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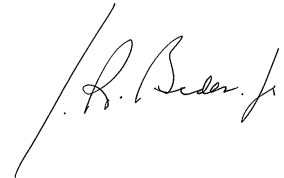
The President

Delegation of Authority Under Section 506(a)(1) of the Foreign Assistance Act of 1961

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 621 of the Foreign Assistance Act of 1961 (FAA), I hereby delegate to the Secretary of State the authority under section 506(a)(1) of the FAA to direct the drawdown of up to \$250 million in defense articles and services of the Department of Defense, and military education and training, to provide assistance to Ukraine and to make the determinations required under such section to direct such a drawdown.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, September 6, 2024

Presidential Documents

Memorandum of September 13, 2024

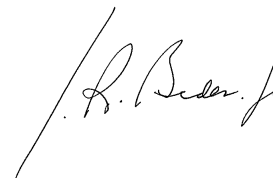
Delegation of Authority Under Section 7019(e) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2024

Memorandum for the Secretary of State [and] the Administrator of the United States Agency for International Development

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Secretary of State, in consultation with the Administrator of the United States Agency for International Development, the functions related to a comprehensive, multi-year strategy for the promotion of democracy abroad under section 7019(e) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2024 (Title VII of Division F of Public Law 118–47), and the accompanying Joint Explanatory Statement.

The delegation in this memorandum shall apply to any provision of any future public law that is the same or substantially the same as the provision referenced in this memorandum.

The Secretary of State is authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, September 13, 2024

Presidential Documents

Memorandum of September 13, 2024

Delegation of Certain Sanctions-Related Authorities Under Public Law 118–50

Memorandum for the Secretary of State[,] the Secretary of the Treasury[,] the Secretary of Defense[,] the Attorney General[,] and] the Secretary of Commerce

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby order as follows:

Section 1. *Stop Harboring Iranian Petroleum Act.* (a) I hereby delegate to the Secretary of the Treasury, in consultation with the Secretary of State, the functions and authorities vested in the President by sections 3(a), 3(c)(1), and 3(e) of the Stop Harboring Iranian Petroleum Act (Division J of Public Law 118–50) (the “SHIP Act”).

(b) I hereby delegate to the Secretary of the Treasury the functions and authorities vested in the President by section 3(c)(2) of the SHIP Act.

(c) I hereby delegate to the Secretary of State the functions and authorities vested in the President by sections 3(h) and 3(i) of the SHIP Act.

Sec. 2. *Fight and Combat Rampant Iranian Missile Exports Act.* (a) I hereby delegate to the Secretary of State, in consultation with the Secretary of the Treasury, the functions and authorities vested in the President by sections 5(a)(1), 5(a)(2), 5(a)(3), and 5(a)(4) of the Fight and Combat Rampant Iranian Missile Exports Act (Division K of Public Law 118–50) (the “Fight CRIME Act”).

(b) I hereby delegate to the Secretary of the Treasury, in consultation with the Secretary of State, the functions and authorities vested in the President by sections 5(a)(5), 5(a)(6), 5(e), and 5(f) of the Fight CRIME Act.

(c) I hereby delegate to the Secretary of the Treasury the functions and authorities vested in the President by section 5(b)(1) of the Fight CRIME Act.

(d) I hereby delegate to the Secretary of State the functions and authorities vested in the President by sections 5(d), 5(h), and 6(c) of the Fight CRIME Act.

Sec. 3. *Mahsa Amini Human Rights and Security Accountability Act.* (a) I hereby delegate to the Secretary of the Treasury, in consultation with the Secretary of State:

(i) the functions and authorities vested in the President by sections 2(c)(1)(A) and 2(c)(1)(B) of the Mahsa Amini Human Rights and Security Accountability Act (Division L of Public Law 118–50) (the “MAHSA Act”), with respect to sanctions listed in sections 2(c)(2)(A), 2(c)(2)(B), 2(c)(2)(C), 2(c)(2)(D), and 2(c)(2)(E) of the MAHSA Act; and

(ii) the functions and authorities vested in the President by section 2(c)(1)(C) of the MAHSA Act.

(b) I hereby delegate to the Secretary of State, in consultation with the Secretary of the Treasury, the functions and authorities vested in the President by sections 2(c)(1)(A) and 2(c)(1)(B) of the MAHSA Act, with respect to sanctions listed in sections 2(c)(2)(C) and 2(c)(2)(F) of the MAHSA Act.

(c) I hereby delegate to the Secretary of State, in consultation with the Secretary of the Treasury, the functions and authorities vested in the President by section 2(d)(5)(A) of the MAHSA Act, and to the Secretary of the Treasury, in consultation with the Secretary of State, the functions and authorities vested in the President by sections 2(d)(5)(B), 2(d)(5)(C), and 2(d)(5)(D) of the MAHSA Act.

Sec. 4. *Hamas and Other Palestinian Terrorist Groups International Financing Prevention Act.* (a) I hereby delegate to the Secretary of State and the Secretary of the Treasury the functions and authorities vested in the President by section 3(a) of the Hamas and Other Palestinian Terrorist Groups International Financing Prevention Act (Division M of Public Law 118–50) (the “Terrorist Groups International Financing Prevention Act”).

(b) I hereby delegate to the Secretary of the Treasury the functions and authorities vested in the President by section 3(c) of the Terrorist Groups International Financing Prevention Act.

(c) I hereby delegate to the Secretary of State the functions and authorities vested in the President by sections 3(f), 4(e), and 6 of the Terrorist Groups International Financing Prevention Act.

(d) I hereby delegate to the Secretary of State, in consultation with the Secretary of the Treasury and the heads of other relevant executive departments and agencies as the Secretary of State deems necessary, the functions and authorities vested in the President by sections 4(a) and 4(c)(1) of the Terrorist Groups International Financing Prevention Act.

(e) I hereby delegate to the Secretary of State and the Secretary of Commerce the functions and authorities vested in the President by section 4(c)(3) of the Terrorist Groups International Financing Prevention Act for which they are responsible under the Arms Export Control Act and the Export Control Reform Act, respectively.

(f) I hereby delegate to the Secretary of State, the Secretary of the Treasury, and the Secretary of Commerce, commensurate with their respective areas of responsibility and in consultation with the heads of other relevant executive departments and agencies as appropriate, the functions and authorities vested in the President by section 4(f)(2) of the Terrorist Groups International Financing Prevention Act.

(g) I hereby delegate to the Secretary of State, in consultation with the Secretary of Defense, the functions and authorities vested in the President by section 4(g) of the Terrorist Groups International Financing Prevention Act.

(h) I hereby delegate to the Secretary of the Treasury, in consultation with the Secretary of State, the functions and authorities vested in the President by sections 3(e), 4(f)(1), and 5 of the Terrorist Groups International Financing Prevention Act.

Sec. 5. *No Technology for Terror Act.* In exercising the functions and authorities described in section 2(d) of the No Technology for Terror Act (Division N of Public Law 118–50), I hereby direct the Secretary of Commerce to consult with the Secretary of State and the Secretary of the Treasury.

Sec. 6. *Strengthening Tools to Counter the Use of Human Shields Act.* (a) I hereby delegate to the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, the functions and authorities vested in the President by section 5(a) of the Strengthening Tools to Counter the Use of Human Shields Act (Division O of Public Law 118–50) (the “Countering Use of Human Shields Act”).

(b) I hereby delegate to the Secretary of the Treasury and the Secretary of State, in consultation with the Attorney General, the functions and authorities vested in the President by sections 6(a) and 6(e)(1) of the Countering Use of Human Shields Act.

(c) I hereby delegate to the Secretary of State the functions and authorities vested in the President by section 6(d) of the Countering Use of Human Shields Act.

Sec. 7. *Illicit Captagon Trafficking Suppression Act of 2023.* (a) I hereby delegate to the Secretary of the Treasury, in consultation with the Secretary of State, the functions and authorities vested in the President by sections 4(a), 4(b)(1), 4(e), 4(f), and 5 of the Illicit Captagon Trafficking Suppression Act of 2023 (Division P of Public Law 118–50) (the “Captagon Suppression Act”).

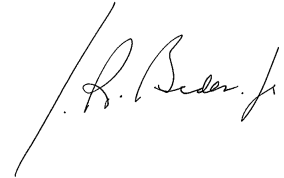
(b) I hereby delegate to the Secretary of State the functions and authorities vested in the President by section 4(d)(1) of the Captagon Suppression Act.

(c) I hereby delegate to the Secretary of State, in consultation with the Secretary of the Treasury, the functions and authorities vested in the President by section 4(d)(2) of the Captagon Suppression Act.

Sec. 8. *Holding Iranian Leaders Accountable Act of 2024.* (a) I hereby delegate to the Secretary of the Treasury, in consultation with the Secretary of State, the functions and authorities vested in the President by section 3(a) of the Holding Iranian Leaders Accountable Act of 2024 (Division R of Public Law 118–50) (the “Holding Iranian Leaders Accountable Act”).

(b) I hereby delegate to the Secretary of State the functions and authorities vested in the President by section 3(a)(3) of the Holding Iranian Leaders Accountable Act.

Sec. 9. The Secretary of State is authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, September 13, 2024

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Presidential Determination on Major Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year 2025

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States, including section 706(1) of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107–228) (FRAA), I hereby identify the following countries as major drug transit or major illicit drug producing countries (including countries that are a significant direct source of precursor chemicals used in the production of certain drugs and substances significantly affecting the United States): Afghanistan, The Bahamas, Belize, Bolivia, Burma, the People's Republic of China (PRC), Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, India, Jamaica, Laos, Mexico, Nicaragua, Pakistan, Panama, Peru, and Venezuela.

A country's presence on the foregoing list is not necessarily a reflection of its government's counterdrug efforts or level of cooperation with the United States. The list is not a sanction or penalty. Consistent with the statutory definition of a major drug transit or major illicit drug producing country set forth in sections 481(e)(2) and 481(e)(5) of the Foreign Assistance Act of 1961, as amended (Public Law 87–195) (FAA), the reason countries are placed on the list is the combination of geographic, commercial, and economic factors that allow drugs or precursor chemicals to be transited or produced, even if a government has engaged in robust and diligent narcotics control and law enforcement measures. The James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (Public Law 117–263) amended the definition of major drug source countries to include source countries of precursor chemicals used to produce illicit drugs significantly affecting the United States.

Pursuant to section 706(2)(A) of the FRAA, I hereby designate Bolivia, Burma, and Venezuela as having failed demonstrably during the previous 12 months to both adhere to their obligations under international counternarcotics agreements and to take the measures required by section 489(a)(1) of the FAA. Included with this determination are justifications for the designations of Bolivia, Burma, and Venezuela, as required by section 706(2)(B) of the FRAA. I have also determined, in accordance with provisions of section 706(3)(A) of the FRAA, that United States programs that support Bolivia, Burma, and Venezuela are vital to the national interests of the United States.

Provisional data from the Centers for Disease Control and Prevention indicate there were an estimated 107,543 drug overdose deaths in the United States during 2023—a decrease of 3 percent from the 111,029 deaths estimated in 2022. This is the first annual decrease in drug overdose deaths since 2018 and a sign that my Administration's historic investments are having an impact. Federally funded State Opioid Response grant programs have contributed to the prevention of over 600,000 potentially fatal overdoses and delivered nearly 10 million naloxone kits since 2020. Naloxone is available over-the-counter for the first time, thanks to actions taken by the Food and Drug Administration. Our workforce of addiction professionals continues to grow, providing the essential prevention, treatment, harm reduction, and recovery support services the American people need.

We are also taking unprecedented action to disrupt the supply of fentanyl, other deadly drugs, and precursor chemicals. U.S. Customs and Border Protection (CBP) has stopped more fentanyl at ports of entry over the last 2 years than in the previous 5 years combined, keeping tens of millions of fentanyl-laced pills and thousands of pounds of fentanyl powder away from our communities. In 2023 alone, CBP seized approximately 1.2 billion doses of fentanyl. In just the last 5 months, over 442 million potentially lethal doses of fentanyl were seized at United States borders. In 2021, I signed an Executive Order targeting foreign persons engaged in the global illicit drug trade and have since sanctioned more than 300 persons and entities under this authority, thus cutting them off from the United States' financial system. The Department of Justice has successfully arrested and prosecuted high-level drug cartel leaders, drug traffickers, and money launderers—placing dangerous traffickers behind bars.

While we expand our efforts at home, we also recognize this problem as a global one that requires a coordinated international response.

For this reason, my Administration launched a Global Coalition in July 2023 uniting more than 150 countries from every region of the world to address synthetic drug threats. Participation in this group has tripled in the past 12 months—evidence that every continent is experiencing an alarming increase in the manufacturing, trafficking, and consumption of dangerous illicit synthetic drugs. I have also engaged with leaders across the world to spur additional global action in the fight against synthetic opioids, negotiated the resumption of bilateral counternarcotics cooperation with the PRC, and established a Trilateral Fentanyl Committee with the Governments of Mexico and Canada.

While the challenges we face are more significant than ever, increased global awareness has yielded enhanced international action. In March, the United Nations (UN) Commission on Narcotic Drugs adopted a United States-sponsored resolution on preventing and responding to overdoses to drive international data collection and information sharing on this issue that remains deeply personal to the American people. The Commission also voted to place international controls on chemicals used to manufacture illicit fentanyl, methamphetamine, and MDMA, making it harder for trafficking networks to use these substances to create and distribute these dangerous synthetic drugs.

Fostering robust, long-term partnerships with crucial allies such as Mexico is imperative for effectively combating the fentanyl epidemic and dismantling the sophisticated criminal organizations that exploit it for financial gain. The U.S.-Mexico Bicentennial Framework for Security, Public Health, and Safe Communities is the foundation for our bilateral efforts to protect our people, prevent trans-border crime, and pursue criminal networks. Through trilateral mechanisms such as the North American Drug Dialogue and the Trilateral Fentanyl Committee, the United States, Mexico, and Canada have strengthened cooperation to address illicit drug production, advance public health, increase collaboration on the control of precursor chemicals, and engage with the private sector to combat the production of illicit synthetic drugs. Our security cooperation has led to significant interdiction efforts in Mexico. For example, United States-donated canines supported the seizure of more than 3 million fentanyl pills in Mexico in 2023 alone. We will continue our close partnership with Mexico to prevent the diversion of precursor chemicals and drug-related equipment; improve interdiction, investigations, and criminal justice outcomes; disrupt illicit finance; advance border integration; and build public trust in security and justice institutions.

In South America, coca cultivation and cocaine production have reached record highs, necessitating urgent action by countries in the region. Colombia, a strong partner, continues to work closely with the United States to reduce cocaine production, conduct drug smuggling interdiction operations, and dismantle the criminal organizations involved in cocaine trafficking. United States assistance has led to increased interdictions, with the Colombian

National Police seizing more than 841 metric tons of pure cocaine and cocaine base in 2023—a 10 percent increase from the previous year. The new metrics for measuring progress agreed upon during the U.S.-Colombia High Level Dialogue in May 2024 demonstrate our renewed bilateral commitment to a holistic approach to address the production and trafficking of cocaine, while providing security, justice, and licit economic opportunities for Colombia's vulnerable rural populations. We are also collaborating to combat crimes that wreak havoc on Colombia's environment and provide significant funding to criminal organizations, including those involved in cocaine production and illegal mining. The United States welcomed the release of Colombia's 10-year drug strategy in 2023 and now urges the Colombian government to resource it adequately and expedite its implementation.

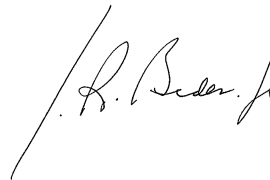
Peru also remains a committed partner in reducing the production and trafficking of cocaine, and our first High Level Dialogue in May 2024 marked a positive step in our bilateral counternarcotics cooperation.

While the Government of Bolivia has taken positive steps to address coca cultivation, it must do more to safeguard the country's licit coca markets from criminal exploitation, reduce illicit coca cultivation that continues to exceed legal limits under Bolivia's domestic laws for medical and traditional use, improve efforts to locate and interdict chemicals diverted through black market channels for processing cocaine, and expand cooperation with international partners to disrupt transnational criminal networks.

Opium poppy cultivation for the production of illicit opioids and methamphetamine in Afghanistan continues to require global attention and action. This past year has seen continued steps from Afghanistan to strengthen drug control and curb the production of illicit opioids and methamphetamine, including through the maintenance of an existing ban on poppy cultivation and efforts to reform drug policies. However, I will reconsider Afghanistan's status in each annual review to assess whether it is upholding its international drug control commitments.

The PRC has worked with the United States to coordinate efforts to counter the global manufacturing and trafficking of illicit synthetic drugs, including fentanyl, since the Woodside Summit between President Biden and President Xi in November 2023. Over the last year, the PRC took significant steps to reduce the flows of precursor chemicals to illicit drug producers known to be trafficking synthetic drugs, such as illicit fentanyl, into the United States. These steps included the PRC issuing a public notice to the PRC chemical industry warning against illicit trade in precursor chemicals and pill press equipment; taking public law enforcement actions against illicit precursor chemical suppliers; removing web-based advertisements; and scheduling 46 synthetic drugs effective July 1, 2024, some of which had been controlled internationally by the UN. The United States and the PRC also launched the U.S.-PRC Counternarcotics Working Group, a valuable mechanism for sharing law enforcement information, tackling the illicit financing of illicit drugs, and ensuring ongoing coordination on shared challenges. That said, sustained enforcement and regulatory action will be necessary to significantly reduce the PRC's role as a source of precursor chemicals used in the production, sale, and trafficking of illicit synthetic drugs significantly impacting the United States.

You are authorized and directed to submit this designation, with the Bolivia, Burma, and Venezuela memoranda of justification, under section 706 of the FRAA, to the Congress, and to publish this determination in the *Federal Register*.

A handwritten signature in black ink, appearing to read "J. R. Biden Jr.", is positioned in the upper right quadrant of the page.

THE WHITE HOUSE,
Washington, September 15, 2024

[FR Doc. 2024-21951

Filed 9-23-24; 8:45 am]

Billing code 4710-10-P

Presidential Documents

Proclamation 10814 of September 19, 2024

National POW/MIA Recognition Day, 2024

By the President of the United States of America

A Proclamation

Throughout history, America's service members have risked everything to keep the light of liberty shining bright. Today, more than 81,000 of these brave men and women remain missing and unaccounted for around the world. They will never be forgotten, and their courage, service, and sacrifice will always be cherished by our grateful Nation. On National POW/MIA Recognition Day, we honor all those missing and unaccounted for. We recommit to bringing them home, no matter how long it takes. And we express our ironclad support for their families.

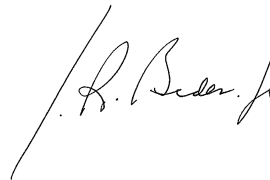
The POW/MIA flag is displayed in its rightful place above the White House—the People's House. The flag serves as a reminder to all Americans that we are the fortunate heirs of the legacy that they—our Nation's unreturned heroes—helped to forge. These service members gave all, risked all, and dared all to protect our freedom. Just as they kept faith in our Nation, we must keep faith with them. My Administration will never forget our obligation to these patriots and their families. We owe them a debt of gratitude we can never fully repay.

For those with family members who are missing and unaccounted for, I know that the not knowing weighs on your hearts, amid the grieving, remembering, and cherishing of your loved ones. My Administration sees you, stands with you, and will never forget our sacred obligation to care for you.

During National POW/MIA Recognition Day, we recognize the absolute bravery of our Nation's service members who are missing and unaccounted for, and we recommit to bringing them home. We offer our gratitude and steadfast support for their families, who have given so much to our Nation. We also honor the service and sacrifice of former prisoners of war. And we remember that the truest testimonial to their sacrifice is doing our part to ensure that our democracy and the soul of our Nation endure.

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 laws of the United States, do hereby proclaim September 20, 2024, as National POW/MIA Recognition Day. Let all who read this know that America remains grateful to our heroes held in the worst imaginable conditions as prisoners of war. Additionally, I encourage my fellow citizens across the Nation to reflect on today and let us not forget those heroes who never returned home from the battlefields around the world or their families who are still waiting for answers. I call upon Federal, State, and local government officials and private organizations to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of September, in the year of our Lord two thousand twenty-four, and of the Independence of the United States of America the two hundred and forty-ninth.

A handwritten signature in black ink, appearing to read "Joe Biden", with a long, sweeping horizontal line extending to the left.

[FR Doc. 2024-21974

Filed 9-23-24; 8:45 am]

Billing code 3395-F4-P

Presidential Documents

Proclamation 10815 of September 19, 2024

National Service Dog Day, 2024

By the President of the United States of America

A Proclamation

On National Service Dog Day, we recognize the proven benefits that service dogs bring to so many people across our Nation.

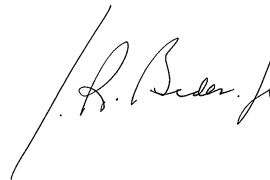
Service dogs have long been at people's sides—acting as an important source of comfort and an essential resource to help with everyday life. It was not until 1990, when we passed the Americans with Disabilities Act, that our Nation fully recognized and protected service dogs by law. I am proud to have co-sponsored this landmark legislation years ago, and I am proud of its continued legacy today. Service dogs continue to provide valuable aid and support, improving people's lives—and even sometimes saving them. For people with disabilities and those struggling with their health, service dogs can help them perform everyday tasks, alert them of oncoming medical episodes, or remind them to take medication. For those dealing with post-traumatic stress disorder or anxiety, service dogs can be a source of comfort and care—waking their owner up during nightmares or helping them navigate large crowds.

My Administration has worked to ensure that everyone has access to the health care and support services they need. I signed the Puppies Assisting Wounded Servicemembers for Veterans Therapy Act, which established a pilot program that makes veterans struggling with post-traumatic stress disorder eligible to train service dogs. Additionally, the Department of Veterans Affairs has also provided the Service Dog Veterinary Health Insurance Benefit to over 1,400 veterans, ensuring that veterinary costs for their service dogs are covered. And the Department of Transportation established the first-ever Airline Passengers with Disabilities Bill of Rights, which affirmed the right to travel with a service animal, and proposed a rule to ensure all passengers with disabilities—including those with service animals—can travel safely and with dignity.

Today, may we celebrate service dogs, who offer assistance, comfort, and unconditional love to so many.

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 September 20, 2024, as National Service Dog Day. I call upon the people of the United States to honor the role of service dogs in the lives of people with disabilities and America's veterans with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of September, in the year of our Lord two thousand twenty-four, and of the Independence of the United States of America the two hundred and forty-ninth.

A handwritten signature in black ink, appearing to read "Joe Biden", with a long, sweeping horizontal line extending to the left.

[FR Doc. 2024-21977

Filed 9-23-24; 8:45 am]

Billing code 3395-F4-P

Rules and Regulations

Federal Register

Vol. 89, No. 185

Tuesday, September 24, 2024

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[NRC-2018-0289]

RIN 3150-AK21

American Society of Mechanical Engineers 2021-2022 Code Editions; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is correcting a final rule that was published in the **Federal Register** on August 30, 2024, regarding the amendment of NRC's regulations to incorporate by reference the 2021 Edition of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code and the 2022 Edition of the American Society of Mechanical Engineers Operation and Maintenance of Nuclear Power Plants, Division 1, OM Code: Section IST, for nuclear power plants. This action is necessary to correct inadvertent errors in the final rule. These corrections do not result in any substantive changes to the final rule.

DATES: The correction is effective on September 30, 2024.

ADDRESSES: Please refer to Docket ID NRC-2018-0289 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2018-0289. Address questions about NRC dockets to Helen Chang; telephone: 301-415-3228; email: Helen.Chang@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to PDR.Resource@nrc.gov.

- **NRC's PDR:** The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Tyler Hammock, Office of Nuclear Material Safety and Safeguards, telephone: 301-415-1381, email: Tyler.Hammock@nrc.gov; or Michael Benson, Office of Nuclear Reactor Regulation, telephone: 301-415-2425, email: Michael.Benson@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

Need for Correction

The final rule published on August 30, 2024, in the **Federal Register** at 89 FR 70449, inadvertently contained some minor technical errors in the regulatory instructions and text that this document corrects. This document corrects errors in amendatory instruction i for § 50.55a. The instructions should have revised the introductory text for paragraphs (b)(2)(viii) and (ix) and retained all paragraphs under (b)(2)(viii) and (ix). In FR Doc. 2024-19235 beginning on page 70449 of the **Federal Register** of Friday, August 30, 2024, the NRC makes the following corrections:

§ 50.55a [Corrected]

- 1. On page 70467, in the first column, amendatory instruction 2.i for § 50.55a is corrected to read "i. Revise paragraphs (b)(2) introductory text, (b)(2)(viii) introductory text, and (b)(2)(ix) introductory text;".
- 2. On page 70468, in the second column, in the amendment text for 10

CFR 50.55a, add five asterisks between paragraphs (b)(2)(viii) and (ix).

For the Nuclear Regulatory Commission.

Dated: September 19, 2024.

Cindy Bladey,

Chief Regulatory Analysis and Rulemaking Support Branch, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2024-21779 Filed 9-23-24; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2024-0758; Project Identifier MCAI-2023-00671-T; Amendment 39-22819; AD 2024-16-13]

RIN 2120-AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD-100-1A10 airplanes. This AD was prompted by the discovery of a single-point failure within the left-hand and right-hand heater current monitor (HCM) units. This AD requires installing a monitor circuit comprising relays external to the HCM units. This AD also requires revising the normal and non-normal procedure sections of the existing airplane flight manual (AFM) to add new procedures associated with revised crew alerting system (CAS) messages. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 29, 2024.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 29, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-0758; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory

continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For Bombardier material identified in this AD, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514-855-2999; email: ac.yul@aero.bombardier.com; website: bombardier.com.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available at regulations.gov under Docket No. FAA-2024-0758.

FOR FURTHER INFORMATION CONTACT:

Steven Dzierzynski, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7300; email 9-avs-nyaco-cos@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model BD-100-1A10 airplanes. The NPRM published in the **Federal Register** on March 25, 2024 (89 FR 20562). The NPRM was prompted by AD CF-2023-33, dated May 10, 2023 (referred to after this as the MCAI), issued by Transport Canada, which is the aviation authority for Canada. The MCAI states that during a review of the air data system, Bombardier discovered that a single-point failure exists within the left-hand and right hand HCM units. The HCM unit is designed with a single programmable logic device (PLD), which is responsible for the control and monitoring functions of the HCM unit. The PLD could fail in a way that it would erroneously energize the heater control relay and switch the heaters off. This failure could lead to un-announced loss of ice protection on the air data probes, resulting in the potential display of misleading airspeed, and erroneous indications to the flightcrew.

In the NPRM, the FAA proposed to require installing a monitor circuit comprising relays external to the HCM units. The NPRM also required revising the normal and non-normal procedure

sections of the existing AFM to add new procedures associated with revised CAS messages. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at regulations.gov under Docket No. FAA-2024-0758.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from NetJets Inc. The following presents the comment received on the NPRM and the FAA's response to the comment.

Request to Reference Previous AFM Revision

NetJets requested that the NPRM be revised to change references to Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, Revision 38, dated May 11, 2023 (Revision 38), to Revision 36, dated September 27, 2022 (Revision 36), which is referenced in the MCAI for Challenger 350 airplanes. NetJets pointed out that the particular procedures affected by the proposed AD were amended in Revision 36. Further, NetJets stated that Revision 38 is out-of-date and speculated that chances are good that, if the FAA changes to Revision 39, dated September 25, 2023 (Revision 39), Bombardier will issue a new revision before the final AD is released. NetJets went on to assert that this will cause an increased workload for the FAA, Bombardier, and operators due to the increase in necessary requests for approvals of alternative methods of compliance (AMOCs) to use later revisions of the AFM.

The FAA does not agree to revise this AD to change the AFM revision but provides the following clarification: Paragraphs (h)(3) and (4) specify to revise Chapter 4, Normal Procedures, to include the information in BEFORE STARTING ENGINES section, Subsection 04-02, and in Chapter 5, Non-Normal Procedures, to include the information in Subsection 05-27, Ice & Rain Protection, respectively, of the Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, Revision 38, dated May 11, 2023 (for the applicable airplanes). The language in paragraph (h) of this AD is designed to allow incorporating the information in the referenced sections, regardless of the revision level of the AFM, so long as the language is identical to the information in BEFORE STARTING ENGINES section, Subsection 04-02, Chapter 4, Normal Procedures, and Subsection 05-27, Ice & Rain Protection, Chapter 5, Non-Normal Procedures, of the

Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, Revision 38, dated May 11, 2023. The information in BEFORE STARTING ENGINES section, Subsection 04-02, Chapter 4, Normal Procedures, and Subsection 05-27, Ice & Rain Protection, Chapter 5, Non-Normal Procedures, of the Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, Revision 38 is identical to that in Revision 36. Therefore, this AD has not been changed regarding this request.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comment received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed Bombardier Service Bulletin 100-30-06 and Bombardier Service Bulletin 350-30-001, both dated December 29, 2022. This material specifies procedures to install a monitoring circuit comprising relays external to the HCM units, including reworking the plate assembly, installing relay bracket assemblies, installing relays and a rail terminal module, installing wires for the relays, and performing operational testing. These documents are distinct since they apply to different airplane serial numbers.

The FAA also reviewed the following material, which specifies new normal procedures to follow after installation of the monitoring circuit. These documents are distinct since they apply to different airplane serial numbers.

- BEFORE STARTING ENGINES section, Subsection 04-02, Chapter 4, Normal Procedures, Bombardier Challenger 300 AFM (Imperial Version), Publication No. CSP 100-1, Revision 72, dated May 11, 2023. (For obtaining the procedures for Bombardier Challenger 300 AFM (Imperial Version), Publication No. CSP 100-1, use Document Identification No. CH 300 AFM-I.)

• BEFORE STARTING ENGINES section, Subsection 04–02, Chapter 4, Normal Procedures, Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, Revision 38, dated May 11, 2023. (For obtaining the procedures for Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, use Document Identification No. CH 350 AFM.)

The FAA reviewed the following material, which specifies non-normal procedures to follow after installation of the monitoring circuit. These documents are distinct since they apply to different airplane serial numbers.

- Subsection 05–27, Ice & Rain Protection, Chapter 5, Non-Normal Procedures, Bombardier Challenger 300 AFM (Imperial Version), Publication No. CSP 100–1, Revision 72, dated May 11, 2023. (For obtaining the procedures for Bombardier Challenger 300 AFM (Imperial Version), Publication No. CSP 100–1, use Document Identification No. CH 300 AFM–I.)
- Subsection 05–27, Ice & Rain Protection, Chapter 5, Non-Normal Procedures, Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, Revision 38, dated May 11, 2023. (For obtaining the procedures for Bombardier

Challenger 350 AFM, Publication No. CH 350 AFM, use Document Identification No. CH 350 AFM.)

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 343 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 70 work-hours × \$85 per hour = Up to \$5,950	Up to \$2,324	Up to \$8,274	Up to \$2,837,982

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2024–16–13 Bombardier, Inc.: Amendment 39–22819; Docket No. FAA–2024–0758; Project Identifier MCAI–2023–00671–T.

(a) Effective Date

This airworthiness directive (AD) is effective October 29, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–100–1A10 airplanes, certificated

in any category, serial numbers 20003 through 20936 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 30, Ice and Rain Protection.

(e) Unsafe Condition

This AD was prompted by a review of the air data system where Bombardier discovered that a single-point failure exists within the left-hand and right-hand heater current monitor (HCM) units. The FAA is issuing this AD to address the failure of the programmable logic device in the left-hand and right-hand HCM units. The unsafe condition, if not addressed, could lead to unannounced loss of ice protection on the air data probes, resulting in the potential display of misleading airspeed, and erroneous indications to the flightcrew.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Monitoring Circuit Installation and Tests

Within 60 months from the effective date of this AD, install a monitoring circuit comprising of relays external to the HCM units, in accordance with sections 2.B. and 2.C. of the Accomplishment Instructions of the applicable material specified in paragraph (g)(1) or (2) of this AD.

(1) Bombardier Service Bulletin 100–30–06, dated December 29, 2022 (for airplane serial numbers 20003 through 20500 inclusive).

(2) Bombardier Service Bulletin 350–30–001, dated December 29, 2022 (for airplane serial numbers 20501 through 20936 inclusive).

(h) Revision of Existing Airplane Flight Manual (AFM)

Within 60 months from the effective date of this AD, and after the completion of the actions required by paragraph (g) of this AD, revise the existing AFM as specified in

paragraphs (h)(1) through (4) of this AD, as applicable.

(1) For airplane serial numbers 20003 through 20500 inclusive: Revise Chapter 4, Normal Procedures, to include the information in BEFORE STARTING ENGINES section, Subsection 04–02, Chapter 4, Normal Procedures, Bombardier Challenger 300 AFM (Imperial Version), Publication No. CSP 100–1, Revision 72, dated May 11, 2023.

Note 1 to paragraph (h)(1): For obtaining the procedures specified in paragraphs (h)(1) and (2) of this AD for Bombardier Challenger 300 AFM (Imperial Version), Publication No. CSP 100–1, use Document Identification No. CH 300 AFM–I.

(2) For airplane serial numbers 20003 through 20500 inclusive: Revise Chapter 5, Non-Normal Procedures, to include the information in Subsection 05–27, Ice & Rain Protection, Chapter 5, Non-Normal Procedures, Bombardier Challenger 300 AFM (Imperial Version), Publication No. CSP 100–1, Revision 72, dated May 11, 2023.

(3) For airplane serial numbers 20501 through 20936 inclusive: Revise Chapter 4, Normal Procedures, to include the information in BEFORE STARTING ENGINES section, Subsection 04–02, Chapter 4, Normal Procedures, Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, Revision 38, dated May 11, 2023.

Note 2 to paragraph (h)(3): For obtaining the procedures specified in paragraphs (h)(3) and (4) of this AD for Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, use Document Identification No. CH 350 AFM.

(4) For airplane serial numbers 20501 through 20936 inclusive: Revise Chapter 5, Non-Normal Procedures, to include the information in Subsection 05–27, Ice & Rain Protection, Chapter 5, Non-Normal Procedures, Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, Revision 38, dated May 11, 2023.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (j) of this AD. Information may be emailed to: 9-AVS-NYACO-COS@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or Transport Canada; or Bombardier, Inc.'s Transport Canada Design Approval Organization (DAO). If approved by

the DAO, the approval must include the DAO-authorized signature.

(j) Additional Information

For more information about this AD, contact Steven Dzierzynski, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email 9-avs-nyaco-cos@faa.gov.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the material listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this material as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) BEFORE STARTING ENGINES section, Subsection 04–02, Chapter 4, Normal Procedures, Bombardier Challenger 300 AFM (Imperial Version), Publication No. CSP 100–1, Revision 72, dated May 11, 2023.

Note 3 to paragraph (k)(2)(i): For obtaining the procedures specified in paragraphs (k)(2)(i) and (ii) of this AD for Bombardier Challenger 300 AFM (Imperial Version), Publication No. CSP 100–1, use Document Identification No. CH 300 AFM–I.

(ii) Subsection 05–27, Ice & Rain Protection, Chapter 5, Non-Normal Procedures, Bombardier Challenger 300 AFM (Imperial Version), Publication No. CSP 100–1, Revision 72, dated May 11, 2023.

(iii) BEFORE STARTING ENGINES section, Subsection 04–02, Chapter 4, Normal Procedures, Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, Revision 38, dated May 11, 2023.

Note 4 to paragraph (k)(2)(iii): For obtaining the procedures specified in paragraphs (k)(2)(iii) and (iv) of this AD for Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, use Document Identification No. CH 350 AFM.

(iv) Subsection 05–27, Ice & Rain Protection, Chapter 5, Non-Normal Procedures, Bombardier Challenger 350 AFM, Publication No. CH 350 AFM, Revision 38, dated May 11, 2023.

(v) Bombardier Service Bulletin 100–30–06, dated December 29, 2022.

(vi) Bombardier Service Bulletin 350–30–001, dated December 29, 2022.

(3) For material identified in this AD, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email ac.yul@aero.bombardier.com; website bombardier.com.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations, or email fr.inspection@nara.gov.

Issued on August 6, 2024.

Victor Wicklund,

Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2024–21806 Filed 9–23–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–2313; Project Identifier MCAI–2024–00493–E; Amendment 39–22852; AD 2024–19–10]

RIN 2120–AA64

Airworthiness Directives; Austro Engine GmbH Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Austro Engine GmbH (Austro) Model E4 and E4P engines. This AD was prompted by reports of engine failures and an investigation where cracks were discovered on the pistons. This AD requires repetitive borescope inspections (BSIs) for cracks on the pistons, and, if necessary, removal from service and replacement of the piston, and a fuel sample analysis for water contamination and, if contamination is found, replacement of the high-pressure pump (HPP), injectors, and fuel rails. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 9, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 9, 2024.

The FAA must receive comments on this AD by November 8, 2024.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to regulations.gov. Follow the instructions for submitting comments.

- *Fax:* (202) 493–2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–2313; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For Austro material identified in this AD, contact Austro, Rudolf-Diesel-Strasse 11, A–2700 Weiner Neustadt, Austria; phone: +43 2622 23000; website: austroengine.at.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–2313.

FOR FURTHER INFORMATION CONTACT:

Morton Lee, Aviation Safety Engineer, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (860) 386–1791; email: morton.y.lee@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA–2024–2313; Project Identifier MCAI–2024–00493–E” at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to [regulations.gov](https://www.regulations.gov), including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this final rule.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your

comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Morton Lee, Aviation Safety Engineer, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Emergency AD 2024–0172–E, dated August 28, 2024 (EASA AD 2024–0172–E) (also referred to as the MCAI), to correct an unsafe condition on certain Austro Model E4 and E4P engines having a piston part number (P/N) E4A–72–400–000. The MCAI states that engine failures have been reported, where, during subsequent inspection, cracks on the piston were identified. During the following investigation, it was determined that only affected parts (pistons P/N E4A–72–400–000) are subject to that failure. Further investigation is on-going to determine the root cause of that failure. This condition, if not corrected, could lead to engine failure with consequent reduced control of the airplane and, for single-engine airplanes, damage to the airplane and injury to occupants during an emergency landing.

You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–2313.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed Austro Mandatory Service Bulletin No. MSB–E4–043/0, dated August 27, 2024, which specifies, among other things, procedures for repetitive BSIs for cracks on the pistons.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA’s Determination

These products have been approved by the aviation authority of another country and are approved for operation

in the United States. Pursuant to the FAA’s bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and material referenced above. The FAA is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

AD Requirements

This AD requires repetitive BSIs for cracks on the pistons and, if necessary, removal from service and replacement of the piston, and a fuel sample analysis for water contamination and, if contamination is found, replacement of the HPP, injectors, and fuel rails.

Interim Action

The FAA considers that this AD is an interim action. The unsafe condition is still under investigation by the manufacturer and, depending on the results of that investigation, the FAA may consider further rulemaking action.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for “good cause,” finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because cracks on the pistons, if not corrected, could lead to engine failure with consequent reduced control of the airplane and, for single-engine airplanes, damage to the airplane and injury to occupants during an emergency landing. The FAA has determined that these engines will need to be inspected before 100 or 200 flight hours after installation depending on the engine model. Based on the fleet usage of these engines, many of these engines will need an inspection before further flight and most within 3 months. These compliance times are shorter than the time necessary for the public to comment and for publication of the final

rule. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons

the FAA found good cause to forgo notice and comment.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good

cause to adopt this rule without prior notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 20 engines installed on airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Perform BSI of the piston	5 work-hours × \$85 per hour = \$425	\$0	\$425	\$8,500

The FAA estimates the following costs to do any necessary replacements and follow-on inspections that would be

required based on the results of the inspection. The agency has no way of determining the number of engines that

might need these replacements and follow-on inspections.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace the piston	60 work-hours × \$85 per hour = \$5,100	\$2,216	\$7,316
Perform fuel sample analysis	1 work-hours × \$85 per hour = \$85	0	85
Replace the injectors, HPP, and fuel rails	60 work-hours × \$85 per hour = \$5,100	2,216	7,316

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs describes in more detail the scope of the Agency’s authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

- (1) Is not a “significant regulatory action” under Executive Order 12866, and
- (2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2024-19-10 Austro Engine GmbH: Amendment 39-22852; Docket No. FAA-2024-2313; Project Identifier MCAI-2024-00493-E.

(a) Effective Date

This airworthiness directive (AD) is effective October 9, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Austro Engine GmbH (Austro) Model E4 and E4P engines with an installed piston having part number E4A-72-400-000.

(d) Subject

Joint Aircraft System Component (JASC) Code 8500, Engine (Reciprocating).

(e) Unsafe Condition

This AD was prompted by reports of engine failures and an investigation where cracks were discovered on the pistons. The FAA is issuing this AD to detect and address cracks on the pistons. The unsafe condition, if not addressed, could result in engine failure with consequent reduced control of the airplane and, for single-engine airplanes, damage to the airplane and injury to occupants during an emergency landing.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Required Actions

(1) At the applicable times specified in paragraphs (g)(1)(i) through (iv) of this AD, do repetitive borescope inspections (BSIs) of each affected piston for cracks on the piston in accordance with paragraph 2.1.2 “Accomplishment/Instructions” of Austro Mandatory Service Bulletin No. MSB-E4-043/0, dated August 27, 2024.

(i) For Configuration E4A and E4P engines with less than 100 flight hours (FHs) since installation as of the effective date of this AD: Inspect within 100 FHs since installation and thereafter at intervals not to exceed 50 FHs.

(ii) For Configuration E4A and E4P engines with 100 FHs or more since installation as of the effective date of this AD: Inspect before further flight and thereafter at intervals not to exceed 50 FHs.

(iii) For Configuration E4B and E4C engines with less than 200 FHs since installation as of the effective date of this AD: Inspect within 200 FHs since installation and thereafter at intervals not to exceed 100 FHs.

(iv) For Configuration E4B and E4C engines with 200 FHs or more since installation as of the effective date of this AD: Inspect before further flight and thereafter at intervals not to exceed 100 FHs.

(2) If during any BSI required by paragraph (g)(1) of this AD, any crack is found, before further flight, do the following:

(i) Remove from service and replace the piston. Replacement of the engine core includes piston replacement and would satisfy this requirement.

(ii) Collect a fuel sample from the high-pressure pump (HPP) fuel return line and do a fuel analysis for water contamination.

(iii) If during any fuel analysis required by paragraph (g)(2)(ii), any water contamination is found, remove from service and replace the HPP, injectors, and fuel rails.

(h) Definitions

For the purpose of this AD:

(1) “Configuration E4A engines” are Model E4 engines with an engine serial number (ESN) that begins with “E4-A- . . .”

(2) “Configuration E4B engines” are Model E4 engines with an ESN that begins with “E4-B- . . .”

(3) “Configuration E4C engines” are Model E4 engines with an ESN that begins with “E4-C- . . .”

(4) “Configuration E4P engines” are Model E4P engines with an ESN that begins with “E4P-B- . . .” or “E4P-C- . . .”

(i) Credit for Previous Actions

Credit may be taken for BSIs done before the effective date of this AD using Austro Engine Authorization Request/Occurrence Reporting AR1734, dated August 16, 2024.

(j) Special Flight Permits

A special flight permit may be issued in accordance with 14 CFR 21.197 and 21.199 to permit a single ferry flight to a location where the actions required by this AD can be accomplished, provided that the flight is accomplished under visual flight rule conditions, without passengers, and does not exceed 3 FHs.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (l) of this AD and email to: AMOC@faa.gov.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager

of the local flight standards district office/certificate holding district office.

(l) Additional Information

For more information about this AD, contact Morton Lee, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (860) 386-1791; email: morton.y.lee@faa.gov.

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the material listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this material as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Austro Engine GmbH (Austro) Mandatory Service Bulletin No. MSB-E4-043/0, dated August 27, 2024.

(ii) [Reserved]

(3) For Austro material identified in this AD, contact Austro, Rudolf-Diesel-Strasse 11, A-2700 Weiner Neustadt, Austria; phone: +43 2622 23000; website: austroengine.at.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222-5110.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

Issued on September 17, 2024.

Victor Wicklund,

Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2024-21804 Filed 9-19-24; 4:15 pm]

BILLING CODE 4910-13-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 112

[Docket No. FDA-2011-N-0921]

Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption: What You Need To Know About the Food and Drug Administration Regulation; Small Entity Compliance Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the availability of a guidance for industry entitled “Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption: What You Need to Know About the FDA Regulation: Small Entity Compliance Guide.” We

are updating the small entity compliance guide (SECG) to help small entities comply with revised requirements related to agricultural water in the “Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption” regulation.

DATES: The announcement of the guidance is published in the **Federal Register** on September 24, 2024.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2011-N-0921 for “What You Need to Know About the FDA Regulation:

Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption—Small Entity Compliance Guide.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the SECG to the Office of Food Safety, Division of Produce Safety (HFS–317), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that

office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the SECG.

FOR FURTHER INFORMATION CONTACT: Samir Assar, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1636.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 27, 2015 (80 FR 74353), we issued a final rule entitled “Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption” (produce safety rule). The produce safety rule, which is codified at part 112 (21 CFR part 112), established science-based minimum standards for the safe growing, harvesting, packing, and holding of produce, meaning fruits and vegetables grown for human consumption. On September 6, 2017 (82 FR 42031) we announced the availability of a guidance for industry entitled “Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption: What You Need to Know About the FDA Regulation: Small Entity Compliance Guide” to help small entities comply with the produce safety rule.

In the **Federal Register** of May 6, 2024 (89 FR 37448), we issued a final rule entitled, “Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption Relating to Agricultural Water” (agricultural water final rule) that revised certain requirements in subpart E of part 112 (21 CFR 112.40 through 112.50) of the produce safety rule applicable to pre-harvest agricultural water for covered produce (other than sprouts). The agricultural water final rule is effective July 5, 2024. The final rule establishes compliance dates for the pre-harvest agricultural water provisions for covered produce (other than sprouts) beginning on April 7, 2025, with date staggering based on farm size.

We examined the economic implications of the agricultural water final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612) and determined that the final rule might have a significant economic impact on a substantial number of small entities. In compliance with section 212 of the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121, as amended by Pub. L. 110–28), we are making available the SECG to explain the actions that a small entity must take to comply with the rule.

We are issuing the SECG consistent with our good guidance practices regulation (21 CFR 10.115(c)(2)). The SECG represents the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in part 112 have been approved under OMB control number 0910–0816.

III. Electronic Access

Persons with access to the internet may obtain the SECG at either <https://www.fda.gov/FoodGuidances>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>. Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: September 19, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–21840 Filed 9–23–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0796]

RIN 1625–AA00

Safety Zone; Allegheny River Mile Marker 0.5 to 0.75, Pittsburgh, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Allegheny River on September 28, 2024, at mile marker 0.5 to mile marker 0.75 from 8 p.m. through 9:30 p.m. This safety zone is necessary to provide for the safety of life on the navigable waters during a drone display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the

Captain of the Port, Pittsburgh, or a designated representative.

DATES: This rule is effective 8 p.m. through 9:30 p.m. on September 28, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2024–0796 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Marine Science Technician First Class Brett Lanza, Marine Safety Unit Pittsburgh, U.S. Coast Guard, at telephone 206–815–6624, email Brett.J.Lanza@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule under the authority in 5 U.S.C. 553(b)(B). This statutory provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this safety zone by September 28, 2024, and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing this rule.

Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because action is needed by September 28, 2024, to ensure the safety of life on the navigable waters during the drone display.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Pittsburgh (COTP)

has determined that potential hazards associated with a drone show on September 28, 2024, will be a safety concern for anyone on the Allegheny River at mile marker 0.5 to mile marker 0.75 from 8 p.m. to 9:30 p.m. This rule is needed to protect participants, vessels, and the navigable waters in the safety zone, before, during, and after the scheduled event.

IV. Discussion of the Rule

This rule establishes a safety zone from 8 p.m. until 9:30 p.m. on September 28, 2024. The safety zone will cover all navigable waters between mile marker 0.5 to 0.75 on the Allegheny River. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during a drone display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. To seek permission to enter, contact the COTP or designated representative via VHF–FM channel 16, or through Marine Safety Unit Pittsburgh at 206–815–6624. Persons and vessels permitted to enter the safety zone must comply with all lawful orders or directions issued by the COTP or designated representative. The COTP or a designated representative will inform the public of the effective period for the safety zone as well as any changes in the dates and times of enforcement through Local Notice to Mariners (LNMs), Broadcast Notice to Mariners (BNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protesters.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on size, location, and duration of the temporary safety zone. This safety zone only impacts a 0.25 mile stretch on the Allegheny River for 90 minutes on September 28, 2024. Moreover, the Coast Guard will issue Local Notice to Mariners and/or Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission from the COTP to transit the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 90 minutes that will prohibit entry within mile marker 0.5 through 0.75 on the Allegheny River. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction

Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Marine safety, Navigation (water), Reporting, Recordkeeping requirements, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T08–0796 to read as follows:

§ 165.T08–0796 Safety Zone; Allegheny River Mile Marker 0.5 to 0.75, Pittsburgh, PA.

(a) *Location.* The following area is a safety zone: All navigable waters on the Allegheny River between mile marker 0.5 and mile marker 0.75.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Pittsburgh (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative;

(2) To seek permission to enter, contact the COTP or the COTP's representative by VFH Channel 16, or through Marine Safety Unit Pittsburgh at 206–815–6624. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 8 p.m. to 9:30 p.m. on September 28, 2024.

Dated: September 18, 2024.

Justin R. Jolley,

Commander, U.S. Coast Guard, Captain of the Port, MSU Pittsburgh.

[FR Doc. 2024–21839 Filed 9–23–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0806]

RIN 1625–AA00

Safety Zone; Ohio River, New Albany, IN

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Ohio River, from Mile Markers 606.5–609.6. The safety zone is needed to ensure the safety of spectators during the Fall Break Blast fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Ohio Valley.

DATES: This rule is effective from 8:30 p.m. to 10:30 p.m. on September 27, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2024–0806 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Petty Officer Second Class Dalton Johnson, U.S. Coast Guard; telephone 502–779–5334, email SECOHV-WWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule under authority in 5

U.S.C. 553(b)(B). This statutory provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impractical and contrary to public interest. The event sponsor recently requested an alternative date for an established fireworks display after a weather event caused it to be canceled. It is impracticable and contrary to the public interest to publish an NPRM because we must establish this safety zone by September 27, 2024.

Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable the safety zone must be in place by September 27, 2024 for the protection of vessels, the waterway, and the public.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with fireworks and the risk of a stationary barge in the navigational channel will be a safety concern for everyone from mile marker 606.5–609.6 on the Ohio River. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the fireworks display is occurring.

IV. Discussion of the Rule

This rule establishes a safety zone from 8:30 p.m. to 10:30 p.m. on September 27, 2024. The safety zone will cover from MM 606.5–609.6 on the Ohio River. The safety zone is necessary for the safety of vessels during loading, standby, and firing of the fireworks. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the short duration of the safety zone. The regulation is only two hours on one day.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on a substantial number of small entities.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–

888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety

zone lasting only 2 hours on one day that will prohibit transit in a 3-mile range on the Ohio River nearby New Albany, Indiana. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

- 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

- 2. Add § 165.T08–0806 to read as follows:

§ 165.T08–0806 Safety Zone; Ohio River, New Albany, IN.

(a) *Location.* The following area is a safety zone: On the Ohio River from mile markers 606.5–609.6 from the times of 8:30 p.m. to 10:30 p.m. on September 27, 2024.

(b) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the Captain of the Port Ohio Valley or their designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by phone at (502) 779–5400. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(3) The COTP will provide notice of the regulated area through advanced

notice via broadcast notice to mariners and by on-scene designated representatives.

(c) *Enforcement period.* This section will be enforced from 8:30 p.m. to 10:30 p.m. on September 27, 2024.

Dated: September 17, 2024.

Heather R. Mattern,

Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.

[FR Doc. 2024–21842 Filed 9–23–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0871]

RIN 1625–AA00

Safety Zone; M/V DALI Transit of the Elizabeth River, Norfolk Harbor, Thimble Shoal Channel and Chesapeake Bay, Norfolk, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for a portion of the Elizabeth River, Norfolk Harbor, Thimble Shoal Channel, and the Chesapeake Bay in Norfolk, VA. This action is necessary to protect personnel, vessels, and the marine environment from potential hazards created by the M/V Dali as it departs Norfolk, Va. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Virginia.

DATES: This rule is effective from September 24, 2024, through September 24, 2024. For the purposes of enforcement, actual notice will be used from September 19, 2024, until September 24, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2024–0871 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email LCDR Justin Strassfield, Sector Virginia, Waterways Management Division, U.S. Coast Guard, Telephone: 757–668–5580, email:

VirginiaWaterways@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On March 26, 2024, the M/V Dali lost propulsion and allied with the Francis Scott Key Bridge in the Chesapeake Bay, near the Port of Baltimore, causing the bridge to collapse upon it. See 89 FR 24385 (April 8, 2024) for additional details about the allision. On June 22, 2024, the M/V Dali transited from the Port of Baltimore to Norfolk, Va. for repairs. More recently, the Port of Virginia has notified the Coast Guard that the M/V Dali will depart Virginia. The vessel transit is taking place with the assistance of multiple tugboats and will be subject to a safety zone issued by the Captain of the Port (COTP). It is anticipated that the vessel will depart between September 19, 2024, and September 24, 2024, but these dates are subject to change. Given both the damage to the vessel from the allision, and the vessel's mechanical history, including the loss of propulsion which led to the allision, a 500-yard safety zone will be enforced during the transit within Virginia waters.

The Coast Guard is issuing this temporary rule under authority in 5 U.S.C. 553(b)(B). This statutory provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to public interest. There is insufficient time to provide notice of a proposed rule, take and consider comments, and publish a final rule before September 19, when the rule must be in effect to provide for safety in the navigable waters around the M/V Dali as it departs Norfolk, Virginia.

Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because prompt action is needed to respond to the dangers associated with the transit of the M/V Dali.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The COTP, Sector Virginia has determined that potential hazards associated with the transit of the M/V Dali will be a safety concern for anyone within a 500-yard radius of the vessel due to its limited ability to maneuver. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the M/V Dali transits through the waters of the COTP Zone, Sector Virginia.

IV. Discussion of the Rule

This rule establishes a safety zone from September 19, 2024, to September 24, 2024. The safety zone will cover all navigable waters within 500 yards of the M/V Dali while in transit within waters of the COTP Zone, Sector Virginia. The dates of the safety zone were chosen to protect personnel, vessels, and the marine environment in the navigable waters of the Sector Virginia, COTP Zone before, during, and after the scheduled transit. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone while the vessel departs Norfolk, VA. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

Because the Coast Guard has determined that this final rule is exempt from notice and comment rulemaking requirements, the regulatory flexibility analysis provisions of the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply to this action.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes,

or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a 500-yard moving safety zone around a vessel. It is categorically excluded from further review under paragraph L60(c) of appendix A, table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5;

Department of Homeland Security Delegation
No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T05–0871 to read as follows:

§ 165.T05–0871 Safety Zone; M/V DALI transit of the Elizabeth River, Norfolk Harbor, Thimble Shoal Channel and Chesapeake Bay, Norfolk, VA

(a) *Location.* The following area is a safety zone: All waters of the Elizabeth River, Norfolk Harbor, Thimble Shoal Channel, and Chesapeake Bay within 500 yards of the M/V Dali while it is transiting within Virginia waters.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Virginia (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF–FM Channel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced during the outbound transit of the M/V Dali from the Port of Norfolk.

Dated: September 18, 2024.

P.M. Britton,
Captain, U.S. Coast Guard, Captain of the Port Sector Virginia.

[FR Doc. 2024–21774 Filed 9–23–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0875]

RIN 1625–AA00

Safety Zone; Grosse Tete, Iberville LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters from mile marker 45 to mile marker 47 of the Port Allen Route, Iberville, LA. The safety zone is needed to protect Grosse Tete bridge repairs and ferry operations for crossing school students during morning and afternoon commutes as a result of the Grosse Tete bridge closure. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector New Orleans.

DATES: This rule is effective without actual notice from September 24, 2024 through 11:59 p.m. on December 1, 2024. For purposes of enforcement, actual notice will be used from September 17, 2024, until September 24, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2024–0875 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Benjamin Adrien, Marine Safety Unit Baton Rouge, U.S. Coast Guard; telephone: (225) 281–2875, email: benjamin.d.adrien@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule under the authority in 5 U.S.C. 553(b)(B). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because prompt action is needed to protect personnel, vessels and the marine environment in the vicinity of the Grosse Tete bridge allision and associated passenger ferry operations during bridge repairs. It is impracticable to publish an NPRM because we must establish this safety zone by September 17, 2024.

Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because prompt action is needed to mitigate potential safety hazards associated with the bridge closure and increased passenger ferry operations.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector New Orleans (COTP) has determined that a safety zone is needed for the safety of Grosse Tete bridge repairs and passenger ferry operations from mile marker 45 to mile marker 47 on the Port Allen Route, Iberville, LA. The safety zone is needed to protect personnel, vessels, and the marine environment in the navigable waters and in the vicinity of the bridge while it is being repaired.

IV. Discussion of the Rule

This rule establishes a temporary safety zone for all navigable waters from mile marker 45 to mile marker 47 of the Port Allen Route, Iberville, LA, on September 17, 2024, through 11:59 p.m. on December 1, 2024. The safety zone will be enforced from 6 a.m. to 8 a.m. and from 2:30 p.m. to 4:30 p.m., daily Monday through Friday, except on federal holidays. The safety zone will also be enforced on September 18, 2024, from 7 a.m. to 5 p.m. for bridge repairs and testing. The duration of the zone is intended to protect personnel, vessels, and the marine environment while the bridge is being repaired. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the

Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and scope of the safety zone. The safety zone is limited in size and duration as it covers navigable waters from mile marker 45 to mile marker 47 of the Port Allen Route, Iberville, LA. The zone will be enforced from 6 a.m. to 8 a.m. and 2:30 p.m. to 4:30 p.m., daily Monday through Friday, except on federal holidays, and on September 18, 2024 from 7 a.m. to 5 p.m. The Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule will allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The

Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit entry of vessels

from mile marker 45 to mile marker 47 of the Port Allen Route, Iberville, LA. The zone will be effective on September 17, 2024 through 11:59 p.m. on December 1, 2024. The safety zone will be enforced from 6 a.m. to 8 a.m. and 2:30 p.m. to 4:30 p.m., daily Monday through Friday, except on federal holidays and on September 18, 2024 from 7 a.m. to 5 p.m. This type of action is categorically excluded from further review under paragraph L60(d) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T08–0875 to read as follows:

§ 165.T08–0875 Safety Zone; Grosse Tete, Iberville, LA.

(a) *Location.* The following is a safety zone: All waters between mile marker 45 and mile marker 47 on the Port Allen Route, Iberville, LA.

(b) *Definition.* As used in this section, *designated representative* means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port New Orleans (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) No person or vessel will be permitted to enter, transit,

anchor, or remain within the safety zone described in paragraph (a) of this section unless authorized by the COTP or a designated representative. If authorization is granted, persons and vessels receiving such authorization must comply with the lawful instructions of the COTP or designated representative.

(2) To seek permission to enter, contact the COTP by telephone at (504) 365-2540 or a designated representative via VHF radio on channel 16.

(d) *Enforcement period.* This section will be enforced from 6 a.m. to 8 a.m. and from 2:30 p.m. to 4:30 p.m., daily Monday through Friday, except on federal holidays. Additionally, this section will be enforced on September 18, 2024 from 7 a.m. to 5 p.m.

Dated: September 17, 2024.

G.A. Callaghan,

Captain, U.S. Coast Guard, Captain of the Port New Orleans.

[FR Doc. 2024-21776 Filed 9-23-24; 8:45 am]

BILLING CODE 9110-04-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 17-310; FCC No. 23-110; FR ID 245909]

Promoting Telehealth in Rural America

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) has approved, for a period of three years, a revision to an information collection associated with the rules for the Rural Health Care Program contained in the final rule published January 11, 2024, as the Commission's Order, FCC 23-110. This document announces the effective dates of the new information collection requirements contained in that final rule.

DATES: The amendments to §§ 54.601(b) and (c) (amendatory instruction 2) and 54.622(e)(1)(i) through (ii) and (i)(3)(iv) (amendatory instruction 4), published at 89 FR 1834, January 11, 2024, are effective September 24, 2024.

FOR FURTHER INFORMATION CONTACT: Bryan P. Boyle, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7400 or TTY: (202) 418-0484 or via email: Bryan.Boyle@fcc.gov. For additional

information concerning the Paperwork Reduction Act information collection requirements, contact Nicole Ongele at (202) 418-2991 or via email: Nicole.Ongele@fcc.gov.

SUPPLEMENTARY INFORMATION: The Commission submitted new information collection requirements for review and approval by OMB, as required by the Paperwork Reduction Act (PRA) of 1995, on July 8, 2024, which were approved by the OMB on September 16, 2024. The information collection requirements are contained in the Commission's Third Report and Order (FCC 23-110), published at 89 FR 1834, January 11, 2024. The OMB Control Number is 3060-0804. The Commission publishes this document as an announcement of the effective date of the rules that required PRA approval. If you have any comments on the burden estimates listed herein, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, 45 L Street NE, Washington, DC 20554. Please include the OMB Control Number, 3060-0804, in your correspondence. The Commission will also accept your comments via email at PRA@fcc.gov.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Commission is notifying the public that it received OMB approval on September 16, 2024, for the information collection requirements contained in 47 CFR 54.601 and 47 CFR 54.622.

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060-0804.

The foregoing notification is required by the Paperwork Reduction Act of 1995, Public Law 104-13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060-0804.

OMB Approval Date: September 16, 2024.

OMB Expiration Date: September 30, 2027.

Title: Universal Service—Rural Health Care Program.

Form Nos.: FCC Form 460, 461, 462, 463, 465, 466, 467, and 469.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local, or Tribal Government.

Number of Respondents and Responses: 12,854 unique respondents; 117,071 responses.

Estimated Time per Response: 0.30–17 hours.

Frequency of Response: On occasion, One-time, Annual, and Monthly reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in sections 1–4, 201–205, 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 214, 254, 303(r), and 403, unless otherwise noted.

Total Annual Burden: 442,389 hours.

Total Annual Cost: No Cost.

Needs and Uses: The Commission provides revisions to information collection 3060-0804 as a result of the 2023 Promoting Telehealth Third Report and Order, FCC 23-110, released December 14, 2023 (89 FR 1834, January 11, 2024). This collection is utilized for the RHC support mechanism of the Commission's universal service fund (USF). The collection of this information is necessary so that the Commission and the Universal Service Administrative Company (USAC) will have sufficient information to determine if entities are eligible for funding pursuant to the RHC universal service support mechanism, to determine if entities are complying with the Commission's rules, and to promote program integrity. This information is also necessary in order to allow the Commission to evaluate the extent to which the RHC Program is meeting the statutory objectives specified in section 254(h) of the 1996 Act, and the Commission's performance goals for the RHC Program.

This information collection updates: (1) extend and revise some of the existing information collection requirements for the Healthcare Connect Fund and Telecom Programs; and (2) add a new information collection requirement for the Healthcare Connect Fund and Telecom Programs. As part of this information collection, the

Commission is also revising the FCC Form 460 Template, the FCC Form 461 Template, the FCC Form 465 Template, the FCC Form 466 Template effective funding year 2025, and the Post-Commitment Template effective funding year 2024. The FCC Form 467 and Telecom Invoice Form will not be used after funding year 2023.

As part of this information collection, the Commission is harmonizing the RHC Program eligibility determination process by using the FCC Form 460 for eligibility determinations in both the Telecom Program and the HCF Program, eliminating the eligibility determination portion from FCC Form 465, which was previously used for eligibility determinations in the Telecom Program. The FCC Form 460 also seeks

information applicable to conditional approvals of eligibility, which will enable health care providers to engage in competitive bidding and request funding (but not receive disbursements) before they become eligible. Additionally, the FCC Form 466 is revised to reflect a streamlined process for calculating urban rates. Finally, the information collection allows health care providers to update the time period covered by evergreen contract designations.

The Healthcare Connect Fund Program currently includes FCC Forms 460, 461, 462, and 463. Effective funding year 2024, the Telecom Program includes FCC Forms 465, 466, and 469 and will include the FCC Form 460 starting in funding year 2025. The

information on the FCC Form templates is a representative description of the information to be collected via an online portal and is not intended to be a visual representation of what each applicant or service provider will see, the order in which they will see information, or the exact wording or directions used to collect the information. Where possible, information already provided by applicants from previous filing years or that was pre-filed in the system portal will be carried forward and auto-generated into the form to simplify the information collection for applicants.

Federal Communications Commission

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024-21645 Filed 9-23-24; 8:45 am]

BILLING CODE 6712-01-P

Proposed Rules

Federal Register

Vol. 89, No. 185

Tuesday, September 24, 2024

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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2024–0224; FRL–11566–04–R7]

Disapproval and Promulgation of Air Quality Implementation Plan; Nebraska; Regional Haze State Implementation Plan; Federal Implementation Plan for Regional Haze; Completion of Remand; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for a proposed rule that published August 1, 2024. The current comment period for the proposed rule was set to end on September 30, 2024. In response to a request from a commenter, the EPA is extending the comment period for the proposed action to October 30, 2024.

DATES: The comment period for the proposed rule published on August 1, 2024, at 89 FR 62691 is extended. Comments must be received on or before October 30, 2024.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R07–OAR–2024–0224 to <https://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the proposed rulemaking (89 FR 62691, August 1, 2024) and the “How to Comment” section of our web page <https://www.epa.gov/ne/state-nebraska>.

FOR FURTHER INFORMATION CONTACT: Jed D. Wolkins, Environmental Protection Agency, Region 7 Office, Air and Radiation Division, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7588; email address: wolkins.jed@epa.gov.

SUPPLEMENTARY INFORMATION: On August 1, 2024, the EPA published the proposed rule “Disapproval and Promulgation of Air Quality Implementation Plan; Nebraska; Regional Haze State Implementation Plan; Federal Implementation Plan for Regional Haze; Completion of Remand” in the **Federal Register** (89 FR 62691). The original deadline to submit comments was September 30, 2024. This action extends the comment period for 30 days in response to requests from commenters. Written comments must now be received by October 30, 2024.

Dated: September 18, 2024.

Cecilia Tapia,

Acting Deputy Regional Administrator, Region 7.

[FR Doc. 2024–21810 Filed 9–23–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 206

[Docket ID FEMA–2023–0005]

RIN 1660–AB09

Update of FEMA’s Public Assistance Regulations; Reopening of Comment Period

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

ACTION: Proposed rulemaking; reopening and extending the public comment period.

SUMMARY: This notice reopens the comment period for the proposed rule published on July 2, 2024, entitled “Update of FEMA’s Public Assistance Regulations.” The comment period for the proposed rule closed September 3, 2024; it is now reopened and extended from September 4, 2024, to October 18, 2024.

DATES: The comment period for the proposed rule published on July 2, 2024 (89 FR 54966) is reopened.

Comments must be submitted by October 18, 2024.

ADDRESSES: Interested persons are invited to participate in this rulemaking by submitting comments and related materials. FEMA will consider all comments and material received during the comment period.

If you submit a comment, include the Docket ID FEMA–2023–0005, indicate the specific section of this document to which each comment applies, and give the reason for each comment. All submissions may be posted, without change, to the Federal eRulemaking Portal at www.regulations.gov, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of www.regulations.gov. For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Tod Wells, Deputy Director, Public Assistance Division. Phone: (202) 646–3834. Email: fema-recovery-pa-policy@fema.dhs.gov.

SUPPLEMENTARY INFORMATION: On July 2, 2024, FEMA published a notice of proposed rulemaking with request for comments in the **Federal Register** at 89 FR 54966. The proposed rule, entitled “Update of FEMA’s Public Assistance Regulations,” would amend the Public Assistance program regulations at Title 44, part 206, of the Code of Federal Regulations (CFR) to reflect current statutory authorities, clarify the requirements for program eligibility, and improve program administration.

FEMA is responsible for administering and coordinating the Federal Government response to Presidentially declared disasters pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (Stafford Act), Public Law 93–288, 42 U.S.C. 5121 *et seq.* When a catastrophe occurs in a State or affects the members of a Tribal community, the State’s Governor or Tribal Chief Executive may request a Presidential declaration of a major disaster pursuant to Section 401 of the

Stafford Act. 42 U.S.C. 5170(a), (b); 44 CFR 206.36(a).

The Public Assistance program is one of the programs that may be authorized by a declaration, which provides a broad range of assistance to State, Tribal, Territorial and local governments. It provides assistance for emergency protective measures, such as emergency evacuation, sheltering, and debris removal, as well as financial assistance for the permanent restoration of facilities. In addition, the Stafford Act authorizes Community Disaster Loans for any local or Tribal government that has suffered a substantial loss of tax and other revenues as a result of a major disaster, and that demonstrates a need for financial assistance to perform its governmental functions. 42 U.S.C. 5184.

In “Update of FEMA’s Public Assistance Regulations,” FEMA proposes to amend its Public Assistance and Community Disaster Loan program regulations to both improve program administration and incorporate statutory changes relating to Public Assistance and Community Disaster Loans. These include the Post Katrina Emergency Management Reform Act of 2006 (PKEMRA), Public Law 109–295, 120 Stat. 1394, the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Public Law 109–347, 120 Stat. 1884, the Pets Evacuation and Transportation Standards Act of 2006 (PETS Act), Public Law 109–308, 120 Stat. 1725, the Sandy Recovery Improvement Act of 2013 (SRIA), Public Law 113–2, 127 Stat. 39, the Emergency Information Improvement Act of 2015, Public Law 114–111, 129 Stat. 2240, the Bipartisan Budget Act of 2018, Public Law 115–123, 132 Stat. 64, and the FAA Reauthorization Act of 2018, Division D, Disaster Recovery Reform Act of 2018 (DRRA), Public Law 115–254, 132 Stat. 3438.

On September 3, 2024, FEMA received a request to reopen and extend the public comment period in Docket ID FEMA–2023–0005. FEMA–2023–0005–0119; FEMA–2023–0005–0138. To provide additional time for interested parties to consider and comment on any implications of the “Update of FEMA’s Public Assistance Regulations,” FEMA reopens and extends the comment period from September 4, 2024, to October 18, 2024.

FEMA will consider comments received from July 2, 2024 to October 18, 2024. Please visit www.regulations.gov to view the

proposed rule, comments received, and all supporting documents.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–21556 Filed 9–23–24; 8:45 am]

BILLING CODE 9111–23–P

FEDERAL MARITIME COMMISSION

46 CFR Part 541

[Docket No. FMC–2024–0010]

Ocean Carrier Equipment Management Association; Denial of Petition for Delay of Effective Date of the Demurrage and Detention Billing Requirements Final Rule

AGENCY: Federal Maritime Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Federal Maritime Commission (FMC) is denying a petition submitted by the Ocean Carrier Equipment Management Association requesting that FMC delay the effective date of the agency’s “Demurrage and Detention Billing Requirements” final rule. This document includes the contents of the actual denial with minor modifications to meet publication requirements for the **Federal Register**.

DATES: The Commission served an order denying the petition on September 17, 2024.

ADDRESSES: To view background documents or comments received, you may use the Federal eRulemaking Portal at www.regulations.gov under Docket No. FMC–2023–0010.

FOR FURTHER INFORMATION CONTACT: David Eng, Secretary; Phone: (202) 523–5725; Email: secretary@fmc.gov.

SUPPLEMENTARY INFORMATION: On May 28, 2024, the date the Federal Maritime Commission’s (Commission or FMC) “Demurrage and Detention Billing Requirements” final rule, 89 FR 14330 (February 26, 2024), went into effect, the Ocean Carrier Equipment Management Association (OCEMA) filed with the Commission a petition under 46 CFR 502.51(a) for an extension of the effective date of the rule by at least 90 days. On September 17, 2024, the Commission denied the petition for the reasons below.

I. Background

On June 16, 2022, the Ocean Shipping Reform Act of 2022 (OSRA 2022) was enacted into law.¹ Section 7 of the Act

prohibits common carriers from issuing an invoice for demurrage or detention charges unless the invoice includes specific information required by the statute, and any additional information required by the Commission through regulation. OSRA 2022 mandated that the Commission, by June 16, 2023, issue a final rule “further defining prohibited practices by common carriers, marine terminal operators, shippers, and ocean transportation intermediaries under [46 U.S.C. 41102(c)] regarding the assessment of demurrage or detention charges.”²

On February 26, 2024, the Commission published the Demurrage and Detention Billing Requirements final rule in the **Federal Register**, 89 FR 14330. With certain limited exceptions, the Administrative Procedure Act (APA) requires rules to have an effective date no sooner than 30 days after publication in the **Federal Register**, 5 U.S.C. 553(d). The rule had an effective date of May 28, 2024, 90 days after publication, except for 46 CFR 541.6 and 541.99.³ The effective date of those two provisions was delayed pending approval of the associated Collection of Information by the Office of Management and Budget (OMB) as the Paperwork Reduction Act requires OMB to approve collections of information before an agency can enforce collection requirements.⁴

On May 9, 2024, the Commission issued a Correction to the preamble, 89 FR 39569. At page 14336 in the preamble to the February 26, 2024, final rule, the Commission responded to a comment requesting that the FMC revise the definition of “billed party” to address situations in which vessel-operating common carriers (VOCCs) enter into written contracts with motor carriers that use containers in the transportation of goods. The Commission responded by declining to adopt this proposed change. The supporting discussion explaining why the request was denied was intended to explain that the rule only addresses carrier-trucker relationships on through

² Section 7, codified at 46 U.S.C. 41102.

³ Section 541.6 sets out substantive requirements for what billing parties must include in their demurrage and detention invoices. It added several provisions in addition to those required by OSRA 2022. While the statutory invoice elements are self-implementing and immediately became effective upon passage of OSRA 2022, regulated entities were not required to comply with the additional elements imposed by the Commission until 46 CFR 541.6 went into effect. Section 541.99 is an administrative provision that provides additional public notice of OMB approval of the collection of information; it does not impose requirements on the public.

⁴ Paperwork Reduction Act (44 U.S.C. 3501–3521).

¹ Public Law 117–146, 136 Stat. 1272 (2022).

bills of lading. The Commission meant this to be understood in the context of its statement in the final rule that “the FMC’s jurisdiction, and thus this rule, would apply only to cargo moved inland under a through bill of lading and contracts between a VOCC [and] a motor carrier not based on a through bill of lading would likely be outside the scope of this rule.” The Correction amended the preamble accordingly. The Correction did not amend any of the regulatory text of the final rule.

On May 14, 2024, following approval of the Collection of Information by OMB, the Commission announced in the **Federal Register** that 46 CFR 541.6 and 541.99 would become effective on May 28, 2024, the same date as the other provisions of the rule.⁵

II. Petition for Delayed Effective Date

On May 28, 2024, the date the final rule went into effect, the Commission accepted for filing a petition from OCEMA requesting an extension of the effective date of the rule by at least 90 days.⁶ Petitioner argues that the requested extension is necessary “to allow time for stakeholders to revise their practices based on the revised guidance provided in the [May 9, 2024] Correction and to address questions raised by the Correction.” Petitioner asserts that “as a result of an apparent reversal in the FMC’s position with regard to the assessment of detention and demurrage to motor carriers, VOCCs are now put in a position of needing to unwind and/or further revise the arrangements they made based on the FMC’s previous guidance.” OCEMA claims that as a result of the Correction, VOCCs only had 19 days to prepare to come into compliance with the rule and that they need more time. It further asserts that the Correction did not fully clarify the FMC’s position with respect to invoicing motor carriers and that additional time is needed to understand the rule’s requirements.

III. Responses and Public Comment to the Petition

A petitioner seeking the amendment or repeal of an FMC rule must provide

⁵ 89 FR 41895 (When processing the document, the Office of the Federal Register incorrectly specified the effective date in the **DATES** section. As a result, the **DATES** section read that the “correction is effective May 14, 2024”, even though the body of the document itself correctly stated that the provisions would be effective May 28, 2024. The Office of the Federal Register issued a correction on May 24, 2024, 89 FR 45772, stating that the **DATES** section should have read that the rule was effective on May 28, 2024. The Commission did not receive any questions from the public concerning this error.).

⁶ 89 FR 14330.

proof of service on all persons named in/that participated in such a rule,⁷ and those served have the opportunity to respond.⁸ OCEMA provided such proof of service. No replies were filed.

On June 10, 2024, the Commission published a notice of filing of the petition in the **Federal Register** and solicited comments from the interested public.⁹ The comment period closed on July 1, 2024. Seventeen comments were submitted. Sixteen of the commenters said that the petition should be denied. One commenter, the National Customs Brokers and Forwarders Association of America (FMC–2024–0010–0018), proposed that, rather than an extension, the FMC should implement an interim period of “informed compliance,” which would allow all ocean industry stakeholders to work toward full compliance and assess the practical applications of these new demurrage and detention billing requirements. The association noted that such “informed compliance” period would mirror U.S. Customs and Border Protection practice with respect to new Customs regulations. Commenters supporting denial of the petition cited concerns about an extension leading to massive confusion and a high administrative burden given that the rule has already gone into effect. Some commenters also said that an extension is not necessary because carriers are already complying with the rule.

IV. Analysis

Delay of an effective date of a rule is itself a substantive rulemaking action that is subject to the requirements of 5 U.S.C. 553 of the Administrative Procedure Act.¹⁰ This includes the requirement that an agency must engage in the notice and comment process in accordance with 5 U.S.C. 553(b)(B) prior to delaying a rule’s effective date unless it finds good cause not to do so.¹¹

⁷ 46 CFR 502.51(a) and 502.115.

⁸ 46 CFR 502.21(a).

⁹ 89 FR 48865.

¹⁰ See, e.g., *Clean Air Council v. Pruitt*, 862 F.3d 1 (D.C. Cir. 2017) (“EPA’s stay, in other words, is essentially an order delaying the rule’s effective date, and this court has held that such orders are tantamount to amending or revoking a rule.”); see also *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009) (“The [APA] makes no distinction, however, between initial agency action and subsequent agency action undoing or revising that action.”).

¹¹ E.g., *Nat. Res. Def. Council v. Nat’l Highway Traffic Safety Admin.*, 894 F.3d 95, 113 (2d Cir. 2018) (“Under the APA, before promulgating a rule an agency must publish ‘[g]eneral notice of proposed rule making . . . in the **Federal Register**,’ as well as ‘an opportunity to participate in the rule making through submission of written data, views, or arguments.’ These requirements apply with the same force when an agency seeks to delay or repeal a previously promulgated final rule. A basic

Section 705 of the Administrative Procedure Act permits an agency to “postpone the effective date” of a rule, without providing notice-and-comment, if the agency “finds that justice so requires.” However, 5 U.S.C. 705 does not permit an agency to suspend, without notice-and-comment, a rule that is already in effect.¹²

After thorough review of the petition requesting that the Demurrage and Detention Billing Requirements final rule’s effective date be delayed, the Commission denies the petition for the following reasons.

1. Delaying the effective date of the Demurrage and Detention Billing Requirements final rule, as requested by the Petitioner, would directly impede the explicit instructions of Congress. OSRA 2022 mandated that the Commission issue a final rule “further defining prohibited practices by common carriers, marine terminal operators, shippers, and ocean transportation intermediaries under [46 U.S.C. 41102(c)] regarding the assessment of demurrage or detention charges . . . not later than [June 16, 2023].” Despite best efforts, the

principle of administrative law is that ‘an agency issuing a legislative rule is itself bound by the rule until that rule is amended or revoked.’ Similarly an agency ‘may not alter such a rule without notice and comment,’ nor does the agency have any inherent power to stay a final rule . . . A significant body of authority reinforces this proposition.” citations omitted); *NRDC v. EPA*, 683 F.2d 752, 761–62 (3d Cir. 1982) (“[S]uspension or delayed implementation of a final regulation normally constitutes substantive rulemaking under APA § 553.”); See also *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (“The [APA] makes no distinction . . . between initial agency action and subsequent agency action undoing or revising that action.”).

¹² *Ctr. for Biological Diversity v. Regan*, 691 F. Supp. 3d 1, 8 (D.D.C. 2023), judgment entered, No. CV 21–119 (RDM), 2024 WL 1591671 (D.D.C. Apr. 12, 2024) (“The Court has also previously suggested—and now holds—that section 705 permits an agency to ‘postpone the effective date’ of a rule that has not yet taken effect, but does not permit an agency to suspend, without notice and comment, a rule that is already in effect. As the Court explained in *CBD I*, that understanding of Section 705 comports with: (1) the D.C. Circuit’s non-precedential decision in *Safety-Kleen Corp. v. EPA*, 1996 U.S. App. LEXIS 2324, at 2–3 (D.C. Cir. Jan. 19, 1996); (2) the usual APA rule, which ‘mandate[s] that agencies use the same procedures when they amend or repeal a rule as they used to issue the rule in the first instance;’ and (3) the plain language of Section 705, which does not grant agencies the same broad equitable authority vested in courts but, rather, merely permits agencies to ‘postpone’—that is, ‘put off for a later time’—agency action that is subject to judicial review. *CBD I*, 597 F. Supp. 3d at 204–05 (first quoting *Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 101, 135 S.Ct. 1199, 191 L.Ed. 2d 186 (2015); and then quoting *Postpone*, Merriam-Webster Dictionary Online, <https://www.merriam-webster.com/dictionary/postpone> (last visited Mar. 28, 2022)) . . . Court now holds that an agency’s authority to ‘postpone the effective date’ of a rule ends when the rule takes legal effect.”).

Commission was unable to issue the Demurrage and Detention Billing Requirements final rule until February 26, 2024. This was in large part because the agency needed the time, as required by the Administrative Procedure Act, to carefully analyze and respond to the 191 public comments submitted on the proposed rule. In the interest of fairness, based on those public comments, the agency granted an additional 60 days beyond the required 30-day period before the final rule became effective, with the final rule having an effective date of May 28, 2024. Granting the Petitioner's request—which was not effectively filed with the Commission until the day the rule went into effect—would result in pushing the rule's effective date even further beyond the explicit statutory deadline. **Federal Register** documents would need to be drafted, and comments analyzed and responded to. If, after analyzing comments on a notice of proposed rulemaking, the agency was to move forward with a final rule to temporarily delay the effective date, the final, permanent effective date of the rule would most likely be at least two years past the specified Congressional deadline. Courts have found that granting significant extensions to rules in direct contradiction to clear statutory deadlines is “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right,” under 5 U.S.C. 706(2)(C). For example, in *Sierra Club v. Pruitt*, the court found that the Environmental Protection Agency violated the Formaldehyde Act by extending a rule's compliance deadline well beyond the deadline set out in the statute.¹³

2. Petitioner asserts that the Correction created confusion about what the rule requires of regulated parties, but that claim is unpersuasive. While

¹³ 293 F. Supp. 3d 1050, 1060 (N.D. Cal. 2018) (“The clear purpose of the Act and the plain meaning of its core provisions was to set expeditious emission compliance standards (not to exceed 180 days past the promulgation of implementing regulations) and to allow the sell off or use of preexisting noncompliant inventory but to prohibit stockpiling. This clear purpose and plain meaning cannot be reconciled with the EPA's suggestion that a year-long extension of the designated date of manufacture in the sell-through provisions permissibly leads to a commensurate year-long extension of the mandatory compliance deadlines. The EPA's interpretation creates inconsistency within the full text of the Act, renders the 180-day compliance deadline superfluous, leads to the absurd result of permitting the perpetual delay of the effectiveness of the Formaldehyde Rule, and fails to satisfy the stated purpose of the Act.”); cf. *Pennsylvania v. DeVos*, 480 F. Supp. 3d 47, 66 (D.D.C. 2020) (“And ‘when the statute authorizing agency action fails to specify a timetable for effectiveness of decisions, the agency normally retains considerable discretion to choose an effective date.’” (internal citations omitted)).

the Commission acknowledged in the Correction that the original preamble language was *potentially* “ambiguous”, the Correction was not a “reversal” of position. The Correction was for the preamble language only; it did not change any of the regulatory text. The regulatory text is clear and unambiguous: “A properly issued invoice is a demurrage or detention invoice issued by a billing party to: (1) The person for whose account the billing party provided ocean transportation or storage of cargo and who contracted with the billing party for the ocean transportation or storage of cargo; or (2) the consignee.” 46 CFR 541.4(a). A rule's preamble cannot be used to create ambiguity and contradict regulatory text.¹⁴ As summarized by the U.S. District Court for the District of Columbia in *Texas Children's Hosp. v. Azar*: “To be clear, the preamble to a statute or rule may be used to help inform the proper interpretation of an ambiguous text. The preamble cannot, however, be used to contradict the text of the statute or rule at issue.”¹⁵ Furthermore, the comments submitted in response to this petition are counterweights to Petitioner's claims. Sixteen of the seventeen comments that were submitted in response to the **Federal Register** notice of the filing petition argued that the petition should be denied and that billing parties are largely in compliance with the rule.

3. Granting the requested delay would lead to greater confusion in the regulated community than what the Petitioner claims was caused by the Correction. Because the rule would have to continue in effect until such time as a delay could be effectuated by rulemaking, the rule would be in effect at least six months, then be temporarily stayed, and then go back into effect. As commenters discussed in their submissions, this has the potential for massive disruption and confusion, as billing parties switch between systems, and would likely raise questions about what rules apply to any given transaction.¹⁶

4. By the time such a delay could take effect, after completion of the required administrative procedures, the Petitioner's justification for delay would no longer be present, as the Petitioner

¹⁴ *Texas Children's Hosp. v. Azar*, 315 F. Supp. 3d 322, 334 (D.D.C. 2018).

¹⁵ *Id.* (citations omitted).

¹⁶ E.g., comments of the Shippers Coalition (FMC–2024–0010–0001), ContainerPort Group Inc. (FMC–2024–0010–0002), Agriculture Transportation Coalition (FMC–2024–0010–0011), Intermodal Motor Carriers Conference (FMC–2024–0010–0012).

would have had ample time to make any necessary adjustments to their practices.

V. Conclusion

For the reasons explained above, the Commission *denies* the petition filed by the Ocean Carrier Equipment Management Association for a delay of the effective date of the Demurrage and Detention Billing Requirements final rule.

By the Commission.

David Eng,
Secretary.

[FR Doc. 2024–21586 Filed 9–23–24; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 240911–0235]

RIN 0648–BM91

Marine Mammal Protection Act List of Fisheries for 2025

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

ACTION: Proposed rule; request for comment.

SUMMARY: NMFS is publishing its proposed List of Fisheries (LOF) for 2025, as required by the Marine Mammal Protection Act (MMPA). The proposed LOF for 2025 reflects new information on interactions between commercial fisheries and marine mammals. NMFS must classify each commercial fishery on the LOF into one of three categories under the MMPA based on the level of mortality and serious injury (M/SI) of marine mammals that occurs incidental to each fishery. The classification of a fishery on the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as those regarding registration, observer coverage, and take reduction plan (TRP) requirements.

DATES: Comments must be received by October 24, 2024.

ADDRESSES: A plain language summary of this proposed rule is available at <https://www.regulations.gov/docket/NOAA-NMFS-2024-0037>. You may submit comments on this document, identified by NOAA–NMFS–2024–0037, by either of the following methods:

Electronic Submission: Submit all electronic public comments via the

Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA–NMFS–2024–0037 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Mail: Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT:

Jaclyn Taylor, Office of Protected Resources, 301–427–8402; Cheryl Cross, Greater Atlantic Region, 978–281–9100; Jessica Powell, Southeast Region, 727–824–5312; Dan Lawson, West Coast Region, 206–526–4740; Suzie Teerlink, Alaska Region, 907–586–7240; Jamie Marchetti 808–725–5108, Pacific Islands Region, 808–725–5085. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

What is the List of Fisheries?

Section 118 of the MMPA requires NMFS to place all U.S. commercial fisheries into one of three categories based on the level of incidental M/SI of marine mammals occurring in each fishery (16 U.S.C. 1387(c)(1)). The classification of a fishery on the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as those regarding registration, observer coverage, and TRP requirements. NMFS must reexamine the LOF annually, considering new information in the Marine Mammal Stock Assessment Reports (SARs) and other relevant sources, and publish in the **Federal Register** any necessary changes to the LOF after notice and opportunity for public comment (16 U.S.C. 1387(c)(1)(C)).

How does NMFS determine in which category a fishery is placed?

The definitions for the fishery classification criteria can be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2). The criteria are also summarized here.

Fishery Classification Criteria

The fishery classification criteria consist of a two-tiered, stock-specific approach that first addresses the total impact of all fisheries on each marine mammal stock and then addresses the impact of individual fisheries on each stock. This approach is based on consideration of the rate, in numbers of animals per year, of incidental mortalities and serious injuries of marine mammals due to commercial fishing operations relative to the potential biological removal (PBR) level for each marine mammal stock. The MMPA (16 U.S.C. 1362 (20)) defines the PBR level 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. This definition can also be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2).

Tier 1: Tier 1 considers the cumulative fishery M/SI for a particular stock. If the total annual M/SI of a marine mammal stock across all fisheries is less than or equal to 10 percent of the PBR level of the stock, all fisheries interacting with the stock will be placed in Category III (unless those fisheries interact with other stock(s) for which total annual M/SI is greater than 10 percent of PBR). Otherwise, these fisheries are subject to the next tier of analysis (Tier 2) to determine their classification.

Tier 2: Tier 2 considers fishery-specific M/SI for a particular stock.

Category I: Annual M/SI of a stock in a given fishery is greater than or equal to 50 percent of the PBR level (i.e., frequent incidental M/SI of marine mammals).

Category II: Annual M/SI of a stock in a given fishery is greater than 1 percent and less than 50 percent of the PBR level (i.e., occasional incidental M/SI of marine mammals).

Category III: Annual M/SI of a stock in a given fishery is less than or equal to 1 percent of the PBR level (i.e., a remote likelihood of or no known incidental M/SI of marine mammals).

Additional details regarding how the categories were determined are provided in the preamble to the final rule implementing section 118 of the MMPA (60 FR 45086, August 30, 1995).

Because fisheries are classified on a per-stock basis, a fishery may qualify as one category for one marine mammal stock and another category for a different marine mammal stock. A fishery is typically classified on the LOF at its highest level of classification (e.g., a fishery qualifying for Category III for one marine mammal stock and for Category II for another marine mammal stock will be listed under Category II). The superscript “1” in tables 1 and 2 identifies stocks whose incidental M/SI determines a fishery’s higher classification.

Other Criteria That May Be Considered

The tier analysis requires a minimum amount of data, and NMFS does not have sufficient data to perform a tier analysis on certain fisheries. Therefore, NMFS has classified certain fisheries by analogy to other fisheries that use similar fishing techniques or gear that are known to cause mortality or serious injury of marine mammals or according to factors discussed in the final LOF for 1996 (60 FR 67063, December 28, 1995) and listed in the regulatory definition of Category II and III fisheries (50 CFR 229.2). In the absence of reliable information indicating the frequency of incidental M/SI of marine mammals by a commercial fishery, NMFS will determine the level of incidental mortality or serious injury by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fishermen reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator for Fisheries.

Further, eligible commercial fisheries not specifically identified on the LOF are deemed to be Category II fisheries until the next LOF is published (50 CFR 229.2).

How does NMFS determine which species or stocks are included as incidentally killed or injured in a fishery?

The LOF includes a list of marine mammal species and/or stocks incidentally killed or injured in each commercial fishery. The list of species and/or stocks incidentally killed or injured includes serious and non-serious documented injuries as described below in the *List of Species and/or Stocks Incidentally Killed or Injured in the Pacific Ocean* and *List of Species and/or Stocks Incidentally Killed or Injured in the Atlantic Ocean, Gulf of Mexico, and Caribbean* sections. To determine which species or stocks

are included as incidentally killed or injured in a fishery, NMFS annually reviews the information presented in the current SARs and injury determination reports. SARs are brief reports summarizing the status of each stock of marine mammals occurring in waters under U.S. jurisdiction. Information includes the identity and geographic range of the stock, population statistics related to abundance, trend, and annual productivity, notable habitat concerns, and estimates of human-caused M/SI by source. The SARs are based upon the best available scientific information and provide the most current and inclusive information on each stock's PBR level and level of interaction with commercial fishing operations. The best available scientific information used in the SARs and reviewed for the 2025 LOF generally summarizes data from 2017–2021. NMFS also reviews other sources of new information, including injury determination reports, bycatch estimation reports, observer data, logbook data, stranding data, disentanglement network data, fishermen self-reports (*i.e.*, MMPA mortality/injury reports), and anecdotal reports from that time period. In some cases, more recent information may be available and used in the LOF.

For fisheries with observer coverage, species or stocks are generally removed from the list of marine mammal species and/or stocks incidentally killed or injured if no interactions are documented in the 5-year timeframe summarized in that year's LOF. For fisheries with no observer coverage and for observed fisheries with evidence indicating that undocumented interactions may be occurring (*e.g.*, fishery has low observer coverage and stranding network data include evidence of fisheries interactions that cannot be attributed to a specific fishery), species and stocks may be retained for longer than 5 years. For these fisheries, NMFS will review the other sources of information listed above and use its discretion to decide when it is appropriate to remove a species or stock.

Where does NMFS obtain information on the level of observer coverage and resulting data in a fishery on the LOF?

The best available information on the level of observer coverage and the spatial and temporal distribution of observed marine mammal interactions is presented in the SARs. Data obtained from the observer program and observer coverage levels are important tools in estimating the level of marine mammal M/SI in commercial fishing operations.

Starting with the 2005 SARs, each Pacific and Alaska SAR includes an appendix with detailed descriptions of each Category I and II fishery on the LOF, including the observer coverage in those fisheries. The SARs do not provide detailed information on observer coverage in Category III fisheries because under the MMPA, Category III fisheries are not required to accommodate observers aboard vessels due to the remote likelihood of M/SI of marine mammals. Fishery information presented in the SARs' appendices and other resources referenced during the tier analysis may include the level of observer coverage, target species, levels of fishing effort, spatial and temporal distribution of fishing effort, characteristics of fishing gear and operations, management and regulations, and interactions with marine mammals. The SARs are available on the NMFS Office of Protected Resources website at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region>. Information on observer coverage levels in Category I, II, and III fisheries and detailed descriptions of each Category I and II fishery on the LOF can be found in the fishery fact sheets on the NMFS Office of Protected Resources' website: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/list-fisheries-summary-tables>. Additional information on observer programs in commercial fisheries can be found on the NMFS National Observer Program's website: <https://www.fisheries.noaa.gov/national/fisheries-observers/national-observer-program>.

How do I find out if a specific fishery is in Category I, II, or III?

The LOF includes three tables that list all U.S. commercial fisheries by Category. Table 1 lists all of the commercial fisheries in the Pacific Ocean (including Alaska), table 2 lists all of the commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean, and table 3 lists all U.S. authorized commercial fisheries on the high seas. A fourth table, table 4, lists all commercial fisheries managed under applicable TRPs or take reduction teams (TRT).

Are high seas fisheries included on the LOF?

NMFS includes high seas fisheries in table 3 of the LOF along with the number of valid High Seas Fishing Compliance Act (HSFCA) permits in each fishery. Many fisheries operate in both U.S. waters and on the high seas,

creating some overlap between the fisheries listed in tables 1 and 2 and those in table 3. In these cases, the high seas component of the fishery is not considered a separate fishery but an extension of a fishery operating within U.S. waters (listed in table 1 or 2). NMFS designates those fisheries in tables 1, 2, and 3 with an asterisk (*) after the fishery's name. The number of HSFCA permits listed in table 3 for the high seas components of these fisheries operating in U.S. waters does not necessarily represent additional effort not accounted for in tables 1 and 2. Many vessels/participants holding HSFCA permits also fish within U.S. waters and are included in the number of vessels and participants operating within those fisheries in tables 1 and 2. For more information on how NMFS classifies high seas fisheries on the LOF, see the preamble text in the final 2009 LOF (73 FR 73032, December 1, 2008). Additional information about HSFCA permits can be found at <https://www.fisheries.noaa.gov/permit/high-seas-fishing-permits>.

Where can I find specific information on fisheries listed on the LOF?

Starting with the 2010 LOF, NMFS developed summary documents or fishery fact sheets for each Category I and II fishery on the LOF. These fishery fact sheets provide the full history of each Category I and II fishery, including: (1) when the fishery was added to the LOF; (2) the basis for the fishery's initial classification; (3) classification changes to the fishery; (4) changes to the list of species and/or stocks incidentally killed or injured in the fishery; (5) fishery gear and methods used; (6) observer coverage levels; (7) fishery management and regulation; and (8) applicable TRPs or TRTs, if any. These fishery fact sheets are updated after each final LOF and can be found under "How Do I Find Out if a Specific Fishery is in Category I, II, or III?" on the NMFS Office of Protected Resources' website: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-protection-act-list-fisheries>, linked to the "List of Fisheries Summary" table. NMFS is developing similar fishery fact sheets for each Category III fishery on the LOF. However, due to the large number of Category III fisheries on the LOF and the lack of accessible and detailed information on many of these fisheries, the development of these fishery fact sheets is taking significant time to complete. NMFS began posting Category III fishery fact sheets online with the LOF for 2016.

Am I required to register under the MMPA?

Owners of vessels or gear engaging in a Category I or II fishery are required under the MMPA (16 U.S.C. 1387(c)(2)), as described in 50 CFR 229.4, to register with NMFS and obtain a marine mammal authorization to lawfully take marine mammals incidental to commercial fishing operations. The take of threatened or endangered marine mammals requires additional authorization. Owners of vessels or gear engaged in a Category III fishery are not required to register with NMFS or obtain a marine mammal authorization.

How do I register, renew, and receive my Marine Mammal Authorization Program (MMAP) authorization certificate?

NMFS has integrated the MMPA registration process, implemented through the MMAP, with existing State and Federal fishery license, registration, or permit systems for Category I and II fisheries on the LOF. Participants in these fisheries are automatically registered under the MMAP and are not required to submit registration or renewal materials.

In the Pacific Islands, West Coast, and Alaska regions, NMFS will issue vessel or gear owners an authorization certificate via U.S. mail or with their State or Federal license or permit at the time of issuance or renewal. In the Greater Atlantic and Southeast Regions, NMFS will issue vessel or gear owners an authorization certificate electronically. The certificate can be downloaded and/or printed at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-authorization-program#obtaining-a-marine-mammal-authorization-certificate>. Printed copies can be mailed upon request by contacting nmfs.gar.mmapcert@noaa.gov or 978-281-9120 in the Greater Atlantic Region or the MMAP Hotline at 727-209-5952 in the Southeast Region.

Vessel or gear owners who participate in fisheries in these regions and have not received authorization certificates by the beginning of the calendar year or with renewed fishing licenses must contact the appropriate NMFS Regional Office (see **FOR FURTHER INFORMATION CONTACT**). Authorization certificates may also be obtained by visiting the MMAP website: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-authorization-program#obtaining-a-marine-mammal-authorization-certificate>.

The authorization certificate or a copy (physical or electronic) must be on board the vessel while it is operating in a Category I or II fishery or for non-vessel fisheries, in the possession of the person in charge of the fishing operation (50 CFR 229.4(e)). Although efforts are made to limit the issuance of authorization certificates to only those vessel or gear owners that participate in Category I or II fisheries, not all State and Federal license or permit systems distinguish between fisheries as classified by the LOF. Therefore, some vessel or gear owners in Category III fisheries may receive authorization certificates even though they are not required for Category III fisheries.

Individuals fishing in Category I and II fisheries for which no State or Federal license or permit is required must register with NMFS by contacting their appropriate Regional Office (see **ADDRESSES**).

Am I required to submit reports when I kill or injure a marine mammal during the course of commercial fishing operations?

In accordance with the MMPA (16 U.S.C. 1387(e)) and 50 CFR 229.6, any vessel owner or operator or gear owner or operator (in the case of non-vessel fisheries) participating in a fishery listed on the LOF must report to NMFS all incidental mortalities and injuries of marine mammals that occur during commercial fishing operations, regardless of the category in which the fishery is placed (*i.e.*, Category I, Category II, or Category III) within 48 hours of the end of the fishing trip or, in the case of non-vessel fisheries, fishing activity. "Injury" is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured regardless of the presence of any wound or other evidence of injury and must be reported.

Mortality/injury reporting forms and instructions for submitting forms to NMFS can be found at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-authorization-program#reporting-a-death-or-injury-of-a-marine-mammal-during-commercial-fishing-operations> or by contacting the appropriate regional office (see **FOR FURTHER INFORMATION CONTACT**). Forms may be submitted online using the electronic form, emailed as an attachment to nmfs.mireport@noaa.gov, faxed to the NMFS Office of Protected Resources at 301-713-0376, or mailed

to the NMFS Office of Protected Resources (mailing address is provided on the postage-paid form that can be printed from the web address listed above). Reporting requirements and procedures are found in 50 CFR 229.6.

Am I required to take an observer aboard my vessel?

Individuals participating in a Category I or II fishery are required to accommodate an observer aboard their vessel(s) upon request from NMFS. MMPA section 118 States that the Secretary is not required to place an observer on a vessel if the facilities for quartering an observer or performing observer functions are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized, thereby authorizing the exemption of vessels too small to safely accommodate an observer from this requirement. Observer requirements are found in 50 CFR 229.7.

Am I required to comply with any marine mammal TRP regulations?

Table 4 provides a LOF affected by TRPs and TRTs. TRP regulations are found at 50 CFR 229.30 through 229.37. A description of each TRT and copies of each TRP can be found at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-take-reduction-plans-and-teams>. It is the responsibility of fishery participants to comply with applicable take reduction regulations.

Where can I find more information about the LOF and the MMAP?

Information regarding the LOF and the MMAP including registration procedures and forms, current and past LOFs, descriptions of each Category I and II fishery and some Category III fisheries, observer requirements, and marine mammal mortality/injury reporting forms and submittal procedures may be obtained at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-protection-act-list-fisheries> or from any NMFS Regional Office at the addresses listed below:

NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930-2298, Attn: Cheryl Cross;

NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701, Attn: Jessica Powell;

NMFS, West Coast Region, Long Beach Office, 501 W Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213, Attn: Dan Lawson;

NMFS, Alaska Region, Protected Resources, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99802, Attn: Suzie Teerlink; or

NMFS, Pacific Islands Regional Office, Protected Resources Division, 1845 Wasp Blvd., Building 176, Honolulu, HI 96818, Attn: Elena Duke.

Sources of Information Reviewed for the 2025 LOF

NMFS reviewed the marine mammal incidental M/SI information presented in the SARs for all fisheries to determine whether changes in fishery classification were warranted. The SARs are based on the best scientific information available at the time of preparation, including the level of M/SI of marine mammals that occurs incidental to commercial fishery operations and the PBR levels of marine mammal stocks. The information contained in the SARs is reviewed by regional Scientific Review Groups (SRGs) representing Alaska, the Pacific (including Hawaii), and the U.S. Atlantic, Gulf of Mexico, and Caribbean. The SRGs were established by the MMPA to review the science that informs the SARs and to advise NMFS on marine mammal population status, trends, and stock structure, as well as on uncertainties in the science, research needs, and other issues (see 16 U.S.C. 1386(d)).

NMFS also reviewed other sources of new information, including marine mammal stranding and entanglement data, observer program data, fishermen self-reports, reports to the SRGs, conference papers, FMPs, and Endangered Species Act (ESA) documents.

The LOF for 2025 was based on, among other things, stranding data, fishermen self-reports, and SARs (primarily the draft 2023 SARs, which are based on data from 2017–2021). The SARs referenced in this LOF include 2022 (88 FR 54592, August 11, 2023) and 2023 (89 FR 5495, January 29, 2024). The SARs are available at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region>. We expect that the 2023 SARs will be finalized before the final 2025 LOF is published.

Summary of Changes to the LOF for 2025

The following summarizes proposed changes to the LOF for 2025, including the classification of fisheries, fisheries listed, the estimated number of vessels/persons in a particular fishery, and the species and/or stocks that are incidentally killed or injured in a

particular fishery. NMFS proposes to add seven fisheries, remove one fishery and reclassify one fishery in the LOF for 2025. NMFS also proposes changes to the estimated number of vessels/persons and list of species and/or stocks killed or injured in certain fisheries. The classifications and definitions of U.S. commercial fisheries for 2025 are identical to those provided in the LOF for 2024, except for the changes discussed below. State and regional abbreviations used in the following paragraphs include AK (Alaska), CA (California), HI (Hawaii), MA (Massachusetts) OR (Oregon), and WA (Washington).

Commercial Fisheries in the Pacific Ocean

Classification of Fisheries

NMFS proposes to reclassify the Category I CA Dungeness crab pot fishery to a Category II fishery. The most recent estimate of annual M/SI of the Central America/Southern Mexico-CA/OR/WA stock of humpback whales from 2017 through 2021 is 1.18, which is 33.8 percent of this stock's PBR of 3.5 (Carretta *et al.*, 2023; Carretta *et al.*, 2023a). Because the estimated M/SI is between 1 and 50 percent of the stock's PBR, NMFS proposes to reclassify the CA Dungeness crab pot fishery from a Category I to a Category II fishery.

Addition of Fisheries

NMFS proposes to add the AK invertebrate aquaculture fishery as a Category III fishery. Operations occur statewide but are primarily in Southeast Alaska, Prince William Sound, and Kachemak Bay. Invertebrate aquaculture in Alaska is generally stationary aquatic farms for commercial production of oysters. Gear is stagnant in the water and generally occurs in shallow depths with an average aquatic farm depth 15 feet. Invertebrate aquaculture is managed and permitted by the State of Alaska. There are 46 active permits for invertebrate aquaculture in Alaska.

Marine invertebrate species cultivated include Pacific oyster (*Magallana gigas*), blue mussel (*Mytilus trossulus*), Arctic razor clam (*Siliqua alta*), Pacific razor clam (*Siliqua patula*), littleneck clam (*Leukoma staminea*), butter clam (*Saxidomus giganteus*), Pacific geoduck (*Panopea abrupta*), cockle species, scallop species, sea urchin species, King crab species, pinto abalone and red sea cucumber.

Currently, the majority of invertebrate aquaculture farms in Alaska use stacked wire-mesh trays hanging from rafts or longlines with minimal horizontal lines on the surface. There are a number of

different methods of invertebrate aquaculture, including onshore or floating hatcheries/nurseries, bottom planting, on-bottom culture, and suspended culture. Each of these methods may employ a variety of gear types and materials.

Bottom planting methods involve seeding the substrate with larvae. These “clam beds” are often protected from predators and environmental stressors by mesh netting, PVC tubes, or other materials. Harvest methods may include hand collection, raking, and use of divers and water jets.

On-bottom culture methods generally use cages, racks, or bags attached to the substrate in shallow waters. Suspended culture methods are used in shallow and deeper waters and generally employ racks, cages, nets, and/or bags attached to longlines or floating rafts that are anchored to the substrate. Harvests of on-bottom and suspended methods may be manual or mechanically assisted (e.g., cranes or winches attached to work skiffs or barges).

Commercial invertebrate aquaculture has been permitted by the State of Alaska since the 1980s, and there are no known marine mammal M/SI incidental to invertebrate aquaculture in Alaska. Therefore, no marine mammal species/stocks are identified in table 1. Marine mammal species/stocks will be added to the list if incidental mortalities or injuries are documented in this fishery.

NMFS proposes to add the AK macroalgae aquaculture fishery as a Category III fishery. Operations occur statewide but are primarily in Southeast Alaska, Prince William Sound, and Kachemak Bay. Macroalgae aquaculture gear is stagnant in the water and generally occurs in shallow depths with an average aquatic farm depth 15 feet. Macroalgae aquaculture is managed and permitted by the State of Alaska. There are 39 active permits for macroalgae aquaculture in Alaska.

Species cultivated are species native to Alaska, including bull kelp, giant kelp, red ribbon-dulse ribbon kelp, black seaweed-nori, sugar kelp, dragon kelp, sea lettuce, three-ribbed kelp, and seagrass laver.

Gear used for macroalgae production varies depending on the species cultured, scale of operations, environmental conditions, cost of gear, maintenance requirements, and harvest strategy. Production can be as small as a single line with an anchor on bottom and a buoy on top or as complex as industrial longline production systems. Most macroalgae is grown close to shore in shallow waters and close to the surface for sufficient sunlight for photosynthesis. The primary methods

are longlines, grid/array systems, and raft/net systems.

Commercial macroalgae aquaculture has been permitted by the State of Alaska since 2016, and there are no known marine mammal M/SI incidental to macroalgae aquaculture in Alaska. In addition, University of Alaska Southeast (UAS) and the University of Alaska Fairbanks (UAF) provided comments on the proposed LOF for 2024 (88 FR 62748, September 13, 2023) in response to NMFS' request for public input on aquaculture fishery descriptions. UAS and UAF have ongoing aquaculture research, including longline kelp installments near Juneau, Alaska. They both provided their observations of marine mammals near their aquaculture research locations. UAS and UAF commented that there are reports of marine mammals near the longline kelp gear but no entanglements or known physical interactions have occurred. Therefore, no marine mammal species/stocks are identified in table 1. Marine mammal species/stocks will be added to the list if incidental mortalities or injuries are documented in this fishery.

Fishery Name and Organizational Changes and Clarifications

NMFS proposes to add the superscript "1" to the Central America/Southern Mexico-CA/OR/WA stocks of humpback whale to indicate that M/SI of the stock is determining the Category II classification of the CA thresher shark/swordfish drift gillnet (≥ 14 inch (in) mesh) fishery. NMFS also proposes to remove the superscript "1" from the CA/OR/WA stock of sperm whale to indicate that M/SI of the stock is no longer determining in the Category II classification of the CA thresher shark/swordfish drift gillnet (≥ 14 in mesh) fishery.

NMFS proposes to add the superscript "1" to the Eastern North Pacific stock of blue whale to indicate that M/SI of the stock is determining the Category II classification of the CA Dungeness crab pot fishery.

Number of Vessels/Persons

NMFS updates the estimated number of vessels/persons in the Pacific Ocean (table 1) as follows:

Category II

- CA Dungeness crab pot fishery from 471 to 469 vessels/persons;
- CA halibut/white seabass and other species set gillnet (≤ 3.5 in mesh) fishery from 39 to 41 vessels/persons;
- CA yellowtail, barracuda, and white seabass drift gillnet (mesh size ≥ 3.5 in and < 14 in) fishery from 20 to eight 8 vessels/persons;

- CA spiny lobster fishery from 189 to 174 vessels/persons;
- CA spot prawn pot fishery from 22 to 20 vessels/persons;
- OR Dungeness crab pot fishery from 323 to 352 vessels/persons;
- WA/OR/CA sablefish pot fishery from 144 to 133 vessels/persons;
- HI shallow-set longline fishery from 14 to 17 vessels/persons;
- American Samoa longline fishery from 11 to 9 vessels/persons;
- HI shortline fishery from 8 to 11 vessels/persons;

Category III

- CA herring set gillnet fishery from 11 to 9 vessels/persons;
- WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing) fishery from 19 to 20 vessels/persons;
- WA/OR Mainstem Columbia River eulachon gillnet fishery from 10 to 8 vessels/persons;
- WA/OR lower Columbia River (includes tributaries) drift net fishery from 244 to 207 vessels/persons;
- WA Willapa Bay drift gillnet fishery from 57 to 47 vessels/persons;
- WA/OR sardine purse seine fishery from six to zero vessels/persons;
- CA anchovy, mackerel, sardine purse seine fishery from 53 to 56 vessels/persons;
- WA/OR Lower Columbia River salmon seine fishery from one to zero vessels/persons;
- WA/OR herring, anchovy, smelt, squid purse seine or lampara fishery from 41 to 48 vessels/persons;
- HI lift net fishery from 14 to 13 vessels/persons;
- HI throw net, cast net fishery from 13 to 12 vessels/persons;
- WA/OR/CA albacore surface hook and line/troll fishery from 556 to 538 vessels/persons;
- CA halibut, white seabass, and yellowtail hook and line/handline fishery from 388 435 vessels/persons;
- American Samoa tuna troll fishery from six to five vessels/persons;
- CA/OR/WA salmon troll fishery from 1,030 to 808 vessels/persons;
- HI troll fishery from 1,124 to 1,186 vessels/persons;
- HI rod and reel fishery from 235 to 208 vessels/persons;
- Guam tuna troll fishery from 450 to 546 vessels/persons;
- WA/OR/CA groundfish, bottomfish longline/set line fishery from 314 to 296 vessels/persons;
- HI kaka line fishery from 17 to 12 vessels/persons;
- HI vertical line fishery from six to less than three vessels/persons;
- CA sea cucumber trawl fishery from 11 to 9 vessels/persons;

- WA/OR/CA shrimp trawl fishery from 130 to 114 vessels/persons;
- WA/OR/CA groundfish trawl fishery from 118 to 104 vessels/persons;
- CA Tanner crab pot fishery from one to two vessels/persons;
- WA/OR/CA hagfish pot fishery from 63 to 57 vessels/persons;
- WA Puget Sound Dungeness crab pot/trap fishery from 145 to 139 vessels/persons;
- HI fish trap fishery from four to less than three vessels/persons;
- HI crab net fishery from four to less than three vessels/persons;
- HI Kona crab loop net fishery from 13 to 17 vessels/persons;
- American Samoa bottomfish fishery from 44 to 87 vessels/persons;
- Commonwealth of the Northern Mariana Islands bottomfish fishery from seven to three vessels/persons;
- Guam bottomfish fishery from 63 to 93 vessels/persons;
- HI bottomfish handline fishery from 392 to 299 vessels/persons;
- HI pelagic handline fishery from 271 to 382 vessels/persons;
- CA/OR/WA dive collection fishery from 186 to 157 vessels/persons;
- HI black coral diving fishery from none recorded to less than three;
- HI handpick fishery from 25 to 24 vessels/persons;
- HI lobster diving fishery from 12 to 8 vessels/persons;
- HI spearfishing fishery from 67 to 58 vessels/persons;
- WA/OR/CA hand/mechanical collection fishery from 320 to 258 vessels/persons;
- CA nearshore finfish trap fishery from 42 to 43 vessels/persons, and
- HI aquarium collecting fishery from none recorded to 12.

List of Species and/or Stocks Incidentally Killed or Injured in the Pacific Ocean

NMFS proposes to correct an administrative error in table 1. Based on public comment, NMFS added the Central America/Southern Mexico-CA/OR/WA and Mainland Mexico-CA/OR/WA stocks of humpback whale to the list of species/stocks incidentally killed or injured in the Category III WA/OR/CA groundfish/finfish hook and line fishery in the final 2024 LOF (89 FR 12257, February 16, 2024) based on a 2021 humpback whale entanglement (Carretta *et al.*, 2023a). Upon further review of the entanglement report, NMFS determined the 2021 humpback whale entanglement was not a confirmed entanglement. Because the entanglement was not confirmed, following NMFS' Process for Distinguishing Serious from Non-

Serious Injury of Marine Mammals an injury determination was not conducted for this event (NMFS, 2023). Therefore, NMFS proposes to remove the Central America/Southern Mexico-CA/OR/WA and Mainland Mexico-CA/OR/WA stocks of humpback whale from the list of species/stocks incidentally killed or injured in the Category III WA/OR/CA groundfish/finfish hook and line fishery.

NMFS proposes to add the North Pacific stock of fin whale to the list of species/stocks incidentally killed or injured in the Category II AK Bering Sea, Aleutian Islands pollock trawl fishery based on a self-reported mortality in 2019 (Freed *et al.*, 2023).

NMFS proposes to add the CA/OR/WA stock of minke whale to the list of species/stocks incidentally killed or injured in the Category II OR Dungeness crab pot fishery. In 2021, a minke whale was reported entangled in OR Dungeness crab pot gear off the coast of San Diego, CA, with line bridled through the mouth and trailing buoys (Carretta *et al.*, 2023a).

NMFS proposes to add the unknown stock of beaked whale to the list of species/stocks incidentally killed or injured in the Category II HI shallow-set longline fishery based on an observed serious injury in 2021 (McCracken and Cooper 2022).

NMFS proposes to add the Beringia stock of bearded seal to the list of species/stocks incidentally killed or injured in the Category III AK Bering Sea, Aleutian Islands Pacific cod longline fishery based on an observed mortality in 2021 (Freed *et al.*, 2023).

NMFS proposes to remove the Bering Sea stock of harbor porpoise and the Western North Pacific stock of humpback whale from the list of species/stocks incidentally killed or injured in the Category II AK Bering Sea, Aleutian Islands flatfish trawl fishery. This fishery has 100 percent observer coverage, and from 2016–2021 there have been no reported or observed M/SI of these two stocks in the AK Bering Sea, Aleutian Islands flatfish trawl fishery (Freed *et al.*, 2023 and Young *et al.*, 2023).

NMFS proposes to remove the Alaska stock of bearded seal from the list of species/stocks incidentally killed or injured in the Category III AK Bering Sea, Aleutian Islands Pacific cod trawl fishery. Observer coverage for this fishery is between 67 and 80 percent, and from 2014–2021 there have been no reported or observed M/SI of this stock in the AK Bering Sea, Aleutian Islands Pacific cod trawl fishery (Freed *et al.*, 2023).

NMFS proposes to remove the Western U.S. stock of Steller sea lion from the list of species/stocks incidentally killed or injured in the Category III AK Gulf of Alaska Pacific cod trawl fishery. Observer coverage for this fishery is between 11 and 100 percent, and from 2017–2021 there have been no reported or observed M/SI of this stock in the AK Gulf of Alaska Pacific cod trawl fishery (Young *et al.*, In press). The list of species/stocks incidentally killed or injured in this fishery is updated to state that none have been documented in the most recent 5 years of data.

NMFS proposes to remove the Western U.S. stock of Steller sea lion from the list of species/stocks incidentally killed or injured in the Category III AK Gulf of Alaska rockfish trawl fishery. Observer coverage for this fishery is between 93 and 98 percent, and from 2017–2021 there have been no reported or observed M/SI of this stock in the AK Gulf of Alaska rockfish trawl fishery (Young *et al.*, In press). The list of species/stocks incidentally killed or injured in this fishery is proposed to be updated to state that none have been documented in the most recent 5 years of data.

NMFS proposes to remove the Western U.S. stock of Steller sea lion from the list of species/stocks incidentally killed or injured in the Category III AK Gulf of Alaska Pacific cod longline fishery. Observer coverage for this fishery is between 0 and 39 percent, and from 2017–2021, there have been no reported or observed M/SI of this stock in the AK Gulf of Alaska Pacific cod longline fishery (Young *et al.*, In press).

Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

Addition of Fisheries

NMFS received comments on the proposed LOF for 2024 (88 FR 62748, September 13, 2023) in response to NMFS' request for public input on aquaculture fishery descriptions. NMFS reviewed and considered the public submission of the publication Bath *et al.*, 2023 when proposing the addition and associated classification of the four aquaculture fisheries described below.

The regulatory definition of a Category II fishery (50 CFR 229.2) provides for NMFS to evaluate factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area when there is no reliable

information on the frequency of incidental M/SI in a given fishery. In the absence of reliable information on incidental M/SI, NMFS proposes to classify the aquaculture rafts fishery, bottom culture (trays/cages) with buoys fishery, and longline aquaculture as Category II fisheries based on analogy to other Category II fisheries that use vertical buoy lines. Vertical buoy lines pose a known entanglement risk for large whales that can result in mortality and serious injury. Additional information for the aquaculture rafts fishery, bottom culture (trays/cages) with buoys fishery and longline aquaculture are provided below.

NMFS proposes to add the aquaculture rafts fishery as a Category II fishery (50 CFR 229.2) and proposes to add the superscript “2” to indicate this fishery is classified by analogy. This fishery operates in Maine State waters and harvests mussels. Gear consists of a steel beam frame with wooden crossbeams supporting vertical lines with floats. This fishery has less than 15 active permits.

There is no information on marine mammal M/SI incidental to this fishery. Therefore, no marine mammal species/stocks are identified in table 2. Marine mammal species/stocks will be added to the list if incidental mortalities or injuries are documented in this fishery.

NMFS proposes to add the bottom culture (trays/cages) with buoys fishery as a Category II fishery (50 CFR 229.2) and proposes to add the superscript “2” to indicate this fishery is classified by analogy. This fishery operates in the Atlantic from Maine through Florida. Gear consists of a cage resting on the seafloor to seed or further grow out shellfish. The cages are attached with a vertical line to a floating buoy on the surface; vertical buoy lines present a known risk of entanglement of large whales in many other fisheries. Harvest species in this fishery include mussels, oysters and other shellfish. The number of participants in this fishery is unknown.

There is no information on marine mammal M/SI incidental to this fishery. Therefore, no marine mammal species/stocks are identified in table 2. Marine mammal species/stocks will be added to the list if incidental mortalities or injuries are documented in this fishery.

NMFS proposes to add the longline aquaculture fishery as a Category II fishery (50 CFR 229.2) and proposes to add the superscript “2” to indicate this fishery is classified by analogy. This fishery operates in the Atlantic from Maine through Florida. Gear consists of a main horizontal longline that is moored, anchored or supported by

poles. From this line extend any of the following: (1) bags or cages that are supported by floats/buoys (suspended floating gear), (2) vertical lines with bags or cages usually hung in horizontal rows at the surface (suspended gear), and (3) a series of vertically aligned nets or compartments (e.g. lantern/pearl nets). These three gear types contain shellfish seed. The fourth gear configuration has target species hung directly from the lines or seeded/grown on vertical hanging lines (drop or continuous). Any of these arrangements could use vertical buoys to support the horizontal longline. Harvest species in this fishery include oysters, scallops, mussels and macroalgae. The number of participants in this fishery is unknown.

There is no information on marine mammal M/SI incidental to this fishery. Therefore, no marine mammal species/stocks are identified in table 2. Marine mammal species/stocks will be added to the list if incidental mortalities or injuries are documented in this fishery.

NMFS proposes to add the on-bottom/off-bottom culture (trays/cages) fishery without buoys as a Category III fishery. This fishery operates in the Atlantic from Maine through Florida. Gear consists of the following: (1) mesh bags, stacked mesh bags, or cages containing shellfish seed placed directly on the seafloor that require mesh predator netting (of a variety of sizes) used as a deterrent; (2) stiff plastic mesh bags or trays resting above the seafloor on racks (a rigid table-like frame) to seed or further grow out shellfish; and (3) shell on bottom, whereby shellfish are grown in natural conditions with no containment. Harvest species in this fishery include oysters and shellfish. The number of participants in this fishery is unknown.

There is no information on marine mammal M/SI incidental to this fishery. Therefore, no marine mammal species/stocks are identified in table 2. Marine mammal species/stocks will be added to the list if incidental mortalities or injuries are documented in this fishery. This fishery is proposed as a Category III fishery because it has a remote likelihood of risk to marine mammals given the gear used (i.e., lack of loose or vertical lines, which have been implicated in documented entanglement cases (Bath *et al.*, 2023)).

NMFS proposes to add the Massachusetts green crab pot fishery as a Category III fishery. This fishery is managed by the State of Massachusetts. It operates entirely in shallow (4 to 15 feet), inshore Massachusetts State waters in estuaries, harbors, tidal creeks and salt marshes from April to November and targets green crab

(*Carcinus maenas*). This fishery uses wire, mesh pots that are discernible from other crab pot gear because the pots have a top entry design and are often homemade. Because the green crab is an invasive species, permits are not required to participate in the fishery; however, letters of authorization are currently issued to 78 commercial participants.

This fishery has been operating and regulated in MA for over 60 years (Annotated Laws of Massachusetts, GL ch. 130, section 37A, 2024) and there are no documented marine mammal M/SI incidental to this fishery. Therefore, NMFS proposes to classify the Massachusetts green crab pot fishery as a Category III fishery and no marine mammal species/stocks are identified in table 2. Marine mammal species/stocks will be added to the list if incidental mortalities or injuries are documented in this fishery.

Fishery Name and Organizational Changes and Clarifications

NMFS proposes to revise the fishery description, distribution and name for the Category III finfish aquaculture fishery. This fishery operates in Maine State waters and harvests salmon species. The fishery uses net pens with rigid, circular or polygonal frames that provide overall stability and support for the netting that contains the target species. A net pen can be fixed at the surface or lowered/raised in the water column. Vertical mooring lines are used to attach the net pens to the seafloor. This fishery has approximately 25 active permits. NMFS proposes to revise the name of the Category III finfish aquaculture fishery to the Category III net pen aquaculture fishery to clarify the gear type used in this fishery.

NMFS proposes to add the superscript “1” to the Gulf of Maine stock of humpback whale to indicate that M/SI of the stock is determining the Category II classification of the Chesapeake Bay inshore gillnet fishery.

NMFS proposes to add the superscript “1” to the Western North Atlantic stock of common dolphin to indicate that M/SI of the stock is determining the Category II classification of the Northeast bottom trawl fishery. NMFS also proposes to remove the superscript “1” from the Western North Atlantic stock of Risso’s dolphin to indicate that M/SI of the stock is no longer determining the Category II classification of the Northeast bottom trawl fishery.

NMFS proposes to add the superscript “1” to the Gulf of Maine stock of humpback whale to indicate that M/SI of the stock is determining the Category

II classification of the MA mixed species trap/pot fishery.

List of Species and/or Stocks Incidentally Killed or Injured in the Atlantic Ocean, Gulf of Mexico, and Caribbean

NMFS proposes to add the Gulf of Maine, Bay of Fundy stock of harbor porpoise to the list of species/stocks incidentally killed or injured in the Category I Northeast/mid-Atlantic American lobster and Jonah crab trap/pot fishery based on a self-reported mortality in 2023.

NMFS proposes to add the Gulf of Maine stock of humpback whale and Canadian East Coast stock of minke whale to the list of species/stocks incidentally killed or injured in the Category II Chesapeake Bay inshore gillnet fishery. In January 2020, a dead humpback whale was reported in Virginia heavily entangled in gillnet gear (Henry *et al.*, 2022). Also in February 2020, a minke whale was reported in Virginia entangled in gillnet gear resulting in a mortality (Hayes *et al.*, In press).

NMFS proposes to add the Western North Atlantic stock of white-sided dolphin to the list of species/stocks incidentally killed or injured in the Category II mid-Atlantic mid-water trawl (including pair trawl) fishery based on a self-reported mortality in 2020.

NMFS proposes to add the Western North Atlantic stock of *Globicephala* spp. (long-finned or short-finned pilot whale) to the list of species/stocks incidentally killed or injured in the Category II mid-Atlantic bottom trawl fishery based on an observed injury in 2021 (Josephson and Lyssikatos 2023).

NMFS proposes to add the Northern Georgia/Southern South Carolina estuarine system stock of bottlenose dolphin to the list of species/stocks incidentally killed or injured in the Category II Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery based on a self-reported injury in 2023.

NMFS proposes to add the Gulf of Maine stock of humpback whale to the list of species/stocks incidentally killed or injured in the Category II MA mixed species trap/pot fishery. In June 2020, a humpback whale was reported entangled off Chatham, MA. The whale was partially disentangled and determined to be a prorated (0.75) serious injury (Henry *et al.*, 2022).

NMFS proposes to remove the Western North Atlantic stock of hooded seal from the list of species/stocks incidentally killed or injured in the Category I mid-Atlantic gillnet fishery. This fishery was observed between 1

and 13 percent; from 2017–2021, there have been no reported or observed M/SI of this stock in this fishery.

NMFS proposes to remove six stocks from the list of species/stocks incidentally killed or injured in the Category I Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery. The six stocks are (1) Western North Atlantic stock of false killer whale; (2) Gulf of Maine, Bay of Fundy stock of harbor porpoise; (3) Canadian East coast stock of minke whale; (4) Gulf of Mexico stock of pygmy sperm whale; (5) Northern Gulf of Mexico stock of Risso's dolphin; and (6) Northern Gulf of Mexico stock of sperm whale. This fishery was observed between 8.7 and 13.3 percent; from 2017–2021, there have been no reported or observed M/SI of these stocks in this fishery (Hayes *et al.*, In press; Garrison and Stokes 2023).

NMFS proposes to remove the Western North Atlantic stock of short-finned pilot whale from the list of species/stocks incidentally killed or injured in the Category III Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel fishery. From 2017–2021, there have been no reported or observed M/SI of these stocks in this fishery (Hayes *et al.*, In press).

Commercial Fisheries on the High Seas

Number of Vessels/Persons

NMFS updates the estimated number of HSFCA permits for high seas fisheries (table 3) as follows:

Category I

- Atlantic Highly Migratory Species longline fishery from 30 to 35 HSFCA permits;

Category II

- South Pacific albacore troll longline fishery from six to five HSFCA permits;
- Western Pacific Pelagic (HI Shallow-set component) fishery from 14 to 17 HSFCA permits;
- Pacific highly migratory species handline/pole and line fishery from 36 to 39 HSFCA permits;
- South Pacific albacore troll handline/pole and line fishery from one to two HSFCA permits;
- South Pacific albacore troll fishery from 23 to 24 HSFCA permits;

Category III

- Northwest Atlantic bottom longline fishery from one to zero HSFCA permits;
- Pacific highly migratory species longline fishery from 119 to 104 HSFCA permits;

- Northwest Atlantic trawl fishery from one to zero HSFCA permits; and
- Pacific highly migratory species troll fishery from 95 to 98 HSFCA permits.

List of Species and/or Stocks Incidentally Killed or Injured on the High Seas

NMFS proposes to update the humpback whale stocks on the list of species/stocks incidentally killed or injured in the Category II Pacific highly migratory species drift gillnet fishery from humpback whale, CA/OR/WA to humpback whale, Central America/Southern Mexico-CA/OR/WA and humpback whale, Mainland Mexico-CA/OR/WA stock based on the revised stock structures in the 2022 SAR (Carretta *et al.*, 2023).

NMFS proposes to add the unknown stock of beaked whale to the list of species/stocks incidentally killed or injured in the Category II Western Pacific Pelagic longline fishery (HI shallow-set component) based on an observed serious injury in 2021 (McCracken and Cooper, 2022). As noted in table 3, the list of marine mammal species and/or stocks killed or injured in this fishery is identical to the list of marine mammal species and/or stocks killed or injured in the U.S. waters component of the fishery minus species and/or stocks that have geographic ranges exclusively in coastal waters.

List of Fisheries

The following tables set forth the list of U.S. commercial fisheries according to their classification under section 118 of the MMPA. Table 1 lists commercial fisheries in the Pacific Ocean (including Alaska); table 2 lists commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean; table 3 lists commercial fisheries on the high seas; and table 4 lists fisheries affected by TRPs or TRTs.

In tables 1 and 2, the estimated number of vessels or persons participating in fisheries operating within U.S. waters is expressed in terms of the number of active participants in the fishery, when possible. If this information is not available, the estimated number of vessels or persons licensed for a particular fishery is provided. If no recent information is available on the number of participants, vessels, or persons licensed in a fishery, then the number from the most recent LOF is used for the estimated number of vessels or persons in the fishery. NMFS acknowledges that, in some cases, these estimates may be inflations of actual effort. For example, the State of Hawaii

does not issue fishery-specific licenses, and the number of participants reported in the LOF represents the number of commercial marine license holders who reported using a particular fishing gear type/method at least once in a given year without considering how many times the gear was used. For these fisheries, effort by a single participant is counted the same whether the fisherman used the gear only once or every day. In the Mid-Atlantic and New England fisheries, the numbers represent the potential effort for each fishery, given the multiple gear types for which several State permits may allow. Changes made to Mid-Atlantic and New England fishery participants will not affect observer coverage or bycatch estimates as observer coverage and bycatch estimates are based on vessel trip reports and landings data. Tables 1 and 2 serve to provide a description of the fishery's potential effort (State and Federal). If NMFS is able to gather more accurate information on the gear types used by State permit holders in the future, the numbers will be updated to reflect this change. For additional information on fishing effort in fisheries found on table 1 or 2, contact the relevant regional office (contact information included above in the section: Where can I find more information about the LOF and the MMAP?).

For high seas fisheries, table 3 lists the number of valid HSFCA permits currently held. Although this likely overestimates the number of active participants in many of these fisheries, the number of valid HSFCA permits is the most reliable data on the potential effort in high seas fisheries at this time. As noted previously, the number of HSFCA permits listed in table 3 for the high seas components of fisheries that also operate within U.S. waters does not necessarily represent additional effort not accounted for in tables 1 and 2. Many vessels holding HSFCA permits also fish within U.S. waters and are included in the number of vessels and participants operating within those fisheries in tables 1 and 2.

Tables 1, 2, and 3 also list the marine mammal species and/or stocks incidentally killed or injured (seriously or non-seriously) in each fishery based on SARs, injury determination reports, bycatch estimation reports, observer data, logbook data, stranding data, disentanglement network data, fishermen self-reports (*i.e.*, MMAP reports), and anecdotal reports. The best available scientific information included in these reports is based on data through 2021. This list includes all species and/or stocks known to be killed

or injured in a given fishery but also includes species and/or stocks for which there are anecdotal records of a mortality or injury. Additionally, species identified by logbook entries, stranding data, or fishermen self-reports (*i.e.*, MMAP reports) may not be verified. In tables 1 and 2, NMFS has designated which species/stocks for which M/SI are determining a fishery's classification (*i.e.*, the fishery is classified based on mortalities and serious injuries of a marine mammal stock that are greater than or equal to 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of a stock's PBR) by including a "1" after the stock's name.

In tables 1 and 2, there are several fisheries classified as Category II that have no recent documented M/SI of marine mammals or fisheries that did not result in a M/SI rate greater than 1 percent of a stock's PBR level based on known interactions. NMFS has classified these fisheries by analogy to other Category I or II fisheries that use similar fishing techniques or gear that are known to cause M/SI of marine mammals, as discussed in the final LOF for 1996 (60 FR 67063, December 28, 1995) and according to factors listed in the definition of Category II and III fisheries in 50 CFR 229.2 (*i.e.*, fishing techniques, gear types, methods used to deter marine mammals, target species, seasons and areas fished, qualitative

data from logbooks or fishermen reports, stranding data, and the species and distribution of marine mammals in the area). NMFS has designated those fisheries listed by analogy in tables 1 and 2 by adding a "2" after the fishery's name.

There are several fisheries in tables 1, 2, and 3 in which a portion of the fishing vessels cross the Exclusive Economic Zone (EEZ) boundary and therefore operate both within U.S. waters and on the high seas. These fisheries, though listed separately on tables 1, 2, or 3, are considered the same fisheries on either side of the EEZ boundary. NMFS has designated those fisheries in each table with an asterisk (*) after the fisheries' names.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
Category I		
<i>Longline/Set Line Fisheries:</i> HI deep-set longline*^	146	Bottlenose dolphin, HI Pelagic. False killer whale, HI Pelagic. ¹ False killer whale, MHI Insular. False killer whale, NWHI. Kogia spp. (Pygmy or dwarf sperm whale), HI. Risso's dolphin, HI. Rough-toothed dolphin, HI. Short-finned pilot whale, HI.
<i>Gillnet Fisheries:</i> AK Southeast salmon drift gillnet	474	Dall's porpoise, AK. Harbor porpoise, northern Southeast Alaska inland waters. Harbor porpoise, southern Southeast Alaska inland waters. ¹ Harbor seal, Southeast AK. Humpback whale, Hawai'i. Humpback whale, Mexico-North Pacific. Pacific white-sided dolphin, North Pacific. Steller sea lion, Eastern U.S.
Category II		
<i>Gillnet Fisheries:</i> CA thresher shark/swordfish drift gillnet (≥14 in mesh) *	21	Bottlenose dolphin, CA/OR/WA offshore. California sea lion, U.S. Dall's porpoise, CA/OR/WA. Gray whale, Eastern North Pacific. Humpback whale, Central America/Southern Mexico-CA/OR/WA. ¹ Humpback whale, Mainland Mexico-CA/OR/WA. Long-beaked common dolphin, CA. Minke whale, CA/OR/WA. Northern elephant seal, CA breeding. Northern right-whale dolphin, CA/OR/WA. Pacific white-sided dolphin, CA/OR/WA. Risso's dolphin, CA/OR/WA. Short-beaked common dolphin, CA/OR/WA. Short-finned pilot whale, CA/OR/WA. ¹ Sperm Whale, CA/OR/WA. California sea lion, U.S.
CA halibut/white seabass and other species set gillnet (>3.5 in mesh).	41	Gray whale, Eastern North Pacific. Harbor seal, CA. Humpback whale, Central America/Southern Mexico-CA/OR/WA. ¹ Humpback whale, Mainland Mexico-CA/OR/WA. Long-beaked common dolphin, CA. Northern elephant seal, CA breeding. Southern sea otter, CA. Short-beaked common dolphin, CA/OR/WA. California sea lion, U.S.
CA yellowtail, barracuda, and white seabass drift gillnet (mesh size ≥3.5 in and <14 in) ² .	8	Long-beaked common dolphin, CA. Short-beaked common dolphin, CA/OR/WA.
AK Bristol Bay salmon drift gillnet ²	1,521	Beluga whale, Bristol Bay. Gray whale, Eastern North Pacific. Harbor seal, Bristol Bay.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
AK Bristol Bay salmon set gillnet ²	855	Northern fur seal, Eastern Pacific. Pacific white-sided dolphin, North Pacific. Spotted seal, Bering. Steller sea lion, Western U.S. Beluga whale, Bristol Bay. Gray whale, Eastern North Pacific. Harbor seal, Bristol Bay. Northern fur seal, Eastern Pacific. Spotted seal, Bering.
AK Kodiak salmon set gillnet	128	Harbor porpoise, GOA. ¹ Harbor seal, GOA. Humpback whale, Hawai'i. Humpback whale, Mexico-North Pacific. Humpback whale, Western North Pacific. Northern sea otter, Southwest AK. Steller sea lion, Western U.S.
AK Cook Inlet salmon set gillnet ²	479	Beluga whale, Cook Inlet. Dall's porpoise, AK. Harbor porpoise, GOA. Harbor seal, Cook Inlet/Shelikof Strait. Humpback whale, Hawai'i. Humpback whale, Mexico-North Pacific. Northern sea otter, Southcentral AK. Steller sea lion, Western U.S.
AK Cook Inlet salmon drift gillnet	355	Beluga whale, Cook Inlet. Dall's porpoise, AK. Harbor porpoise, GOA. ¹ Harbor seal, GOA. Steller sea lion, Western U.S.
AK Peninsula/Aleutian Islands salmon drift gillnet ²	148	Dall's porpoise, AK. Harbor porpoise, GOA. Harbor seal, GOA. Northern fur seal, Eastern Pacific. Harbor porpoise, Bering Sea. Northern sea otter, Southwest AK. Steller sea lion, Western U.S.
AK Peninsula/Aleutian Islands salmon set gillnet ²	75	Dall's porpoise, AK. Gray whale, Eastern North Pacific. Harbor porpoise, GOA. ¹ Harbor seal, Prince William Sound. Humpback whale, Hawai'i. Humpback whale, Mexico-North Pacific. Northern fur seal, Eastern Pacific. Pacific white-sided dolphin, North Pacific. Northern sea otter, Southcentral AK. Steller sea lion, Western U.S. ¹
AK Prince William Sound salmon drift gillnet	483	Gray whale, Eastern North Pacific. Harbor porpoise, GOA. ¹ Harbor seal, Prince William Sound. Humpback whale, Hawai'i. Humpback whale, Mexico-North Pacific. Northern fur seal, Eastern Pacific. Pacific white-sided dolphin, North Pacific. Northern sea otter, Southcentral AK. Steller sea lion, Western U.S. ¹
AK Yakutat salmon set gillnet	95	Gray whale, Eastern North Pacific. Harbor Porpoise, Yakutat/Southeast Alaska offshore waters. ¹ Harbor seal, Southeast AK. Humpback whale, Hawai'i. Humpback whale, Mexico-North Pacific. Dall's porpoise, CA/OR/WA.
WA Puget Sound Region salmon drift gillnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line-Treaty Indian fishing is excluded).	136	Harbor porpoise, inland WA. ¹ Harbor seal, WA inland.
<i>Trawl Fisheries:</i>		
AK Bering Sea, Aleutian Islands flatfish trawl	29	Bearded seal, Beringia. Gray whale, Eastern North Pacific. Harbor seal, Bristol Bay. Killer whale, Eastern North Pacific Alaska resident. ¹ Killer whale, Eastern North Pacific GOA, AI, BS transient. ¹ Northern fur seal, Eastern Pacific. Ringed seal, Arctic. Ribbon seal. Spotted seal, Bering. Steller sea lion, Western U.S. ¹ Walrus, AK.
AK Bering Sea, Aleutian Islands pollock trawl	116	Bearded seal, Beringia. Fin whale, North Pacific. Harbor seal, Bristol Bay. Humpback whale, Hawai'i. Humpback whale, Mexico-North Pacific. Humpback whale, Western North Pacific. Pacific white-sided dolphin, North Pacific. Ribbon seal. Ringed seal, Arctic. Steller sea lion, Western U.S. ¹
<i>Pot, Ring Net, and Trap Fisheries:</i>		
CA Dungeness crab pot	469	Blue whale, Eastern North Pacific. ¹

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
CA coonstripe shrimp pot	9	Gray whale, Eastern North Pacific. Humpback whale, Central America/Southern Mexico-CA/OR/WA. ¹ Humpback whale, Mainland Mexico-CA/OR/WA. Killer whale, Eastern North Pacific GOA, BSAI transient. Killer whale, West Coast transient. Northern elephant seal, CA breeding. Gray whale, Eastern North Pacific. Harbor seal, CA. Humpback whale, Central America/Southern Mexico-CA/OR/WA. ¹ Humpback whale, Mainland Mexico-CA/OR/WA. Bottlenose dolphin, CA/OR/WA offshore. California sea lion, U.S. Humpback whale, Central America/Southern Mexico-CA/OR/WA. ¹ Humpback whale, Mainland Mexico-CA/OR/WA. Gray whale, Eastern North Pacific. Southern sea otter, CA.
CA spiny lobster	174	Gray whale, Eastern North Pacific. Humpback whale, Central America/Southern Mexico-CA/OR/WA. ¹ Humpback whale, Mainland Mexico-CA/OR/WA. Long-beaked common dolphin, CA. Gray whale, Eastern North Pacific.
CA spot prawn pot	20	Gray whale, Eastern North Pacific. Humpback whale, Central America/Southern Mexico-CA/OR/WA. ¹ Humpback whale, Mainland Mexico-CA/OR/WA.
OR Dungeness crab pot	352	Gray whale, Eastern North Pacific. Humpback whale, Central America/Southern Mexico-CA/OR/WA. ¹ Humpback whale, Mainland Mexico-CA/OR/WA. Minke whale, CA/OR/WA.
WA/OR/CA sablefish pot	133	Humpback whale, Central America/Southern Mexico-CA/OR/WA. ¹ Humpback whale, Mainland Mexico-CA/OR/WA. ¹
WA coastal Dungeness crab pot	204	Gray whale, Eastern North Pacific. Humpback whale, Central America/Southern Mexico-CA/OR/WA. ¹ Humpback whale, Mainland Mexico-CA/OR/WA.
<i>Longline/Set Line Fisheries:</i>		
AK Gulf of Alaska sablefish longline	177	Northern elephant seal, California breeding. Sperm whale, North Pacific. ¹ Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
HI shallow-set longline * ^	17	Beaked whale, unknown. Bottlenose dolphin, HI Pelagic. False killer whale, HI Pelagic. ¹ Guadalupe fur seal. Risso's dolphin, HI. Striped dolphin, HI.
American Samoa longline ²	9	False killer whale, American Samoa. Rough-toothed dolphin, American Samoa. Striped dolphin, unknown.
HI shortline ²	11	None documented.
<i>Marine Aquaculture Fisheries:</i>		
HI offshore pen culture	1	Hawaiian monk seal.
Category III		
<i>Gillnet Fisheries:</i>		
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet	360	Harbor porpoise, Bering Sea.
AK Prince William Sound salmon set gillnet	25	Harbor seal, GOA. Northern sea otter, Southcentral AK. Steller sea lion, Western U.S.
AK roe herring and food/bait herring gillnet	15	None documented.
CA herring set gillnet	9	None documented.
HI inshore gillnet	26	Bottlenose dolphin, HI. Spinner dolphin, HI.
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing).	20	Harbor seal, OR/WA coast.
WA/OR Mainstem Columbia River eulachon gillnet	8	None documented.
WA/OR lower Columbia River (includes tributaries) drift net	207	California sea lion, U.S. Harbor seal, OR/WA coast.
WA Willapa Bay drift gillnet	47	Harbor seal, OR/WA coast. Northern elephant seal, CA breeding.
<i>Miscellaneous Net Fisheries:</i>		
AK Cook Inlet salmon purse seine	16	Humpback whale, Hawai'i. Humpback whale, Mexico-North Pacific.
AK Kodiak salmon purse seine	159	Dall's porpoise, AK. Harbor seal, North Kodiak. Humpback whale, Hawai'i. Humpback whale, Mexico-North Pacific. Humpback whale, Western North Pacific. Steller sea lion, Western U.S.
AK Southeast salmon purse seine	206	Humpback whale, Hawai'i. Humpback whale, Mexico-North Pacific.
AK roe herring and food/bait herring purse seine	31	None documented.
AK salmon beach seine	2	None documented.
AK salmon purse seine (Prince William Sound, Chignik, Alaska Peninsula).	298	Harbor seal, GOA.
		Harbor seal, Prince William Sound.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
WA/OR sardine purse seine	0	None documented.
CA anchovy, mackerel, sardine purse seine	56	California sea lion, U.S. Harbor seal, CA.
CA squid purse seine	68	California sea lion, U.S. Long-beaked common dolphin, CA. Risso's dolphin, CA/OR/WA. Short-beaked common dolphin, CA/OR/WA.
CA tuna purse seine *	14	None documented.
WA/OR Lower Columbia River salmon seine	0	None documented.
WA/OR herring, anchovy, smelt, squid purse seine or lampara	48	None documented.
WA salmon seine	81	None documented.
WA salmon reef net	11	None documented.
HI lift net	13	None documented.
HI inshore purse seine	None recorded	None documented.
HI throw net, cast net	12	None documented.
HI seine net	17	None documented.
<i>Dip Net Fisheries:</i>		
CA squid dip net	19	None documented.
<i>Marine Aquaculture Fisheries:</i>		
AK invertebrate aquaculture	46	None documented.
AK macroalgae aquaculture	39	None documented.
CA marine shellfish aquaculture	unknown	None documented.
CA salmon enhancement rearing pen	>1	None documented.
CA white seabass enhancement net pens	13	California sea lion, U.S.
WA salmon net pens	14	California sea lion, U.S. Harbor seal, WA inland waters.
WA/OR shellfish aquaculture	23	None documented.
<i>Troll Fisheries:</i>		
WA/OR/CA albacore surface hook and line/troll	538	None documented.
CA halibut, white seabass, and yellowtail hook and line/handline	435	None documented.
CA/OR/WA non-albacore HMS hook and line	124	None documented.
AK Gulf of Alaska groundfish hand troll and dinglebar troll	4	None documented.
AK salmon troll	850	Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
American Samoa tuna troll	5	None documented.
CA/OR/WA salmon troll	808	None documented.
HI troll	1,186	Pantropical spotted dolphin, HI.
HI rod and reel	208	None documented.
Commonwealth of the Northern Mariana Islands tuna troll	9	None documented.
Guam tuna troll	546	None documented.
<i>Longline/Set Line Fisheries:</i>		
AK Bering Sea, Aleutian Islands Greenland turbot longline	4	Killer whale, GOA, AI, BS transient.
AK Bering Sea, Aleutian Islands Pacific cod longline	26	Bearded seal, Beringia. Northern fur seal, Eastern Pacific. Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands sablefish longline	8	None documented.
AK Bering Sea, Aleutian Islands halibut longline	84	Northern fur seal, Eastern Pacific. Sperm whale, North Pacific.
AK Gulf of Alaska halibut longline	689	Harbor seal, Clarence Strait. Harbor seal, Cook Inlet. Steller sea lion, Eastern U.S.
AK Gulf of Alaska Pacific cod longline	23	Harbor seal, Cook Inlet/Shelikof Strait.
AK octopus/squid longline	0	None documented.
AK State-managed waters longline/setline (including sablefish, rockfish, lingcod, and miscellaneous finfish).	464	None documented.
WA/OR/CA groundfish, bottomfish longline/set line	296	Bottlenose dolphin, CA/OR/WA offshore. California sea lion, U.S. Northern elephant seal, California breeding. Sperm whale, CA/OR/WA. Steller sea lion, Eastern U.S.
WA/OR/CA Pacific halibut longline	130	None documented.
West Coast pelagic longline	4	None documented in the most recent 5 years of data.
HI kaka line	12	None documented.
HI vertical line	Less than 3	None documented.
<i>Trawl Fisheries:</i>		
AK Bering Sea, Aleutian Islands Atka mackerel trawl	17	Harbor seal, Aleutian Islands. Northern elephant seal, California. Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands Pacific cod trawl	64	Ribbon seal. Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands rockfish trawl	22	Harbor seal, Aleutian Islands. Ribbon seal.
AK Gulf of Alaska flatfish trawl	16	Harbor seal, Cook Inlet/Shelikof Strait. Harbor seal, North Kodiak. Harbor seal, South Kodiak. Steller sea lion, Western U.S.
AK Gulf of Alaska Pacific cod trawl	12	None documented in most recent 5 years of data.
AK Gulf of Alaska pollock trawl	60	Steller sea lion, Western U.S.
AK Gulf of Alaska rockfish trawl	35	None documented in most recent 5 years of data.
AK Kodiak food/bait herring otter trawl	0	None documented.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
AK shrimp otter trawl and beam trawl	12	None documented.
CA halibut bottom trawl	23	California sea lion, U.S. Harbor porpoise, unknown. Harbor seal, unknown. Northern elephant seal, CA breeding. Steller sea lion, unknown.
CA sea cucumber trawl	9	California sea lion, U.S.
WA/OR/CA shrimp trawl	114	California sea lion, U.S.
WA/OR/CA groundfish trawl	104	California sea lion, U.S. Dall's porpoise, CA/OR/WA. Harbor seal, OR/WA coast. Northern elephant seal, CA breeding. Northern fur seal, Eastern Pacific. Northern right whale dolphin, CA/OR/WA. Pacific white-sided dolphin, CA/OR/WA. Steller sea lion, Eastern U.S.
<i>Pot, Ring Net, and Trap Fisheries:</i>		
AK Bering Sea, Aleutian Islands Pacific cod pot	80	Harbor seal, Bristol Bay. Humpback whale, Hawai'i. Humpback whale, Mexico-North Pacific. Humpback whale, Western North Pacific. Sperm whale, North Pacific.
AK Bering Sea, Aleutian Islands sablefish pot	15	Bowhead whale, Western Arctic.
AK Bering Sea, Aleutian Islands crab pot	73	Gray whale, Eastern North Pacific.
AK Gulf of Alaska crab pot	86	None documented.
AK Gulf of Alaska Pacific cod pot	48	None documented in most recent 5 years of data.
AK Gulf of Alaska sablefish pot	129	None documented.
AK Southeast Alaska crab pot	375	Humpback whale, Hawai'i. Humpback whale, Mexico-North Pacific.
AK Southeast Alaska shrimp pot	104	Humpback whale, Hawai'i. Humpback whale, Mexico-North Pacific.
AK shrimp pot, except Southeast	77	None documented.
AK octopus/squid pot	0	None documented.
CA rock crab pot	113	Gray whale, Eastern North Pacific. Harbor seal, CA.
CA Tanner crab pot fishery	2	None documented.
WA/OR/CA hagfish pot	57	None documented.
WA/OR shrimp pot/trap	28	None documented.
WA Puget Sound Dungeness crab pot/trap	139	None documented.
HI crab trap	4	Humpback whale, Hawai'i.
HI fish trap	Less than 3	None documented.
HI lobster trap	Less than 3	None documented in recent years.
HI shrimp trap	3	None documented.
HI crab net	Less than 3	None documented.
HI Kona crab loop net	17	None documented.
<i>Hook and Line, Handline, and Jig Fisheries:</i>		
AK Bering Sea, Aleutian Islands groundfish jig	2	None documented.
AK Gulf of Alaska groundfish jig	68	None documented in most recent 5 years of data.
AK halibut jig	5	None documented.
American Samoa bottomfish	87	None documented.
Commonwealth of the Northern Mariana Islands bottomfish	3	None documented.
Guam bottomfish	93	None documented.
HI aku boat, pole, and line	None recorded	None documented.
HI bottomfish handline	299	None documented in recent years.
HI inshore handline	158	None documented.
HI pelagic handline	382	None documented.
WA/OR/CA groundfish/finfish hook and line	689	California sea lion, U.S.
Western Pacific squid jig	0	None documented.
<i>Harpoon Fisheries:</i>		
CA swordfish harpoon	21	None documented.
<i>Pound Net/Weir Fisheries:</i>		
AK herring spawn on kelp pound net	143	None documented.
AK Southeast herring roe/food/bait pound net	1	None documented.
HI bullpen trap	<3	None documented.
<i>Bait Pens:</i>		
WA/OR/CA bait pens	13	California sea lion, U.S.
<i>Dredge Fisheries:</i>		
AK scallop dredge	108 (5 AK)	None documented.
<i>Dive, Hand/Mechanical Collection Fisheries:</i>		
AK clam	57	None documented.
AK miscellaneous invertebrates handpick	188	None documented.
CA/OR/WA dive collection	157	None documented.
CA/WA kelp, seaweed, and algae	4	None documented.
HI black coral diving	Less than 3	None documented.
HI fish pond	None recorded	None documented.
HI handpick	24	None documented.
HI lobster diving	8	None documented.
HI spearfishing	58	None documented.
WA/OR/CA hand/mechanical collection	258	None documented.
<i>Commercial Passenger Fishing Vessel (Charter Boat) Fisheries:</i>		

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
AK/WA/OR/CA commercial passenger fishing vessel	>7,000 (1,006 AK)	Humpback whale, Hawai'i. Humpback whale, Mexico-North Pacific. Humpback whale, Western North Pacific. Killer whale, unknown. Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
<i>Live Finfish/Shellfish Fisheries:</i>		
CA nearshore finfish trap	43	None documented.
HI aquarium collecting	12	None documented.

List of Abbreviations and Symbols Used in table 1:

AI—Aleutian Islands; AK—Alaska; BS—Bering Sea; CA—California; ENP—Eastern North Pacific; GOA—Gulf of Alaska; HI—Hawaii; MHI—Main Hawaiian Islands; OR—Oregon; WA—Washington;

¹ Fishery classified based on mortalities and serious injuries of this stock, which are greater than or equal to 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR;² Fishery classified by analogy;^{*} Fishery has an associated high seas component listed in table 3; and[^] The list of marine mammal species and/or stocks killed or injured in this fishery is identical to the list of species and/or stocks killed or injured in high seas component of the fishery, minus species and/or stocks that have geographic ranges exclusively on the high seas. The species and/or stocks are found, and the fishery remains the same, on both sides of the EEZ boundary. Therefore, the EEZ components of these fisheries pose the same risk to marine mammals as the components operating on the high seas.

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
Category I		
<i>Gillnet Fisheries:</i>		
Mid-Atlantic gillnet	4,020	Bottlenose dolphin, Northern Migratory coastal. Bottlenose dolphin, Southern Migratory coastal. ¹ Bottlenose dolphin, Northern NC estuarine system. ¹ Bottlenose dolphin, Southern NC estuarine system. ¹ Bottlenose dolphin, WNA offshore. Common dolphin, WNA. Gray seal, WNA. Harbor porpoise, GME/BF. Harbor seal, WNA. Harp seal, WNA. Humpback whale, Gulf of Maine. Minke whale, Canadian east coast. Bottlenose dolphin, Northern Migratory coastal. Bottlenose dolphin, WNA offshore. Common dolphin, WNA. Fin whale, WNA. Gray seal, WNA. ¹ Harbor porpoise, GME/BF. Harbor seal, WNA. Harp seal, WNA. Humpback whale, Gulf of Maine. Minke whale, Canadian east coast. North Atlantic right whale, WNA. Risso's dolphin, WNA. White-sided dolphin, WNA.
Northeast sink gillnet	4,924	Harbor porpoise, GME/BF. Humpback whale, Gulf of Maine. Minke whale, Canadian east coast. North Atlantic right whale, WNA. ¹
<i>Trap/Pot Fisheries:</i>		
Northeast/Mid-Atlantic American lobster and Jonah crab trap/pot	8,485	Atlantic spotted dolphin, Northern GMX. Bottlenose dolphin, Northern GMX oceanic. Bottlenose dolphin, WNA offshore. Common dolphin, WNA. Cuvier's beaked whale, WNA. Kogia spp. (Pygmy or dwarf sperm whale), WNA. Long-finned pilot whale, WNA. Mesoplodon beaked whale, WNA. Pantropical spotted dolphin, Northern GMX. Risso's dolphin, WNA. Rough-toothed dolphin, Northern GMX. Short-finned pilot whale, Northern GMX. Short-finned pilot whale, WNA. ¹
<i>Longline Fisheries:</i>		
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline*	201	
Category II		
<i>Gillnet Fisheries:</i>		
Chesapeake Bay inshore gillnet ²	265	Bottlenose dolphin, unknown (Northern migratory coastal or Southern migratory coastal). Humpback whale, Gulf of Maine. ¹

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
Gulf of Mexico gillnet ²	248	Minke whale, Canadian East Coast. Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, GMX bay, sound, and estuarine. Bottlenose dolphin, Mobile Bay, Bonsecour Bay. Bottlenose dolphin, MS Sound, Lake Borgne, Bay Boudreau. Bottlenose dolphin, Northern GMX coastal. Bottlenose dolphin, Western GMX coastal.
NC inshore gillnet	1,157	Bottlenose dolphin, Northern NC estuarine system. ¹ Bottlenose dolphin, Southern NC estuarine system. ¹
Northeast drift gillnet ²	1,036	None documented.
Southeast Atlantic gillnet ²	273	Bottlenose dolphin, Central FL coastal. Bottlenose dolphin, Northern FL coastal.
Southeastern U.S. Atlantic shark gillnet	21	Bottlenose dolphin, unknown (Central FL, Northern FL, SC/GA coastal, or Southern migratory coastal). North Atlantic right whale, WNA.
<i>Trawl Fisheries:</i>		
Mid-Atlantic mid-water trawl (including pair trawl)	320	Bottlenose dolphin, WNA offshore. Harbor seal, WNA.
Mid-Atlantic bottom trawl	633	White-sided dolphin, WNA. Bottlenose dolphin, WNA offshore. ¹ Common dolphin, WNA. ¹ <i>Globicephala spp.</i> (long-finned or short-finned pilot whale), WNA. Gray seal, WNA. ¹ Harbor seal, WNA. Risso's dolphin, WNA. ¹ White-sided dolphin, WNA.
Northeast mid-water trawl (including pair trawl)	542	Common dolphin, WNA. Gray seal, WNA. Harbor seal, WNA. Long-finned pilot whale, WNA. White-sided dolphin, WNA.
Northeast bottom trawl	968	Bottlenose dolphin, WNA offshore. ¹ Common dolphin, WNA. ¹ Gray seal, WNA. ¹ Harbor porpoise, GME/BF. Harbor seal, WNA. Harp seal, WNA. Long-finned pilot whale, WNA. ¹ Risso's dolphin, WNA. White-sided dolphin, WNA. ¹
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	10,824	Atlantic spotted dolphin, Northern Gulf of Mexico. Bottlenose dolphin, Barataria Bay Estuarine System. Bottlenose dolphin, Eastern GMX coastal. ¹ Bottlenose dolphin, GMX bay, sound, estuarine. ¹ Bottlenose dolphin, GMX continental shelf. Bottlenose dolphin, Mississippi River Delta. Bottlenose dolphin, Mobile Bay, Bonsecour Bay. Bottlenose dolphin, Northern GA/Southern SC estuarine system. Bottlenose dolphin, Northern GMX coastal. ¹ Bottlenose dolphin, Pensacola Bay, East Bay. Bottlenose dolphin, Perdido Bay. Bottlenose dolphin, SC/GA coastal. ¹ Bottlenose dolphin, Southern migratory coastal. Bottlenose dolphin, Western GMX coastal. ¹
Virginia shrimp trawl	12	None documented.
<i>Trap/Pot Fisheries:</i>		
MA mixed species trap/pot	1,240	Humpback whale, Gulf of Maine. ¹
Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot ²	1,101	Bottlenose dolphin, Biscayne Bay estuarine. Bottlenose dolphin, Central FL coastal. Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, FL Bay. Bottlenose dolphin, GMX bay, sound, estuarine (FL west coast portion). Bottlenose dolphin, Indian River Lagoon estuarine system. Bottlenose dolphin, Jacksonville estuarine system. Bottlenose dolphin, Sarasota Bay, Little Sarasota Bay.
Atlantic mixed species trap/pot ²	3,493	Fin whale, WNA.
Atlantic blue crab trap/pot	6,679	Humpback whale, Gulf of Maine. Bottlenose dolphin, Biscayne Bay estuarine. Bottlenose dolphin, Central FL coastal. Bottlenose dolphin, Central GA estuarine system. ¹ Bottlenose dolphin, Charleston estuarine system. ¹ Bottlenose dolphin, Indian River Lagoon estuarine system. Bottlenose dolphin, Jacksonville estuarine system. Bottlenose dolphin, Northern FL coastal. ¹ Bottlenose dolphin, Northern GA/Southern SC estuarine system. Bottlenose dolphin, Northern Migratory coastal. Bottlenose dolphin, Northern NC estuarine system. ¹ Bottlenose dolphin, Northern SC estuarine system.

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
<i>Purse Seine Fisheries:</i>		Bottlenose dolphin, SC/GA coastal. Bottlenose dolphin, Southern GA estuarine system. Bottlenose dolphin, Southern Migratory coastal. ¹ Bottlenose dolphin, Southern NC estuarine system. West Indian manatee, FL.
Gulf of Mexico menhaden purse seine	40–42	Bottlenose dolphin, GMX bay, sound, estuarine. Bottlenose dolphin, Mississippi River Delta. Bottlenose dolphin, Mississippi Sound, Lake Borgne, Bay Boudreau. Bottlenose dolphin, Northern GMX coastal. ¹ Bottlenose dolphin, Western GMX coastal. ¹
Mid-Atlantic menhaden purse seine ²	17	Bottlenose dolphin, Northern Migratory coastal. Bottlenose dolphin, Southern Migratory coastal.
<i>Haul/Beach Seine Fisheries:</i>		
Mid-Atlantic haul/beach seine	359	Bottlenose dolphin, Northern Migratory coastal. ¹ Bottlenose dolphin, Northern NC estuarine system. ¹ Bottlenose dolphin, Southern Migratory coastal. ¹
NC long haul seine	10	Bottlenose dolphin, Northern NC estuarine system. ¹ Bottlenose dolphin, Southern NC estuarine system.
<i>Stop Seine/Weir/Pound Net:</i>		
U.S. Mid-Atlantic mixed species stop seine/weir/pound net (except the NC roe mullet stop net).	unknown	Bottlenose dolphin, Northern NC estuarine system.
<i>Stop Net Fisheries:</i>		
NC roe mullet stop net	1	Bottlenose dolphin, Northern NC estuarine system. Bottlenose dolphin, unknown (Southern migratory coastal or Southern NC estuarine system).
<i>Pound Net Fisheries:</i>		
VA pound net	20	Bottlenose dolphin, Northern migratory coastal. Bottlenose dolphin, Northern NC estuarine system. Bottlenose dolphin, Southern Migratory coastal. ¹
<i>Marine Aquaculture Fisheries:</i>		
Aquaculture rafts ²	<15	None documented.
Bottom culture (trays/cages) with buoys ²	Unknown	None documented.
Longline aquaculture ²	Unknown	None documented.
Category III		
<i>Gillnet Fisheries:</i>		
Caribbean gillnet	127	None documented in the most recent 5 years of data.
DE River inshore gillnet	unknown	None documented in the most recent 5 years of data.
Long Island Sound inshore gillnet	unknown	None documented in the most recent 5 years of data.
RI, southern MA (to Monomoy Island), and NY Bight (Raritan and Lower NY Bays) inshore gillnet.	unknown	None documented in the most recent 5 years of data.
Southeast Atlantic inshore gillnet	unknown	Bottlenose dolphin, Northern SC estuarine system.
<i>Trawl Fisheries:</i>		
Atlantic shellfish bottom trawl	>58	None documented.
Gulf of Mexico butterfish trawl	2	Bottlenose dolphin, Northern GMX oceanic. Bottlenose dolphin, Northern GMX continental shelf.
Gulf of Mexico mixed species trawl	20	None documented.
GA cannonball jellyfish trawl	1	Bottlenose dolphin, SC/GA coastal.
<i>Marine Aquaculture Fisheries:</i>		
Net pen aquaculture	~25	Harbor seal, WNA.
On-bottom/off-bottom culture (trays/cages) without buoys	Unknown	None documented.
Shellfish aquaculture	Unknown	None documented.
<i>Purse Seine Fisheries:</i>		
Gulf of Maine Atlantic herring purse seine	>7	Harbor seal, WNA.
Gulf of Maine menhaden purse seine	>2	None documented.
FL West Coast sardine purse seine	10	None documented.
<i>Longline/Hook and Line Fisheries:</i>		
Northeast/Mid-Atlantic bottom longline/hook-and-line	>1,207	None documented.
Gulf of Maine, U.S. Mid-Atlantic tuna, shark, swordfish hook-and-line/harpoon.	2,846	Humpback whale, Gulf of Maine.
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/hook-and-line.	>5,000	Bottlenose dolphin, GMX continental shelf.
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/hook-and-line.	39	Bottlenose dolphin, Eastern GMX coastal.
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean pelagic hook-and-line/harpoon.	680	Bottlenose dolphin, Northern GMX continental shelf. None documented.
U.S. Atlantic, Gulf of Mexico trotline	unknown	Bottlenose dolphin, Galveston Bay, East Bay, Trinity Bay.
<i>Trap/Pot Fisheries:</i>		
Caribbean mixed species trap/pot	154	Bottlenose dolphin, Puerto Rico and United States Virgin Islands.
Caribbean spiny lobster trap/pot	40	None documented.
FL spiny lobster trap/pot	1,268	Bottlenose dolphin, Biscayne Bay estuarine. Bottlenose dolphin, Central FL coastal. Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, FL Bay. Bottlenose dolphin, FL Keys.
Gulf of Mexico blue crab trap/pot	4,113	Bottlenose dolphin, Barataria Bay.

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
Gulf of Mexico mixed species trap/pot	unknown	Bottlenose dolphin, Caloosahatchee River.
MA green crab pot	78	Bottlenose dolphin, Eastern GMX coastal.
Southeastern U.S. Atlantic, Gulf of Mexico golden crab trap/pot	10	Bottlenose dolphin, GMX bay, sound, estuarine.
U.S. Mid-Atlantic eel trap/pot	unknown	Bottlenose dolphin, Mississippi Sound, Lake Borgne, Bay Boudreau.
<i>Stop Seine/Weir/Pound Net/Floating Trap/Fyke Net Fisheries:</i>		Bottlenose dolphin, Mobile Bay, Bonsecour Bay.
Gulf of Maine herring and Atlantic mackerel stop seine/weir	>1	Bottlenose dolphin, Northern GMX coastal.
		Bottlenose dolphin, Waccasassa Bay, Withlacoochee Bay, Crystal Bay.
		Bottlenose dolphin, Western GMX coastal.
		West Indian manatee, FL.
U.S. Mid-Atlantic crab stop seine/weir	2,600	None documented.
RI floating trap	9	None documented.
Northeast and Mid-Atlantic fyke net	unknown	None documented.
<i>Dredge Fisheries:</i>		None documented.
Gulf of Maine sea urchin dredge	unknown	None documented.
Gulf of Maine mussel dredge	unknown	None documented.
Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge	>403	None documented.
Mid-Atlantic blue crab dredge	unknown	None documented.
Mid-Atlantic soft-shell clam dredge	unknown	None documented.
Mid-Atlantic whelk dredge	unknown	None documented.
U.S. Mid-Atlantic/Gulf of Mexico oyster dredge	7,000	None documented.
New England and Mid-Atlantic offshore surf clam/quahog dredge	unknown	None documented.
<i>Haul/Beach Seine Fisheries:</i>		None documented.
Caribbean haul/beach seine	38	West Indian manatee, Puerto Rico.
Gulf of Mexico haul/beach seine	unknown	None documented.
Southeastern U.S. Atlantic haul/beach seine	25	None documented.
<i>Dive, Hand/Mechanical Collection Fisheries:</i>		None documented.
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection.	20,000	None documented.
Gulf of Maine urchin dive, hand/mechanical collection	unknown	None documented.
Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean cast net.	unknown	None documented.
<i>Commercial Passenger Fishing Vessel (Charter Boat) Fisheries:</i>		None documented.
Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel.	4,000	Bottlenose dolphin, Barataria Bay estuarine system.
		Bottlenose dolphin, Biscayne Bay estuarine.
		Bottlenose dolphin, Central FL coastal.
		Bottlenose dolphin, Charleston estuarine system.
		Bottlenose dolphin, Choctawhatchee Bay.
		Bottlenose dolphin, Eastern GMX coastal.
		Bottlenose dolphin, FL Bay.
		Bottlenose dolphin, GMX bay, sound, estuarine.
		Bottlenose dolphin, Indian River Lagoon estuarine system.
		Bottlenose dolphin, Jacksonville estuarine system.
		Bottlenose dolphin, Mississippi Sound, Lake Borgne, Bay Boudreau.
		Bottlenose dolphin, Northern FL coastal.
		Bottlenose dolphin, Northern GA/Southern SC estuarine.
		Bottlenose dolphin, Northern GMX coastal.
		Bottlenose dolphin, Northern migratory coastal.
		Bottlenose dolphin, Northern NC estuarine.
		Bottlenose dolphin, Southern migratory coastal.
		Bottlenose dolphin, Southern NC estuarine system.
		Bottlenose dolphin, SC/GA coastal.
		Bottlenose dolphin, Western GMX coastal.

List of Abbreviations and Symbols Used in table 2:

DE—Delaware; FL—Florida; GA—Georgia; GME/BF—Gulf of Maine/Bay of Fundy; GMX—Gulf of Mexico; MA—Massachusetts; NC—North Carolina; NY—New York; RI—Rhode Island; SC—South Carolina; VA—Virginia; WNA—Western North Atlantic;

¹ Fishery classified based on mortalities and serious injuries of this stock, which are greater than or equal to 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR;² Fishery classified by analogy; and^{*} Fishery has an associated high seas component listed in table 3.

TABLE 3—LIST OF FISHERIES—COMMERCIAL FISHERIES ON THE HIGH SEAS

Fishery description	Number of HSFCA permits	Marine mammal species and/or stocks incidentally killed or injured
Category I		
<i>Longline Fisheries:</i>		

TABLE 3—LIST OF FISHERIES—COMMERCIAL FISHERIES ON THE HIGH SEAS—Continued

Fishery description	Number of HSFCA permits	Marine mammal species and/or stocks incidentally killed or injured
Atlantic Highly Migratory Species *	35	Atlantic spotted dolphin, WNA. Bottlenose dolphin, Northern GMX oceanic. Bottlenose dolphin, WNA offshore. Common dolphin, WNA. Cuvier's beaked whale, WNA. False killer whale, WNA. Killer whale, GMX oceanic. Kogia spp. whale (Pygmy or dwarf sperm whale), WNA. Long-finned pilot whale, WNA. Mesoplodon beaked whale, WNA. Minke whale, Canadian East coast. Pantropical spotted dolphin, WNA. Risso's dolphin, GMX. Risso's dolphin, WNA. Short-finned pilot whale, WNA.
Western Pacific Pelagic (HI Deep-set component) * ^	146	Bottlenose dolphin, HI Pelagic. False killer whale, HI Pelagic. Kogia spp. (Pygmy or dwarf sperm whale), HI. Risso's dolphin, HI. Rough-toothed dolphin, HI. Short-finned pilot whale, HI.
Category II		
<i>Drift Gillnet Fisheries:</i> Pacific Highly Migratory Species * ^	2	Long-beaked common dolphin, CA. Humpback whale, Central America/Southern Mexico-CA/OR/WA. Humpback whale, Mainland Mexico-CA/OR/WA. Northern right-whale dolphin, CA/OR/WA. Pacific white-sided dolphin, CA/OR/WA. Risso's dolphin, CA/OR/WA. Short-beaked common dolphin, CA/OR/WA.
<i>Trawl Fisheries:</i> CCAMLR	0	Antarctic fur seal.
<i>Purse Seine Fisheries:</i> Western and Central Pacific Ocean Tuna Purse Seine	14	Bottlenose dolphin, unknown. Blue whale, unknown. Bryde's whale, unknown. False killer whale, unknown. Fin whale, unknown. Indo-Pacific dolphin. Long-beaked common dolphin, unknown. Melon-headed whale, unknown. Minke whale, unknown. Pantropical spotted dolphin, unknown. Risso's dolphin, unknown. Rough-toothed dolphin, unknown. Sei whale, unknown. Short-finned pilot whale, unknown. Sperm whale, unknown. Spinner dolphin, unknown.
Western Pacific Pelagic	0	No information.
<i>Longline Fisheries:</i> CCAMLR	0	None documented.
South Pacific Albacore Troll	5	No information.
Western Pacific Pelagic (HI Shallow-set component) * ^	17	Beaked whale, unknown. Bottlenose dolphin, HI Pelagic. False killer whale, HI Pelagic. Guadalupe fur seal. Risso's dolphin, HI. Striped dolphin, HI.
<i>Handline/Pole and Line Fisheries:</i> Atlantic Highly Migratory Species	0	No information.
Pacific Highly Migratory Species	39	No information.
South Pacific Albacore Troll	2	No information.
Western Pacific Pelagic	1	No information.
<i>Troll Fisheries:</i> Atlantic Highly Migratory Species	0	No information.
South Pacific Albacore Troll	24	No information.
Western Pacific Pelagic	6	No information.
Category III		
<i>Longline Fisheries:</i> Northwest Atlantic Bottom Longline	0	None documented.
Pacific Highly Migratory Species	104	None documented in the most recent 5 years of data.
<i>Purse Seine Fisheries:</i> Pacific Highly Migratory Species * ^	1	None documented.
<i>Trawl Fisheries:</i> Northwest Atlantic	0	None documented.
<i>Troll Fisheries:</i>		

TABLE 3—LIST OF FISHERIES—COMMERCIAL FISHERIES ON THE HIGH SEAS—Continued

Fishery description	Number of HSFCA permits	Marine mammal species and/or stocks incidentally killed or injured
Pacific Highly Migratory Species *	98	None documented.

List of Terms, Abbreviations, and Symbols Used in table 3:

CA—California; GMX—Gulf of Mexico; HI—Hawaii; OR—Oregon; WA—Washington; WNA—Western North Atlantic;

* Fishery is an extension/component of an existing fishery operating within U.S. waters listed in table 1 or 2. The number of permits listed in table 3 represents only the number of permits for the high seas component of the fishery; and

^ The list of marine mammal species and/or stocks killed or injured in this fishery is identical to the list of marine mammal species and/or stocks killed or injured in U.S. waters component of the fishery, minus species and/or stocks that have geographic ranges exclusively in coastal waters, because the marine mammal species and/or stocks are also found on the high seas and the fishery remains the same on both sides of the EEZ boundary. Therefore, the high seas components of these fisheries pose the same risk to marine mammals as the components of these fisheries operating in U.S. waters.

TABLE 4—FISHERIES AFFECTED BY TAKE REDUCTION TEAMS AND PLANS

Take reduction plans	Affected fisheries
Atlantic Large Whale Take Reduction Plan (ALWTRP)—50 CFR 229.32	<i>Category I.</i> Mid-Atlantic gillnet. Northeast/Mid-Atlantic American lobster and Jonah crab trap/pot. Northeast sink gillnet. <i>Category II.</i> Atlantic blue crab trap/pot. Atlantic mixed species trap/pot. MA mixed species trap/pot. Northeast drift gillnet. Southeast Atlantic gillnet. Southeastern U.S. Atlantic shark gillnet.* Southeastern, U.S. Atlantic, Gulf of Mexico stone crab trap/pot.^
Bottlenose Dolphin Take Reduction Plan (BDTRP)—50 CFR 229.35	<i>Category I.</i> Mid-Atlantic gillnet. <i>Category II.</i> Atlantic blue crab trap/pot. Chesapeake Bay inshore gillnet fishery. Mid-Atlantic haul/beach seine. Mid-Atlantic menhaden purse seine. NC inshore gillnet. NC long haul seine. NC roe mullet stop net. Southeast Atlantic gillnet. Southeastern U.S. Atlantic shark gillnet. Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl.^ Southeastern, U.S. Atlantic, Gulf of Mexico stone crab trap/pot.^ U.S. Mid-Atlantic mixed species stop seine/weir/pound net (except the NC roe mullet stop net). VA pound net.
False Killer Whale Take Reduction Plan (FKWTRP)—50 CFR 229.37 ..	<i>Category I.</i> HI deep-set longline. <i>Category II.</i> HI shallow-set longline.
Harbor Porpoise Take Reduction Plan (HPTRP)—50 CFR 229.33 (New England) and 229.34 (Mid-Atlantic).	<i>Category I.</i> Mid-Atlantic gillnet. Northeast sink gillnet.
Pelagic Longline Take Reduction Plan (PLTRP)—50 CFR 229.36	<i>Category I.</i> Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline. <i>Category II.</i>
Pacific Offshore Cetacean Take Reduction Plan (POCTRP)—50 CFR 229.31.	CA thresher shark/swordfish drift gillnet (≥14 in mesh).
Atlantic Trawl Gear Take Reduction Team (ATGTRT)	<i>Category II.</i> Mid-Atlantic bottom trawl. Mid-Atlantic mid-water trawl (including pair trawl). Northeast bottom trawl Northeast mid-water trawl (including pair trawl).

List of Symbols Used in table 4:

* Only applicable to the portion of the fishery operating in U.S. waters; and

^ Only applicable to the portion of the fishery operating in the Atlantic Ocean.

Classification

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified

to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule would not have a significant economic impact on a substantial number of small entities. As

a result of this certification, an initial regulatory flexibility analysis is not required and none has been prepared. The certification is based on the following analysis.

Any entity with combined annual fishery landing receipts less than \$11 million is considered a small entity for purposes of the Regulatory Flexibility Act. Under the size standard, all entities subject to this action were considered small entities; thus, they all would continue to be considered small under the new standards.

Under existing regulations, all individuals participating in Category I or II fisheries must register under the MMPA and obtain an authorization certificate. The authorization certificate authorizes the taking of marine mammals incidental to commercial fishing operations under the MMPA. Additionally, individuals may be subject to a TRP and requested to carry an observer. NMFS has estimated that up to approximately 53,590 fishing vessels, most with annual revenues below the SBA's small entity thresholds, may operate in Category I or II fisheries. As fishing vessels operating in Category I or II fisheries, they are required to register with NMFS. The MMPA registration process is integrated with existing State and Federal licensing, permitting, and registration programs. Therefore, individuals who have a State or Federal fishing permit or landing license or who are authorized through another related State or Federal fishery registration program are currently not required to register separately under the MMPA or pay the \$25 registration fee. Through this integrated process, registration under the MMPA, including the \$25 registration fee, is only required for vessels participating in a Category I or II non-permitted fishery. All Category I and II fisheries listed on the 2025 proposed LOF are permitted through State or Federal processes, and registration under the MMPA is covered through the integrated process. Therefore, this proposed rule would not impose any direct costs on small entities.

The MMPA requires any vessel owner or operator to report to NMFS, within 48 hours of the end of the fishing trip, all marine mammal incidental mortalities and injuries that occur during commercial fishing operations. These marine mammal mortalities and injuries are reported using a postage-paid, Office of Management and Budget (OMB) approved form (OMB Control Number 0648-0292). This postage-paid form requires less than 15 minutes to complete and can be dropped in any mailbox, faxed, emailed, or completed online within 48 hours of the vessel's return to port. Therefore, recordkeeping and reporting costs associated with this LOF are minimal and would not have a

significant impact on a substantial number of small entities.

If a vessel is requested to carry an observer, vessels will not incur any direct economic costs associated with carrying that observer. In the event that reclassification of a fishery to Category I or II results in a TRP, economic analyses of the effects of that TRP would be summarized in subsequent rulemaking actions.

Paperwork Reduction Act

This proposed rule contains existing collection-of-information (COI) requirements subject to the Paperwork Reduction Act but would not impose additional or new COI requirements. The COI for the registration of individuals under the MMPA has been approved by the OMB under OMB Control Number 0648-0293 (0.15 hours per report for new registrants). The requirement for reporting marine mammal mortalities or injuries has been approved by OMB under OMB Control Number 0648-0292 (0.15 hours per report). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the COI. Send comments regarding these reporting burden estimates or any other aspect of the COI, including suggestions for reducing burden, to NMFS (see **ADDRESSES**). You may also submit comments on these or any other aspects of the collection of information at <https://www.reginfo.gov/public/do/PRAMain>.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a COI, subject to the requirements of the Paperwork Reduction Act, unless that COI displays a currently valid OMB control number.

E.O. 12866

This proposed rule has been determined to be not significant for the purposes of Executive Orders 12866 and 13563.

National Environmental Policy Act

In accordance with the Companion Manual for NOAA Administrative Order (NAO) 216-6A, NMFS determined that the publishing this proposed LOF qualifies to be categorically excluded from further National Environmental Policy Act (NEPA) review, consistent with categories of activities identified in Categorical Exclusion G7 ("Preparation of policy directives, rules, regulations, and guidelines of an administrative, financial, legal, technical, or procedural

nature, or for which the environmental effects are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or on a case-by-case basis") of the Companion Manual, and we have not identified any extraordinary circumstances listed in chapter 4 of the Companion Manual for NAO 216-6A that would preclude application of this categorical exclusion. If NMFS takes additional management action (for example, through the development of a TRP), NMFS would first prepare an Environmental Impact Statement or Environmental Assessment, as required under NEPA, specific to that action.

This proposed rule would not affect species listed as threatened or endangered under the ESA or their associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions, and this rulemaking will not affect the conclusions of those opinions. The classification of fisheries on the LOF is not considered to be a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, through the development of a TRP, NMFS would consult under ESA section 7 on that action.

This proposed rule would have no adverse impacts on marine mammals and may have a positive impact on marine mammals by improving knowledge of marine mammals and the fisheries interacting with marine mammals through information collected from observer programs, stranding and sighting data, or TRT.

This proposed rule would not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

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Dated: September 19, 2024.

Samuel D. Rauch, III,

*Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.*

[FR Doc. 2024–21835 Filed 9–23–24; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 89, No. 185

Tuesday, September 24, 2024

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 AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS–2024–0012]

Proposed Revisions to the National Handbook of Conservation Practices for the Natural Resources Conservation Service

AGENCY: Natural Resources Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of availability, request for comments.

SUMMARY: The Natural Resources Conservation Service (NRCS) is revising specific conservation practice standards (CPS) in the National Handbook of Conservation Practices (NHCP). NRCS is also giving the public an opportunity to provide comments on the proposed changes to the specific CPS.

DATES: We will consider comments that we receive by October 24, 2024.

ADDRESSES: We invite you to submit comments in response to this notice. You may submit your comments through one of the following methods below:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and search for Docket ID NRCS–2024–0012. Follow the online instructions for submitting comments; or

- *Mail or Hand Delivery:* Mr. J'Que C. Jones, National Environmental Engineer, Conservation Engineering Division, NRCS, USDA, 1400 Independence Avenue, South Building, Room 4636, Washington, DC 20250. In your comment, please specify the Docket ID NRCS–2024–0012.

All comments received will be made publicly available on <http://www.regulations.gov>.

The copies of the proposed revised standards are available through <http://www.regulations.gov> by accessing

Docket No. NRCS–2024–0012.

Alternatively, the proposed revised standards can be downloaded or printed from the <https://www.nrcs.usda.gov/getting-assistance/conservation-practices>.

FOR FURTHER INFORMATION CONTACT: Mr. J'Que C. Jones at (443) 926–6957, or by email at jque.jones@usda.gov. Individuals who require alternative means for communication should contact the USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

Background

NRCS plans to revise the CPS in the NHCP. This notice provides an overview of the planned changes and gives the public an opportunity to offer comments on the specific CPS and NRCS's proposed changes.

NRCS State Conservationists who choose to adopt these practices in their States will incorporate these practices into the respective electronic Field Office Technical Guide. These practices may be used in conservation systems that treat highly erodible land (HEL) or on land determined to be wetland. Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–127) requires NRCS to make available for public review and comment all proposed revisions to CPS used to carry out HEL and wetland provisions of the law.

Revisions to the National Handbook of Conservation Practices

The amount of the proposed changes varies considerably for each of the CPS addressed in this notice. To fully understand the proposed changes, individuals are encouraged to compare these changes with the current version for each standard, which can be found at: <https://www.nrcs.usda.gov/resources/guides-and-instructions/conservation-practice-standards>.

NRCS is requesting comments on the following CPS:

- Controlling Existing Flowing Well (Code 352);
- Irrigation Water Management (Code 449);
- Phosphorous Removal System (Code 624);

- Saturated Buffer (Code 604); and
- Wetland Creation (Code 658).

The following paragraphs highlight some of the proposed changes to each standard:

Controlling Existing Flowing Well (Code 352): This is a new CPS that was added to address flowing artesian wells that deplete the aquifer. Flowing wells can also cause ponding, erosion, and ice damage and can waste freshwater resources.

Irrigation Water Management (Code 449): Revised the “Purpose” section to add that the CPS will provide data needed to manage efficient use of irrigation water to promote optimal use of available irrigation water supplies. Additional methods for determining the timing of irrigation, was added to the “General Criteria” section. Added criteria to the standard for “Closed Conduit and Open Channel Irrigation Flow Measurement.” Minor revisions were made for clarity and readability purposes.

Phosphorous Removal System (Code 624): This is a new national standard for a system to remove dissolved phosphorus from surface runoff, subsurface drain, or ditch flows using a phosphorus sorption media within a containment structure. NRCS developed this new national standard in collaboration with Dr. Chad Penn of the USDA Agricultural Research Service.

Saturated Buffer (Code 604): Revised to add text to the “Definition” section to include the nitrate removal feature of the technology. Revised the “General Criteria Applicable to All Purposes” section to allow nitrate removal optimization in vegetated buffer zone sizing and design flow capacity. And added text to clarify the factors that contribute to the probability of bank failure.

Wetland Creation (Code 658): Revised to narrow the practice standard to the creation of wetland hydrology, assuring consistency with the revised CPS on Wetland Restoration (Code 657). In the “Criteria and Considerations” section, the definition was updated and greater clarity was provided and references and corresponding links were updated.

USDA Non-Discrimination Policy

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institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Individuals who require alternative means of communication for program information (e.g., braille, large print, audiotope, American Sign Language, etc.) should contact the responsible agency or USDA TARGET Center at (202) 720-2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay Service (both voice and telephone users can initiate this call from any phone). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410; (2) fax: (202) 690-7442; or email: OAC@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

Noller Herbert,

Acting Associate Chief, Natural Resources Conservation Service.

[FR Doc. 2024-21817 Filed 9-23-24; 8:45 am]

BILLING CODE 3410-16-P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Arizona Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules

and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a virtual business meeting of the Arizona Advisory Committee (Committee) to the U.S. Commission on Civil Rights will convene via ZoomGov on Monday, October 21, 2024, from 12:30 p.m.—2 p.m. Arizona time. The purpose of the meeting is to review drafts of their report examining the racial and/or ethnic disparities in access to pediatric health care.

DATES: The meeting will take place on: Monday, October 21, 2024, from 12:30 p.m.—2 p.m. Arizona time.

ADDRESSES:

Webinar Zoom Link to Join (*Audio/Visual*): <https://www.zoomgov.com/j/1604974348>.

Telephone (Audio Only) Dial: 1-833-435-1820 (US Toll-free); Webinar ID: 160 497 4348.

FOR FURTHER INFORMATION CONTACT: Ana Fortes, DFO, at afortes@usccr.gov or (202) 681-0857.

SUPPLEMENTARY INFORMATION:

Committee meetings are available to the public through the videoconference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Angelica Trevino, Support Services Specialist, at atrevino@usccr.gov at least 10 business days prior to the meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments can be sent via email to Ana Fortes (DFO) at afortes@usccr.gov.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via www.facadatabase.gov under the

Commission on Civil Rights, Arizona Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Coordination Unit at atrevino@usccr.gov.

Agenda

- I. Welcome, Roll Call, and Announcements
- II. Review Report Findings and Recommendations
- III. Public Comment
- IV. Next Steps
- V. Adjournment

Dated: September 19, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024-21830 Filed 9-23-24; 8:45 am]

BILLING CODE 6335-01-P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Wyoming Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Wyoming Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via Zoom at 1 p.m. MT on Wednesday, October 2, 2024. The purpose of this meeting is to discuss the Committee's project, *Housing Discrimination and Fair Housing Practices in Wyoming*.

DATES: Wednesday, October 2, 2024, from 1 p.m.—2:30 p.m. mountain time.

ADDRESSES: The meeting will be held via Zoom Webinar.

Registration Link (Audio/Visual): https://www.zoomgov.com/webinar/register/WN_qqT3lzqRSpc3FqOlCpgKg.

Join by Phone (Audio Only): (833) 435-1820 USA Toll-Free; Meeting ID: 160 694 2041.

FOR FURTHER INFORMATION CONTACT: Kayla Fajota, Designated Federal Officer, at kfajota@usccr.gov or (434) 515-2395.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make

a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Liliana Schiller, Support Services Specialist, at lschiller@usccr.gov at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Kayla Fajota at kfajota@usccr.gov. Persons who desire additional information may contact the Regional Programs Coordination Unit at (434) 515-2395.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit, as they become available, both before and after the meeting. Records of the meeting will be available via the file sharing website, www.box.com. Persons interested in the work of this Committee are directed to the Commission's website, www.usccr.gov, or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

- I. Welcome & Roll Call
- II. Approval of Minutes
- III. Discussion: Draft Report
- IV. Next Steps
- V. Public Comment
- VI. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102-3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting due to the availability of staff and the Committee.

Dated: September 19, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.
[FR Doc. 2024-21833 Filed 9-23-24; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Arizona Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a virtual business meeting of the Arizona Advisory Committee (Committee) to the U.S. Commission on Civil Rights will convene via ZoomGov on Monday, November 18, 2024, from 12:30 p.m.–2 p.m. Arizona time. The purpose of the meeting is to review drafts of their report examining the racial and/or ethnic disparities in access to pediatric health care.

DATES: The meeting will take place on: Monday, November 18, 2024, from 12:30 p.m.–2 p.m. Arizona time.

ADDRESSES:

Webinar Zoom Link to Join (Audio/Visual): <https://www.zoomgov.com/j/1600065721>.

Telephone (Audio Only) Dial: 1-833-435-1820 (US Toll-free); Webinar ID: 160 006 5721.

FOR FURTHER INFORMATION CONTACT: Ana Fortes, DFO, at afortes@usccr.gov or (202) 681-0857.

SUPPLEMENTARY INFORMATION:

Committee meetings are available to the public through the videoconference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Angelica Trevino, Support Services Specialist, at atrevino@usccr.gov at least 10 business days prior to the meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be

received in the Regional Programs Unit within 30 days following the meeting. Written comments can be sent via email to Ana Fortes (DFO) at afortes@usccr.gov

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via www.facadatabase.gov under the Commission on Civil Rights, Arizona Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Coordination Unit at atrevino@usccr.gov.

Agenda

- I. Welcome, Roll Call, and Announcements
- II. Review Report
- III. Public Comment
- IV. Vote on Final Report
- V. Next Steps
- VI. Adjournment

Dated: September 19, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024-21823 Filed 9-23-24; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-28-2024]

Foreign-Trade Zone (FTZ) 75; Authorization of Production Activity; Lucid Motors USA, Inc.; (Lithium-Ion Batteries); Casa Grande and Tempe, Arizona

On May 22, 2024, Lucid Motors USA, Inc. submitted a notification of proposed production activity to the FTZ Board for its facilities within Subzone 75N, in Casa Grande and Tempe, Arizona.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (89 FR 47129, May 31, 2024). On September 19, 2024, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including section 400.14.

Dated: September 19, 2024.

Elizabeth Whiteman,
Executive Secretary.

[FR Doc. 2024–21805 Filed 9–23–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–137–2024]

Approval of Subzone Status; Willow Glen Terminal LLC; Saint Gabriel, Louisiana

On August 1, 2024, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Port of Greater Baton Rouge, grantee of FTZ 154, requesting subzone status subject to the existing activation limit of FTZ 154, on behalf of Willow Glen Terminal LLC, in Saint Gabriel, Louisiana.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (89 FR 63916, August 6, 2024). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR 400.36(f)), the application to establish Subzone 154D was approved on September 18, 2024, subject to the FTZ Act and the Board's regulations, including section 400.13, and further subject to FTZ 154's 2,000-acre activation limit.

Dated: September 18, 2024.

Elizabeth Whiteman,
Executive Secretary.

[FR Doc. 2024–21726 Filed 9–23–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–122–2024]

Approval of Subzone Status; Catalent Pharma Solutions, LLC; Winchester, Kentucky

On July 23, 2024, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Louisville & Jefferson County Riverport Authority, grantee of FTZ 29, requesting subzone status subject to the existing activation limit of FTZ 29, on behalf of Catalent Pharma Solutions, LLC, in Winchester, Kentucky.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (89 FR 60861, July 29, 2024). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR 400.36(f)), the application to establish Subzone 29Y was approved on September 19, 2024, subject to the FTZ Act and the Board's regulations, including section 400.13, and further subject to FTZ 29's, 2,000-acre activation limit.

Dated: September 19, 2024.

Elizabeth Whiteman,
Executive Secretary.

[FR Doc. 2024–21821 Filed 9–23–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–27–2024]

Foreign-Trade Zone (FTZ) 22; Authorization of Production Activity; Gotion Inc; (Lithium Battery Packs and Lithium Battery Systems); Manteno, Illinois

On May 22, 2024, Gotion Inc. submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 22AF, in Manteno, Illinois.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (89 FR 46856, May 30, 2024). On September 19, 2024, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including section 400.14.

Dated: September 19, 2024.

Elizabeth Whiteman,
Executive Secretary.

[FR Doc. 2024–21822 Filed 9–23–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–274–810]

Melamine From Trinidad and Tobago: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, In Part

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that melamine from Trinidad and Tobago is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is January 1, 2023, through December 31, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable September 24, 2024.

FOR FURTHER INFORMATION CONTACT: Brittany Bauer, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; (202) 482–3860.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on March 11, 2024.¹ On June 18, 2024, Commerce postponed the preliminary determination of this investigation.² On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.³ The deadline for the preliminary determination is now September 18, 2024.

For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum.⁴ A list of topics

¹ See *Melamine from Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago: Initiation of Less-Than-Fair-Value Investigations*, 89 FR 17413 (March 11, 2024) (*Initiation Notice*).

² See *Melamine from Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 89 FR 52437 (June 24, 2024).

³ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated July 22, 2024.

⁴ See Memorandum, “Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Melamine from Trinidad and Tobago,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

included in the Preliminary Decision Memorandum is included as Appendix II 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 Service System (ACCESS). ACCESS is available to registered users at <https://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 Investigation

The product covered by this investigation is melamine from Trinidad and Tobago. For a full description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,⁵ we set aside a period of time, as stated in the *Initiation Notice*, for parties to raise issues regarding product coverage (*i.e.*, scope).⁶ No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice*. Commerce is not modifying the scope language as it appeared in the *Initiation Notice*. *See* the complete description of the scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Pursuant to section 776(a) of the Act, Commerce preliminarily relied upon facts otherwise available to assign an estimated weighted-average dumping margin to Methanol Holdings (Trinidad) Limited (MHTL), the sole mandatory respondent in this investigation because MHTL did not submit a response to Commerce's antidumping duty questionnaire. Further, Commerce preliminarily determines that MHTL failed to cooperate by not acting to the best of its ability to comply with a request for information and Commerce is using an adverse inference in selecting from among the facts otherwise available (*i.e.*, applying adverse facts available (AFA) to this respondent, in accordance with section 776(b) of the Act). For a full description of the methodology underlying our preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Affirmative Determination of Critical Circumstances, in Part

On June 17, 2024, the petitioner⁷ timely filed a critical circumstances allegation, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of the subject merchandise from Trinidad and Tobago.⁸ Section 733(e)(1) of the Act provides that Commerce will preliminarily determine that critical circumstances exist in an LTFV investigation if there is a reasonable basis to believe or suspect that: (A) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

In accordance with section 733(e) of the Act and 19 CFR 351.206, we preliminarily determine that critical circumstances exist with respect to imports of melamine produced and exported by MHTL. Furthermore, we preliminarily determine that critical circumstances do not exist with respect to imports of melamine produced and exported by all other producers and exporters from Trinidad and Tobago. For a full description of Commerce's preliminary critical circumstances determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Section 733(d)(1)(ii) of the Act provides that, in a preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and producers not individually investigated in accordance with section 735(c)(5) of the Act. Section 735(c)(5)(A) of the Act states that generally the estimated rate for all others shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. The estimated weighted-average dumping margin in

this preliminary determination was determined entirely under section 776 of the Act. In cases where no weighted-average dumping margins other than zero, *de minimis*, or those determined entirely under section 776 of the Act have been established for individually examined entities, in accordance with section 735(c)(5)(B) of the Act, Commerce typically calculates a simple average of the margins alleged in the petition and applies the results to all other entities not individually examined.⁹

In the Petition,¹⁰ the petitioner alleged two estimated dumping margins for Trinidad and Tobago, 49.78 and 146.85 percent.¹¹ Therefore, consistent with our practice, for the all-others rate in this investigation, we preliminarily assign a simple average of the dumping margins alleged in the Petition, which is 98.32 percent.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist during the period January 1, 2023, through December 31, 2023:

Exporter/producer	Weighted-average dumping margin (percent)
Methanol Holdings (Trinidad) Limited	*146.85
All Others	98.32

*Rate is based on AFA.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of melamine, as described in the "Scope of the Investigation" in Appendix I, from MHTL that are entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication of this notice in the **Federal Register**. In accordance with section 733(d)(2) of the Act, Commerce will direct CBP to suspend liquidation of all other entries of melamine from Trinidad and Tobago, as described in the "Scope of the Investigation" in Appendix I, entered, or withdrawn from warehouse,

⁹ *See, e.g., Thermal Paper from Spain: Final Determination of Sales at Less Than Fair Value*, 86 FR 54162, 54163 (September 30, 2021), and accompanying Issues and Decision Memorandum.

¹⁰ *See* Petitioner's Letter, "Melamine from Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago: Petition for the Imposition of Antidumping Duties," dated February 14, 2024 (Petition).

¹¹ *See Initiation Notice*, 89 FR at 17416.

⁵ *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

⁶ *See Initiation Notice*, 89 FR at 17413.

⁷ The petitioner is Cornerstone Chemical Company.

⁸ *See* Petitioner's Letter, "Allegation of Critical Circumstances," dated June 17, 2024.

for consumption on or after the date of publication of this notice in the **Federal Register**. We will also instruct CBP, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of preliminary determination in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily applied AFA to the mandatory respondent in this investigation and applied an AFA rate based on the Petition, there are no calculations to disclose.

Consistent with 19 CFR 351.224(e), Commerce will analyze and, if appropriate, correct any timely allegations of significant ministerial errors by amending the preliminary determination. However, consistent with 19 CFR 351.224(d), Commerce will not consider incomplete allegations that do not address the significance standard under 19 CFR 351.224(g) following the preliminary determination. Instead, Commerce will address such allegations in the final determination together with issues raised in the case briefs or other written comments.

Verification

Because the mandatory respondent in this investigation did not act to the best of its ability to provide information requested by Commerce, and Commerce preliminarily determines the mandatory respondent has been uncooperative, we will not conduct verification.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 14 days after the date of publication of the preliminary determination. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.¹² Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.¹³

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁴ Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination. We request that interested parties include footnotes for relevant citations in the public executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁵

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, U.S. Department of Commerce, filed electronically via ACCESS. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants and whether any participant is a foreign national; and (3) a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. An electronically filed hearing request must be received

¹² See 19 CFR 351.309(d); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

¹³ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁴ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁵ See *APO and Service Final Rule*.

successfully in its entirety via ACCESS by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.

Final Determination

Section 735(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that Commerce will issue the final determination within 75 days after the date of its preliminary determination.

Accordingly, Commerce will make its final determination no later than 75 days after the signature date of this preliminary determination.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of our affirmative preliminary determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: September 18, 2024.

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

Scope of the Investigation

The merchandise subject to this investigation is melamine (Chemical Abstracts Service (CAS) registry number 108–78–01, molecular formula $C_3H_6N_6$). Melamine is also known as 2,4,6-triaminotriazine; 1,3,5-Triazine-2,4,6- triamine; Cyanurotriamide; Cyanurotriamine; Cyanuramide; and by various brand names. Melamine is a crystalline powder or granule. All melamine is covered by the scope of this investigation irrespective of purity, particle size, or physical form. Melamine that has been blended with other products is included within this scope when such blends include constituent parts that have been intermingled, but that have not been chemically reacted with each other to produce a different product. For such blends, only the melamine component of the mixture is covered by the scope of this investigation. Melamine that is otherwise subject to this investigation is not excluded when commingled with melamine from sources not subject to this investigation. Only the subject component of such commingled products is covered by the scope of this investigation.

The subject merchandise is provided for in subheading 2933.61.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading and CAS registry number are provided for convenience and customs purposes, the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Application of Facts Available, Use of Adverse Inference, and Calculation of All-Others Rate
- V. Critical Circumstances
- VI. Recommendation

[FR Doc. 2024–21829 Filed 9–23–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–825]

Common Alloy Aluminum Sheet From South Africa: Final Results of Antidumping Duty Administrative Review; 2022–2023

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

SUMMARY: The U.S. Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty order on common alloy aluminum sheet (CAAS) from South Africa. We determine that Hulamin Operations (Pty) Ltd. (Hulamin Operations) made sales of subject merchandise at less than normal value during the period of review (POR) April 1, 2022, through March 31, 2023.

DATES: Applicable September 24, 2024.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Brendan Quinn, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4243 or (202) 482–5848, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 16, 2024, Commerce published the *Preliminary Results* of this review in the **Federal Register** and invited interested parties to comment on those results.¹ On July 22, 2024,

Commerce tolled certain deadlines in this administrative proceeding by seven days.² The deadline for the preliminary determination is now September 20, 2024. For a complete description of the events that occurred since the *Preliminary Results*, see the Issues and Decision Memorandum.³ Commerce conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order⁴

The product covered by the *Order* is CAAS from South Africa. For a complete description of the scope, see the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties in this review are listed in the appendix to this notice and addressed in the Issues and Decision Memorandum. 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>.

Final Results of the Review

Commerce determines the following estimated weighted-average dumping margins exist for the period April 1, 2022, through March 31, 2023:

Producer/exporter	Weighted-average dumping margin (percent)
Hulamin Operations (Pty) Ltd	3.54

Administrative Review; 2022–2023, 89 FR 42845 (May 16, 2024) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

² See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated July 22, 2024.

³ See Memorandum, “Decision Memorandum for the Final Results of the Administrative Review of Common Alloy Aluminum Sheet from South Africa, 2022–2023,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

⁴ See *Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, India, Indonesia, Italy, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and the Republic of Turkey: Antidumping Duty Orders*, 86 FR 22139 (April 27, 2021) (*Order*).

Disclosure

Normally, Commerce discloses to interested parties the calculations of the final results of an administrative review within five days of the date of publication of the notice of final results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because we have made no changes to the *Preliminary Results*, there are no calculations to disclose.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For any individually examined respondents whose weighted-average dumping margin is above *de minimis*, we calculated importer-specific *ad valorem* duty assessment rates by dividing the total amount of antidumping duties calculated for the examined sales by the total entered value of the examined sales to that importer. Where the respondent did not report entered value, we calculated the entered value in order to calculate the assessment rate. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific assessment rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce's “automatic assessment” will apply to entries of subject merchandise during the POR produced by Hulamin Operations for which the company did not know that the merchandise it sold to an intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.⁵

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).

⁵ For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

¹ See *Common Alloy Aluminum Sheet from South Africa: Preliminary Results of Antidumping Duty*

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review in the **Federal Register**, as provided for by section 751(a)(2) of the Act: (1) the cash deposit rate for companies subject to this review will be the rates established in these final results of the review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published 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 is, then the cash deposit rate will be the rate established 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 8.85 percent, the all-others rate established in the investigation.⁶ 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 review period. 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 Regarding the Administrative Protective Order

This notice also serves as a reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the return or destruction 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 return or 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.

⁶ See Order, 86 FR at 22142.

Notification to Interested Parties

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

Dated: September 17, 2024.

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

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Changes Since the Preliminary Results
- V. Discussion of the Issues
 - Comment 1: Hulamin's U.S. Selling Expenses
 - Comment 2: Hulamin's U.S. Billing Adjustments
 - Comment 3: Hulamin's Domestic Warehousing Charges
 - Comment 4: Hulamin's U.S. Warehousing Charges
- VI. Recommendation

[FR Doc. 2024–21770 Filed 9–23–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–523–812]

Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman: Final Results of the Administrative Review of the Antidumping Duty Order; 2021–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that the sole producer/exporter subject to this administrative review made sales of circular welded carbon-quality pipe (CWPs) from the Sultanate of Oman (Oman) at less than normal value during the period of review (POR) December 1, 2021, through November 30, 2022.

DATES: Applicable September 24, 2024.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Noah Wetzels, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5973 or (202) 482–7466, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 2024, Commerce published the preliminary results in this administrative review in the **Federal Register**.¹ Although we provided interested parties with an opportunity to comment on the *Preliminary Results*, no interested party submitted comments. Accordingly, the final results remain unchanged from the *Preliminary Results*, and thus, there is no decision memorandum accompanying this notice. Commerce conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order²

The product covered by the Order is CWPs from Oman. For a complete description of the scope of the Order, see the *Preliminary Results*.³

Final Results of the Review

For these final results, we determine that the following estimated weighted-average dumping margin exists for the period December 1, 2021, through November 30, 2022:

Producer and/or exporter	Weighted-average dumping margin (percent)
Al Jazeera Steel Products Co. SAOG	0.61

Disclosure

Normally, Commerce discloses to parties in the proceeding the calculations performed in connection with the final results of review within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of the final results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because we made no changes from the *Preliminary Results*, there are no calculations to disclose.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), Commerce has determined, and U.S.

¹ See Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman: Preliminary Results of Antidumping Duty Administrative Review; 2021–2022, 89 FR 65314 (August 9, 2024) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

² See Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman, Pakistan, and the United Arab Emirates: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Orders, 81 FR 91906 (December 19, 2016) (Order).

³ See *Preliminary Results* PDM at 2–5.

Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. Pursuant to 19 CFR 351.212(b)(1), because Al Jazeera Steel Products Co. SAOG (Al Jazeera) reported the entered value for all of its U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of those same sales.

Commerce's "automatic assessment" will apply to entries of subject merchandise during the POR produced by Al Jazeera for which the company did not know that the merchandise it sold to an intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.⁴

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 will be effective upon publication in the **Federal Register** of these final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Al Jazeera will be equal to the weighted-average dumping margin established in these final results of this administrative review; (2) for merchandise exported by companies not covered in this review but covered in a prior completed segment of this 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, or the less-than-fair-value (LFTV) investigation, but the producer is, then the cash deposit rate will be the cash deposit rate established for the

most recently completed segment for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers and exporters will continue to be the all-others rate (*i.e.*, 7.36 percent).⁵ 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 review period. 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.

Administrative Protective Order (APO)

This notice serves as the only reminder to parties subject to an APO of their responsibility concerning the disposition 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 return or 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 sanctionable violation.

Notification to Interested Parties

This notice is being issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: September 19, 2024.

Ryan Majerus,

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

[FR Doc. 2024–21818 Filed 9–23–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–882]

Melamine From Japan: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, In Part

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that melamine from Japan is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is January 1, 2023, through December 31, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable September 24, 2024.

FOR FURTHER INFORMATION CONTACT: George McMahon, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1167.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on March 11, 2024.¹ On June 18, 2024, Commerce postponed the preliminary determination of this investigation.² On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.³ The deadline for the preliminary determination is now September 18, 2024.

For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum.⁴ A list of topics

¹ See *Melamine from Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago: Initiation of Less-Than-Fair-Value Investigations*, 89 FR 17413 (March 11, 2024) (Initiation Notice).

² See *Melamine from Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 89 FR 52437 (June 24, 2024).

³ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.

⁴ See Memorandum, "Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Melamine from Japan," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁴ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2023).

⁵ See *Order*.

included in the Preliminary Decision Memorandum is included as Appendix II 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 Service System (ACCESS). ACCESS is available to registered users at <https://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 Investigation

The product covered by this investigation is melamine from Japan. For a full description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,⁵ we set aside a period of time, as stated in the *Initiation Notice*, for parties to raise issues regarding product coverage (*i.e.*, scope).⁶ No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice*. Commerce is not modifying the scope language as it appeared in the *Initiation Notice*. *See* the complete description of the scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Pursuant to section 776(a) of the Act, Commerce preliminarily relied upon facts otherwise available to assign an estimated weighted-average dumping margin to Mitsui Chemicals, the sole mandatory respondent in this investigation because Mitsui Chemicals did not submit a response to Commerce's antidumping duty questionnaire. Further, Commerce preliminarily determines that Mitsui Chemicals failed to cooperate by not acting to the best of its ability to comply with a request for information and Commerce is using an adverse inference in selecting from among the facts otherwise available (*i.e.*, applying adverse facts available (AFA) to this respondent, in accordance with section 776(b) of the Act). For a full description of the methodology underlying our preliminary determination, *see* the Preliminary Decision Memorandum.

⁵ *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

⁶ *See Initiation Notice*, 89 FR at 17413.

Preliminary Affirmative Determination of Critical Circumstances, in Part

On June 17, 2024, the petitioner⁷ timely filed a critical circumstances allegation, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of the subject merchandise from Japan.⁸ Section 733(e)(1) of the Act provides that Commerce will preliminarily determine that critical circumstances exist in an LTFV investigation if there is a reasonable basis to believe or suspect that: (A) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

In accordance with section 733(e) of the Act and 19 CFR 351.206, we preliminarily determine that critical circumstances exist with respect to imports of melamine produced and exported by Mitsui Chemicals. Furthermore, we preliminarily determine that critical circumstances do not exist with respect to imports of melamine produced and exported by all other producers and exporters from Japan. For a full description of Commerce's preliminary critical circumstances determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Section 733(d)(1)(ii) of the Act provides that, in a preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and producers not individually investigated in accordance with section 735(c)(5) of the Act. Section 735(c)(5)(A) of the Act states that generally the estimated rate for all others shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. The estimated weighted-average dumping margin in

⁷ The petitioner is Cornerstone Chemical Company.

⁸ *See* Petitioner's Letter, "Allegation of Critical Circumstances," dated June 17, 2024 (Critical Circumstances Allegation).

this preliminary determination was determined entirely under section 776 of the Act. In cases where no weighted-average dumping margins other than zero, *de minimis*, or those determined entirely under section 776 of the Act have been established for individually examined entities, in accordance with section 735(c)(5)(B) of the Act, Commerce typically calculates a simple average of the margins alleged in the petition and applies the results to all other entities not individually examined.⁹

In the Petition,¹⁰ the petitioner alleged two estimated dumping margins for Japan, 102.53 and 127.69 percent.¹¹ Therefore, consistent with our practice, for the all-others rate in this investigation, we preliminarily assign a simple average of the dumping margins alleged in the Petition, which is 115.11 percent.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist during the period January 1, 2023, through December 31, 2023:

Exporter/producer	Weighted-average dumping margin (percent)
Mitsui Chemicals, Inc.	*127.69
All Others	115.11

* Rate is based on AFA.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of melamine, as described in the "Scope of the Investigation" in Appendix I, from Mitsui Chemicals that are entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication of this notice in the **Federal Register**. In accordance with section 733(d)(2) of the Act, Commerce will direct CBP to suspend liquidation of all other entries of melamine from Japan, as described in the "Scope of the Investigation" in Appendix I, entered, or withdrawn from warehouse, for consumption on or after

⁹ *See, e.g., Thermal Paper from Spain: Final Determination of Sales at Less Than Fair Value*, 86 FR 54162, 54163 (September 30, 2021), and accompanying Issues and Decision Memorandum.

¹⁰ *See* Petitioner's Letter, "Melamine from Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago: Petition for the Imposition of Antidumping Duties," dated February 14, 2024 (Petition).

¹¹ *See Initiation Notice*, 89 FR at 17416.

the date of publication of this notice in the **Federal Register**. We will also instruct CBP, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of preliminary determination in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily applied AFA to the mandatory respondent in this investigation and applied an AFA rate based on the Petition, there are no calculations to disclose.

Consistent with 19 CFR 351.224(e), Commerce will analyze and, if appropriate, correct any timely allegations of significant ministerial errors by amending the preliminary determination. However, consistent with 19 CFR 351.224(d), Commerce will not consider incomplete allegations that do not address the significance standard under 19 CFR 351.224(g) following the preliminary determination. Instead, Commerce will address such allegations in the final determination together with issues raised in the case briefs or other written comments.

Verification

Because the mandatory respondent in this investigation did not act to the best of its ability to provide information requested by Commerce, and Commerce preliminarily determines the mandatory respondent has been uncooperative, we will not conduct verification.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 14 days after the date of publication of the preliminary determination. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.¹² Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.¹³

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁴ Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination. We request that interested parties include footnotes for relevant citations in the public executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁵

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, U.S. Department of Commerce, filed electronically via ACCESS. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants and whether any participant is a foreign national; and (3) a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. An electronically filed hearing request must be received

¹² See 19 CFR 351.309(d); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

¹³ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁴ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁵ See *APO and Service Final Rule*.

successfully in its entirety via ACCESS by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.

Final Determination

Section 735(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that Commerce will issue the final determination within 75 days after the date of its preliminary determination. Accordingly, Commerce will make its final determination no later than 75 days after the signature date of this preliminary determination.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of our affirmative preliminary determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: September 18, 2024.

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

Scope of the Investigation

The merchandise subject to this investigation is melamine (Chemical Abstracts Service (CAS) registry number 108–78–01, molecular formula $C_3H_6N_6$). Melamine is also known as 2,4,6-triaminotriazine; 1,3,5-Triazine-2,4,6-triamine; Cyanurotriamide; Cyanurotriamine; Cyanuramide; and by various brand names. Melamine is a crystalline powder or granule. All melamine is covered by the scope of this investigation irrespective of purity, particle size, or physical form. Melamine that has been blended with other products is included within this scope when such blends include constituent parts that have been intermingled, but that have not been chemically reacted with each other to produce a different product. For such blends, only the melamine component of the mixture is covered by the scope of this investigation. Melamine that is otherwise subject to this investigation is not excluded when commingled with melamine from sources not subject to this investigation. Only the subject component of such commingled products is covered by the scope of this investigation.

The subject merchandise is provided for in subheading 2933.61.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading and CAS registry number are provided for convenience and customs purposes, the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Application of Facts Available, Use of Adverse Inference, and Calculation of All-Others Rate
- V. Critical Circumstances
- VI. Recommendation

[FR Doc. 2024–21826 Filed 9–23–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–852]

Melamine From Germany: Preliminary Affirmative Determination of Sales at Less Than Fair Value

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that melamine from Germany is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is January 1, 2023, through December 31, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable September 24, 2024.

FOR FURTHER INFORMATION CONTACT: Noah Wetzel, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7466.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on March 11, 2024.¹ On June 18, 2024, Commerce postponed the preliminary

determination of this investigation.² On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.³ The deadline for the final results is now September 18, 2024.

For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum.⁴ A list of topics included in the Preliminary Decision Memorandum is included as Appendix II 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 Service System (ACCESS). ACCESS is available to registered users at <https://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 Investigation

The product covered by this investigation is melamine from Germany. For a full description of the scope of this investigation, see Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,⁵ we set aside a period of time, as stated in the *Initiation Notice*, for parties to raise issues regarding product coverage (*i.e.*, scope).⁶ No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice*. Commerce is not modifying the scope language as it appeared in the *Initiation Notice*. See the complete description of the scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Pursuant to section 776(a) of the Act, Commerce has preliminarily relied upon facts otherwise available to assign estimated

weighted-average dumping margins to LAT Nitrogen Piesteritz GmbH, the sole mandatory respondent in this investigation because LAT Nitrogen Piesteritz GmbH did not submit a response to Commerce's antidumping duty questionnaire. Further, Commerce preliminarily determines that LAT Nitrogen Piesteritz GmbH failed to cooperate by not acting to the best of its ability to comply with a request for information and is using an adverse inference in selecting from among the facts otherwise available (*i.e.*, applying adverse facts available (AFA)) to this respondent, in accordance with section 776(b) of the Act. For a full description of the methodology underlying our preliminary determination, see the Preliminary Decision Memorandum.

All-Others Rate

Section 733(d)(1)(ii) of the Act provides that, in the preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and producers not individually investigated in accordance with section 735(c)(5) of the Act. Section 735(c)(5)(A) of the Act states that generally the estimated rate for all others shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. The estimated weighted-average dumping margins in this preliminary determination were calculated entirely under section 776 of the Act. In cases where no weighted-average dumping margins other than zero, *de minimis*, or those determined entirely under section 776 of the Act have been established for individually examined entities, in accordance with section 735(c)(5)(B) of the Act, Commerce typically calculates a simple average of the margins alleged in the petition and applies the results to all other entities not individually examined.⁷

In the Petition,⁸ Cornerstone Chemical Company (the petitioner)

⁷ See, *e.g.*, *Thermal Paper from Spain: Final Determination of Sales at Less Than Fair Value*, 86 FR 54162, 54163 (September 30, 2021), and accompanying Issues and Decision Memorandum; see also *Certain Preserved Mushrooms from France: Final Affirmative Determination of Sales at Less Than Fair Value*, 87 FR 72963, 72964 (November 28, 2022).

⁸ See Petitioner's Letter, "Melamine from Germany, Japan, the Netherlands, Qatar, and Trinidad and Tobago: Petition for the Imposition of Antidumping Duties," dated February 14, 2024 (Petition); see also Checklist, "AD Investigation Initiation Checklist," dated March 5, 2024

¹ See *Melamine from Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago: Notice of Less-Than-Fair-Value Investigations*, 89 FR 17413 (March 11, 2024) (*Initiation Notice*).

² See *Melamine from Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 89 FR 52437 (June 24, 2024).

³ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.

⁴ See Memorandum, "Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Melamine from Germany," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁵ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

⁶ See *Initiation Notice*, 89 FR at 17413.

calculated two estimated dumping margins, 139.74 and 218.73 percent. Therefore, consistent with our practice, for the all-others rate in this investigation, we preliminarily assigned a simple average of the dumping margins alleged in the Petition, which is 179.24 percent.⁹

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist during the period January 1, 2023, through December 31, 2023:

Exporter/producer	Weighted-average dumping margin (percent)
LAT Nitrogen Piesteritz GmbH ...	*218.73
All Others	179.24

*Rate is based on AFA.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of melamine from Germany, as described in the “Scope of the Investigation” in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

(Initiation Checklist); and Petitioner’s Letter, “Petitioner’s Second Supplemental Response Regarding Petition Volume II (Germany Antidumping),” dated February 27, 2024 (Second Germany AD Supplement).

⁹ See Petitions at Volume II; see also Initiation Checklist; and Second Germany AD Supplement at Exhibit II–2S2.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of preliminary determination in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily applied AFA to the mandatory respondent in this investigation and applied an AFA rate based on the Petition, there are no calculations to disclose.

Consistent with 19 CFR 351.224(e), Commerce will analyze and, if appropriate, correct any timely allegations of significant ministerial errors by amending the preliminary determination. However, consistent with 19 CFR 351.224(d), Commerce will not consider incomplete allegations that do not address the significance standard under 19 CFR 351.224(g) following the preliminary determination. Instead, Commerce will address such allegations in the final determination together with issues raised in the case briefs or other written comments.

Verification

Because the mandatory respondent in this investigation did not act to the best of its ability to provide information requested by Commerce, and Commerce preliminarily determines the mandatory respondent to be uncooperative, we will not conduct verification.

Public Comment

Case briefs or other written comments may be submitted to Assistant Secretary for Enforcement and Compliance no later than 14 days after the date of publication of the preliminary determination.¹⁰ Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.¹¹ Interested parties who submit case or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.¹²

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that

should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹³ Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁴

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 ACCESS. Requests should contain: (1) the party’s name, address, and telephone number; (2) the number of participants and whether any participant is a foreign national; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. An electronically filed hearing request must be received successfully in its entirety via ACCESS by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.

Final Determination

Section 735(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that Commerce will issue the final determination within 75 days after the date of its preliminary determination.

Accordingly, Commerce will make its final determination no later than 75 days after the signature date of this preliminary determination.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of our affirmative preliminary determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports

¹⁰ See 19 CFR 351.309(c)(1)(i); see also 19 CFR 351.303 (for general filing requirements).

¹¹ See 19 CFR 351.309(d); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

¹² See 19 CFR 351.309(c)(2) and (d)(2).

¹³ We use the term “issue” here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁴ See *APO and Service Final Rule*.

are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: September 18, 2024.

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

Scope of the Investigation

The merchandise subject to this investigation is melamine (Chemical Abstracts Service (CAS) registry number 108–78–01, molecular formula C₃H₆N₆). Melamine is also known as 2,4,6-triamino-s-triazine; 1,3,5-Triazine-2,4,6- triamine; Cyanurotriamide; Cyanurotriamine; Cyanuramide; and by various brand names. Melamine is a crystalline powder or granule. All melamine is covered by the scope of this investigation irrespective of purity, particle size, or physical form. Melamine that has been blended with other products is included within this scope when such blends include constituent parts that have been intermingled, but that have not been chemically reacted with each other to produce a different product. For such blends, only the melamine component of the mixture is covered by the scope of this investigation. Melamine that is otherwise subject to this investigation is not excluded when commingled with melamine from sources not subject to this investigation. Only the subject component of such commingled products is covered by the scope of this investigation.

The subject merchandise is provided for in subheading 2933.61.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading and CAS registry number are provided for convenience and customs purposes, the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Application of Facts Available, Use of Adverse Inference, and Calculation of

All-Others Rate
V. Recommendation
[FR Doc. 2024–21825 Filed 9–23–24; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–518–001]

Melamine From Qatar: Preliminary Negative Determination of Sales at Less Than Fair Value

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that melamine from Qatar is not being, or is not likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is January 1, 2023, through December 31, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable September 24, 2024.

FOR FURTHER INFORMATION CONTACT:

Andrew Hart, 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) 482–1058.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation in the **Federal Register** on March 11, 2024.¹ On June 24, 2024, Commerce postponed the preliminary determination of this investigation and the revised deadline was September 11, 2024.² On July 22, 2024, Commerce tolled certain deadlines in this proceeding by seven days until September 18, 2024.³ For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision

Memorandum.⁴ A list of topics included in the Preliminary Decision Memorandum is included as Appendix II 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 Service System (ACCESS). ACCESS is available to registered users at <https://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 Investigation

The product covered by this investigation is melamine from Qatar. For a full description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,⁵ we set aside a period of time, as stated in the *Initiation Notice*, for parties to raise issues regarding product coverage (*i.e.*, scope).⁶ No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice*. Commerce is not modifying the scope language as it appeared in the *Initiation Notice*. *See* the complete description of the scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce calculated export prices in accordance with section 772(a) of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margin exists for the period, January 1, 2023, through December 31, 2023:⁷

¹ *See Melamine from Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago: Initiation of Less-Than-Fair-Value investigations*, 89 FR 17413 (March 11, 2024) (*Initiation Notice*).

² *See Melamine from Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 89 FR 52437 (June 24, 2024).

³ *See* Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.

⁴ *See* Memorandum, "Decision Memorandum for the Preliminary Negative Determination in the Less-Than-Fair-Value Investigation of Melamine from Qatar," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁵ *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

⁶ *See Initiation Notice*, 89 FR at 17413.

⁷ As discussed in the Preliminary Decision Memorandum, Commerce preliminarily collapsed the following companies and treated them as a single entity: Qatar Melamine Company (QMC); Qatar Chemical and Petrochemical Marketing and Distribution Company (Muntajat) Q.P.J.S.C. (Muntajat); and Qatar Fertiliser Company P.S.C. (QAFCO).

Exporter/producer	Weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offset(s)) (percent)
Qatar Melamine Company; Qatar Chemical and Petrochemical Marketing and Distribution Company (Muntajat) Q.P.J.S.C.; Qatar Fertiliser Company (P.S.C.).	*0.80	Not Applicable.

* *de minimis*.

For this preliminary determination, Commerce calculated a *de minimis* estimated weighted-average dumping margin for the only individually examined respondent, the single entity consisting of QMC, Muntajat, and QAFCO. Consistent with section 733(b)(3) of the Act, Commerce disregards *de minimis* rates and preliminarily determines that the single entity with a *de minimis* rate has not made sales of subject merchandise at LTFV.

Consistent with section 733(d) of the Act, Commerce has not calculated an estimated weighted-average dumping margin for all other producers and exporters because it has not made an affirmative preliminary determination of sales at LTFV.

Critical Circumstances Allegation

On June 17, 2024, the petitioner alleged that critical circumstances exist with respect to imports of melamine from Qatar.⁸ Commerce issued a questionnaire to the respondents requesting information regarding their exports of melamine to the United States from October 2022 to February 2024 and establishing an ongoing requirement for the respondents to provide monthly data during the investigation.⁹ On June 24, 2024 and August 15, 2024, the respondents provided a timely response.¹⁰ Section 733(e)(1) of the Act provides that Commerce, upon receipt of a timely-filed allegation of critical circumstances, will determine whether there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject

merchandise at LTFV and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period. However, as stated above, because Commerce preliminarily calculated a *de minimis* rate for the sole mandatory respondent, single entity consisting of QMC, Muntajat, and QAFCO, the entity has not made sales of subject merchandise at LTFV. Therefore, pursuant to 19 CFR 351.204(e), the respondent will not be subject to provisional measures under sections 703(d) or section 733(d) of the Act. Consequently, Commerce has not conducted a critical circumstances analysis for this preliminary determination.

Suspension of Liquidation

Because Commerce has made a negative preliminary determination of sales at LTFV with regard to subject merchandise, Commerce will not direct U.S. Customs and Border Protection to suspend liquidation or to require a cash deposit of estimated antidumping duties for entries of melamine from Qatar.

Disclosure

Commerce intends to disclose its calculations and analysis performed in connection with this preliminary determination to interested parties within five days of any public announcement 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).

Consistent with 19 CFR 351.224(e), Commerce will analyze and, if appropriate, correct any timely allegations of significant ministerial errors by amending the preliminary determination. However, consistent with 19 CFR 351.224(d), Commerce will not consider incomplete allegations that do not address the significance standard under 19 CFR 351.224(g) following the preliminary determination. Instead, Commerce will address such allegations in the final determination together with issues raised in the case briefs or other written comments.

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.¹¹ Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.¹²

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹³ Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the public executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the

⁸ See Petitioner's Letter, "Petitioner's Allegation of Critical Circumstances," dated June 17, 2024 (Critical Circumstances Allegation).

⁹ See Commerce's Letter, "Request for Monthly Quantity and Value Shipment Data," dated June 17, 2024.

¹⁰ See QMC's and Muntajat's Letter, "Response to Request for Monthly Quantity and Value Shipment Data," dated June 24, 2024, and August 15, 2024.

¹¹ See 19 CFR 351.309(d); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

¹² See 19 CFR 351.309(c)(2) and (d)(2).

¹³ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

service of documents in 19 CFR 351.303(f).¹⁴

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, U.S. Department of Commerce, filed electronically via ACCESS. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants and whether any participant is a foreign national; and (3) a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. An electronically filed hearing request must be received successfully in its entirety via ACCESS by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.

Final Determination

Section 735(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that Commerce will issue the final determination within 75 days after the date of its preliminary determination. Accordingly, Commerce will make its final determination no later than 75 days after the signature date of this preliminary determination.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports of melamine from Qatar are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This preliminary determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: September 18, 2024.

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

Scope of the Investigation

The merchandise subject to this investigation is melamine (Chemical

Abstracts Service (CAS) registry number 108–78–01, molecular formula C₃H₆N₆). Melamine is also known as 2,4,6-triamino-s-triazine; 1,3,5-Triazine-2,4,6-triamine; Cyanurotriamide; Cyanurotriamine; Cyanuramide; and by various brand names. Melamine is a crystalline powder or granule. All melamine is covered by the scope of this investigation irrespective of purity, particle size, or physical form. Melamine that has been blended with other products is included within this scope when such blends include constituent parts that have been intermingled, but that have not been chemically reacted with each other to produce a different product. For such blends, only the melamine component of the mixture is covered by the scope of this investigation. Melamine that is otherwise subject to this investigation is not excluded when commingled with melamine from sources not subject to this investigation. Only the subject component of such commingled products is covered by the scope of this investigation.

The subject merchandise is provided for in subheading 2933.61.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading and CAS registry number are provided for convenience and customs purposes, the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Affiliation and Single Entity Treatment
- V. Discussion of the Methodology
- VI. Particular Market Situation
- VII. Currency Conversion
- VIII. Recommendation

[FR Doc. 2024–21828 Filed 9–23–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–857]

Certain Softwood Lumber Products From Canada: Amended Final Results of Antidumping Duty Administrative Review in Part; 2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) is amending the final results of the administrative review of the antidumping duty (AD) order on certain softwood lumber products (softwood lumber) from Canada to correct certain ministerial errors. The period of review (POR) is January 1, 2022, through December 31, 2022.

DATES: Applicable September 24, 2024.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor, AD/CVD Operations,

Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5831.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 2024, Commerce published, in the **Federal Register**, the final results of the administrative review of the AD order on softwood lumber from Canada for the POR.¹ On August 21, 2024, we received a timely submitted ministerial error allegation from West Fraser Mills, Ltd. (West Fraser), a mandatory respondent in this administrative review.² We are amending the *Final Results* to correct the ministerial error alleged by West Fraser.³

Legal Framework

Section 751(h) of the Tariff Act of 1930, as amended (the Act), defines a “ministerial error” as including “errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other unintentional error which the administering authority considers ministerial.”⁴ With respect to final results of administrative reviews, 19 CFR 351.224(e) provides that Commerce “will analyze any comments received and, if appropriate, correct any . . . ministerial error by amending the final results of review”

Ministerial Errors

In the *Final Results*, we made certain revisions to our preliminary results calculations for West Fraser, including setting the stage of the proceeding in the comparison market program to final.⁵ In its ministerial error comments, West Fraser alleged that Commerce failed to make the same adjustment in the corresponding margin calculation

¹ See *Certain Softwood Lumber Products from Canada: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Administrative Review and Final Determination of No Shipments; 2022*, 89 FR 67067 (August 19, 2024) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

² See West Fraser's Letter, “Request for Correction of Ministerial Errors in the Antidumping Duty Administrative Review Calculations,” dated August 21, 2024, at Attachment I (West Fraser Ministerial Error Allegation).

³ See Memorandum, “Antidumping Duty Administrative Review of Certain Softwood Lumber Products from Canada: Analysis of Ministerial Error Allegations,” dated concurrently with this notice (Ministerial Error Memorandum).

⁴ See 19 CFR 351.224(f).

⁵ See Memorandum, “Analysis for the Final Results of the Fifth Antidumping Duty Administrative Review—West Fraser Mills Ltd.,” dated August 12, 2024, at Attachment I.

¹⁴ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule*, 88 FR 67069 (September 29, 2023).

program, *i.e.*, setting the stage of the review segment in the margin program to “final.”⁶ West Fraser alleged that by failing to set the stage of the review segment to final (instead of preliminary) in the margin calculation program, Commerce inadvertently accessed certain databases from the preliminary results margin program.⁷ West Fraser also alleged that the preliminary results margin program databases at issue did not incorporate the calculation changes that Commerce made for the *Final Results*.⁸

We agree with West Fraser that we made a ministerial error in the *Final Results*, pursuant to section 751(h) of the Act and 19 CFR 351.224(f), and have amended our calculations to correct the stage of the review segment section of the margin program.⁹ As a result, we also revised our calculation of the dumping margin for the non-selected companies.¹⁰

Pursuant to 19 CFR 351.224(e), we are amending the *Final Results* to correct this ministerial error in the calculation of the weighted-average dumping margin for West Fraser, which changes from 5.32 percent to 5.04 percent.¹¹ Furthermore, we are also amending the rate for the companies not selected for individual examination in this review based on the weighted-average dumping margins calculated for the mandatory respondents,¹² which changes from 7.80 percent to 7.66 percent.¹³ For a complete discussion of the ministerial error allegation, as well as Commerce’s analysis, see the accompanying Ministerial Error Memorandum.¹⁴ The Ministerial Error 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>.

Amended Final Results of Review

As a result of correcting the ministerial errors described above, we determine the following estimated weighted-average dumping margins for the period January 1, 2022, through December 31, 2022:

Exporter or producer	Weighted-average dumping margin (percent)
West Fraser Mills, Ltd	5.04
Companies Not Selected for Individual Review ¹⁵	7.66

Disclosure

We intend to disclose the calculations performed in connection with these amended final results of review to parties in this review within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the amended final results of this review.

We intend to calculate importer- (or customer-) specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for each importer’s (or customer’s) examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1). Where an importer- (or customer-) specific rate is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the companies not selected for individual review, we used an assessment rate based on the weighted average dumping margins of the mandatory respondents, based on their publicly ranged sales data.¹⁶ The amended final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the amended final results of this review and for the future deposits of estimated duties where applicable.¹⁷

Commerce’s “reseller policy” will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, 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.¹⁸

Commerce intends to issue assessment instructions to CBP no earlier than 41 days after the date of publication of the amended final results of this review in the **Federal Register** in accordance with 19 CFR 356.8(a). 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 amended cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after August 19, 2024, the publication date of the *Final Results*, as provided by section 751(a)(2)(C) of the Act: (1) the amended cash deposit rate for the companies listed above will be equal to the weighted-average dumping margin established in these amended final results of 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; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 6.04 percent *ad valorem*, the all-others rate established in the less-than-fair-value

⁶ See West Fraser Ministerial Error Allegation.

⁷ *Id.*

⁸ *Id.*

⁹ See Ministerial Error Memorandum; see also Memorandum, “West Fraser Amended Final Calculation Memorandum,” dated concurrently with this notice (WF Amended Final Calculation Memorandum).

¹⁰ See Memorandum, “Calculation of the Rate for Non-Selected Respondents,” dated concurrently with this notice (Non-Selected Rate Analysis Memorandum). A list of the non-selected companies under review is included here as an appendix.

¹¹ See Ministerial Error Memorandum; see also WF Amended Final Calculation Memorandum.

¹² The margin for the other mandatory respondent, Canfor Corporation, remains unchanged from the *Final Results* and continues to be 10.44 percent.

¹³ See Non-Selected Rate Analysis Memorandum.

¹⁴ See Ministerial Error Memorandum; see also WF Amended Final Calculation Memorandum.

¹⁵ See Appendix.

¹⁶ See Non-Selected Rate Analysis Memorandum.

¹⁷ See section 751(a)(2)(C) of the Act.

¹⁸ For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

investigation.¹⁹ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also 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 and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Notice Regarding 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(a)(3), 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

We are issuing and publishing these amended final results of review in accordance with sections 751(h) and 777(i) of the Act and 19 CFR 351.224(e).

Dated: September 18, 2024.

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

Non-Selected Exporters/Producers

1. 0752615 B.C Ltd; Frasersview Remanufacturing Inc; Frasersview Cedar Products²⁰

¹⁹ See *Certain Softwood Lumber Products from Canada: Final Affirmative Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 82 FR 51806 (November 8, 2017).

²⁰ "DBA" has been removed from the name 0752615 B.C Ltd; Frasersview Remanufacturing Inc; DBA Frasersview Cedar Products referred to in the *Preliminary Results*, at the request of CBP. See *Final Results* IDM at Comment 10.

2. 10104704 Manitoba Ltd.; Woodstock Forest Products²¹
3. 1074712 BC Ltd.; Quadra Cedar
4. 5214875 Manitoba Ltd.
5. Absolute Lumber Products Ltd.
6. Adwood Manufacturing Ltd.
7. AJ Forest Products Ltd.
8. Aler Forest Products Ltd.
9. Alpa Lumber Mills Inc.
10. Andersen Pacific Forest Products Ltd.
11. Antrim Cedar Corporation
12. Aquila Cedar Products Ltd.
13. Arbec Lumber Inc.; Arbec Bois Doeuvre Inc.
14. Aspen Pacific Industries Inc.
15. Aspen Planers Ltd.
16. B&L Forest Products Ltd.
17. B.B. Pallets Inc.; Les Palettes B.B.Inc.
18. Babine Forest Products Limited
19. Bakerview Forest Products Inc.
20. Barrette-Chapais Ltee
21. BarretteWood Inc.
22. Benoît & Dionne Produits Forestiers Ltee; Benoît & Dionne Forest Products Ltd.
23. Blanchet Multi Concept Inc.
24. Blanchette & Blanchette Inc.
25. Bois Aise de Montreal Inc.
26. Bois Bonsai Inc.
27. Bois Daaquam Inc.; Daaquam Lumber Inc.
28. Bois D'oeuvre Cedrico Inc.; Cedrico Lumber Inc.
29. Bois et Solutions Marketing SPEC, Inc.; SPEC Wood & Marketing Solution; SPEC Wood and Marketing Solutions Inc.
30. Bois Weedon Inc.
31. Boisaco Inc.
32. Boscus Canada Inc.
33. Boucher Bros. Lumber Ltd.
34. BPWood Ltd.
35. Bramwood Forest Inc.
36. Brink Forest Products Ltd.
37. Brunswick Valley Lumber Inc.
38. Burrows Lumber (CD) Ltd., Theo A. Burrows Lumber Company Limited
39. Busque & Laflamme Inc.
40. Canadian Bavarian Millwork & Lumber Ltd.
41. Canyon Lumber Company Ltd.
42. Carrier & Begin Inc.
43. Carrier Forest Products Ltd.
44. Carrier Lumber Ltd.
45. Carter Forest Products Inc.
46. Cedarland Forest Products Ltd.
47. Cedarline Industries Ltd.
48. Central Alberta Pallet Supply
49. Central Cedar Ltd.
50. Central Forest Products Inc.
51. Centurion Lumber Ltd.
52. Chaleur Forest Products Inc.
53. Chaleur Forest Products LP
54. Channel-ex Trading Corporation
55. Clair Industrial Development Corp. Ltd.
56. Clermond Hamel Ltee
57. CLG Enterprises Inc.

²¹ "O/A" has been removed from the name 10104704 Manitoba Ltd O/A Woodstock Forest Product referred to in the *Preliminary Results*, at the request of CBP. See *Final Results* IDM at Comment 10.

58. Columbia River Shake & Shingle Ltd.; Teal Cedar Products Ltd.;²² The Teal Jones Group²³
59. Commonwealth Plywood Co. Ltd.
60. Conifex Fibre Marketing Inc.
61. Coulson Manufacturing Ltd.
62. Cowichan Lumber Ltd.
63. CS Manufacturing Inc.; Cedarshed²⁴
64. CWP—Industriel Inc.
65. D & D Pallets Ltd.
66. Dakeryn Industries Ltd.
67. Decker Lake Forest Products Ltd.
68. Deep Cove Forest Products, Inc.
69. Delco Forest Products Ltd.
70. Delta Cedar Specialties Ltd.
71. Devon Lumber Co. Ltd.
72. Doubletree Forest Products Ltd.
73. Downie Timber Ltd.
74. Dunkley Lumber Ltd.
75. EACOM Timber Corporation
76. East Fraser Fiber Co. Ltd.
77. Edgewood Forest Products Inc.
78. ER Probyn Export Ltd.
79. Falcon Lumber Ltd.
80. Fontaine Inc.
81. Foothills Forest Products Inc.
82. Forest Products Mauricie LP; Societe en commandite Scierie Opitciwan; Resolute Growth Canada Inc.; Resolute FP Canada Inc.; Resolute-LP Engineered Wood Larouche Inc.; Resolute-LP Engineered Wood St-Prime Limited Partnership
83. Fort St. James Forest Products Limited Partnership
84. Fraser Specialty Products Ltd.
85. FraserWood Industries Ltd.
86. Furtado Forest Products Ltd.
87. Galloway Lumber Company Ltd.
88. Goldwood Industries Ltd.
89. Goodfellow Inc.
90. Gorman Bros. Lumber Ltd.
91. Greendale Industries Inc.
92. GreenFirst Forest Products (QC) Inc.
93. Greenwell Resources Inc.
94. Griff Building Supplies Ltd.
95. Groupe Crete Chertsey Inc.
96. Groupe Crete Division St-Faustin Inc.
97. Groupe Lebel Inc.
98. H.J. Crabbe & Sons Ltd.
99. Haida Forest Products Ltd.
100. Halo Sawmill, a division of Delta Cedar Specialties Ltd.; Halo Sawmill Manufacturing Limited Partnership
101. Hampton Tree Farms, LLC; Hampton Lumber Sales Canada²⁵

²² "DBA" has been removed from the name Columbia River Shake & Shingle Ltd./Teal Cedar Products Ltd., DBA the Teal Jones Group referred to in the *Preliminary Results* at the request of CBP. See *Final Results* IDM at Comment 10.

²³ Because we are now treating the three companies as one entity for customs purposes, we have removed from the Automated Commercial Environment (ACE) module case number individual company case numbers for Teal Cedar Products Ltd. (A-122-857-224) and The Teal Jones Group (A-122-857-227) and have instructed CBP to enter all entries for all three companies under the ACE module case number A-122-857-349.

²⁴ "dba" has been removed from the name CS Manufacturing Inc. (dba Cedarshed) referred to in the *Preliminary Results* at the request of CBP. See *Final Results* IDM at Comment 10.

²⁵ "dba" has been removed from the name Hampton Tree Farms, LLC (dba Hampton Lumber Sales Canada) referred to in the *Preliminary Results* at the request of CBP. See *Final Results* IDM at Comment 10.

102. Hornepayne Lumber LP
103. Hy Mark Wood Products Inc.
104. Independent Building Materials Distribution Inc.
105. Interfor Corporation; Interfor Sales & Marketing Ltd.²⁶
106. Ivor Forest Products Ltd.
107. J&G Log Works Ltd.
108. J.D. Irving, Limited
109. J.H. Huscroft Ltd.
110. Jan Woodlands (2001) Inc.
111. Jasco Forest Products Ltd.
112. Jazz Forest Products Ltd.
113. Jhaji Lumber Corporation
114. Kalesnikoff Lumber Co. Ltd.
115. Kan Wood Ltd.
116. Kebois Ltee; Kebois Ltd.
117. Kelfor Industries Ltd.
118. Kermod Forest Products Ltd.
119. Keystone Timber Ltd.
120. La Crete Sawmills Ltd.
121. Lafontaine Lumber Inc.
122. Langevin Forest Products Inc.
123. Lecours Lumber Co. Limited
124. Leisure Lumber Ltd.
125. Les Bois d'oeuvre Beaudoin Gauthier Inc.
126. Les Bois Martek Lumber
127. Les Chantiers de Chibougamau Ltee; Les Chantiers de Chibougamau Ltd.
128. Les Industries P.F. Inc.
129. Les Produits Forestiers D&G Ltee; D&G Forest Products Ltd.
130. Leslie Forest Products Ltd.
131. Lignum Forest Products LLP
132. Linwood Homes Ltd.
133. Lonestar Lumber Inc.
134. Lulumco Inc.
135. Madera Forest Products INC
136. Magnum Forest Products Ltd.
137. Maibec Inc.
138. Manitou Forest Products Ltd.
139. Marcel Lauzon Inc.
140. Marwood Ltd.
141. Matériaux Blanchet Inc.
142. Mid Valley Lumber Specialties Ltd.
143. Midway Lumber Mills Ltd.
144. Mill & Timber Products Ltd.
145. Millar Western Forest Products Ltd.
146. Mirax Lumber Products Ltd.
147. Mobilier Rustique (Beauce) Inc.
148. Monterra Lumber Mills Limited
149. Morwood Forest Products Inc.
150. Multicetre Ltee
151. Murray Brothers Lumber Company Ltd.
152. Nakina Lumber Inc.
153. National Forest Products Ltd.
154. Nicholson and Cates Ltd.
155. Norsask Forest Products Inc.
156. Norsask Forest Products Limited Partnership
157. North American Forest Products Ltd. (located in Abbotsford, British Columbia)
158. North American Forest Products Ltd. (located in Saint-Quentin, New Brunswick)
159. North Enderby Timber Ltd.
160. Northland Forest Products Ltd.
161. Oakwood Manufacturing A Division of Weston Forest Products Inc.
162. Olympic Industries Inc.
163. Olympic Industries ULC
164. Oregon Canadian Forest Products; Oregon Canadian Forest Products Inc.
165. Pacific NorthWest Lumber Ltd.
166. Pacific Western Wood Works Ltd.
167. PalletSource Inc.
168. Parallel Wood Products Ltd.
169. Partap Forest Products Ltd.
170. Partap Industries
171. Peak Industries (Cranbrook) Ltd.
172. Phoenix Forest Products Inc.
173. Pine Ideas Ltd.
174. Pioneer Pallet & Lumber Ltd.
175. Porcupine Wood Products Ltd.
176. Portbec Forest Products Ltd.; Les Produits Forestiers Portbec Ltee
177. Power Wood Corp.
178. Precision Cedar Products Corp.
179. Produits Forestiers Petit Paris Inc.
180. Produits Matra Inc.
181. Promoboies G.D.S. Inc.
182. R.A. Green Lumber Ltd.
183. Rembos Inc.
184. Rene Bernard Inc.
185. Rielly Industrial Lumber Inc.
186. River City Remanufacturing Inc.
187. S&R Sawmills Ltd.
188. San Group
189. San Industries Ltd.
190. Sawarne Lumber Co. Ltd.
191. Scierie Alexandre Lemay & Fils Inc.
192. Scierie St-Michel Inc.
193. Scierie West Brome Inc.
194. Scott Lumber Sales; Scott Lumber Sales Ltd.
195. Sechoirs de Beauce Inc.
196. Shakertown Corp.
197. Sigurdson Forest Products Ltd.
198. Silvaris Corporation
199. Sinclair Group Forest Products Ltd.
200. Skana Forest Products Ltd.
201. Skeena Sawmills Ltd.
202. Smart Wood Forest Products Ltd.
203. South Beach Trading Inc.
204. Specialiste du Bardeau de Cedre Inc.; Specialiste du Bardeau de Cedre Inc. (SBC)
205. Spruceland Millworks Inc.
206. Suncoast Industries Inc.
207. Sundher Timber Products Inc.
208. Surrey Cedar Ltd.
209. T.G. Wood Products Ltd.²⁷

210. Taan Forest Limited Partnership; Taan Forest Products²⁸
211. Taiga Building Products Ltd.
212. Tall Tree Lumber Company
213. Tenryu Canada Corporation
214. Terminal Forest Products Ltd.
215. The Wood Source Inc.
216. Tolko Industries Ltd.; Tolko Marketing and Sales Ltd.; Gilbert Smith Forest Products Ltd.
217. Top Quality Lumber Ltd.
218. Trans-Pacific Trading Ltd.
219. Triad Forest Products Ltd.
220. Twin Rivers Paper Co. Inc.
221. Tyee Timber Products Ltd.
222. Universal Lumber Sales Ltd.
223. Usine Sartigan Inc.
224. Vaagen Fibre Canada ULC
225. Vancouver Specialty Cedar Products Ltd.
226. Vanderhoof Specialty Wood Products Ltd.
227. Vanderwell Contractors (1971) Ltd.
228. Visscher Lumber Inc.
229. W.I. Woodtone Industries Inc.
230. Waldun Forest Product Sales Ltd.
231. West Bay Forest Products Ltd.
232. West Coast Panel Cutters
233. Western Forest Products Inc.
234. Western Lumber Sales Limited
235. Westminster Industries Ltd.
236. Weston Forest Products Inc.
237. Westrend Exteriors Inc
238. Weyerhaeuser Co.
239. White River Forest Products L.P.
240. Woodline Forest Products Ltd.
241. Woodtone Specialties Inc.

[FR Doc. 2024–21819 Filed 9–23–24; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–817]

Melamine From the Netherlands: Preliminary Affirmative Determination of Sales at Less Than Fair Value

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that melamine from the Netherlands is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is January 1, 2023, through December 31, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable September 24, 2024.

FOR FURTHER INFORMATION CONTACT: Fred Baker, AD/CVD Operations,

(A–122–857–360) from the module and instructed CBP to enter all entries under the case number A–122–857–220.

²⁸ “aka” has been removed from the name Taan Forest Limited Partnership (aka Taan Forest Products) referred to in at the request of CBP. See Issues and Decision Memorandum at Comment 10.

²⁶ In *Softwood Lumber from Canada AR4*, we determined that it was appropriate to treat Interfor Corporation and Interfor Sales & Marketing Ltd. as one entity. See *Certain Softwood Lumber Products from Canada: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments*; 2021, 88 FR 50106 (August 1, 2023) (*Softwood Lumber from Canada AR4*), at Appendix II. Thus, we have removed from the ACE module case number for Interfor Sales & Marketing Ltd. (A–122–857–299) and have instructed CBP to enter all entries for Interfor Corporation and Interfor Sales & Marketing Ltd. under the ACE module case number for Interfor Corporation and Interfor Sales & Marketing Ltd. (A–122–857–118).

²⁷ The ACE module contains separate case numbers for T.G. Wood Products Ltd. (A–122–857–220) and TG Wood Products (A–122–857–360), which was caused by data entry errors and we have never treated T.G. Wood Products and TG Wood Products as separate companies; rather we named T.G. Wood Products Ltd. as the sole respondent in the first and second administrative reviews of this proceeding and TG Wood Products. See *Certain Softwood Lumber Products from Canada: Final Results of Antidumping Duty Administrative Review*; 2017–2018, 85 FR 76519 (November 30, 2020); *Certain Softwood Lumber Products from Canada: Final Results of Antidumping Duty Administrative Review*; 2019, 86 FR 68471 (December 2, 2021); and *Softwood Lumber from Canada AR4*. We have removed TG Wood Products

Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2924.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on March 11, 2024.¹ On June 18, 2024, Commerce postponed the preliminary determination of this investigation.² On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.³ The deadline for the preliminary determination is now September 18, 2024.

For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum.⁴ A list of topics included in the Preliminary Decision Memorandum is included as Appendix II 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 Service System (ACCESS). ACCESS is available to registered users at <https://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 Investigation

The product covered by this investigation is melamine from the Netherlands. For a full description of the scope of this investigation, see Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce’s regulations,⁵ we set aside a

¹ See *Melamine from Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago: Initiation of Less-Than-Fair-Value Investigations*, 89 FR 17413 (March 11, 2024) (*Initiation Notice*).

² See *Melamine from Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 89 FR 52437 (June 24, 2024).

³ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated July 22, 2024.

⁴ See Memorandum, “Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Melamine from the Netherlands,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁵ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

period of time, as stated in the *Initiation Notice*, for parties to raise issues regarding product coverage (*i.e.*, scope).⁶ No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice*. Commerce is not modifying the scope language as it appeared in the *Initiation Notice*. See the complete description of the scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Pursuant to section 776(a) of the Act, Commerce has preliminarily relied upon facts otherwise available to assign an estimated weighted-average dumping margin to OCI Nitrogen, the mandatory respondent in this investigation because OCI Nitrogen did not submit a complete response to Commerce’s antidumping duty questionnaire. Further, Commerce preliminarily determines that OCI Nitrogen failed to cooperate by not acting to the best of its ability to comply with a request for information and Commerce is using an adverse inference in selecting from among the facts otherwise available (*i.e.*, applying adverse facts available (AFA)) to this respondent, in accordance with section 776(b) of the Act. For a full description of the methodology underlying our preliminary determination, see the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) of the Act provides that, in the preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and producers not individually investigated in accordance with section 735(c)(5) of the Act. Section 735(c)(5)(A) of the Act states that generally the estimated rate for all others shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* rates, and any rates determined entirely under section 776 of the Act. The estimated weighted-average dumping margin in this preliminary determination was determined entirely under section 776 of the Act. In cases where no weighted-average dumping margins other than zero, *de minimis*, or those determined entirely under section 776 of the Act have been established for individually examined entities, in accordance with section 735(c)(5)(B) of the Act, Commerce typically calculates a simple

⁶ See *Initiation Notice*, 89 FR at 17413.

average of the dumping margins alleged in the petition and applies the results to all other entities not individually examined.⁷

In the Petition,⁸ Cornerstone Chemical Company (the petitioner) alleged two estimated dumping margins for the Netherlands, 34.84 and 72.16 percent. Therefore, consistent with our practice, for the all-others rate in this investigation, we preliminarily assign a simple average of the dumping margins alleged in the Petition, which is 53.50 percent.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist during the period January 1, 2023, through December 31, 2023:

Exporter/producer	Weighted-average dumping margin (percent)
OCI Nitrogen B.V	* 72.16
All Others	53.50

* Rate is based on AFA.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of melamine, as described in the “Scope of the Investigation” in Appendix I, from OCI Nitrogen that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. In accordance with section 733(d)(2) of the Act, Commerce will direct CBP to suspend liquidation of all other entries of melamine from the Netherlands, as described in the “Scope of the Investigation” in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will also instruct CBP, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the

⁷ See, *e.g.*, *Thermal Paper from Spain: Final Determination of Sales at Less Than Fair Value*, 86 FR 54162, 54163 (September 30, 2021), and accompanying Issues and Decision Memorandum.

⁸ See Petitioner’s Letter, “Melamine from Germany, Japan, the Netherlands, Qatar, and Trinidad and Tobago: Petition for the Imposition of Antidumping Duties,” dated February 14, 2024 (Petition); Petitioner’s Letter, “Petitioner’s Response to Volume V Supplemental Questionnaire (Netherlands Antidumping),” dated February 22, 2024 (Netherlands SQR).

respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of preliminary determination in the **Federal Register**, in accordance with 19 CFR 351.224(b).

However, because Commerce preliminarily applied AFA to the sole mandatory respondent in this investigation, and applied an AFA rate based on the Petition, there are no calculations to disclose.

Consistent with 19 CFR 351.224(e), Commerce will analyze and, if appropriate, correct any timely allegations of significant ministerial errors by amending the preliminary determination. However, consistent with 19 CFR 351.224(d), Commerce will not consider incomplete allegations that do not address the significance standard under 19 CFR 351.224(g) following the preliminary determination. Instead, Commerce will address such allegations in the final determination together with issues raised in the case briefs or other written comments.

Verification

Because the mandatory respondent in this investigation did not act to the best of its ability to provide information requested by Commerce, and Commerce preliminarily determines the mandatory respondent to be uncooperative, we will not conduct verification.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 14 days after the date of publication of the preliminary determination. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case

briefs.⁹ Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.¹⁰

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹¹ Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹²

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 ACCESS. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants and whether any participant is a foreign national; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. An electronically filed hearing request must be received successfully in its entirety via ACCESS by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.

Final Determination

Section 735(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that Commerce will issue the final determination within 75 days after the date of its preliminary determination. Accordingly, Commerce will make its final determination no later than 75

days after the signature date of this preliminary determination.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its affirmative preliminary determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: September 18, 2024.

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

Scope of the Investigation

The merchandise subject to this investigation is melamine (Chemical Abstracts Service (CAS) registry number 108-78-01, molecular formula C₃H₆N₆). Melamine is also known as 2,4,6-triamino-s-triazine; 1,3,5-Triazine-2,4,6- triamine; Cyanurotriamide; Cyanurotriamine; Cyanuramide; and by various brand names. Melamine is a crystalline powder or granule. All melamine is covered by the scope of this investigation irrespective of purity, particle size, or physical form. Melamine that has been blended with other products is included within this scope when such blends include constituent parts that have been intermingled, but that have not been chemically reacted with each other to produce a different product. For such blends, only the melamine component of the mixture is covered by the scope of this investigation. Melamine that is otherwise subject to this investigation is not excluded when commingled with melamine from sources not subject to this investigation. Only the subject component of such commingled products is covered by the scope of this investigation.

The subject merchandise is provided for in subheading 2933.61.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading and CAS registry number are provided for convenience and customs purposes, the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background

⁹ See 19 CFR 351.309(d); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

¹⁰ See 19 CFR 351.309(c)(2) and (d)(2).

¹¹ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹² See *APO and Service Final Rule*.

III. Period of Investigation
 IV. Application of Facts Available, Use of
 Adverse Inference, and Calculation of
 All-Others Rate
 V. Recommendation

[FR Doc. 2024–21827 Filed 9–23–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–924]

Melamine From India: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part

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

SUMMARY: The U.S. Department of
 Commerce (Commerce) preliminarily
 determines that melamine from India is
 being, or is likely to be, sold in the
 United States at less than fair value
 (LTFV). The period of investigation
 (POI) is January 1, 2023, through
 December 31, 2023. Interested parties
 are invited to comment on this
 preliminary determination.

DATES: Applicable September 24, 2024.

FOR FURTHER INFORMATION CONTACT:
 Myrna Lobo, AD/CVD Operations,
 Enforcement and Compliance,
 International Trade Administration,
 U.S. Department of Commerce, 1401
 Constitution Avenue NW, Washington,
 DC 20230; (202) 482–2371.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is
 made in accordance with section 733(b)
 of the Tariff Act of 1930, as amended
 (the Act). Commerce published the
 notice of initiation of this investigation
 on March 11, 2024.¹ On June 18, 2024,
 Commerce postponed the preliminary
 determination of this investigation.² On
 July 22, 2024, Commerce tolled certain
 deadlines in this administrative
 proceeding by seven days.³ The
 deadline for the preliminary

determination is now September 18,
 2024.

For a complete description of the
 events that followed the initiation of
 this investigation, *see* the Preliminary
 Decision Memorandum.⁴ A list of topics
 included in the Preliminary Decision
 Memorandum is included as Appendix
 II 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 Service System
 (ACCESS). ACCESS is available to
 registered users at [https://
 access.trade.gov](https://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](https://access.trade.gov/public/FRNoticesListLayout.aspx).

Scope of the Investigation

The product covered by this
 investigation is melamine from India.
 For a full description of the scope of this
 investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to
 Commerce's regulations,⁵ we set aside a
 period of time, as stated in the *Initiation
 Notice*, for parties to raise issues
 regarding product coverage (*i.e.*, scope).⁶
 No interested party commented on the
 scope of the investigation as it appeared
 in the *Initiation Notice*. Commerce is
 not modifying the scope language as it
 appeared in the *Initiation Notice*. *See*
 the complete description of the scope in
 Appendix I to this notice.

Methodology

Commerce is conducting this
 investigation in accordance with section
 731 of the Act. Pursuant to section
 776(a) of the Act, Commerce
 preliminarily relied upon facts
 otherwise available to assign an
 estimated weighted-average dumping
 margin to Gujarat State Fertilizers and
 Chemicals Limited (GSFC), the sole
 mandatory respondent in this
 investigation. Further, Commerce
 preliminarily determines that GSFC
 failed to cooperate by not acting to the
 best of its ability to comply with a
 request for information and Commerce
 is using an adverse inference in
 selecting from among the facts
 otherwise available (*i.e.*, applying

adverse facts available (AFA) to this
 respondent, in accordance with section
 776(b) of the Act). For a full description
 of the methodology underlying our
 preliminary determination, *see* the
 Preliminary Decision Memorandum.

Preliminary Affirmative Determination of Critical Circumstances, in Part

On June 17, 2024, the petitioner⁷
 timely filed a critical circumstances
 allegation, pursuant to section 733(e)(1)
 of the Act and 19 CFR 351.206(c)(1),
 alleging that critical circumstances exist
 with respect to imports of the subject
 merchandise from India.⁸ Section
 733(e)(1) of the Act provides that
 Commerce will preliminarily determine
 that critical circumstances exist in an
 LTFV investigation if there is a
 reasonable basis to believe or suspect
 that: (A) there is a history of dumping
 and material injury by reason of
 dumped imports in the United States or
 elsewhere of the subject merchandise, or
 the person by whom, or for whose
 account, the merchandise was imported
 knew or should have known that the
 exporter was selling the subject
 merchandise at less than its fair value
 and that there was likely to be material
 injury by reason of such sales; and (B)
 there have been massive imports of the
 subject merchandise over a relatively
 short period.

In accordance with section 733(e)
 of the Act and 19 CFR 351.206, we
 preliminarily determine that critical
 circumstances exist with respect to
 imports of melamine produced and
 exported by GSFC. Furthermore, we
 preliminarily determine that critical
 circumstances do not exist with respect
 to imports of melamine produced and
 exported by all other producers and
 exporters from India. For a full
 description of Commerce's preliminary
 critical circumstances determination,
see the Preliminary Decision
 Memorandum.

All-Others Rate

Section 733(d)(1)(ii) of the Act
 provides that, in a preliminary
 determination, Commerce shall
 determine an estimated all-others rate
 for all exporters and producers not
 individually investigated in accordance
 with section 735(c)(5) of the Act.
 Section 735(c)(5)(A) of the Act states
 that generally the estimated rate for all
 others shall be an amount equal to the
 weighted average of the estimated
 weighted-average dumping margins

¹ *See Melamine from Germany, India, Japan, the
 Netherlands, Qatar, and Trinidad and Tobago:
 Initiation of Less-Than-Fair-Value Investigations*, 89
 FR 17413 (March 11, 2024) (*Initiation Notice*).

² *See Melamine from Germany, India, Japan, the
 Netherlands, Qatar, and Trinidad and Tobago:
 Postponement of Preliminary Determinations in the
 Less-Than-Fair-Value Investigations*, 89 FR 52437
 (June 24, 2024).

³ *See Memorandum*, "Tolling of Deadlines for
 Antidumping and Countervailing Duty
 Proceedings," dated July 22, 2024.

⁴ *See Memorandum*, "Decision Memorandum for
 the Preliminary Determination in the Less-Than-
 Fair-Value Investigation of Melamine from India,"
 dated concurrently with, and hereby adopted by,
 this notice (Preliminary Decision Memorandum).

⁵ *See Antidumping Duties; Countervailing Duties*,
 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

⁶ *See Initiation Notice*, 89 FR at 17413.

⁷ The petitioner is Cornerstone Chemical
 Company.

⁸ *See Petitioner's Letter*, "Petitioner's Allegation
 of Critical Circumstances," dated June 17, 2024
 (Critical Circumstances Allegation).

established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. The estimated weighted-average dumping margin in this preliminary determination was determined entirely under section 776 of the Act. In cases where no weighted-average dumping margins other than zero, *de minimis*, or those determined entirely under section 776 of the Act have been established for individually examined entities, in accordance with section 735(c)(5)(B) of the Act, Commerce typically calculates a simple average of the margins alleged in the petition and applies the results to all other entities not individually examined.⁹

In the Petition,¹⁰ the petitioner alleged two estimated dumping margins for India, 393.82 and 632.74 percent.¹¹ Therefore, consistent with our practice, for the all-others rate in this investigation, we preliminarily assign a simple average of the dumping margins alleged in the Petition, which is 513.28 percent.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist during the period January 1, 2023, through December 31, 2023:

Exporter/producer	Weighted-average dumping margin (percent)	Adjusted cash deposit rate (percent) ¹²
Gujarat State Fertilizers and Chemicals Limited	* 632.74	630.69
All Others	513.28	511.23

* Rate is based on AFA.

⁹ See, e.g., *Thermal Paper from Spain: Final Determination of Sales at Less Than Fair Value*, 86 FR 54162, 54163 (September 30, 2021), and accompanying Issues and Decision Memorandum.

¹⁰ See Petitioner's Letter, "Melamine from Germany, Japan, the Netherlands, Qatar, and Trinidad and Tobago: Petition for the Imposition of Antidumping Duties," dated February 14, 2024 (Petition).

¹¹ See also *Initiation Notice*, 89 FR at 17416.

¹² Adjusted for export subsidies of 2.05 percent (comprised of 0.80 percent for the RoDTEP program and 1.25 percent for the DDB program) for GSFC and All Others. See *Melamine from India: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Determination with the Final Antidumping Duty Determination*, 89 FR 59055 (July 22, 2024), and accompanying Preliminary Decision Memorandum.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of melamine, as described in the "Scope of the Investigation" in Appendix I, from GSFC that are entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication of this notice in the **Federal Register**. In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all other entries of melamine from India, as described in the "Scope of the Investigation" in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will also instruct CBP, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Commerce normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) investigation, when CVD provisional measures are in effect. Accordingly, where Commerce preliminarily made an affirmative determination for countervailable export subsidies, Commerce has offset the estimated weighted-average dumping margin by the appropriate export subsidy rate. Any adjusted cash deposit rate may be found in the "Preliminary Determination" section above.

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting estimated antidumping duty cash deposits unadjusted for countervailed export subsidies at the time that the provisional CVD measures expire.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of preliminary determination in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily applied AFA to the mandatory respondent in this investigation and applied an AFA rate based on the Petition, there are no calculations to disclose.

Consistent with 19 CFR 351.224(e), Commerce will analyze and, if appropriate, correct any timely allegations of significant ministerial errors by amending the preliminary determination. However, consistent with 19 CFR 351.224(d), Commerce will not consider incomplete allegations that do not address the significance standard under 19 CFR 351.224(g) following the preliminary determination. Instead, Commerce will address such allegations in the final determination together with issues raised in the case briefs or other written comments.

Verification

Because the mandatory respondent in this investigation did not act to the best of its ability to provide information requested by Commerce, and Commerce preliminarily determines the mandatory respondent has been uncooperative, we will not conduct verification.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 14 days after the date of publication of the preliminary determination. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.¹³ Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.¹⁴

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that

¹³ See 19 CFR 351.309(d); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

¹⁴ See 19 CFR 351.309(c)(2) and (d)(2).

should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁵ Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination. We request that interested parties include footnotes for relevant citations in the public executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁶

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, U.S. Department of Commerce, filed electronically via ACCESS. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants and whether any participant is a foreign national; and (3) a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. An electronically filed hearing request must be received successfully in its entirety via ACCESS by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.

Final Determination

Section 735(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that Commerce will issue the final determination within 75 days after the date of its preliminary determination. Accordingly, Commerce will make its final determination no later than 75 days after the signature date of this preliminary determination.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of our affirmative preliminary determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary

determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: September 18, 2024.

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

Scope of the Investigation

The merchandise subject to this investigation is melamine (Chemical Abstracts Service (CAS) registry number 108–78–01, molecular formula C₃H₆N₆). Melamine is also known as 2,4,6-triamino-1,3,5-Triazine-2,4,6- triamine; Cyanurotriamide; Cyanurotriamine; Cyanuramide; and by various brand names. Melamine is a crystalline powder or granule. All melamine is covered by the scope of this investigation irrespective of purity, particle size, or physical form. Melamine that has been blended with other products is included within this scope when such blends include constituent parts that have been intermingled, but that have not been chemically reacted with each other to produce a different product. For such blends, only the melamine component of the mixture is covered by the scope of this investigation. Melamine that is otherwise subject to this investigation is not excluded when commingled with melamine from sources not subject to this investigation. Only the subject component of such commingled products is covered by the scope of this investigation.

The subject merchandise is provided for in subheading 2933.61.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading and CAS registry number are provided for convenience and customs purposes, the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Application of Facts Available, Use of Adverse Inference, and Calculation of All-Others Rate
- V. Critical Circumstances
- VI. Recommendation

[FR Doc. 2024–21824 Filed 9–23–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; National Voluntary Laboratory Accreditation Program (NVLAP) Information Collection System

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before November 25, 2024.

ADDRESSES: Interested persons are invited to submit written comments by mail to Maureen O'Reilly, Management Analyst, NIST by email to PRANIST@nist.gov. Please reference OMB Control Number 0693–0003 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Bethany Hackett, National Voluntary Laboratory Accreditation Program, National Institute of Standards and Technology, 100 Bureau Drive, Stop 2140, Gaithersburg, MD 20899–2140; phone: (301) 975–6113; email: bethany.hackett@nist.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request to extend this currently approved information collection. This information is collected from all testing or calibration laboratories that apply for NVLAP accreditation. Applicants provide the minimum information necessary for NVLAP to evaluate the competency of laboratories to carry out specific tests or

¹⁵ We use the term “issue” here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁶ See APO and Service Final Rule.

calibrations or types of tests or calibrations. The collection is mandated by 15 CFR part 285.

II. Method of Collection

Each new or renewal applicant laboratory electronically submits its application for NVLAP accreditation through a self-service, web-based portal called the “NVLAP Interactive Web System” (NIWS). This method of collection also gives applicant laboratories the ability to upload document files needed to support the application process and to maintain their own profile information.

III. Data

OMB Control Number: 0693–0003.
Form Number(s): None.

Type of Review: Regular submission, extension of a current information collection.

Affected Public: Business or other for-profit organizations; not-for-profit institutions; and Federal, State or local government.

Estimated Number of Respondents: 630.

Estimated Time per Response: 3 hours.

Estimated Total Annual Burden Hours: 1,890 hours.

Estimated Total Annual Cost to Public: \$0.

Respondent's Obligation: Required to obtain benefits.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. 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 us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–21814 Filed 9–23–24; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Analysis of Exoskeleton-Use for Enhancing Human Performance Data Collection

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before November 25, 2024.

ADDRESSES: Interested persons are invited to submit written comments to Maureen O'Reilly, Management Analyst, NIST by email to PRANIST@nist.gov. Please reference OMB Control Number 0693–0083 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or specific questions related to collection activities should be directed to Ann Marie Virts, Project Leader, NIST, 100 Bureau Drive, Gaithersburg, MD 20899, Ann.virts@nist.gov, 301–975–5068.

SUPPLEMENTARY INFORMATION:

I. Abstract

Exoskeletons—sometimes called wearable robots—are a very rapidly

expanding domain with a range of applications and a broad diversity of designs. NIST's Engineering Laboratory will be developing methods to evaluate performance of exoskeletons in two key areas (1) The fit and motion of the exoskeleton device with respect to the users' body and (2) The impact that using an exoskeleton has on the performance of users executing tasks that are representative of activities in industrial settings and emergency response applications. The results of these experiments will inform future test method development at NIST, other organizations, and under the purview of the American Society for Testing Materials (ASTM) Committee F48 on Exoskeletons and Exosuits.

For the first research topic, NIST will be measuring the difference in performance of a person wearing an exoskeleton versus the person's baseline without the exoskeleton while positioning loads and tools. The NIST Position and Load Test Apparatus for Exoskeletons (PoLoTAE), which presents abstractions of industrial task challenges, will be used in this research. NIST researchers will also develop standard test methods to represent real world applications for emergency responders such as mobility tasks, climbing over, around and thru obstacles.

For the second research topic, NIST will evaluate a method for measuring the alignment of an exoskeleton to human joint (knee) and any relative movement between the exoskeleton and user. Measurement methods prototyped by NIST for evaluating exoskeleton on mannequin position and motion will be applied to human subjects to verify the usefulness of optical tracking system and designed artifacts worn by users as measurement methods.

Participants will be chosen from volunteers within NIST and adult NIST visitors to participate in the study. Gender and size diversity will be sought in the population of participants. No personally identifiable information (PII) will be recorded unless subject consent for PII disclosure is received. NIST intends to publish information on the analysis and results.

II. Method of Collection

Participants will give informed consent prior to participating in the research. Information may be collected via a paper background questionnaire which may include disclosure of health information which may be relevant for safety and research reasons. Data will be collected using a combination of heart rate monitor, video and still cameras to collect time and subject activity to

correlate heart rate with activity and an optical tracking system which detects markers worn by the subject. Participants will be asked to complete a paper survey once data is collected for the research.

III. Data

OMB Control Number: 0693–0083.

Form Number(s): None.

Type of Review: Regular submission, extension of a current information collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 240.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 40 hours.

Estimated Total Annual Cost to Public: \$0.

Respondent's Obligation: Voluntary.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. 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 us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Departmental PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–21837 Filed 9–23–24; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE106]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Furie Operating Alaska, LLC Natural Gas Activities in Cook Inlet, Alaska

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 two incidental harassment authorizations (IHAs) to Furie Operating Alaska, LLC (Furie) to incidentally harass marine mammals during natural gas activities in Cook Inlet, Alaska.

DATES: These authorizations are effective from September 13, 2024 through September 12, 2025 for year 1 activities, and September 13, 2025 through September 12, 2026 for year 2 activities.

ADDRESSES: 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/national/marine-mammal-protection/incidental-take-authorizations-oil-and-gas>. In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Leah Davis, Office of Protected Resources, NMFS, (301) 427–8401.

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 IHA 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 monitoring and reporting of the takings. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On July 19, 2023, NMFS received a request from Furie for two consecutive IHAs to take marine mammals incidental to natural gas activities in Cook Inlet, Alaska. The application was deemed adequate and complete on April 5, 2024. Furie’s request is for take of 12 species of marine mammals, by Level B harassment and, for harbor seals, Level A harassment. Neither Furie nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of the Specified Activity

From September 13, 2024, through September 12, 2025 (year 1), and from September 13, 2025 through September 12, 2026 (year 2), Furie is planning to conduct the following natural gas activities in Middle Cook Inlet, Alaska. In year 1, Furie proposes to relocate the Enterprise 151 jack-up production rig (Enterprise 151 or rig) to the Julius R. Platform (JRP) site, install up to two conductor piles using an impact hammer, and conduct production drilling of up to two natural gas wells at the JRP with the Enterprise 151 rig (or a similar rig) across 45–180 days. During year 2, Furie proposes to relocate the Enterprise 151 rig to the JRP site again, potentially install one to two conductor piles using an impact hammer (depending on whether either or both of these piles are installed or not during year 1), and conduct additional production drilling at the JRP. Furie proposes to conduct the rig towing and pile driving activities between April 1 and November 15 each year, but if favorable ice conditions occur outside of that period, it may tow the rig or pile drive outside of that period. Noise produced by rig towing and installation

of the conductor piles may result in take, by Level B harassment, of marine mammals, and for harbor seals, also Level A harassment. Thus, references to tugging activities herein refer to activities where tugs are under load with the rig.

A detailed description of the planned tugging and pile driving project is provided in the **Federal Register** notice for the proposed IHA (89 FR 51102, June 14, 2024). Since that time, no changes have been made to the planned activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Responses

A notice of NMFS' proposal to issue two consecutive IHAs to Furie was published in the **Federal Register** on June 14, 2024 (89 FR 51102). That notice described, in detail, Furie's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. In that notice, we requested public input on the request for authorization described therein, our analyses, the proposed authorizations, and any other aspect of the notice of proposed IHAs, and requested that interested persons submit relevant information, suggestions, and comments.

During the 30-day public comment period, NMFS received comments from Furie, Friends of Animals (FoA), and a member of the public. Further, U.S. Geological Survey provided a recent paper that its researchers co-authored (Himes Boor *et al.* 2022) that found that Cook Inlet beluga whale population declines are likely due to both low survival rates and low birth rates. All relevant, substantive comments, and NMFS' responses, are provided below and are organized by topic. The comments and recommendations are available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>. Please see the comment submissions for full details regarding the recommendations and supporting rationale.

Comment 1: Furie stated that the notice of the proposed IHA (89 FR 51102, June 14, 2024) characterizes its planned activities as "oil and gas activities." Furie stated that it only produces natural gas in Cook Inlet and is not planning to drill for or produce oil. The wells planned during the activities target proven natural gas reserves and will not intersect oil-bearing formations. Furie recommended revising the proposed IHA (89 FR

51102, June 14, 2024) and the **Federal Register** notice to refer to the planned activities as "natural gas production activities."

Response: NMFS concurs that it is more appropriate to refer to Furie's activities as natural gas activities rather than oil and gas, and has replaced "oil and gas activities" with "natural gas activities" throughout. Given the inclusion of tugging, NMFS did not include "production" in the overarching term.

Comment 2: Furie stated that the notice of the proposed IHA (89 FR 51102, June 14, 2024) includes language adapted from its application (finalized in October 2023), in which it stated that it was Furie's understanding that Hilcorp Alaska, LLC (Hilcorp) did not intend to operate Enterprise 151 at the Tyonek platform in 2024 and 2025. In subsequent discussions with Hilcorp regarding a potential hand-off of the rig, Furie realized that its understanding was incorrect. In meetings and emails with NMFS in February and March of 2024, Furie clarified that Hilcorp did intend to operate the jack-up rig at the Tyonek platform and provided additional information to amend its planned activities to include towing the rig from the Tyonek platform to Furie's JRP. Furie recommends removing statements characterizing Hilcorp's intent not to operate at the Tyonek Platform.

Response: NMFS' reference to Hilcorp not intending to conduct work with the Enterprise 151 at the Tyonek platform in 2024 or 2025 was in error. NMFS thanks Furie for further clarifying this matter. Of note, while the notice of proposed IHA mistakenly included this outdated statement, NMFS did consider the potential for Hilcorp to operate the Enterprise 151 at the Tyonek platform in its analysis, including as it relates to required mitigation, and the analysis included in the IHA remains appropriate and incorporates the farthest distance that Furie may tow the tug (originating from the Rig Tenders Dock).

Comment 3: Furie stated that the notice of the proposed IHA (89 FR 51102, June 14, 2024) describes Furie's planned activities as taking place in "... an otherwise nonindustrial setting for a period of several days." Oil and gas platforms have operated in this area of Cook Inlet for 60 years with daily activity. Similarly, Furie will tow the jack-up rig in shipping lanes that are transited nearly every day, often several times per day, by commercial ships, offshore supply vessels, and tugs and barges. Thus Furie states it is incorrect

to characterize the project area as a "non-industrial setting."

Response: The full statement in the notice of the proposed IHA (89 FR 51102, June 14, 2024) that Furie is referencing states, "essentially, the project area will become a concentrated work area in an otherwise non-industrial setting for a period of several days." NMFS recognizes that industrial activities, such as construction and operation of oil and gas platforms as well as vessel transit, as highlighted by Furie, occur in middle Cook Inlet and include overlap with the area that Furie will operate. NMFS did not intend for its statement to imply that no industrial activity occurs in the project area, but instead to highlight that the project will cause a concentrated increase in a specific area in comparison to the baseline in that same area, as this relative comparison can inform how marine mammals may or may not respond to an applicant's activities.

Comment 4: Furie stated that it plans to install the conductors inside the caisson monopod leg of the JRP platform. Therefore, no area of the seafloor will be impacted by pile driving and will not cause a decrease in water quality as NMFS stated in the notice of the proposed IHA (89 FR 51102, June 14, 2024). Furie recommended alternate language in its letter.

Response: NMFS concurs that the reference to decreased water quality and seafloor habitat impacts is in error given that the pile driving will occur within the caisson monopod leg of the JRP platform. The referenced language is not included in this notice of final IHA.

Comment 5: Furie stated in its letter that its application mistakenly proposed a proxy source level of 184 decibels (dB) sound exposure level (SEL) for installation of 20-in conductor piles in Sections 1.1.2.1, 6.2.3, and 6.3.3, while the user spreadsheet in Appendix A of its application used 181 dB SEL for the same activity. Furie intended to propose use of 181 dB SEL. In the proposed IHA (89 FR 51102, June 14, 2024), NMFS estimated the Level A harassment zones using 184 dB SEL. Furie stated that Navy (2015) lists the 184 dB SEL as applicable to 24-inch (in), 30-in, and 36-in piles collectively, but lists 181 dB SEL as specifically applicable to 24-in piles.

Given that the source level applies to piles ranging from 24-in to 36-in, Furie suggested that NMFS retain the Level A harassment zones presented in table 8 of the corrected notice (89 FR 53961; June 28, 2024) and the resulting estimate of take by Level A harassment as valid analyses for installation of conductor piles up to 36-in. That way, NMFS'

analysis would encompass all conductor sizes available to Furie, should it choose to use larger conductors in our wells.

Furie noted that this would not affect the Level B harassment zones which are calculated using a different sound source level.

Response: NMFS concurs with Furie that it is appropriate to use 184 dB SEL as a proxy source level for calculating Level A harassment zones for installation of piles that range in size from 20 to 36 in diameters. NMFS has retained the analysis for installation of conductor piles (using sound source levels of 184 dB SEL and 193 dB sound pressure level root mean square (SPL_{rms}) at 10 m) as included in the notice of the proposed IHA (89 FR 51102, June 14, 2024) but recognizes that the conductor piles that Furie installs may have a diameter of up to 36 in rather than 20 in. NMFS further concurs that this does not affect the calculated Level B harassment zones, as those are calculated using 193 dB SPL_{rms} at 10 m.

Comment 6: Furie stated that the notice of proposed IHA (89 FR 51102, June 14, 2024) states, “*Site-specific TL (transmission loss) data for pile driving at the JRP site are not available*” but that this is not entirely accurate. Furie contracted with JASCO Applied Sciences during the 2015 installation of the JRP to conduct a sound source verification (SSV) to evaluate the impact installation of the 42-in pin piles that hold the JRP in place (cited as Austin et al. 2015 in Section 6.2.3 of Furie’s application). The calculated transmission loss coefficient was 20.3. Because the hammer is rated at four times the energy of the one planned for use at the JRP and because it was for the installation of 42-in piles, Furie did not view it as a suitable proxy for the sound source levels (SSL) for the installation of the conductor pipes inside the monopod leg of the platform. Furie stated that it acknowledges that many factors affect transmission loss, including the frequencies of the predominant sound energy emanating from the piles as they are impacted, which may vary with pile size and impact energy. However, the other factors affecting transmission loss, such as bathymetry, depth, salinity, and temperature, are “site-specific” and are relevant to Furie’s planned installation of conductors. Furie states that the use of a 15 dB per decade transmission loss likely overestimates the Level A harassment and Level B harassment isopleths and the degree of incidental take.

Response: As stated in the notice of the proposed IHA (89 FR 51102, June 14, 2024), absent site-specific acoustical monitoring with differing measured TL,

a practical spreading value of 15 is used as the TL coefficient in the above formula. NMFS concurs that the sentence in the notice that states that “TL data for pile driving at the JRP site are not available” could have been worded in a way that is more accurate to acknowledge that SSV has been conducted at the project site for a different size pile than that which Furie plans to install. NMFS has updated this statement to state “Site-specific TL data for pile driving with relevant parallel characteristics are not available.” This wording change does not affect NMFS’ analysis, as NMFS still finds that the default transmission loss coefficient of 15 is appropriate.

Comment 7: Furie stated that in table 13 of the notice of the proposed IHA (89 FR 51102, June 14, 2024), NMFS identifies the “best” Cook Inlet beluga abundance estimate (Nbest) as 279. The estimated take as a percentage of this stock abundance is 3.9 percent. Furie states that the fourth footnote contradicts the table, describing the most recent abundance ranging from 290 to 386, with a best estimate of 331 animals, citing Goetz et al. (2023) as the source. The footnote also describes the authorized take as 3.3 percent of the stock rather than the 3.9 percent listed in the table. Furie believes that the estimate in Goetz et al. 2023 is the best available data and recommends a revision of the table to align with the information provided in the footnote.

Response: As noted by Furie, Goetz et al. (2023) provides the most recent Cook Inlet beluga whale abundance estimate. Footnotes 9 and 4 in tables 3 and 13, respectively, of the notice of the proposed IHA (and table 1 and table 11 in this notice) also state that “in accordance with the MMPA, this population estimate will be incorporated into the Cook Inlet beluga whale SAR, which will be reviewed by an independent panel of experts, the Alaska Scientific Review Group. After this review, the SAR will be made available as a draft for public review before being finalized.” Even when more recent abundance estimates are available, NMFS typically considers abundance estimates from the SARs to be the best available given the rigorous SAR review process. However, in this case, regardless of whether the number of instances of takes is compared to the abundance estimate in the current Cook Inlet beluga whale SAR or the Goetz et al. (2023) abundance estimate, the number of instances of take as a percent of the stock abundance is less than 4 percent and is considered to be of small numbers.

Comment 8: FoA states that the proposed IHAs would allow for the take of 11 beluga whales, or 3 percent, of the Cook Inlet population per year for a total of up to two consecutive years. Therefore, Furie is proposing to take at least 22 or 6 percent of beluga whales if NMFS approves the IHAs. FOA cites the Cook Inlet beluga whale 2018 SAR that states “even one take every two years may still impede recovery.” FoA states that the estimated number of takes is indefinite, and based on the vast amount of harmful impacts it says Furie’s proposed project would add to the existing anthropogenic activities within Cook Inlet, the actual number of takes is likely to be higher.

Response: The commenter appears to be misinterpreting the discussion of take in the Cook Inlet beluga whale SAR. The statement in the 2018 SAR that the commenter quoted is referencing take by mortality. The Furie IHAs do not authorize take by serious injury or mortality, and for all species other than harbor seals (for which take by Level A harassment is authorized), authorized take is by Level B harassment only. As described further in the Negligible Impact Analysis and Determination section, the authorized takes are not expected to have more than a negligible impact on all marine mammal stocks. As described in further detail in that section, the area of exposure would be limited to habitat primarily used for transiting and not areas known to be of particular importance for feeding or reproduction, the activities are not expected to result in Cook Inlet beluga whales abandoning critical habitat nor are they expected to restrict passage of Cook Inlet beluga whales within or between critical habitat areas, and any disturbance to Cook Inlet beluga whales is expected to be limited to temporary modifications in behavior, and would not be of a duration or intensity expected to result in impacts on reproduction or survival.

The commenter does not provide support for its assertion that the estimated number of takes is indefinite, and these IHAs are each effective for one year. The commenter also does not provide support for its assertion that the actual number of takes is likely to be higher than the estimated number included in the proposed IHA (89 FR 51102, June 14, 2024) and authorized in this final IHA.

Comment 9: FoA stated that despite this critical time for monitoring population trends, NMFS has delayed aerial surveying of the species from June 2024 until June 2025, due to less aggregation of the whales in places they previously and regularly have been

observed (NMFS 2024). Authorization of further take of the species without performing consistent surveying methods is especially concerning since the resident population is known for behavioral congregation patterns, such as for feeding and reproduction (NMFS 2021).

Response: The MMPA requires NMFS to make its findings based upon the best available science, regardless of whether any particular survey is continued or not. However, to clarify, and as described in a recent article (NMFS 2024c), since 2010, NOAA Fisheries scientists have been conducting a biennial aerial survey in early-to-mid June to estimate the abundance and trends of Cook Inlet beluga whales. Beluga whales gather in the upper inlet in June to feed on returning fish runs. The biennial aerial survey involved flying a coastal trackline of all nearshore waters in Cook Inlet and a series of offshore transects across the inlet. When they encountered a beluga group, the plane made multiple passes alongside the group so observers could count the whales present and collect videos. Scientists used these observation data to estimate group sizes. The surveys were designed to take advantage of the clumped distribution of these whales in early June, when they are often found in a small number (two to eight) of large groups. However, in recent years, whales have not been as aggregated in places that researchers used to regularly see them, such as the Susitna Delta.

To identify the best and most cost-effective approach for estimating abundance and trends, in 2021 and 2022 scientists added line-transect aerial surveys within Susitna Delta, Chickaloon Bay, and Trading Bay. They also conducted the conventional aerial survey for comparative purposes. Scientists found that the sightings data from the line-transect survey approach produced a reliable abundance estimate similar to the conventional method. The method also does not require months of video analysis, instead producing an estimate shortly after the completion of field work.

As to the reason for pushing the 2024 survey to 2025, in 2024, researchers had hoped to replace the conventional aerial survey method with a line-transect aerial survey conducted in combination with a Cook Inlet beluga photo-identification project. This project obtains overhead photos taken from an uncrewed aerial system (UAS). However, the plane chartered for survey operations had mechanical issues and the team was unable to secure an alternative. Therefore, the team plans to conduct the survey next year.

Researchers expect to be able to obtain an abundance estimate from the photo-identification project, which uses UAS technology, in 2024. They have been using UAS since 2017, and the count information collected using this technology has allowed NMFS to produce a comparable abundance estimate to other approaches. However, the crewed aerial survey can provide distribution information, as it covers the entire Inlet's coastline and offshore waters, areas where UAS/photo identification studies do not currently occur. Currently UAS use has been limited to areas in the upper inlet such as the Susitna Delta, Knik Arm, Chickaloon Bay, and Trading Bay. Further, UAS is limited in that it has to operate within line of sight of the person operating the drone. It is also limited by weather and tides. Tides restrict access to these areas for boats used to deploy the drones.

It is unclear what the commenter means in stating that authorization of further take of the species without performing consistent surveying methods is especially concerning since the resident population is known for behavioral congregation patterns, such as for feeding and reproduction. However, as described above, the planned changes to survey methods are based on a determination that the newly planned method is the best and most cost-effective approach for estimating abundance and trends.

Comment 10: FOA urges NMFS to deny issuance of IHAs to Furie, as well as any renewal IHAs, and to cease issuing IHAs that include take of Cook Inlet beluga whales until they are on a successful path to recovery. FoA further urges NMFS to cease issuing IHAs that include take of Cook Inlet beluga whales and marine mammals altogether until threats of high concern to Cook Inlet marine mammals can be better understood and addressed through continued research and action initiatives. FoA states that continuous granting of incidental take permits and IHAs for anthropogenic activities by Federal agencies diminishes the recovery and survivability of Cook Inlet beluga whales and is inconsistent with the purposes of the MMPA.

Response: The MMPA requires that NMFS issue an ITA for a specified activity, provided the necessary findings are made and appropriate mitigation and monitoring measures are set forth, as described in the Background section of this notice. Please refer to that section for additional information. Such findings have been made, and therefore, NMFS has issued two consecutive IHAs to Furie.

Consistent with the MMPA, NMFS has included measures to ensure the least practicable adverse impact on marine mammal species and their habitat, and has also included appropriate monitoring and reporting requirements. For example, during tugging and pile driving, Furie must conduct pre-clearance monitoring prior to commencing activities and must delay the start of activities if marine mammals are within designated pre-clearance zones. Furie must implement soft start techniques and shut down activities if an animal enters a designated shutdown zone for pile driving activities, and it must conduct tugging activities with a favorable tide to reduce noise output. Please see the Mitigation section of this notice for a full description of the required mitigation measures.

Further, monitoring results from previous similar tugging and construction activities have not recorded responses from Cook Inlet beluga whales that indicate impacts that would affect the survival or recovery of Cook Inlet beluga whales. Hilcorp's most recent annual marine mammal monitoring report indicates that it did not record any sightings of beluga whales from their rig-based monitoring efforts (Horsley and Larson, 2023), and the most recent monthly monitoring report that describes monitoring results from the May 2024 rig transiting also indicates no recorded sightings of beluga whales during transit (Weston Solutions, 2024). Further, monitoring data from construction at the Port of Alaska (POA) demonstrates Level B harassment of Cook Inlet beluga whales typically manifests as increased swim speeds past the POA, tighter group formations, and cessation of vocalizations, none of which would be expected to impact survival or recovery of Cook Inlet beluga whales.

Comment 11: FoA stated that the potential impacts from Level B harassment that Furie's proposed project will have on the species are varied and numerous. They assert this includes hearing impairment, separation of family groups, loss of prey and/or habitat, disturbances to biologically sensitive feeding and mating areas, bodily harm, behavioral changes, and synergistic and/or cumulative effects, among others. For these reasons, FoA states the numerous negative effects on marine mammals do not constitute negligible impacts, and therefore, Furie does not meet the qualifications for obtaining an IHA under the MMPA.

Response: NMFS disagrees with the FoA's claim that the effects of Furie's activities on marine mammals do not

constitute negligible impact. In the Negligible Impact Analysis and Determination section of the notice of the proposed IHAs (89 FR 51102, June 14, 2024) and this notice, we describe how the take estimated and authorized for Furie's project will have a negligible impact on all of the affected species, including Cook Inlet beluga whales. We discuss how this determination is based upon the authorized number of takes of each stock that might be exposed briefly during the activity, the low level of behavioral harassment (and for harbor seals, small degree of permanent threshold shift (PTS)) that might result from an instance of take that could occur within a year, and the likelihood that the mitigation measures required further lessen the likelihood or severity of exposures. NMFS has considered the status of each stock in its analysis, as well as the importance of reducing impacts from anthropogenic noise, and there is no evidence that brief exposure to low level noise causing Level B harassment (and for harbor seals, PTS) would have the impacts asserted by the commenter.

NMFS' negligible impact finding considers a number of parameters including, but not limited to, the nature of the activities (e.g., duration, sound source), effects/intensity of the taking, the context of takes, and mitigation. NMFS understands that marine mammals will have varying responses to elevated noise levels resulting from pile driving and tugging activities such as masking of communication and foraging signals, avoidance behaviors, and more. However, NMFS does not anticipate that these responses will result in separation of family groups, nor has the commenter provided information supporting that assertion.

No serious injury or mortality (i.e., bodily harm, as referred to by the commenter) is anticipated or authorized. While exposure to elevated noise levels associated with Furie's activities may result in low-level behavioral changes in marine mammals (and for harbor seals, a small degree of PTS (i.e., hearing impairment, as referred to by the commenter) for a maximum of three animals per year), NMFS' review of the best available scientific evidence, as summarized and cited herein, demonstrates that these responses do not rise to the level of having adverse effects on the fitness of individuals for reproduction or survival, and thus would not affect reproduction or survival rates of any stock, and the commenter has provided no evidence to the contrary. Further, while Furie's project area does overlap ESA-designated critical habitat for Cook Inlet

beluga whale, the impacts from the project are not expected to occur in areas that are important for feeding or reproduction for any species, including Cook Inlet beluga whales, nor are they anticipated to result in a loss of prey or habitat. Monitoring data from Hilcorp's activities suggest that tugging activities do not discourage Cook Inlet beluga whales from transiting throughout Cook Inlet and between critical habitat areas and that the whales do not abandon critical habitat areas (Horsley and Larson, 2023). In addition, large numbers of Cook Inlet beluga whales have continued to use Cook Inlet and pass through the area, likely traveling to critical foraging grounds found in upper Cook Inlet (i.e., outside of the project area), while noise-producing anthropogenic activities, including vessel use, have taken place during the past two decades (e.g., Shelden *et al.* 2013, 2015, 2017, 2022; Shelden and Wade 2019; Geotz *et al.* 2023). Therefore, NMFS has appropriately concluded that the taking from year 1 and year 2 activities each will have a negligible impact on the affected stocks, and accordingly has issued two consecutive IHAs to Furie.

Please see NMFS' response to Comment 13 regarding cumulative effects.

Comment 12: FoA stated that after the finalization of the Recovery Plan in December 2016 (NMFS 2016a) and a Species in the Spotlight 2021–2025 Priority Action Plan for the Cook Inlet beluga whale (NMFS 2021) in place, NMFS should emphasize greater measures to enhance the survival of the species and address a needed reduction of anthropogenic activities within Cook Inlet. Doing so will support recovery efforts while eliminating long-term harassment and further endangerment to the species.

Response: NMFS has prescribed mitigation measures in the IHAs to effect the least practicable adverse impact on Cook Inlet beluga whales and all other affected marine mammal species. Of note, these IHAs extend the pre-clearance zone for Cook Inlet beluga whales ahead of tugging activities to include the extent to which protected species observers (PSOs) can feasibly observe, rather than a zone of 1,500 meters (m) included in previous IHAs for similar activities (87 FR 62364, October 14, 2022).

We note that NMFS' authority under section 101(a)(5)(A) of the MMPA pertains only to the authorization of marine mammal take incidental to that activity and to the prescription of appropriate mitigation, monitoring, and reporting requirements. Therefore,

while NMFS cannot reduce anthropogenic activities within Cook Inlet, we will continue to consider the vulnerable status of Cook Inlet beluga whales in our negligible impact analyses and require that any activity for which we issue an ITA will meet that standard; and we will prescribe appropriate measures under the least practicable adverse impact standard.

Comment 13: FOA stated that NMFS should consider the potential cumulative impact from past, current, and future activities and their impact on the environmental baseline when determining whether "take is negligible" (which we interpret as a reference to the negligible impact standard). FoA quoted the Cook Inlet beluga whale recovery plan (NMFS 2016a), which states "applications for IHAs have historically been reviewed on the basis of an individual activity in isolation. But the high level of human activity in Cook Inlet has increased such that cumulative effects of multiple activities must be appropriately accounted for." FoA further stated that there are already a prominent number of authorizations throughout Cook Inlet allowing for the take of Cook Inlet beluga whales, stating that between 2017 and 2025, NMFS is projected to authorize approximately 120,000 incidental takes of Cook Inlet beluga whales (Migura and Bollini 2022).

Response: We note first that the Migura and Bollini (2022) paper cited by FoA, regarding the projected authorized take of Cook Inlet beluga whale through 2025, seems to have led to a misunderstanding of the takes authorized or permitted by NMFS. The vast majority of the asserted ~120,000 total takes (over 99 percent), including all of the very small amount of take by Level A harassment, were authorized under directed research or enhancement permits, which directly support research or actions identified in the Recovery Plan to address Cook Inlet beluga whale recovery goals. Further, the vast majority (~99 percent) of the total permitted research or enhancement take numbers are low-level MMPA Level B harassment from remote or non-invasive procedures that were considered "not likely to adversely affect" listed species under the consultation requirements of section 7 of the ESA (i.e., take under the ESA is neither expected to occur nor exempted for those activities). We refer the commenter to NMFS' Cook Inlet beluga whale 5-year review (NMFS 2022; section 2.3.2), in which NMFS addressed the assertions in Migura and Bollini (2022). Last, it is worth noting that for research activities, authorized

takes are typically a larger number than the actual takes that occur. For example, 22,090 takes were authorized for Cook Inlet beluga research occurring in 2019 but only 2,405 takes occurred.

Regarding the comprehensive evaluation and minimization of permitted takes, we reference the analysis that has already been completed through NMFS' 2019 Biological and Conference Opinion on the Proposed Implementation of a Program for the Issuance of Permits for Research and Enhancement Activities on Cetaceans in the Arctic, Atlantic, Indian, Pacific, and Southern Oceans (NMFS 2019), which determined that the research and enhancement takes permitted by the program would not jeopardize the existence of any of the affected species. As part of our programmatic framework for permitting directed take of ESA species, the Permits and Conservation Division will continue to closely evaluate the number and manner of Cook Inlet beluga whale takes requested by each applicant, how the proposed research ties to recovery plan goals, and the collective number of authorized and requested takes to consider the potential cumulative impact of the activities to the population. Each directed take annual report is reviewed to understand how authorized takes were actually used and to closely monitor the impacts that permitted research methods are having on the target animals.

Regarding the comment about the negligible impact determination for this action, neither the MMPA nor NMFS' implementing regulations call for consideration of the take resulting from other activities in the negligible impact analysis. 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 (such as incidental mortality in commercial fisheries, Unusual Mortality Events (UMEs), and subsistence hunting)); see the Negligible Impact Analyses and Determinations section of this notice of issuance. The 1989 final rule for NMFS' implementing regulations also addressed public comments regarding cumulative effects

from future, unrelated activities. There, NMFS stated that such effects are not considered in making findings under section 101(a)(5) concerning negligible impact. In this case, the two IHAs issued to Furie are appropriately considered an unrelated activity relative to other ITAs currently in effect or proposed within the specified geographic region. The ITAs are unrelated in the sense that they are discrete actions under section 101(a)(5)(D) issued to discrete applicants (with the exception of the two consecutive IHAs issued to Furie).

Section 101(a)(5)(D) of the MMPA requires 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 have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence uses. 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 (see 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, Furie was the applicant for the IHAs, and we are responding to the specified activities as described in that application (and making the necessary findings on that basis). The take estimates NMFS authorizes represent the upper limits for individuals and some instances of take may represent multiple exposures to a single individual.

NMFS' response to public comments in the 1989 implementing regulations also indicated (1) that we would consider cumulative effects that are reasonably foreseeable when preparing a National Environmental Policy Act (NEPA) analysis, and (2) that reasonably foreseeable cumulative effects would also be considered under section 7 of the ESA for ESA-listed species, as appropriate. Accordingly, NMFS has prepared an EA that addressed cumulative impacts of Furie's activities and all past, present and reasonably foreseeable future actions. Additionally, the NMFS Alaska Regional Office (AKRO) issued a Biological Opinion on September 11, 2024, under section 7 of the ESA, on the issuance of two IHAs to Furie under section 101(a)(5)(D) of the MMPA by NMFS OPR that independently considered the reasonably foreseeable cumulative effects of activities on ESA-listed species.

Comment 14: FoA states that it supports the creation of annual programmatic EAs, an annual permitting cycle, and the overall analysis of cumulative effects from multiple IHAs. FoA further urges NMFS to complete its development of an analysis on the cumulative effects of anthropogenic activities and threats of high concern to enhance the recovery efforts for Cook Inlet beluga whales. In a related comment, FOA stated that to prevent further decline of Cook Inlet beluga whales, NMFS should not stray from conducting a more comprehensive assessment of the cumulative impacts related to noise, habitat degradation, chemical exposure, mortality, stranding, climate change, and migration of the species and its prey. FoA states that synergistic effects of toxic chemical exposure and noise are particularly concerning in coastal areas where pollutants are concentrated, and in areas heavy with potential spillage, engine leaks, and consistent vessel traffic.

Response: Although not explicit, the commenter may be referring to a 2015 notice of intent to prepare a programmatic EA (80 FR 48299; August 12, 2015) and a 2014 notice of intent to prepare an EIS (79 FR 61616, October 14, 2014). In the 2015 notice, NMFS announced its intent to (1) prepare a Programmatic Environmental Assessment (EA) to analyze the environmental impacts of issuing annual Incidental Take Authorizations (ITAs) pursuant to the Marine Mammal Protection Act (MMPA) for the taking of marine mammals incidental to anthropogenic activities in the waters of Cook Inlet, AK, for the 2016 season and; (2) its intent to institute an MMPA authorization cycle wherein companies planning to submit MMPA incidental harassment authorization applications for work to be conducted in Cook Inlet in 2016 do so by no later than October 1, 2015.

In the 2014 notice, NMFS declared its intent to prepare an EIS for oil and gas-related incidental take authorizations in Cook Inlet, Alaska (79 FR 61616, October 14, 2014). However, in a 2017 **Federal Register** notice (82 FR 41939, September 5, 2017), NMFS indicated that due to a reduced number of ITA requests in the region, combined with funding constraints at that time, we were postponing any potential preparation of an EIS for oil and gas activities in Cook Inlet. As we stated in the 2017 **Federal Register** notice, should the number of ITA requests, or anticipated requests, noticeably increase, NMFS will re-evaluate whether preparation of an EIS is necessary.

Currently, the number of ITA requests for activities that may affect marine mammals in Cook Inlet is at such a level that preparation of an EIS is not yet necessary, nor are annual EAs as proposed in 2015 (80 FR 48299; August 12, 2015). Nonetheless, under NEPA, NMFS is required to consider cumulative effects of other potential activities in the same geographic area as the proposed action, and these are discussed in greater detail in NMFS' Final EA prepared for this issuance of two consecutive IHAs to Furie for natural gas activities, which supports our finding that NMFS' issuance of the IHAs will not have a significant impact on the human environment.

Regarding the threats of high concern identified by FoA (noise, habitat degradation, chemical exposure, mortality, stranding, climate change, and migration of Cook Inlet beluga whales and their prey), NMFS addressed these threats, as appropriate, in the Final EA. Noise from both the project and other nearby activities is addressed throughout the Final EA. The Cumulative Effects section of the Final EA (Section 4.8) addresses subsistence hunting, pollution, fisheries interaction, vessel traffic, coastal zone development, oil and gas development, mining, marine mammal research, and climate change impacts, all of which contribute or could potentially contribute (*e.g.*, subsistence hunting of Cook Inlet beluga whales, which is not known to currently occur in Cook Inlet) to the threats identified by FoA. Specifically related to pollutants, as noted in the Final EA, a recent study of Cook Inlet beluga whales, the species most at risk in the action area, suggests a potential link between gastrointestinal cancer in belugas to environmental PAH contamination (Poirier et al. 2019). There is also preliminary evidence of female marine mammals passing contaminant loads to offspring (Peterson et al. 2018; Andvik et al. 2021) as well as a relationship between contaminant exposure and congenital abnormalities (Burek-Huntington et al. 2022). However, the effects of transfer of contaminant loads to offspring repeatedly across generations is unclear, and additional research on the causes of congenital abnormalities in Cook Inlet beluga whales (including effects of contaminant exposure, genetic diversity, and nutrition) is needed. Of note, while the Recovery Plan for the Cook Inlet Beluga Whale identifies pollution as a threat, it notes that available information indicates that the magnitude of the pollution threat to Cook Inlet beluga whales appears low,

though not all pollutants to which Cook Inlet beluga whales are exposed have been studied in that environment.

While consideration of the activities discussed above in sum suggests an increase in industrialization of Cook Inlet, many of these activities are spatially and temporally limited and do not permanently reduce or degrade the habitat available to marine mammals or their prey species. Cook Inlet is also a geographically vast area, and many activities, including the activities planned by Furie and other noise-producing activities, are geographically distinct to various portions of the inlet, which prevents the continued or permanent disruption of one particular portion of the inlet for extended durations, therefore providing other areas of available habitat.

It is unclear what the commenter is referring to in terms of addressing migration of Cook Inlet beluga whales and their prey as a threat. However, as noted in response to Comment 9, in recent years, Cook Inlet beluga whales have not been as aggregated in places that researchers used to regularly see them, such as the Susitna Delta.

Comment 15: FoA stated that NMFS should extend its public comment period to at least one month to obtain adequate public findings before the issuance of consecutive IHAs.

Response: Publication of the notice of proposed IHAs (89 FR 51102, June 14, 2024) began a 30-day public comment period that served as the statutorily-required comment period for each of the proposed IHAs. FoA did not provide reasoning for why this initial comment period was insufficient. As such, and given that Furie's planned project schedule did not allow for extension of the comment period, NMFS has not extended the public comment period for the proposed IHAs.

Comment 16: USGS provided a recent paper that its researchers co-authored (Himes Boor et al. 2022) that found that Cook Inlet beluga whale population declines are likely due to both low survival rates and low birth rates.

Response: NMFS thanks USGS for providing this paper for NMFS' consideration. As described in the paper, the results of this study can assist researchers and managers in identifying the most significant factors contributing to the decline of Cook Inlet beluga whales, and we have incorporated consideration of this paper into our analysis of the potential impacts of Furie's activities on Cook Inlet beluga whales in the EA.

Changes From the Proposed IHA to Final IHA

In the final IHAs, NMFS updated the measure that describes the clearance zones required for tugging activities during daylight hours (measure 4(d) in the IHAs). The updated language does not change the intent of the measure, but rather, is intended to clarify that if a beluga whale is observed within the relevant clearance zone during those 30 minutes, operations may not commence until the beluga whale(s) is no longer detected at any range and 30 minutes have elapsed without any observations of beluga whales. The measure in the proposed IHA could have potentially been interpreted to imply that activities could commence after 30 minutes even if a beluga whale was still detected by PSOs. NMFS also amended measure 5(b) of the IHAs to state that in addition to the two PSOs that must be stationed on the tug or jack-up rig for monitoring purposes for the entirety of the jack-up rig towing and positioning operations, an additional PSO must be stationed on the JRP platform. Last, NMFS added a footnote to Table 2 of the IHAs to clarify that the shutdown zone for Cook Inlet beluga whales during conductor pipe pile driving is different from other mid-frequency cetaceans. The footnote states "If Cook Inlet beluga whales are observed within or approaching the Level B harassment zone for conductor pipe installation, impact installation of the conductor pipe must be delayed or halted until the beluga(s) have voluntarily left and been visually confirmed to be 100 m beyond the Level B harassment zone and on a trajectory away from the zone, or 30 minutes have passed without subsequent detections." This requirement was included in the notice of the proposed IHAs (89 FR 51102, June 14, 2024).

Further, in response to Furie's comments, NMFS has changed references to "oil and gas activities" to "natural gas activities" throughout, clarified that Hilcorp does intend to operate at Tyonek platform, and clarified that site-specific TL data for pile driving with relevant parallel characteristics are not available. Also in response to Furie's comments, NMFS updated its analysis to note that Furie may install conductor piles ranging in size from 20-in to 36-in depending on availability.

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. NMFS fully considered all of this information, and we refer the

reader to these descriptions, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' 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' website (<https://www.fisheries.noaa.gov/find-species>).

Additional information on Cook Inlet beluga whales may be found in NMFS' 2016 Recovery Plan for the Cook Inlet beluga whale, available online at <https://www.fisheries.noaa.gov/resource/document/recovery-plan-cook-inlet-beluga-whale-delphinapterus-leucas>, and NMFS' 2023 report on the abundance and trend of Cook Inlet beluga whales in Cook Inlet in June 2021 and June 2022, available online at

<https://www.fisheries.noaa.gov/resource/document/abundance-and-trend-belugas-delphinapterus-leucas-cook-inlet-alaska-june-2021-and-2022>.

Table 1 lists all species or stocks for which take is expected and authorized for this activity 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. 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 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 or stocks 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' 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. 2022 SARs. All values presented in table 1 are the most recent available at the time of publication (including from the draft 2023 SARs) and are available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>.

TABLE 1—SPECIES ¹ LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) ²	Stock abundance (CV, N _{min} , most recent abundance survey) ³	PBR	Annual M/SI ⁴
Order Artiodactyla—Cetacea—Mysticeti (baleen whales)						
<i>Family Eschrichtiidae:</i> Gray whale	<i>Eschrichtius robustus</i>	Eastern N Pacific	-, -, N	26,960 (0.05, 25,849, 2016).	801	131
<i>Family Balaenidae:</i> <i>Family Balaenopteridae</i> (rorquals):						
Fin whale	<i>Balaenoptera physalus</i>	Northeast Pacific	E, D, Y	UND ⁵ (UND, UND, 2013).	UND	0.6
Humpback whale	<i>Megaptera novaeangliae</i>	Hawai'i	-, -, N	11,278 (0.56, 7,265, 2020).	127	27.09
Humpback whale	<i>Megaptera novaeangliae</i>	Mexico-North Pacific	T, D, Y	N/A ⁶ (N/A, N/A, 2006)	UND	0.57
Humpback whale	<i>Megaptera novaeangliae</i>	Western North Pacific	E, D, Y	1,084 ⁷ (0.088, 1,007, 2006).	3.4	5.82
Minke whale	<i>Balaenoptera acutorostrata</i>	AK	-, -, N	N/A ⁸ (N/A, N/A, N/A)	UND	0
Odontoceti (toothed whales, dolphins, and porpoises)						
<i>Family Delphinidae:</i> Killer whale	<i>Orcinus orca</i>	Eastern North Pacific Alaska Resident.	-, -, N	1,920 (N/A, 1,920, 2019)	19	1.3
Killer whale	<i>Orcinus orca</i>	Eastern North Pacific Gulf of Alaska, Aleutian Islands and Bering Sea Transient.	-, -, N	587 (N/A, 587, 2012)	5.9	0.8
Pacific white-sided dolphin	<i>Lagenorhynchus obliquidens</i>	N Pacific	-, -, N	26,880 (N/A, N/A, 1990)	UND	0
<i>Family Monodontidae (white whales):</i> Beluga whale	<i>Delphinapterus leucas</i>	Cook Inlet	E, D, Y	279 ⁹ (0.061, 267, 2018)	0.53	0
<i>Family Phocoenidae (porpoises):</i> Dall's porpoise	<i>Phocoenoides dalli</i>	AK	-, -, N	UND ¹⁰ (UND, UND, 2015).	UND	37
Harbor porpoise	<i>Phocoena phocoena</i>	Gulf of Alaska	-, -, Y	31,046 (0.21, N/A, 1998)	UND	72
Order Carnivora—Pinnipedia						
<i>Family Otariidae (eared seals and sea lions):</i> CA sea lion	<i>Zalophus californianus</i>	U.S.	-, -, N	257,606 (N/A, 233,515, 2014).	14,011	>321
Steller sea lion	<i>Eumetopias jubatus</i>	Western	E, D, Y	49,837 ¹¹ (N/A, 49,837, 2022).	299	267
<i>Family Phocidae (earless seals):</i>						

TABLE 1—SPECIES¹ LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) ²	Stock abundance (CV, N _{min} , most recent abundance survey) ³	PBR	Annual M/SI ⁴
Harbor seal	<i>Phoca vitulina</i>	Cook Inlet/Shelikof Strait	-, -, N	28,411 (N/A, 26,907, 2018).	807	107

¹ Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (<https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/>; Committee on Taxonomy (2022)).

² 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.

³ NMFS marine mammal SARs online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region>. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

⁴ 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. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

⁵ The best available abundance estimate for this stock is not considered representative of the entire stock as surveys were limited to a small portion of the stock's range. Based upon this estimate and the N_{min}, the PBR value is likely negatively biased for the entire stock.

⁶ Abundance estimates are based upon data collected more than 8 years ago and, therefore, current estimates are considered unknown.

⁷ The best estimates of abundance for the stock (1,084) and the portion of the stock migrating to summering areas in U.S. waters (127) were derived from a reanalysis of the 2004–2006 SPLASH data (Wade 2021). Although these data are more than fifteen years old, the estimates are still considered valid minimum population estimates.

⁸ Reliable population estimates are not available for this stock. Please see Friday *et al.* (2013) and Zerbini *et al.* (2006) for additional information on numbers of minke whales in Alaska.

⁹ On June 15, 2023, NMFS released an updated abundance estimate for endangered Cook Inlet beluga whales in Alaska (Goetz *et al.* 2023). Data collected during NOAA Fisheries' 2022 aerial survey suggest that the whale population is stable or may be increasing slightly. Scientists estimated that the population size is between 290 and 386, with a median best estimate of 331. In accordance with the MMPA, this population estimate will be incorporated into the Cook Inlet beluga whale SAR, which will be reviewed by an independent panel of experts, the Alaska Scientific Review Group. After this review, the SAR will be made available as a draft for public review before being finalized.

¹⁰ The best available abundance estimate is likely an underestimate for the entire stock because it is based upon a survey that covered only a small portion of the stock's range.

¹¹ Nest is best estimate of counts, which have not been corrected for animals at sea during abundance surveys.

As indicated above, all 12 species (with 15 number managed stocks) in table 3 temporally and spatially co-occur with the activity to the degree that take could occur. In addition, the northern sea otter may be found in Cook Inlet, Alaska. However, northern sea otters are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

A detailed description of the species likely to be affected by Furie's activities, including a brief introduction to the affected stock as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice of the proposed IHA (89 FR 51102; June 14, 2024). Since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here.

Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (<https://www.fisheries.noaa.gov/find-species>) for generalized species accounts.

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. 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 hearing groups based on directly measured

(behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). 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 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 and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in table 2.

TABLE 2—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, <i>Kogia</i> , river dolphins, Cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>)	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 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 *et al.* 2013). This division between phocid and otariid pinnipeds is now reflected in the updated hearing groups proposed in Southall *et al.* (2019).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from Furie's activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the project area. The notice of proposed IHA (89 FR 51102; June 14, 2024) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from rig tugging and pile driving on marine mammals and their habitat. That information and analysis is referenced in this final IHA determination and is not repeated here; please refer to the notice of proposed IHA (89 FR 51102; June 14, 2024).

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes authorized through the IHAs, which will inform NMFS' consideration of "small numbers," the negligible impact determinations, and impacts on subsistence uses.

Harassment is the only type of take expected to result from these 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 will primarily be by Level B harassment, as use of the acoustic sources (*i.e.*, pile driving and tug towing and positioning) may result in disruption of behavioral patterns of individual marine mammals. We note here that given the slow, predictable, and generally straight path of tug towing

and positioning, the likelihood of a resulting disruption of marine mammal behavioral patterns that would qualify as harassment is considered relatively low; however, at the request of the applicant, we have quantified the potential take from this activity, analyzed the impacts, and authorized take. There is also some potential for auditory injury (Level A harassment) to result to phocids because of species occurrence and because predicted auditory injury zones are larger than for mid-frequency and otariid species. Auditory injury is unlikely to occur for low-frequency, mid-frequency, high-frequency, or otariid species. The required mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or authorized for this activity. Below we describe how the take numbers are estimated.

To determine whether Level B harassment is expected to result from acoustic exposure, NMFS considers both the received levels a marine mammal is expected to be exposed to as compared to the relevant NMFS Level B harassment thresholds, as well as contextual factors that can impact whether a marine mammal's behavioral patterns are likely to be disrupted (*e.g.*, bearing and distance, predictability of source movement, whether habituation in a noisier/busy area is likely); specifically, whether any contextual factors would be expected to reduce the likelihood of behavioral disturbance even when a marine mammal is exposed above the Level B harassment threshold. Where the take of marine mammals is considered likely or is requested by the applicant, 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 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) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential 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 take estimates.

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 or exposure context (*e.g.*, frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.*, bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.*, Southall *et al.* 2007, 2021, Ellison *et al.* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to support the estimation of the onset of Level B harassment and to quantify likely Level B harassment. Acknowledging the consideration of contextual factors noted above, NMFS generally predicts that marine mammals are likely to be affected in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB re 1 μ Pa for continuous (*e.g.*, vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 μ Pa for non-explosive impulsive (*e.g.*, seismic airguns) or intermittent (*e.g.*, scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these thresholds are expected to include any likely takes by temporary threshold shift (TTS) as, in most cases, the likelihood of TTS occurs at distances from the source smaller than those at which onset of Level B harassment is likely. TTS of a sufficient degree can manifest as Level B harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in disruptions in behavior patterns that would not otherwise occur.

Furie's planned activity includes the use of continuous (tugs towing rig) and impulsive (impact pile driving) sources, and therefore the RMS SPL thresholds

of 120 and 160 dB re 1 μ Pa are applicable.

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 5 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). Furie's planned activity includes the use of impulsive (impact pile driving) and non-impulsive (tugs towing and positioning rig) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the

development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>.

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds* (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	Cell 1: $L_{pk,flat}$: 219 dB; $L_E,LF,24h$: 183 dB	Cell 2: $L_E,LF,24h$: 199 dB.
Mid-Frequency (MF) Cetaceans	Cell 3: $L_{pk,flat}$: 230 dB; $L_E,MF,24h$: 185 dB	Cell 4: $L_E,MF,24h$: 198 dB.
High-Frequency (HF) Cetaceans	Cell 5: $L_{pk,flat}$: 202 dB; $L_E,HF,24h$: 155 dB	Cell 6: $L_E,HF,24h$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	Cell 7: $L_{pk,flat}$: 218 dB; $L_E,PW,24h$: 185 dB	Cell 8: $L_E,PW,24h$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	Cell 9: $L_{pk,flat}$: 232 dB; $L_E,OW,24h$: 203 dB	Cell 10: $L_E,OW,24h$: 219 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 μ Pa, and cumulative sound exposure level (L_E) has a reference value of 1 μ Pa²s. 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 OW pinnipeds) 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, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss (TL) coefficient.

The sound field in the project area is the existing background noise plus additional noise from the planned project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.*, pile driving and tug towing and positioning). The calculated distance to the farthest Level B harassment isopleth is approximately 4,483 m (2.8 miles (mi)).

The project includes impact installation of up to two conductor pipe piles (ranging in potential size from 20-in to 36-in) in each year. The monopod leg of the JRP will encase the well slot, which will encase the conductor pipes;

therefore, some attenuation is expected during conductor pipe pile installation. However, water-filled isolation casings (such as the well slot and caisson at the JRP) are expected to provide limited sound attenuation (Caltrans 2015). Due to the well slot's reflective surfaces and the monopod leg's caisson inside the JRP, some attenuation of the impact noise is expected before reaching the open water. However, lacking project-specific empirical data for a 20-in to 36-in conductor installed within a well slot located within a monopod leg, the unaltered sound source levels (SSLs) from U.S. Navy (2015) are used to calculate Level A harassment and Level B harassment isopleths.

For tug activities, as described in 87 FR 27597 (May 9, 2022), Hilcorp conducted a literature review of available source level data for tugs under load in varying power output scenarios. Table 4 below provides

values of measured source levels for tugs varying from 2,000 to 8,200 horsepower. For the purposes of this table, berthing activities could include tugs either pushing or pulling a load. The SSLs appear correlated to speed and power output, with full power output and higher speeds generating more propeller cavitation and greater SSLs than lower power output and lower speeds. Additional tug source levels are available from the literature but they are not specific to tugs under load but rather measured values for tugs during activities such as transiting, docking, and anchor pulling. For a summary of these additional tug values, see table 7 in Hilcorp's 2022 IHA application, available at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-hilcorp-alaska-llc-oil-and-gas-activities-cook-inlet-alaska-0>.

TABLE 4—LITERATURE VALUES OF MEASURED TUG SOURCE LEVELS

Vessel	Vessel length (m)	Speed (knots)	Activity	Source level @1 m (re: 1 μ Pa)	Horsepower	Reference
Eagle	32	9.6	Towing barge	173	6,770	Bassett <i>et al.</i> 2012.
Valor	30	8.4	Towing barge	168	2,400	
Lela Joy	24	4.9	Towing barge	172	2,000	
Pacific Eagle	28	8.2	Towing barge	165	2,000	
Shannon	30	9.3	Towing barge	171	2,000	
James T Quigg	30	7.9	Towing barge	167	2,000	

TABLE 4—LITERATURE VALUES OF MEASURED TUG SOURCE LEVELS—Continued

Vessel	Vessel length (m)	Speed (knots)	Activity	Source level @ 1 m (re: 1 μ Pa)	Horsepower	Reference
Island Scout	30	5.8	Towing barge	174	4,800	Austin <i>et al.</i> 2013. Roberts Bank Terminal 2 Technical Report 2014.
Chief	34	11.4	Towing barge	174	8,200	
Lauren Foss	45	N/A	Berthing barge	167	8,200	
Seaspan Resolution	30	N/A	Berthing at half power	180	6,000	
Seaspan Resolution	30	N/A	Berthing at full power	200	6,000	

The Roberts Bank Terminal 2 Technical Report (2014), although not in Cook Inlet, includes repeated measurements of the same tug operating under different speeds and loads. This allows for a comparison of source levels from the same vessel at half power versus full power, which is an important distinction for Furie's activities, as a small fraction of the total time spent by tugs under load will be at greater than 50 percent power. The Seaspan Resolution's half-power berthing scenario has a sound source level of 180 dB re 1 μ Pa at 1 m. In addition, the Roberts Bank Report (2014) analyzed 650 tug transits under varying load and speed conditions and reported mean tug source levels of 179.3 dB re 1 μ Pa at 1 m; the 25th percentile

was 179.0 dB re 1 μ Pa at 1 m, and 5th percentile source levels were 184.9 dB re 1 μ Pa at 1 m.

Based solely on the literature review, a source level of 180 dB for a single tug under load would be appropriate. However, Furie's use of a three tug configuration would increase the literature source level to approximately 185 dB at 1 m (Lawrence *et al.* 2022, as cited in Weston and SLR 2022).

As described in the *Detailed Description of the Specific Activity* section of the notice of proposed IHA (89 FR 51102, June 14, 2024), based on in situ measurements of Hilcorp's tug and a review of the available literature of tugs under load described above, NMFS finds that a source level of 185 dB re 1 μ Pa is appropriate for Furie's 3 tug configuration for towing the rig.

As described above in the *Detailed Description of the Specific Activity* section, Furie may need to use four tugs to position the rig at the JRP. The SPL_{RMS} of 185 dB for three tugs at 50 percent power implies each tug individually has a source level of 180.2 dB SPL_{rms} because the addition of 3 equal-intensity sound signals adds 4.8 dB to the sound level of a single source (Engineering Toolbox 2023). Each doubling of sound intensity adds 3 dB to the baseline (Engineering Toolbox 2023), and 4 tugs represents two doublings of a single source. Therefore, adding 6 dB to the 180.2 dB baseline results in an expected SSL of 186.2 dB rms SPL for the use of 4 tugs. Source levels for each activity are presented in table 5.

TABLE 5—SSLs FOR PROJECT ACTIVITIES

Sound source	SSL	
	SEL	SPL _{RMS}
3 tugs at 50 percent power .....	.....	185 dB at 1 m.
4 tugs at 50 percent power .....	.....	186.2 dB at 1 m.
Conductor pipe pile (20-in to 36-in, impact)	184 dB at 10 m	193 dB at 10 m.

Several factors will determine the duration that the tugboats are towing the Enterprise 151, including the origin and destination of the towing route (e.g., Rig Tenders Dock, the JRP, one of Hilcorp's platforms) and the tidal conditions. The power output will be variable and influenced by the prevailing wind direction and velocity, the current velocity, and the tidal stage. To the extent feasible, transport will be timed with the tide to minimize towing duration and power output.

TL is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * \log_{10} (R1/R2),$$

where

TL = transmission loss in dB

B = transmission loss coefficient

R1 = the distance of the modeled SPL from the driven pile, and

R2 = the distance from the driven pile of the initial measurement

Absent site-specific acoustical monitoring with differing measured TL, a practical spreading value of 15 is used as the TL coefficient in the above formula. Site-specific TL data for pile driving with relevant parallel characteristics are not available; therefore, the default coefficient of 15 is used to determine the distances to the Level A harassment and Level B harassment thresholds for conductor pile driving.

For its tugging activities, Hilcorp contracted SLR Consulting to model the extent of the 120-dB isopleth as well as

the extent of the Level A harassment isopleth for their planned tugging using three tugs. Rather than applying practical spreading loss, SLR Consulting created a more detailed propagation loss model in an effort to improve the accuracy of the results by considering the influence of environmental variables (e.g., bathymetry) at Hilcorp's specific well sites. Modeling was conducted using dBSea software. The fluid parabolic equation modeling algorithm was used with 5 Padé terms (see page 57 in Hilcorp's application, available at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-hilcorp-alaska-llc-oil-and-gas-activities-cook-inlet-alaska-0>, for more detail) to calculate the TL between the source and the receiver at low frequencies ($\frac{1}{3}$ -octave bands, 31.5 Hertz (Hz) up to 1 kilohertz (kHz)). For higher frequencies (1 kHz up to 8 kHz) the ray tracing

model was used with 1,000 reflections for each ray. Sound sources were assumed to be omnidirectional and modeled as points. The received sound levels for the project were calculated as follows: (1) One-third octave source spectral levels were obtained via reference spectral curves with subsequent corrections based on their corresponding overall source levels; (2) TL was modeled at one-third octave band central frequencies along 100 radial paths at regular increments around each source location, out to the maximum range of the bathymetry data set or until constrained by land; (3) The bathymetry variation of the vertical plane along each modeling path was obtained via interpolation of the bathymetry dataset which has 83 m grid resolution; (4) The one-third octave source levels and TL were combined to obtain the received levels as a function of range, depth, and frequency; and (5) The overall received levels were calculated at a 1 m depth resolution along each propagation path by summing all frequency band spectral levels.

Bathymetry data used in the model was collected from the NOAA National Centers for Environmental Information (AFSC 2019). Using NOAA’s temperature and salinity data, sound speed profiles were computed for depths from 0 to 100 m for May, July, and October to capture the range of possible sound speed depending on the time of year Hilcorp’s work could be conducted. These sound speed profiles were compiled using the Mackenzie Equation (1981) and are presented in table 8 of Hilcorp’s application (available at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-hilcorp-alaska-llc-oil-and-gas-activities-cook-inlet-alaska-0>). Geoacoustic parameters were also incorporated into the model. The parameters were based on substrate type and their relation to depth. These parameters are presented in table 9 of Hilcorp’s application (available at

<https://www.fisheries.noaa.gov/action/incidental-take-authorization-hilcorp-alaska-llc-oil-and-gas-activities-cook-inlet-alaska-0>).

Detailed broadband sound TL modeling in dBSea used the source level of 185 dB re 1 μ Pa at 1 m calculated in one-third octave band levels (31.5 Hz to 64,000 Hz) for frequency dependent solutions. The frequencies associated with tug sound sources occur within the hearing range of marine mammals in Cook Inlet. Received levels for each hearing marine mammal group based on one-third octave auditory weighting functions were also calculated and integrated into the modeling scenarios of dBSea. For modeling the distances to relevant PTS thresholds, a weighting factor adjustment was not used; instead, the data on the spectrum associated with their source was used and incorporated the full auditory weighting function for each marine mammal hearing group.

Furie plans to use the tugs towing the rig for two functions, rig positioning and towing. The activity was divided into two parts (stationary and mobile) and two approaches were taken for modeling the relevant isopleths.

SLR’s model, described above, calculated the 120-dB isopleth propagating from three tugs towing a jack-up rig at 25 locations between Hilcorp platforms and well sites and the Rig Tenders Dock in Nikiski, Alaska. The average 120-dB isopleth across all locations and seasons was determined to be 3,850 m (Weston and SLR 2022). Given that Furie is conducting the same three tug activity as Hilcorp, also in middle Cook Inlet, Furie estimates, and NMFS concurs, that 3,850 m is also an appropriate estimate of its Level B harassment zone for tugging using three tugs. Similarly, Hilcorp modeled Level A harassment zones for each hearing group; Furie proposed using these Level A harassment zones for its towing and positioning activities using three tugs, and NMFS concurs. These zones are included in table 8.

As described in the Description of Proposed Activity section of the notice of the proposed IHA (89 FR 51102; June 14, 2024), when positioning the rig, Furie may use four tugs for up to 1 hour. Hilcorp did not model a 120-dB zone accounting for the use of four tugs. Furie estimated the Level B harassment zones for tugging and positioning with four tugs using a sound source level of 186.2 dB and a TL of 18.129.

NMFS estimated the Level A harassment zones from the use of four tugs using its User Spreadsheet and the Level A harassment zones modeled by Hilcorp for the use of three tugs. First, NMFS calculated the Level A harassment zones for the three tug scenario using the User Spreadsheet (sound source level of 185 dB, 5 hours of sound production, and a propagation loss coefficient of 18.129). Next, NMFS calculated the Level A harassment zones for the “combined scenario” (use of three tugs for 5 hours and four tugs for 1 hour, combined). NMFS then calculated the ratio between the three tug scenario and the combined scenario. For all hearing groups the combined scenario Level A harassment isopleths are 13.8 percent larger than the three tug scenario. Rather than using the Level A harassment isopleths for the combined scenario that were calculated using the User Spreadsheet, NMFS applied a 13.8 percent increase to the three tug Level A harassment isopleths modeled by Hilcorp, given that those isopleths are more conservative than the isopleths NMFS calculated using the User Spreadsheet. The Level A harassment isopleths that Furie will implement are included in table 8.

The 120-dB isopleth from the use of four tugs is 4,483 m, as described in Furie’s application and included in table 6, calculated using a sound source level of 186.2 dB SPL. NMFS concurs and estimates a 120-dB zone of 4,483 m for the purpose of predicting the number of potential takes by Level B harassment from tugging and positioning using four tugs (Table 8).

TABLE 6—USER SPREADSHEET INPUTS (SOURCE LEVELS PROVIDED IN TABLE 5)

Source	Number of strikes per pile	Number of piles per day	Transmission loss coefficient
Conductor pipe pile, Day 1 (70 percent installation)	6,100	0.7	15
Conductor pipe pile, Day 2 (30 percent installation) .....	.....	0.3	.....

TABLE 7—LEVEL A HARASSMENT ISOPLETHS CALCULATED USING NMFS' USER SPREADSHEET, AND USED TO DETERMINE THE RATIO BETWEEN THE THREE TUG SCENARIO AND THREE AND FOUR TUGS COMBINED SCENARIO

Scenario	Level A harassment isopleth (m)				
	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid pinnipeds	Otariid pinnipeds
Three Tug Scenario Level A harassment Isopleth	17.2	9.7	178.9	9.1	0.9
Combined Scenario Level A harassment Isopleth	19.6	11.0	203.6	10.3	1.0

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this

optional tool, we anticipate that the resulting isopleth estimates are typically overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources such as conductor pipe pile driving and rig positioning, the optional User Spreadsheet tool predicts the distance at

which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. For mobile sources such as tugging, the optional User Spreadsheet tool predicts the closest distance at which a stationary animal would not be expected to incur PTS if the sound source traveled by the stationary animal in a straight line at a constant speed. Inputs used in the optional User Spreadsheet tool, and the resulting estimated isopleths, are reported below.

TABLE 8—LEVEL A HARASSMENT AND LEVEL B HARASSMENT ISOPLETHS FROM TUGGING AND IMPACT PILE DRIVING

Sound source	Level A harassment isopleths (m)					Level B harassment isopleths (m)
	LF	MF	HF	PW	OW	
Conductor pipe pile, 70 percent installation	3,064	109	3,650	1,640	119	1,585
Conductor pipe pile, 30 percent installation	1,742	62	2,075	932	68	.....
Tugging/Positioning, 3 Tugs ¹	95	78	679	69	0	3,850
Tugging/Positioning, 4 Tugs ²	108	89	773	79	1	4,483

¹ These zones are results from Hilcorp's modeling.

² For otariids, Hilcorp's model estimated a Level A harassment zone of 0 during tugging/positioning with three tugs. Therefore, for four tugs, NMFS applied the Level A harassment zone calculating with the User Spreadsheet.

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including density or other relevant information which will inform the take calculations.

Densities for marine mammals in Cook Inlet were derived from NMFS' Marine Mammal Laboratory (MML) aerial surveys, typically flown in June, from 2000 to 2018 (Rugh *et al.* 2005;

Shelden *et al.* 2013, 2015, 2017, 2019). While the surveys are concentrated for a few days in June annually, which may skew densities for seasonally present species, they are still the best available long-term dataset of marine mammal sightings available in Cook Inlet. (Note that while more recent surveys have been conducted and published (Shelden *et al.* 2022; Goetz *et al.* 2023), the surveyed area was not included in either report, therefore they were not

used to calculate density). Density was calculated by summing the total number of animals observed and dividing the number sighted by the area surveyed. The total number of animals observed accounts for both lower and upper Cook Inlet. There are no density estimates available for California sea lions and Pacific white-sided dolphins in Cook Inlet, as they are so infrequently sighted. Densities are presented in table 9.

TABLE 9—MARINE MAMMAL DENSITIES

Species	Density (individuals/km ²)
Humpback whale	0.00177
Minke whale	0.000009
Gray whale	0.000075
Fin whale	0.000311
Killer whale	0.000601
Beluga (Trading Bay)	0.004453–0.015053
Beluga (North Cook Inlet)	0.001664
Dall's porpoise	0.000154
Harbor porpoise	0.004386
Pacific white-sided dolphin	0

TABLE 9—MARINE MAMMAL DENSITIES—Continued

Species	Density (individuals/km ²)
Harbor seal	0.241401
Steller sea lion	0.007609
California sea lion	0

For the beluga whale density, Furie, and subsequently NMFS, used the Goetz *et al.* (2012) habitat-based model. This model is derived from sightings and incorporates depth soundings, coastal substrate type, environmental sensitivity index, anthropogenic disturbance, and anadromous fish streams to predict densities throughout Cook Inlet. The output of this model is a beluga density map of Cook Inlet, which predicts spatially explicit density estimates for Cook Inlet belugas. Using the resulting grid densities, average densities were calculated for two regions applicable to Furie's operations. The densities applicable to the area of activity (*i.e.*, the North Cook Inlet Unit density for middle Cook Inlet activities and the Trading Bay density for activities in Trading Bay) are provided in table 9 and were carried forward to the take estimates. Likewise, when a range is given, the higher end of the range was conservatively used to calculate take estimates (*i.e.*, Trading Bay in the Goetz model has a range of 0.004453 to 0.015053; 0.015053 was used for the take estimates).

Take Estimation

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and is authorized in each IHA.

Year 1 IHA

As described above, Furie plans to conduct rig towing and positioning and may install up to two conductor piles using an impact hammer in year 1. To quantify potential take by Level B harassment from tugging, acknowledging that there are contextual factors that make take less likely to

result from this activity, for each species, Furie summed the estimated take for towing the rig at the beginning of the season, positioning the rig, and towing the rig at the end of the season. To estimate take for towing the rig (beginning and end of season), Furie multiplied the area of the Level B harassment zone (316.1 square kilometers (km²); inclusive of the full potential tug path of 35 km) by the species density (table 9). To estimate take for positioning the rig, Furie multiplied the maximum area of the Level B harassment zone (63.1 km², 4 tugs) by the species density (table 9), by the number of potential positioning attempts (2 attempts). NMFS concurs that this method for estimating take from tugging activities is appropriate.

To estimate take by Level B harassment from installation of conductor piles, Furie multiplied the Level B harassment zone (7.98 km²) by the species density (table 9) by the estimated number of days that conductor pile installation would occur (4 days, 2 per pile). The Level B harassment zone used in the calculation conservatively assumes 70 percent installation of a conductor pile on a given day, and therefore, on 2 of the 4 days that conductor piles would be installed, the Level B harassment zone would likely be smaller. NMFS concurs that this method for estimating take from pile driving activities is appropriate.

NMFS summed the estimated take by Level B harassment from tugging and pile driving activities for each species. For species where the total calculated take by Level B harassment is less than the estimated group size for that species, NMFS rounded up the authorized take

by Level B harassment to the anticipated group size. Authorized take during year 1 activities is included in table 10.

Based on the analysis described above, NMFS does not authorize take by Level A harassment related to Furie's tugging activity. For mobile tugging activity, the distances to the PTS thresholds for high frequency cetaceans (the only hearing group for which modeling results in a Level A harassment zone greater than 0 m) are smaller than the overall size of the tug and rig configuration, making it unlikely a cetacean would remain close enough to the tug engines for a long enough duration to incur PTS. For stationary positioning of the rig, the PTS isopleths are up to 679 m for high frequency cetaceans, but calculated with the assumption that an animal would remain within several hundred meters of the rig for the full 5 hours of noise-producing activity which is unlikely. Therefore, take by Level A harassment due to stationary or mobile tugging is neither anticipated nor authorized.

For conductor pile installation, NMFS anticipates take by Level A harassment for harbor seal only. For all other species, calculated take by Level A harassment takes is less than one. Considering that along with the low likelihood that an individual of these species would enter and remain within the Level A harassment zone for long enough to incur PTS, particularly in consideration of implementation of required shutdown zones, Furie did not request, nor did NMFS authorize, take by Level A harassment. For harbor seal, NMFS authorized 3 takes by Level A harassment, conservatively rounded up from 2.7 Level A harassment takes calculated.

TABLE 10—AUTHORIZED TAKE BY LEVEL B HARASSMENT, BY SPECIES, ACTIVITY, AND IN TOTAL, YEAR 1

Species	Rig tow, 3 tugs		Rig positioning, 4 tugs		Conductor pile installation		Total year 1 estimated take by Level B harassment	Authorized take by Level B harassment
	Ensonified area (km ²) ¹	Calculated take by Level B harassment ²	Ensonified area (km ²)	Calculated take by Level B harassment ³	Ensonified area (km ²)	Calculated take by Level B harassment ⁴		
Humpback whale	316.1	1.2	63.1	0.2	7.89	0.06	1.5	3
Minke whale		0.006		0.001		0.0003	0.007	3
Gray whale		0.04		0.009		0.002	0.05	3
Fin whale		0.2		0.04		0.01	0.3	2
Killer whale		0.4		0.08		0.02	0.5	10
Beluga (Trading Bay)		0.5		0.2		0.05	0.8	11
Beluga (NCI)		4.8		NA		NA	4.8	

TABLE 10—AUTHORIZED TAKE BY LEVEL B HARASSMENT, BY SPECIES, ACTIVITY, AND IN TOTAL, YEAR ¹—Continued

Species	Rig tow, 3 tugs		Rig positioning, 4 tugs		Conductor pile installation		Total year 1 estimated take by Level B harassment	Authorized take by Level B harassment
	Ensonified area (km ²) ¹	Calculated take by Level B harassment ²	Ensonified area (km ²)	Calculated take by Level B harassment ³	Ensonified area (km ²)	Calculated take by Level B harassment ⁴		
Dall's porpoise		0.1		0.01		0.005	0.1	6
Harbor porpoise		2.8		0.3		0.1	3.2	12
Pacific white-sided dolphin		0.000		0.000		0.000	0.000	3
Harbor seal		152.6		15.2		7.6	175.4	176
Steller sea lion		4.8		0.5		0.2	5.5	6
California sea lion		0.000		0.000		0.000	0.000	2

¹ This zone assumes a 35 km towing distance (the farthest potential distance that Furie may need to tow the rig).

² Level B harassment zone area $\times$ density $\times$ 2 (towing at beginning and end of season), with the exception of Cook Inlet beluga whale. For Cook Inlet beluga whale, Furie used the Trading Bay density for the initial rig tow since the density is predicted to be higher there than in the North Cook Inlet Lease Unit (located offshore in middle Cook Inlet), and Furie may tug the rig through that area. Furie used the NCI density to estimate take for the end of season tow. NMFS concurs and has used these two separate densities in its analysis.

³ Level B harassment zone (63.1 km²) $\times$ species density (table 9) $\times$ number of potential positioning attempts (2).

⁴ Level B harassment zone (7.89 km²) $\times$ species density (table 9) $\times$ estimated number of days that conductor pile installation will occur (4).

Explanations for species for which the authorized take is greater than calculated take are included below.

Several recent surveys and monitoring programs have documented groups of humpback whales ranging up to 14 whales in size. During the annual survey, Shelden *et al.* (2022) recorded a group of three humpback whales west of Kachemak Bay in June of 2022. Past annual aerial surveys have documented groups up to 12 in number (Shelden *et al.* 2013, 2015, 2016, 2019). During Hilcorp's lower Cook Inlet seismic survey, group size ranged from 1 to 14 (Fairweather Science 2020). During monitoring of the Harvest Alaska Cross Inlet Pipeline (CIPL) project (the closest to Furie's Action Area), two sightings of three humpbacks were reported. During construction of the JRP in 2015, a group of 6 to 10 unidentified whales, thought to be either gray whales or humpbacks, was observed approximately 15 km northeast of the platform (Jacobs 2015). There were two sightings of three humpback whales observed near Ladd Landing north of the Forelands during the Harvest Alaska CIPL project (Sitkiewicz *et al.* 2018). Furie requested, and NMFS authorized, three takes of humpback whale by Level B harassment in year 1. This estimate accounts for the potential of take of a group of two animals and a solitary animal.

Groups of up to three minke whales have been recorded in recent years, including one group of three southeast of Kalgin Island (Lomac-MacNair *et al.* 2014). Other recent surveys in Cook Inlet typically have documented minke whales traveling alone (Shelden *et al.* 2013, 2015, 2017; Kendall *et al.* 2015, as cited in Weston and SLR 2022; Fairweather Science 2020). As the occurrence of minke whales is expected to be less in middle Cook Inlet than lower Cook Inlet and considering the observed group sizes, Furie requested, and NMFS

authorized, 3 takes of minke whale by Level B harassment in year 1 to account for the potential of take of a group of 3 minke whales.

During Apache's 2012 seismic program, nine gray whales were observed in June and July (Lomac-MacNair *et al.* 2013). During Apache's seismic program in 2014, one gray whale was observed (Lomac-MacNair *et al.* 2014). During construction of the JRP in 2015, 1 gray whale was documented approximately 5 km from the platform, and a group of 6 to 10 unidentified whales, thought to be either gray whales or humpbacks, was observed approximately 15 km northeast of the platform (Jacobs 2015). During SAExploration's seismic survey in 2015, the 2018 CIPL project, and Hilcorp's 2019 seismic survey, no gray whales were observed (Kendall *et al.* 2015; Sitkiewicz *et al.* 2018; Fairweather Science, 2020). None were observed during the 2018 CIPL project in middle Cook Inlet (Sitkiewicz *et al.* 2018). In 2020 and 2021, one gray whale was reported in each season at the POA (61N 2021, 2022a). The documented occasional presence of gray whales near and north of the project area suggests that gray whale density may be seasonally higher than the relatively low density suggested by the aerial surveys. Considering the project area is in middle Cook Inlet where sightings of gray whales are less common, Furie requested, and NMFS authorized, take of 3 gray whales in year 1.

During seismic surveys conducted in 2019 by Hilcorp in the lower Cook Inlet, fin whales were recorded in groups ranging in size from 1 to 15 individuals (Fairweather, 2020). During the NMFS aerial surveys in Cook Inlet from 2000 to 2018, 10 sightings of 26 estimated individual fin whales in lower Cook Inlet were observed (Shelden *et al.* 2013, 2015, 2016, 2019). Furie

requested, and NMFS authorized, take of 1 group of 2 fin whales (the lower end of the range of common group sizes) in year 1.

Killer whales are typically sighted in pods of a few animals to 20 or more (NOAA, 2022a). During seismic surveys conducted in 2019 by Hilcorp in the lower Cook Inlet, 21 killer whales were observed, either as single individuals or in groups ranging in size from 2 to 5 individuals (Fairweather, 2020). Furie requested 10 takes by Level B harassment in year 1 to account for 2 groups of 5 animals. NMFS concurs and authorized 10 takes by Level B harassment of killer whale.

The 2018 MML aerial survey (Shelden and Wade 2019) estimated a median group size of approximately 11 beluga whales, although group sizes were highly variable (2 to 147 whales) as was the case in previous survey years (Boyd *et al.* 2019). Over 3 seasons of monitoring at the POA, 61N reported groups of up to 53 belugas, with a median group size of 3 and a mean group size of 4.4 (61N 2021, 2022a, 2022b, and 2022c). Additionally, vessel-based surveys in 2019 observed beluga whale groups in the Susitna River Delta (roughly 24 km (15 miles) north of the Tyonek Platform) that ranged from 5 to 200 animals (McGuire *et al.* 2022). The very large groups seen in the Susitna River Delta are not expected in Trading Bay or offshore areas near the JRP or the towing route for the Enterprise 151. However, smaller groups (*i.e.*, around the median group size) could be traveling through to access the Susitna River Delta and other nearby coastal locations, particularly in the shoulder seasons when belugas are more likely to occur in middle Cook Inlet. Few if any takes of beluga whale are anticipated during impact installation of the conductor piles. Therefore, Furie requested, and NMFS authorized, 11

takes by Level B harassment of beluga whale in year 1.

Dall's porpoises typically occur in groups averaging between 2 and 12 individuals (NOAA, 2024b). During seismic surveys conducted in 2019 by Hilcorp in the lower Cook Inlet, Dall's porpoises were observed in groups ranging in size from two to seven individuals (Fairweather, 2020). The 2012 Apache survey recorded two groups of three individual Dall's porpoises (Lomac-MacNair, 2014). Because occurrence of Dall's porpoise is anticipated to be less in middle Cook Inlet than lower Cook Inlet, the smaller end of documented group sizes (three individuals) is used. NMFS authorized six takes (two groups of three animals) by Level B harassment of Dall's porpoise in year 1.

Shelden *et al.* (2014) compiled historical sightings of harbor porpoises from lower to upper Cook Inlet that spanned from a few animals to 92 individuals. The 2018 CIPL project that occurred just north of the Action Area in Cook Inlet reported 29 sightings of 44

individuals (Sitkiewicz *et al.* 2018).

While the duration of days that the tugs are towing a jack-up rig will be less than the CIPL project, given the increase in sightings of harbor porpoise in recent years, the sighting of harbor porpoise during Hilcorp's rig move in June 2022, and the inability to shut down the tugs, Furie requested, and NMFS authorized, 12 takes by Level B harassment of harbor porpoise. This accounts for two potential groups of six animals.

Calculated take of Pacific white-sided dolphin was zero because the estimated density is zero. However, in 2014, during Apache's seismic survey program, three Pacific white-sided dolphins were reported (Lomac-MacNair *et al.* 2014). They are considered rare in most of Cook Inlet, including in the lower entrance, but their presence was documented in Iniskin Bay and mid-inlet through passive acoustic recorders in 2019 (Castellote *et al.* 2020). Furie conservatively requested three takes based on the potential that a group similar in size to that encountered in

2014 could occur within the Level B harassment zone during project activities. NMFS concurs and has authorized three takes of Pacific white-sided dolphin by Level B harassment.

Calculated take of California sea lions was zero because the assumed density in Cook Inlet is zero. Any potential sightings would likely be of lone, out of habitat individuals. Two solitary individuals were seen during the 2012 Apache seismic survey in Cook Inlet (Lomac-MacNair *et al.* 2013). Furie requested two takes based on the potential that two lone animals could be sighted over a year of work, as was seen during Apache's year of work. NMFS concurs and has authorized two takes of California sea lion by Level B harassment.

Year 2 IHA

Given that Furie intends to conduct the same activities in year 2 as in year 1, authorized take by Level A harassment and Level B harassment for year 2 is the same as that authorized for year 1 (table 10).

TABLE 11—AUTHORIZED TAKE AS A PERCENTAGE OF STOCK ABUNDANCE

Species	Stock	Abundance (Nbest)	Year 1		Year 2	
			Total take (Level A and Level B harassment)	Take as a percentage of stock abundance	Total take (Level A and Level B harassment)	Take as a percentage of stock abundance
Humpback whale	Hawaii (Hawaii DPS)	11,278	3	<1	3	<1
	Mexico—North Pacific (Mexico DPS)	¹ N/A		N/A		N/A
	Western North Pacific	1,084		<1		<1
Minke whale	Alaska	² N/A	3	N/A	3	N/A
Gray whale	Eastern Pacific	26,960	3	<1	3	<1
Fin whale	Northeast Pacific	³ UND	2	N/A	2	N/A
Killer whale	Eastern North Pacific Alaska Resident	1,920	10	<1	10	<1
	Eastern North Pacific Gulf of Alaska, Aleutian Islands, and Bering Sea Transient	587		<1		<1
Beluga	Cook Inlet	⁴ 279	11	3.9	11	3.9
Dall's porpoise	Alaska	⁵ UND	6	N/A	6	N/A
Harbor porpoise	Gulf of Alaska	31,046	12	<1	12	<1
Pacific white-sided dolphin	North Pacific	26,880	3	<1	3	<1
Harbor seal	Cook Inlet/Shelikof	28,411	179	<1	179	<1
Steller sea lion	Western U.S	⁶ 49,932	6	<1	6	<1
California sea lion	U.S	257,606	2	<1	2	<1

¹ Abundance estimates are based upon data collected more than 8 years ago and, therefore, current estimates are considered unknown.

² Reliable population estimates are not available for this stock. Please see Friday *et al.* (2013) and Zerbini *et al.* (2006) for additional information on numbers of minke whales in Alaska.

³ The best available abundance estimate for this stock is not considered representative of the entire stock as surveys were limited to a small portion of the stock's range.

⁴ On June 15, 2023, NMFS released an updated abundance estimate for endangered Cook Inlet beluga whales in Alaska (Goetz *et al.* 2023). Data collected during NOAA Fisheries' 2022 aerial survey suggest that the whale population is stable or may be increasing slightly. Scientists estimated that the population size is between 290 and 386, with a median best estimate of 331. In accordance with the MMPA, this population estimate will be incorporated into the Cook Inlet beluga whale SAR, which will be reviewed by an independent panel of experts, the Alaska Scientific Review Group. After this review, the SAR will be made available as a draft for public review before being finalized. When the number of instances of takes is compared to this median abundance, the percent of the stock for which take is authorized is 3.3 percent.

⁵ The best available abundance estimate is likely an underestimate for the entire stock because it is based upon a survey that covered only a small portion of the stock's range.

⁶ Nest is best estimate of counts, which have not been corrected for animals at sea during abundance surveys.

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.

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)).

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 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, as well as subsistence uses. 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.

In addition to the measures described in detail below, Furie will conduct briefings between conductor pipe installation supervisors, vessel captains and crew, and the marine mammal monitoring team before the start of all in-water work and when new personnel join the work to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

Mitigation for Rig Tugging/Positioning

NMFS anticipates that there is a discountable potential for marine mammals to incur PTS from the tugging and positioning, as source levels are relatively low, non-impulsive, and animals would have to remain at very close distances for multiple hours to accumulate acoustic energy at levels that could damage hearing. Therefore, we do not believe there is reasonable potential for Level A harassment from rig tugging or positioning. However, Furie will implement a number of mitigation measures designed to reduce the potential for and severity of Level B harassment, and minimize the acoustic footprint of the project.

Protected Species Observers

Furie will station PSOs at the highest possible vantage point on either the rig or on one of the tugs.

Pre-Clearance and Post-Activity Monitoring

The tugs towing a rig are not able to shut down while transiting or positioning the rig. Furie will maneuver the tugs towing the rig such that they maintain a consistent speed (approximately 4 knots or less [7 km/hr]) and avoid multiple changes of speed and direction to make the course of the vessels as predictable as possible to marine mammals in the surrounding environment, characteristics that are expected to be associated with a lower likelihood of disturbance.

During tugging activities, Furie will implement a clearance zone of 1,500 m around the rig for all marine mammals other than Cook Inlet beluga whales. This clearance zone was determined to be appropriate as it is approximately twice as large as largest Level A harassment zone (table 10) and is a reasonable distance within which cryptic species (e.g., porpoises, pinnipeds) could be observed. For Cook Inlet beluga whales, Furie will implement a clearance zone that extends as far as PSOs can feasibly observe for Cook Inlet beluga whales. Prior to commencing new activities during daylight hours or if there is a 30-minute lapse in operational activities, the PSOs will monitor the clearance zone for marine mammals for 30 minutes (i.e., pre-clearance monitoring). (Note, transitioning from towing to positioning without shutting down is not considered commencing a new operational activity.) If no marine mammals are observed within the relevant clearance zone during this pre-clearance monitoring period, tugging activities may commence. If a non-beluga marine mammal(s) is observed within the relevant clearance zone during the pre-clearance monitoring period, tugging activities will be delayed, unless the delay interferes with the safety of working conditions. Operations will not commence until the PSO(s) observe that: (1) the non-beluga marine mammal(s) is outside of and on a path away from the clearance zone, or (2) for non-ESA-listed species, 15 minutes have elapsed without observing the marine mammal, or for ESA-listed species, 30 minutes have elapsed without observing the marine mammal. If a beluga whale is observed within the relevant clearance zone during those 30 minutes, operations may not commence until the beluga whale(s) is no longer detected at any range and 30 minutes have elapsed without any observations of beluga whales. PSOs must also conduct monitoring for marine mammals through 30 minutes post-

completion of any tugging activity each day, and after each stoppage of 30 minutes or greater.

During nighttime hours or low/no-light conditions, night-vision devices (NVDs) shown to be effective at detecting marine mammals in low-light conditions (e.g., Portable Visual Search-7 model, or similar) will be provided to PSOs to aid in their monitoring of marine mammals. Every effort will be made to observe that the relevant clearance zone is free of marine mammals by using night-vision devices and or the naked eye, however it may not always be possible to see and clear the entire clearance zones prior to nighttime transport. Prior to commencing new operational activities during nighttime hours, or if there is a 30-minute lapse in operational activities in low/no-light conditions, the PSOs must observe the extent visible while using night vision devices for 30 minutes (i.e., pre-clearance monitoring). If no marine mammals are observed during this pre-clearance period, tugging activities may commence. If a marine mammal(s) is observed within the pre-clearance monitoring period, tugging activities will be delayed, unless the delay interferes with the safety of working conditions. Operations will not commence until the PSO(s) observe that: (1) the animal(s) is outside of the observable area; or (2) for non-ESA-listed species, 15 minutes have elapsed without observing the marine mammal, or for ESA-listed species, 30 minutes have elapsed without observing the marine mammal. Once the PSOs have determined one of those conditions are met, operations may commence.

Should a marine mammal be observed during towing or positioning of the rig, the PSOs will monitor and carefully record any reactions observed until the towing or positioning has concluded. PSOs will also collect behavioral information on marine mammals sighted during monitoring efforts.

Nighttime Work

Furie will conduct tug towing operations with the tide, resulting in a low power output from the tugs towing the rig, unless human safety or equipment integrity is at risk. Due to the nature of tidal cycles in Cook Inlet, it is possible the most favorable tide for the towing operation will occur during nighttime hours. Furie will only operate the tug towing activities at night if necessary to accommodate a favorable tide. Prior to commencing operational activities during nighttime hours or low/no-light conditions, Furie must implement the pre-clearance measures described above.

Susitna Delta

The Tyonek platform is within the Susitna Delta Exclusion Zone identified in Hilcorp's IHAs (87 FR 62364, October 14, 2022). If Hilcorp conducts work at the Tyonek platform, it will maintain operatorship and control of the Enterprise 151 until the tow is underway with lines taut and the Enterprise 151 is under tug power. Once the tow is underway, Furie representatives will take over operatorship of the Enterprise 151.

Out of concern for potential disturbance to Cook Inlet beluga whales in sensitive and essential habitat, Furie would maintain a distance of 2.4 km from the mean lower-low water (MLLW) line of the Susitna River Delta (Beluga River to the Little Susitna River) between April 15 and November 15. The dates of applicability of this exclusion zone have been expanded based on new available science, including visual surveys and acoustic studies, which indicate that substantial numbers of Cook Inlet beluga whales continue to occur in the Susitna Delta area through at least mid-November (M. Castellote, pers. comm., T. McGuire, pers. comm.).

Mitigation for Conductor Pile Installation

Furie must implement the following measures for impact driving of conductor piles.

Shutdown Zones

The purpose of a shutdown zone is generally to define an area within which shutdown of the activity will occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Construction supervisors and crews, PSOs, and relevant Furie staff must avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 m of such activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions, as necessary to avoid direct physical interaction. Further, Furie must implement shutdown zones as described in table 12. Furie states that if a shutdown or delay occurs, impact installation of the conductor pipe will not commence or resume until the animal has voluntarily left and been visually confirmed to be 100 m beyond the shutdown zone and on a trajectory away from the zone, or 30 minutes have passed without subsequent detections. If Cook Inlet beluga whales are observed within or approaching the Level B harassment zone for conductor pipe

installation, impact installation of the conductor pipe will be delayed or halted until the beluga(s) have voluntarily left and been visually confirmed to be 100 m beyond the Level B harassment zone and on a trajectory away from the zone, or 30 minutes have passed without subsequent detections.

TABLE 12—SHUTDOWN ZONES FOR CONDUCTOR PIPE PILE DRIVING

Hearing group	Shutdown zone (m)
Low-frequency Cetaceans	2,000
Mid-frequency Cetaceans	110
High-frequency Cetaceans ...	400
Phocids	400
Otariids	120

Protected Species Observers

Furie will establish a monitoring location on the JRP at the highest possible vantage point to monitor to the maximum extent possible in all directions. Monitoring is described in more detail in the Monitoring and Reporting section, below.

Pre- and Post-Activity Monitoring

Monitoring must take place from 30 minutes prior to initiation of pile driving activity (*i.e.*, pre-start clearance monitoring) through 30 minutes post-completion of pile driving activity. Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine that the shutdown zones indicated in table 12 are clear of marine mammals. Pile driving may commence following 30 minutes of observation when the determination is made that the shutdown zones are clear of marine mammals. If a marine mammal is observed entering or within the shutdown zones, pile driving activity must be delayed or halted. If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone for 15 minutes (for non-ESA-listed species) or 30 minutes (for ESA-listed species) have passed without re-detection of the animal. With the exception of Cook Inlet beluga whales, if a marine mammal for which take by Level B harassment is authorized is present in the Level B harassment zone but beyond the relevant shutdown zone, activities may begin and Level B harassment take will be recorded.

Monitoring for Level A and Level B Harassment

PSOs will monitor the shutdown zones and beyond to the extent that PSOs can see. Monitoring beyond the shutdown zones enables observers to be aware of and communicate the presence of marine mammals in the project areas outside the shutdown zones and thus prepare for a potential cessation of activity should the animal enter the shutdown zone.

Soft Start

Soft-start procedures are used to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, soft start requires contractors to provide an initial set of three strikes at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. A soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

Mitigation for Helicopter Activities

Helicopters must transit at an altitude of 1,500 ft (457 m) or higher, to the extent practicable, while adhering to Federal Aviation Administration flight rules (*e.g.*, avoidance of cloud ceiling, *etc.*), excluding takeoffs and landing. If flights must occur at altitudes less than 1,500 ft due to environmental conditions, aircraft must make course adjustments, as needed, to maintain at least a 1,500-foot separation from all observed marine mammals. Helicopters must not hover or circle above marine mammals. A minimum transit altitude is expected to reduce the potential for disturbance to marine mammals from transiting aircraft.

Based on our evaluation of Furie's proposed measures, as well as other measures considered by NMFS (*i.e.*, the extended clearance zone for beluga whales), for both IHAs, NMFS has determined that the required mitigation measures provide the means of 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, and on the availability of such species or stock for subsistence uses.

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 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 activity; 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); and
- Mitigation and monitoring effectiveness.

Monitoring

Furie will abide by all monitoring and reporting measures contained within the IHAs, and their Marine Mammal Monitoring and Mitigation Plan (see Appendix B of Furie's application). A summary of those measures and additional requirements from NMFS is provided below.

A minimum of two NMFS-approved PSOs will be on-watch during all activities wherein the rig is attached to the tugs for the duration of the project.

PSOs will be stationed aboard a tug or the rig during tug towing and positioning and may use a combination of equipment to perform marine mammal observations and to verify the required monitoring distance from the project site, including 7 by 50 binoculars and NMFS approved NVDs for low light and nighttime operations. A minimum of two NMFS-approved PSOs will be stationed on the JRP at the highest possible vantage point to monitor to the maximum extent possible in all directions during pile driving. PSOs will be independent of the activity contractor (for example, employed by a subcontractor) and have no other assigned tasks during monitoring periods. At least one PSO will have prior experience performing the duties of a PSO during an activity pursuant to a NMFS-issued Incidental Take Authorization or Letter of Concurrence. Other PSOs may substitute other relevant experience (including relevant Alaska Native traditional knowledge), education (degree in biological science or related field), or training for prior experience performing the duties of a PSO. Where a team of three or more PSOs is required, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience performing the duties of a PSO during an activity pursuant to a NMFS-issued incidental take authorization.

PSOs will also have the following additional qualifications:

- PSOs must be able to conduct field observations and collect data according to assigned protocols;
- PSOs must have experience or training in the field identification of marine mammals, including the identification of behaviors;
- PSOs must have sufficient training, orientation, or experience with the tugging operation to provide for personal safety during observations;
- PSOs must have sufficient writing skills to record required information including but not limited to the number and species of marine mammals observed; dates and times when in-water tugging activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
- PSOs must have the 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.

Reporting

Furie will submit interim monthly reports for all months in which tugs towing, holding, or positioning the rig occurs. Monthly reports will include a summary of marine mammal species and behavioral observations, delays, and tugging activities completed. They also must include an assessment of the amount of tugging remaining to be completed, in addition to the number of Cook Inlet beluga whales observed within estimated harassment zones to date.

A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of the tug towing rig activities for the year. It will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated marine mammal observation data sheets in an electronic format. Specifically, the report must include the following information:

- Date and time that monitored activity begins or ends;
- Activities occurring during each observation period, including (a) the type of activity, (b) the total duration of each type of activity, (c) the number of attempts required for positioning, (d) when nighttime operations were required (e) whether towing against the tide was required, (f) the number and type of piles that were driven and the method (*e.g.*, impact, vibratory, down-the-hole), and (g) total number of strikes for each pile.
- PSO locations during marine mammal monitoring;
- Environmental conditions during monitoring periods (at the beginning and end of the PSO shift and whenever conditions change significantly), including Beaufort sea state, tidal state, and any other relevant weather conditions, including cloud cover, fog, sun glare, overall visibility to the horizon, and estimated observable distance;
- Upon observation of a marine mammal, (a) name of PSO who sighted the animal(s) and PSO location and activity at time of sighting, (b) time of sighting, (c) identification of the animal(s) (*e.g.*, genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species, (d) distance and location of each observed marine mammal relative to the tugs or pile being driven for each sighting, (e) estimated number of animals (min/max/best estimate), (f) estimated number of animals by cohort (adults, juveniles, neonates, group composition, *etc.*), (g)

animal's closest point of approach and estimated time spent within the harassment zone, (h) 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 (e.g., no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

- Number of marine mammals detected within the harassment zones, by species; and
- Detailed information about implementation of any mitigation (e.g., shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

If no comments are received from NMFS within 30 days, the draft summary report will constitute the final report. If NMFS submits comments, Furie will submit a final summary report addressing NMFS comments within 30 days after receipt of comments.

In the event that personnel involved in Furie's activities discover an injured or dead marine mammal, Furie must report the incident to the Office of Protected Resources (OPR), NMFS (PR.ITP.MonitoringReports@noaa.gov and ITP.davis@noaa.gov) and to the Alaska regional stranding network as soon as feasible. If the death or injury was clearly caused by the specified activity, Furie must immediately cease the 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 IHAs. The Holder must not resume their activities until notified by NMFS.

The report must include the following information:

- (i) Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- (ii) Species identification (if known) or description of the animal(s) involved;
- (iii) Condition of the animal(s) (including carcass condition if the animal is dead);
- (iv) Observed behaviors of the animal(s), if alive;
- (v) If available, photographs or video footage of the animal(s); and
- (vi) General circumstances under which the animal was discovered.

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 impacts or responses (e.g., intensity, duration), the context of any impacts or responses (e.g., critical reproductive time or location, foraging impacts affecting energetics), 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' 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 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 majority of our analysis applies to all the species listed in table 11, except for Cook Inlet beluga whale and harbor seal, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. For Cook Inlet beluga whales and harbor seals, there are meaningful differences in anticipated individual responses to activities, impact of expected take on the population, or impacts on habitat; therefore, we provide a separate independent detailed analysis for Cook Inlet beluga whales and harbor seals following the analysis for other species for which we authorized take.

NMFS has identified several key factors which may be employed to assess the level of analysis necessary to conclude whether potential impacts associated with a specified activity should be considered negligible. These include (but are not limited to) the type and magnitude of taking, the amount and importance of the available habitat for the species or stock that is affected, the duration of the anticipated effect on the individuals, and the status of the species or stock. The potential effects of

the specified activity on humpback whales, minke whales, gray whales, fin whales, killer whales, Dall's porpoises, harbor porpoises, Pacific white-sided dolphins, Steller sea lions, and California sea lions are discussed below. These factors also apply to Cook Inlet beluga whales and harbor seals; however, additional analysis for Cook Inlet beluga whales and harbor seals is provided in a separate subsection below.

Furie's tugging activities associated with this project, as outlined previously, have the potential to harass marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment, from underwater sounds generated by tugs towing, holding, and positioning a rig. Potential takes could occur if marine mammals are present in zones ensounded above the thresholds for Level B harassment, identified above, while activities are underway.

Furie's planned activities and associated impacts will occur within a limited area of the affected species' or stocks' ranges over a total of 4 days each year for tugging, and 2 days for pile driving. The intensity and duration of take by Level B harassment will be minimized through use of mitigation measures described herein. Further the amount of take authorized is small when compared to stock abundance (table 11). In addition, NMFS does not anticipate that serious injury or mortality will occur as a result of Furie's planned activity given the nature of the activity, even in the absence of required mitigation.

Exposures to elevated sound levels produced during tugging and pile driving activities may cause behavioral disturbance of some individuals within the vicinity of the sound source. Behavioral responses of marine mammals to Furie's tugging activities are expected to be mild, short term, and temporary. Effects on individuals that are taken by Level B harassment, as enumerated in the Estimated Take section, on the basis of reports in the literature as well as monitoring from other similar activities conducted by Furie (Horsley and Larson, 2023), will likely be limited to behavioral response such as increased swimming speeds, changing in directions of travel and diving and surfacing behaviors, increased respiration rates, or interrupted foraging (if such activity were occurring) (Ridgway *et al.* 1997; Nowacek *et al.* 2007; Thorson and Reyff, 2006; Kendall and Cornick 2015; Goldbogen *et al.* 2013b; Blair *et al.* 2016; Wisniewska *et al.* 2018; Piwetz *et al.* 2021). Marine mammals within the

Level B harassment zones may not present any visual cues they are disturbed by activities, or they may become alert, avoid the area, leave the area, or have other mild responses that are not observable such as increased stress levels (e.g., Rolland *et al.* 2012; Lusseau, 2005; Bejder *et al.* 2006; Rako *et al.* 2013; Pirotta *et al.* 2015b; Pérez-Jorge *et al.* 2016). They may also exhibit increased vocalization rates (e.g., Dahlheim 1987; Dahlheim and Castellote 2016), louder vocalizations (e.g., Frankel and Gabriele 2017; Fournet *et al.* 2018), alterations in the spectral features of vocalizations (e.g., Castellote *et al.* 2012), or a cessation of communication signals (e.g., Tsujii *et al.* 2018). However, as described in the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section, marine mammals observed near Furie's tugging activities have shown little to no observable reactions to tugging activities (Horsley and Larson 2023).

Tugs pulling, holding, and positioning a rig are slow-moving as compared to typical recreational and commercial vessel traffic. Assuming an animal was stationary, exposure to sound above the Level B harassment threshold from the moving tug configuration (which comprises most of the tug activity being considered) will be on the order of minutes in any particular location. The slow, predictable, and generally straight path of this activity is expected to further lower the likelihood of more than low-level responses to the sound. Also, this slow transit along a predictable path is planned in an area of routine vessel traffic where many large vessels move in slow straight-line paths, and some individuals are expected to be habituated to these sorts of sounds. While it is possible that animals may swim around the project area, avoiding closer approaches to the boats, we do not expect them to abandon any intended path. Further, most animals present in the region will likely be transiting through the area; therefore, any potential exposure is expected to be brief. Based on the characteristics of the sound source and the other activities regularly encountered in the area, it is unlikely Furie's planned tugging activities will be of a duration or intensity expected to result in impacts on reproduction or survival.

Effects on individuals that are taken by Level B harassment during pile driving, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing

time, or interrupted foraging (if such activity were occurring; e.g., Thorson and Reyff 2006; HDR, Inc. 2012; Lerma 2014; ABR 2016). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving and removal. If sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring, particularly as the project is expected to occur over a maximum of just 2 days of in-water pile driving during each year.

Most of the species present in the region will only be present temporarily based on seasonal patterns or during transit between other habitats. These temporarily present species will be exposed to even smaller periods of noise-generating activity, further decreasing the impacts. Most likely, individual animals will simply move away from the sound source and be temporarily displaced from the area. Takes may also occur during important feeding times. The project area though represents a small portion of available foraging habitat and impacts on marine mammal feeding for all species should be minimal.

We anticipate that any potential reactions and behavioral changes are expected to subside quickly when the exposures cease and, therefore, we do not expect long-term adverse consequences from Furie's activities for individuals of any species other than harbor seal (for which take by Level A harassment is authorized, discussed further below). The intensity of Level B harassment events will be minimized through use of mitigation measures described herein. Furie will use PSOs to monitor for marine mammals before commencing any tugging or construction activities, which will minimize the potential for marine mammals to be present within Level B harassment zones when tugs are under load or within the shutdown zones at the commencement of construction. Further, given the absence of any major rookeries, haulouts, or areas of known biological significance for marine mammals (e.g., foraging hot spots) within the estimated harassment zones (other than critical habitat and a BIA for Cook Inlet beluga whales as described below), we conclude that any takes by Level B harassment will have an inconsequential short-term effect on individuals and will not result in population-level impacts.

Theoretically, repeated, sequential exposure to elevated noise from tugging activities over a long duration could result in more severe impacts to

individuals that could affect a population (via sustained or repeated disruption of important behaviors such as feeding, resting, traveling, and socializing; Southall *et al.* 2007). Alternatively, marine mammals exposed to repetitious sounds may become habituated, desensitized, or tolerant after initial exposure to these sounds (reviewed by Richardson *et al.* 1995; Southall *et al.* 2007). Cook Inlet is a regional hub of marine transportation, and is used by various classes of vessels, including containerships, bulk cargo freighters, tankers, commercial and sport-fishing vessels, and recreational vessels. Off-shore vessels, tug vessels, and tour boats represent 86 percent of the total operating days for vessels in Cook Inlet (BOEM 2016). Given that marine mammals still frequent and use Cook Inlet despite being exposed to anthropogenic sounds such as those produced by tug boats and other vessels across many years, population level impacts resulting from the additional noise produced by Furie's tugging activities are not anticipated.

Take by Level A harassment of harbor seals is authorized to account for the potential that an animal could enter and remain within the area between a Level A harassment zone and the shutdown zone during conductor pile installation for a duration long enough to be taken by Level A harassment. Any take by Level A harassment is expected to arise from, at most, a small degree of PTS because animals would need to be exposed to higher levels and/or longer duration than are expected to occur here in order to incur any more than a small degree of PTS. Additionally, some subset of the individuals that are behaviorally harassed could also simultaneously incur some small degree of TTS for a short duration of time. Because of the small degree anticipated, though, any PTS or TTS potentially incurred here is not expected to adversely impact individual fitness, let alone annual rates of recruitment or survival.

Furie's tugging activities are not expected to have significant adverse effects on any marine mammal habitat as no temporary or physical impacts to habitat are anticipated to result from the specified activities. During both tugging and construction, marine mammal habitat may be impacted by elevated sound levels, but these impacts will be temporary. In addition to being temporary and short in overall duration, the acoustic footprint of the activity is small relative to the overall distribution of the animals in the area and their use of the area. Additionally, the habitat within the estimated acoustic footprint

is not known to be heavily used by marine mammals.

Impacts to marine mammal prey species are expected to be minor and temporary, having, at most, short-term effects on foraging success of individual marine mammals, and likely no effect on the populations of marine mammals as a whole. Overall, as described above, the area anticipated to be impacted by Furie's tugging and construction activities is very small compared to the available surrounding habitat, and does not include habitat of particular importance. The most likely impact to prey will be temporary behavioral avoidance of the immediate area. During tugging and construction activities, it is expected that some fish will temporarily leave the area of disturbance (e.g., Nakken 1992; Olsen 1979; Ona and Godo 1990; Ona and Toresen, 1988), thus impacting marine mammals' foraging opportunities in a limited portion of their foraging range. But, because of the relatively small area of the habitat that may be affected, and lack of any foraging habitat of particular importance, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

Finally, Furie will minimize exposure of marine mammals to elevated noise levels by implementing mitigation measures for tugging and construction activities. For tugging, Furie will delay tugging activities if marine mammals are observed during the pre-clearance monitoring period. Furie will also implement vessel maneuvering measures to reduce the likelihood of disturbing marine mammals during any periods when marine mammals may be present near the vessels. Lastly, Furie will also reduce the impact of their activity by conducting tugging operations with favorable tides whenever feasible. For construction, Furie will also delay the start of pile driving activities if marine mammals are observed during the pre-clearance monitoring period and will implement hearing group-specific shutdown zones during the activities. Furie will also implement soft-start procedures to provide warning and/or give marine mammals a chance to leave the area prior to the hammer operating at full capacity.

In summary and as described above, the following factors (with additional analyses for Cook Inlet beluga whales included below) primarily support our determination that the impacts resulting from the activities described for both of these IHAs 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;
- Take by Level A harassment is not anticipated or authorized for any species except harbor seal;
- Exposure to sounds above harassment thresholds will likely be brief given the short duration of the specified activity and the transiting behavior of marine mammals in the action area;
- Marine mammal densities are low in the project area; therefore, there will not be substantial numbers of marine mammals exposed to the noise from the project compared to the affected population sizes;
- Take will not occur in places and/or times where take would be more likely to accrue to impacts on reproduction or survival, such as within ESA-designated or proposed critical habitat or BIAs (other than for Cook Inlet beluga whales as described below), or other habitats critical to recruitment or survival (e.g., rookery);
- The project area represents a very small portion of the available foraging area for all potentially impacted marine mammal species;
- Take will only occur within middle Cook Inlet and Trading Bay—a limited area of any given species or stock's home range;
- Monitoring reports from previous tugging activities in Cook Inlet have documented little to no observable effect on individuals of the same species and stocks impacted by the specified activities;
- The required mitigation measures (i.e., pre-clearance monitoring, vessel maneuver) are expected to be effective in reducing the effects of the specified activity by minimizing the numbers of marine mammals exposed to sound and the intensity of the exposures; and
- The intensity of anticipated takes by Level B harassment is low for all species and stocks, consisting of, at worst, temporary modifications in behavior, and will not be of a duration or intensity expected to result in impacts on reproduction or survival of individuals.

Cook Inlet Beluga Whale

For Cook Inlet beluga whales, we further discuss our negligible impact analysis in addition to the assessment above for all species in the context of potential impacts to this endangered stock based on our evaluation of the authorized take (table 11).

All tugging activities will be done in a manner implementing best management practices to preserve water

quality, and no work will occur around creek mouths or river systems leading to prey abundance reductions. In addition, no physical structures will restrict passage; however, impacts to the acoustic habitat are relevant and discussed here. While the specified activity will occur within Cook Inlet beluga whale Critical Habitat Area 2 (and potentially Area 1, depending on the origin of the tug tow), and recognizing that Cook Inlet beluga whales have been identified as a small and resident population, monitoring data from Hilcorp's activities suggest that tugging activities do not discourage Cook Inlet beluga whales from transiting throughout Cook Inlet and between critical habitat areas and that the whales do not abandon critical habitat areas (Horsley and Larson, 2023). In addition, large numbers of Cook Inlet beluga whales have continued to use Cook Inlet and pass through the area, likely traveling to critical foraging grounds found in upper Cook Inlet, while noise-producing anthropogenic activities, including vessel use, have taken place during the past two decades (e.g., Sheldon *et al.* 2013, 2015, 2017, 2022; Sheldon and Wade 2019; Geotz *et al.* 2023). These findings are not surprising as food is a strong motivation for marine mammals. As described in Forney *et al.* (2017), animals typically favor particular areas because of their importance for survival (e.g., feeding or breeding), and leaving may have significant costs to fitness (reduced foraging success, increased predation risk, increased exposure to other anthropogenic threats). Consequently, animals may be highly motivated to maintain foraging behavior in historical foraging areas despite negative impacts (e.g., Rolland *et al.* 2012).

Generation of sound may result in avoidance behaviors that will be limited in time and space relative to the larger availability of important habitat areas in Cook Inlet; however, the area ensounded by sound from the specified activity is anticipated to be small compared to the overall available critical habitat for Cook Inlet beluga whales to feed and travel. Therefore, the specified activity will not create a barrier to movement through or within important areas. We anticipate that disturbance to Cook Inlet beluga whales will manifest in the same manner as other marine mammals described above (i.e., increased swimming speeds, changes in the direction of travel and dive behaviors, increased respiration rates, decreased foraging (if such activity were occurring), or alterations to communication signals). We do not

believe exposure to elevated noise levels during transit past tugging or construction activities will have adverse effects on individuals' fitness for reproduction or survival.

Although data demonstrate that Cook Inlet beluga whales are not abandoning the planned project area during anthropogenic activities, results of an expert elicitation (EE) at a 2016 workshop, which predicted the impacts of noise on Cook Inlet beluga whale survival and reproduction given lost foraging opportunities, helped to inform our assessment of impacts on this stock. The 2016 EE workshop used conceptual models of an interim population consequences of disturbance (PCoD) for marine mammals (NRC, 2005; New *et al.* 2014; Tollit *et al.* 2016) to help in understanding how noise-related stressors might affect vital rates (survival, birth rate and growth) for Cook Inlet beluga whale (King *et al.* 2015). NMFS (2016b) suggests that the main direct effects of noise on Cook Inlet beluga whales are likely to be through masking of vocalizations used for communication and prey location and habitat degradation. The 2016 workshop on Cook Inlet beluga whales was specifically designed to provide regulators with a tool to help understand whether chronic and acute anthropogenic noise from various sources and projects are likely to be limiting recovery of the Cook Inlet beluga whale population. The full report can be found at <https://www.smruconsulting.com/publications/> with a summary of the expert elicitation portion of the workshop below.

For each of the noise effect mechanisms chosen for EE, the experts provided a set of parameters and values that determined the forms of a relationship between the number of days of disturbance a female Cook Inlet beluga whale experiences in a particular period and the effect of that disturbance on her energy reserves. Examples included the number of days of disturbance during the period of April, May, and June that would be predicted to reduce the energy reserves of a pregnant Cook Inlet beluga whale to such a level that she is certain to terminate the pregnancy or abandon the calf soon after birth, the number of days of disturbance in the period of April–September required to reduce the energy reserves of a lactating Cook Inlet beluga whale to a level where she is certain to abandon her calf, and the number of days of disturbance where a female fails to gain sufficient energy by the end of summer to maintain herself and her calf during the subsequent winter. Overall, median values ranged from 16 to 69

days of disturbance depending on the question. However, for this elicitation, a “day of disturbance” was defined as any day on which an animal loses the ability to forage for at least one tidal cycle (*i.e.*, it forgoes 50–100 percent of its energy intake on that day). The day of disturbance considered in the context of the report is notably more severe than the Level B harassment expected to result from these activities, which as described is expected to be comprised predominantly of temporary modifications in the behavior of individual Cook Inlet beluga whales (*e.g.*, faster swim speeds, longer dives, decreased sighting durations, alterations in communication). Also, NMFS authorized 11 instances of take by Level B harassment during each year, with the instances representing disturbance events within a day—this means that either 11 different individual Cook Inlet beluga whales are disturbed on no more than 1 day each, or some lesser number of individuals may be disturbed on more than 1 day, but with the total number of takes not exceeding 11. Given the overall anticipated take, and the short duration of the specified activities, it is unlikely that any one Cook Inlet beluga whale will be disturbed on more than a couple of days. Further, Furie has required mitigation measures specific to Cook Inlet beluga whales whereby they will not begin tugging activities should a Cook Inlet beluga whale be observed at any distance. While take by Level B harassment (behavioral disturbance) is authorized, this measure, along with other mitigation measures described herein, will limit the severity of the effects of that Level B harassment to behavioral changes such as increased swim speeds, changes in diving and surfacing behaviors, and alterations to communication signals, not the loss of foraging capabilities. Finally, take by mortality, serious injury, or Level A harassment of Cook Inlet beluga whales is not anticipated or authorized.

In summary and as described above, the additional following factors primarily support our determination that the impacts resulting from the activities described for both of these IHAs are not expected to adversely affect the Cook Inlet beluga whale through effects on annual rates of recruitment or survival:

- The area of exposure will be limited to habitat primarily used for transiting, and not areas known to be of particular importance for feeding or reproduction;
- The activities are not expected to result in Cook Inlet beluga whales abandoning critical habitat nor are they expected to restrict passage of Cook

Inlet beluga whales within or between critical habitat areas; and

- Any disturbance to Cook Inlet beluga whales is expected to be limited to temporary modifications in behavior, and will not be of a duration or intensity expected to result in impacts on reproduction or survival.

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 required monitoring and mitigation measures, NMFS finds that the total marine mammal take authorized for year 1 of activity will have a negligible impact on all affected marine mammal species or stocks. Separately, NMFS finds that the total marine mammal take authorized for year 2 of activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, take of only small numbers of marine mammals 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 fewer than one-third of the species or stock abundance, the take is considered to be of small numbers (86 FR 5322, January 19, 2021). Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Table 11 provides the quantitative analysis informing our small numbers determinations for the year 1 and year 2 IHAs. For all stocks whose abundance estimate is known, the amount of taking is less than one-third of the best available population abundance estimate (in fact it is less than 1 percent for all stocks, except for Cook Inlet beluga whales whose authorized take is 3.9 percent of the stock; table 11). The number of animals authorized to be taken from these stocks therefore, would be considered small relative to the relevant stock's abundances even if each estimated take occurred to a new individual.

Abundance estimates for the Mexico–North Pacific stock of humpback whales are based upon data collected more than

8 years ago and, therefore, current estimates are considered unknown (Young *et al.* 2023). The most recent minimum population estimates (N_{MIN}) for this population include an estimate of 2,241 individuals between 2003 and 2006 (Martinez-Aguilar 2011) and 766 individuals between 2004 and 2006 (Wade 2021). NMFS' Guidelines for Assessing Marine Mammal Stocks suggest that the N_{MIN} estimate of the stock should be adjusted to account for potential abundance changes that may have occurred since the last survey and provide reasonable assurance that the stock size is at least as large as the estimate (NMFS 2023b). The abundance trend for this stock is unclear; therefore, there is no basis for adjusting these estimates (Young *et al.* 2023). Assuming the population has been stable, and that the 3 authorized takes of humpback whale will all be of the Mexico-North Pacific stock, this represents small numbers of this stock (less than 1 percent of the stock assuming a N_{MIN} of 2,241 individuals and <1 percent of the stock assuming an N_{MIN} of 766 individuals).

A lack of an accepted stock abundance value for the Alaska stock of minke whale did not allow for the calculation of an expected percentage of the population that will be affected during each Year. The most relevant estimate of partial stock abundance is 1,233 minke whales in coastal waters of the Alaska Peninsula and Aleutian Islands (Zerbini *et al.* 2006). Given three authorized takes by Level B harassment for the stock during year 1 and year 2, comparison to the best estimate of stock abundance shows, at most, less than 1 percent of the stock is expected to be impacted.

There is no stock-wide abundance estimate for Northeast Pacific fin whales. However, Young *et al.* (2022) estimate the minimum stock size for the areas surveyed is 2,554. Given 2 authorized takes by Level B harassment for the stock during year 1 and year 2, comparison to the minimum population estimate shows, at most, less than 1 percent of the stock is expected to be impacted.

The Alaska stock of Dall's porpoise has no official NMFS abundance estimate for this area, as the most recent estimate is greater than 8 years old. As described in the 2022 Alaska SAR (Young *et al.* 2023) the minimum population estimate is assumed to correspond to the point estimate of the 2015 vessel-based abundance computed by Rone *et al.* (2017) in the Gulf of Alaska ($N = 13,110$; $CV = 0.22$). Given 6 authorized takes by Level B harassment for the stock during year 1

and year 2, comparison to the minimum population estimate shows, at most, less than 1 percent of the stock is expected to be impacted.

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 the affected species or stocks for the year 1 IHA. Separately, NMFS also finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks for the year 2 IHA.

Unmitigable Adverse Impact Analysis and Determination

In order to issue an IHA, NMFS must find that the specified activity will not have an "unmitigable adverse impact" on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined "unmitigable adverse impact" in 50 CFR 216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

Subsistence communities identified as project stakeholders near Furie's middle Cook Inlet (and potentially Trading Bay, depending on where Furie takes over the rig from Hilcorp) activities include the Village of Salamatof and the Native Village of Tyonek. The Alaska Department of Fish and Game Community Subsistence Information System does not contain data for Salamatof. For the purposes of our analyses for the year 1 and year 2 IHAs, we assume the subsistence uses are similar to those of nearby communities such as Kenai. Tyonek, on the western side of lower Cook Inlet, has a subsistence harvest area that extends from the Susitna River south to Tuxedni Bay (BOEM 2016). In Tyonek, harbor seals were harvested between June and September by 6 percent of the households (Jones *et al.* 2015). Seals were harvested in several areas, encompassing an area stretching 32.2 km (20 mi) along the Cook Inlet coastline from the McArthur Flats north to the Beluga River. Seals were searched for or harvested in the Trading Bay areas

as well as from the beach adjacent to Tyonek (Jones *et al.* 2015). Subsistence hunting of whales is not known to currently occur in Cook Inlet.

Furie's tug towing rig activities may overlap with subsistence hunting of seals. However, these activities typically occur along the shoreline or very close to shore near river mouths, whereas most of Furie's tugging (all, with the exception of returning the rig to the Rig Tender's Dock, located in an industrialized area of Nikiski, Alaska), as well as its pile driving, is in the middle of the Inlet and rarely near the shoreline or river mouths. Any harassment to harbor seals is anticipated to be short-term, mild, and not result in any abandonment or behaviors that would make the animals unavailable for harvest. However, to further minimize any potential effects of their action on subsistence activities, Furie plans to conduct stakeholder outreach before the planned operations in 2024 and 2025, according to its Stakeholder Engagement Plan. According to Furie, they contacted Alaska Native Tribes in the Cook Inlet Region by email and phone message. To date, Furie has not received any responses from the Tribes. Furie states it will expand the effort to include Cook Inlet Regional Inc. and Chugach Alaska Corporation and will continue to reach out to the Tribes as the project nears. Furie must coordinate with local Tribes as described in its Stakeholder Engagement Plan, notify the communities of any changes in the operation, and take action to avoid or mitigate impacts to subsistence harvests.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the required mitigation and monitoring measures, NMFS has determined that there will not be an unmitigable adverse impact on subsistence uses from Furie's planned activities under the year 1 IHA. Separately, NMFS has also determined that there will not be an unmitigable adverse impact on subsistence uses from Furie's planned activities under the year 2 IHA.

Endangered Species Act

Section 7(a)(2) of the ESA 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

whenever we propose to authorize take for endangered or threatened species, in this case with the NMFS AKRO.

Four marine mammal species, fin whale, humpback whale (Mexico Distinct Population Segment (DPS)), beluga whale (Cook Inlet), and Steller sea lion (Western DPS) occur in the project area and are listed as threatened or endangered under the ESA. The NMFS AKRO issued a Biological Opinion under section 7 of the ESA on the issuance of two IHAs to Furie under section 101(a)(5)(D) of the MMPA by NMFS OPR. The Biological Opinion concluded that the action is not likely to jeopardize the continued existence of these species and is not likely to destroy or adversely modify their critical habitat.

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.*, the issuance of two consecutive IHAs) and alternatives with respect to potential impacts on the human environment.

NMFS prepared an Environmental Assessment (EA) and analyzed the potential impacts to marine mammals that would result from Furie's natural gas activities. A Finding of No Significant Impact (FONSI) was signed on September 12, 2024. Copies of the EA and FONSI are available at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-oil-and-gas>.

Authorization

NMFS has issued two consecutive IHAs to Furie for the potential harassment of small numbers of 12 marine mammal species incidental to Furie's natural gas activities in Cook Inlet, Alaska, that includes the previously explained mitigation, monitoring and reporting requirements.

Dated: September 16, 2024.

Kimberly Damon-Randall,

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

[FR Doc. 2024–21469 Filed 9–23–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF14–1–008]

Southwestern Power Administration; Notice of Filing

Take notice that on September 13, 2024, Southwestern Power Administration submitted a tariff filing: 2013 IS Rate Extension Informational Filing—2024 to be effective 10/1/2024.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<https://www.ferc.gov>). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the “eFiling” link at <https://www.ferc.gov>. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand

delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Comment Date: 5 p.m. Eastern Time on October 15, 2024.

Dated: September 17, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–21723 Filed 9–23–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15368–000]

Orcas Power & Light Cooperative; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On July 22, 2024, Orcas Power & Light Cooperative filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Rosario Strait Tidal Energy Project (or Project) to be located on Rosario Strait in the Salish Sea, near the town of Eastsound, Washington. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) a 245 foot-long, 13 foot-wide floating tube; (2) two wings attached to 65 foot diameter rotors with an overall width of 165 feet; (3) two 1.2 MW turbines (4) four catenary mooring lines (each approximately 740 feet long); (5) four seabed anchors; (6) a 3.3 mile

long 12.47 kV subsea power cable; and (7) one subsea junction box.

The estimated annual generation of the Project would be 5.7 GW-hr.

Applicant Contact: Russell Guerry, C/O Orcas Power and Light Cooperative (OPALCO), 183 Mount Baker Road, Eastsound, Washington 98245 (360) 376–3500.

FERC Contact: Jeffrey Ackley at jeffrey.ackley@ferc.gov.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number.

More information about this project, including a copy of the application, can be viewed or printed on the “eLibrary” link of Commission's website at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 17, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024–21725 Filed 9–23–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD24–7–000]

Federal and State Current Issues Collaborative; Notice Announcing Meeting

On March 21, 2024, the Commission established a Federal and State Current Issues Collaborative (Collaborative) to

explore cross-jurisdictional issues relevant to FERC and state utility commissions.¹

The first public meeting of the Collaborative will be held on November 12, 2024, from approximately 2:30 p.m.–5 p.m. PST, at the Anaheim Marriott in Anaheim, California. The meeting will be open to the public for listening and observing and on the record. There is no fee for attendance and registration is not required. The public may also attend via Webcast. This conference will be transcribed. Transcripts will be available for a fee from Ace Reporting, 202–347–3700.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to accessibility@ferc.gov or call toll free 1–866–208–3372 (voice) or 202–208–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

The first overarching topic the Collaborative will discuss is gas-electric coordination. As explained in the Establishing Order, the Commission will issue agendas for each meeting, after consulting with members of the Collaborative and considering suggestions from state commissions.² The Commission will issue the specific agenda for the first public meeting no later than October 29, 2024.

More information about the Collaborative is available here: <https://www.ferc.gov/federal-state-current-issues-collaborative>. For questions related to the Collaborative, please contact: Rob Thormeyer, 202–502–8694, robert.thormeyer@ferc.gov, Sarah Greenberg, 202–502–6230, sarah.greenberg@ferc.gov, or Robert Cain, 202–898–1350, rcain@naruc.org.

Dated: September 17, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024–21727 Filed 9–23–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take Notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24–289–000.

¹ *Fed. and State Current Issues Collaborative*, 186 FERC ¶ 61,189 (2024) (Establishing Order).

² *Id.* P 7.

Applicants: Dan's Mountain Wind Force, LLC.

Description: Dan's Mountain Wind Force, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/17/24.

Accession Number: 20240917–5035.

Comment Date: 5 p.m. ET 10/8/24.

Docket Numbers: EG24–290–000.

Applicants: Silver State South Storage, LLC.

Description: Silver State South Storage, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/17/24.

Accession Number: 20240917–5113.

Comment Date: 5 p.m. ET 10/8/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER22–2359–003.

Applicants: PJM Interconnection, L.L.C.

Description: Compliance filing: Motion for Leave to Submit Compliance Filing to be effective 7/12/2025.

Filed Date: 9/16/24.

Accession Number: 20240916–5133.

Comment Date: 5 p.m. ET 10/7/24.

Docket Numbers: ER24–2072–001.

Applicants: The Empire District Electric Company, Southwest Power Pool, Inc.

Description: Compliance filing: The Empire District Electric Company submits tariff filing per 35: The Empire District Electric Company's Amended Order No. 864 Compliance Filing to be effective 1/27/2020.

Filed Date: 9/17/24.

Accession Number: 20240917–5111.

Comment Date: 5 p.m. ET 10/8/24.

Docket Numbers: ER24–2253–001.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 4268 Blue Valley Grid GIA—Deficiency Response to be effective 5/23/2024.

Filed Date: 9/17/24.

Accession Number: 20240917–5028.

Comment Date: 5 p.m. ET 10/8/24.

Docket Numbers: ER24–2725–000.

Applicants: Lone Star Solar, LLC.

Description: Supplement to 08/08/2024 Lone Star Solar, LLC tariff filing.

Filed Date: 9/13/24.

Accession Number: 20240913–5243.

Comment Date: 5 p.m. ET 9/23/24.

Docket Numbers: ER24–3054–000.

Applicants: Constellation Mystic Power, LLC.

Description: Constellation Mystic Power, LLC submits request for waiver of certain deadlines required by Schedule 3A of the Mystic Cost of Service Agreement.

Filed Date: 9/13/24.

Accession Number: 20240913–5244.

Comment Date: 5 p.m. ET 9/20/24.

Docket Numbers: ER24–3057–000.

Applicants: Kearsarge Riverpark I LLC.

Description: Baseline eTariff Filing: KS Riverpark I MBRA_App to be effective 11/1/2024.

Filed Date: 9/16/24.

Accession Number: 20240916–5121.

Comment Date: 5 p.m. ET 10/7/24.

Docket Numbers: ER24–3058–000.

Applicants: Midcontinent

Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2024–09–17_SA 4271 NIPSCO-Ridgeway Power 1st Rev GIA (J1358) to be effective 9/11/2024.

Filed Date: 9/17/24.

Accession Number: 20240917–5024.

Comment Date: 5 p.m. ET 10/8/24.

Docket Numbers: ER24–3059–000.

Applicants: Dan's Mountain Wind Force, LLC.

Description: Baseline eTariff Filing: Market-Based Rate Application and Requests for Waivers and Blanket Approvals to be effective 11/10/2024.

Filed Date: 9/17/24.

Accession Number: 20240917–5030.

Comment Date: 5 p.m. ET 10/8/24.

Docket Numbers: ER24–3060–000.

Applicants: Duke Energy Florida, LLC.

Description: Tariff Amendment: DEF–SECI Notice of Cancellation of RS No. 213 to be effective 12/31/2024.

Filed Date: 9/17/24.

Accession Number: 20240917–5075.

Comment Date: 5 p.m. ET 10/8/24.

Docket Numbers: ER24–3061–000.

Applicants: VESI 34 LLC.

Description: Baseline eTariff Filing: Petition for Approval of Initial Market-Based Rate Tariff to be effective 9/18/2024.

Filed Date: 9/17/24.

Accession Number: 20240917–5135.

Comment Date: 5 p.m. ET 10/8/24.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR24–7–000.

Applicants: North American Electric Reliability Corporation.

Description: Petition for approval of the Amended and Restated Bylaws of the North American Electric Reliability Corporation.

Filed Date: 9/17/24.

Accession Number: 20240917–5069.

Comment Date: 5 p.m. ET 10/8/24.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Dated: September 17, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–21728 Filed 9–23–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF16–1–003]

Southwestern Power Administration; Notice of Filing

Take notice that on September 13, 2024, Southwestern Power Administration submitted a tariff filing: 2015 Robert D. Willis Hydropower Project Rate Extension Informational Filing—2024 to be effective 10/1/2024.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as

appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<https://www.ferc.gov>). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

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The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Comment Date: 5 p.m. Eastern Time on October 15, 2024.

Dated: September 17, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–21724 Filed 9–23–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–OEJECR–2024–0297; FRL—12234–01–OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Environmental Justice Thriving Communities Grantmaking Program: Applications for Subawards—September Launch (New)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Environmental Justice Thriving Communities Grantmaking Program: Applications for Subawards—September Launch (EPA ICR Number 7787.01, OMB Control Number 2035–NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a request for emergency clearance of a new collection. A two-week public comment period has been initiated via a notice in the **Federal Register**.

DATES: Comments may be submitted on or before October 8, 2024.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–OEJECR–2024–0297 to EPA online using www.regulations.gov (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Aarti Iyer, Office of the Chief Financial Officer, Mail Code 2710A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–0214; email address: iyer.aarti@epa.gov.

SUPPLEMENTARY INFORMATION: This is a request for approval of a new collection. 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.

This notice allows for a 14 day public comment period. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

Abstract: To meet the goals and objectives that demonstrate the U.S. Environmental Protection Agency (EPA's) and the Administration's commitment to achieving environmental justice and embedding environmental justice into Agency programs, EPA released the Thriving Communities Grantmaking Program funding opportunity. The program will provide about \$600 million in 11 cooperative agreements funding to "Grantmakers" who will function as pass-through entities for the Environmental Justice Thriving Communities Subgrants (2 CFR parts 200 and 1500). The pass-through model removes the requirement of applying through the federal grants process and decreases the amount of time it takes to award federal funds. The Grantmakers will collaborate with EPA to design and build their own processes to receive and evaluate applications to fund the initial development of community-led environmental justice projects. With this Information Collection Request (ICR), EPA seeks emergency clearance for three Grantmakers to solicit applications for their first round of subgrants to be launched in September 2024. If the information requested under this emergency clearance were not collected, EPA would have no mechanism for selecting and distributing subaward grants. Without this activity, the central programmatic objectives of the Environmental Justice Thriving Communities Grantmaking Program cannot be met. The six-month emergency clearance period will cover the first round of subaward applications that will be solicited by three Grantmakers in September 2024. Subsequent rounds of applications for these three Grantmakers will be authorized via a Standard ICR package for the Grantmaking Program that will

be submitted for review via the customer ICR approval process.

Form Numbers: None.

Respondents/affected entities:

Respondents will include entities who are eligible to receive subawards, including community based nonprofit organizations, Puerto Rico, U.S. Territories and Freely Associated States, Native American organizations, local governments, and institutions of higher education.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 1,155 (total).

Frequency of response: Once.

Total estimated burden: 23,975 hours (total). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: \$1,286,331 (total), which includes \$43,989 annualized capital or operation & maintenance costs.

Requested approval date: September 16, 2024.

Courtney Kerwin,

Director, Information Engagement Division.

[FR Doc. 2024–21464 Filed 9–23–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meetings

TIME AND DATE: 1:06 p.m. on Friday, September 20, 2024.

PLACE: The meeting was held in the Board Room located on the sixth floor of the FDIC Building located at 550 17th Street, NW, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The Board of Directors of the Federal Deposit Insurance Corporation met to consider matters related to the Corporation's corporate activities. In calling the meeting, the Board determined, on motion of Director Rohit Chopra (Director, Consumer Financial Protection Bureau), seconded by Director Michael J. Hsu (Acting Comptroller of the Currency), by the unanimous vote of Chairman Martin J. Gruenberg, Vice Chairman Travis Hill, Director Jonathan McKernan, Director Michael J. Hsu (Acting Comptroller of the Currency), and Director Rohit Chopra (Director, Consumer Financial Protection Bureau), that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable;

that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2) and (c)(6), of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

CONTACT PERSON FOR MORE INFORMATION: Requests for further information concerning the meeting may be directed to Debra A. Decker, Executive Secretary of the Corporation, at 202-898-8748.

Dated this the 20th day of September, 2024.

Federal Deposit Insurance Corporation.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024-22010 Filed 9-20-24; 4:15 pm]

BILLING CODE 6714-01-P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2 p.m., Tuesday, September 24, 2024.

PLACE: The Richard V. Backley Hearing Room, Room 511, 1331 Pennsylvania Avenue NW, Suite 504 North, Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Geneva Rock Products, Inc.*, Docket No. WEST 2022-0097. (Issues include whether the Judge abused his discretion when he ordered a stay of the case for an indefinite duration because of a pending criminal matter.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434-9935/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

PHONE NUMBER FOR LISTENING TO MEETING: 1-(866) 236-7472, Passcode: 678-100.

Authority: 5 U.S.C. 552b.

Dated: September 20, 2024.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2024-22012 Filed 9-20-24; 4:15 pm]

BILLING CODE 6735-01-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

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 paragraph 7 of the Act.

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

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 October 9, 2024.

A. Federal Reserve Bank of Cleveland (Nadine M. Wallman, Vice President) 1455 East Sixth Street Cleveland, Ohio 44101-2566. Comments can also be sent electronically to

Comments.applications@clev.frb.org;

1. *Larry T. Clark, Danville, Kentucky, as Successor Trustee of the John M. St. Clair, Jr. Trust dated January 16, 2006;* to retain voting shares of Citizens Guaranty Financial Corporation, Irvine, Kentucky, and thereby indirectly retain voting shares of Citizens Guaranty Bank, Richmond, Kentucky.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414.

Comments can also be sent electronically to

Comments.applications@chi.frb.org;

1. *Bradley C. Hanson, Sioux Falls, South Dakota;* to acquire voting shares of AgCom Holdings, Inc., and thereby indirectly acquire voting shares of Maxwell State Bank, both of Maxwell, Iowa.

2. *Stephen Lange Ranzini Inherited IRA, Stephen Lange Ranzini, trustee, both of Ann Arbor, Michigan; Joseph Lange Ranzini IRA, Joseph Lange Ranzini, trustee, both of Waynesboro, Virginia; Paul Lange Ranzini, Meunster, Germany; David William Ranzini, Tokyo, Japan; Gregory Paul Ranzini, Wilmington, Delaware; Holly Ann Clare, Atlanta, Georgia; Emily Elizabeth Hu, Washington, DC; and Jonathan Paul Hu and Abigail Raffaela Hu, both of Princeton, New Jersey;* to join the Ranzini Family Group, a group acting in concert, to retain voting shares of University Bancorp, Inc., and thereby indirectly retain voting shares of University Bank, both of Ann Arbor, Michigan.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2024-21815 Filed 9-23-24; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS-10516]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any

other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by October 24, 2024.

ADDRESSES: Written comments and recommendations for the proposed 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.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing>.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786-4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Program

Integrity; Exchange, Premium Stabilization Programs, and Market Standards; Amendments to the HHS Notice of Benefit and Payment Parameters for 2014; Final Rule II; *Use:* On March 23, 2010, the Patient Protection and Affordable Care Act (PPACA; Pub. L. 111-148) was signed into law and on March 30, 2010, the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152) was signed into law. The two laws implement various health insurance policies. On June 19, 2013, the Department of Health and Human Services (HHS) published proposed rule CMS-9957-P: Program Integrity: Exchanges, SHOP, Premium Stabilization Programs, and Market Standards (78 FR 37302) (Program Integrity Proposed Rule) which, among other things, contained third party disclosure requirements and data collections that supported the oversight of premium stabilization programs, State Exchanges, and qualified health plan (QHP) issuers in Federally-facilitated Exchanges (FFEs). Parts of the proposed rule were finalized as Patient Protection and Affordable Care Act; Program Integrity: Exchange, Premium Stabilization Programs, and Market Standards; Amendments to the HHS Notice of Benefit and Payment Parameters for 2014; Final Rule (Program Integrity Final Rule II), 78 FR 25326 (October 24, 2013). This ICR relates to a portion of the information collection request (ICR) requirements set forth in the final rule. *Form Number:* CMS-10516 (OMB control number: 0938-1277); *Frequency:* Annually; *Affected Public:* Private Sector, State, Local, or Tribal Governments; Business or other for-profits, and Not-for-Profits; *Number of Respondents:* 457; *Number of Responses:* 457; *Total Annual Hours:* 42,771. (For questions regarding this collection, contact Andrea Honig at (301) 492-4147.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024-21732 Filed 9-23-24; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2015-E-2079]

Determination of Regulatory Review Period for Purposes of Patent Extension; BRAVECTO; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA or the Agency) published a notice in the **Federal Register** of February 12, 2018, for the determination of the regulatory review period for the animal drug BRAVECTO. In accordance with the Court's order in *Nissan Chemical Corp., et al. v. FDA, et al.*, No. 22-01598 (D.D.C.), this document revises the **SUPPLEMENTARY INFORMATION** section of that notice by adjusting the start date of the testing phase for BRAVECTO. This notice supersedes the June 11, 2021, **Federal Register** document revising the February 12, 2018, notice.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301-796-3600.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 12, 2018 (83 FR 6033), in FR Doc. 2018-02761, in the first column, the first two paragraphs under the section "II. Determination of Regulatory Review Period," the following revision is made on page 6034:

FDA has determined that the applicable regulatory review period for BRAVECTO is 1,548 days. Of this time, 1,510 days occurred during the testing phase of the regulatory review period, while 38 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360b(j)) became effective:* February 19, 2010. Pursuant to the Court's order in *Nissan Chemical Corp., et al. v. FDA, et al.*, No. 22-01598 (D.D.C.), the start date of the testing phase for BRAVECTO was February 19, 2010.

Dated: September 19, 2024.

Lauren K. Roth,
Associate Commissioner for Policy.

[FR Doc. 2024-21841 Filed 9-23-24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration**

[Docket Nos. FDA–2024–E–0204 and FDA–2024–E–0200]

Determination of Regulatory Review Period for Purposes of Patent Extension; OJJAARA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for OJJAARA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by November 25, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 24, 2025. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 25, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any

confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket Nos. FDA–2024–E–0204 and FDA–2024–E–0200 for “Determination of Regulatory Review Period for Purposes of Patent Extension; OJJAARA.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management

Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:**I. Background**

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product’s regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the

actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, OJJAARA (mometinib). OJJAARA is indicated for the treatment of intermediate or high-risk myelofibrosis (MF), including primary MF or secondary MF [post-polycythemia vera and post-essential thrombocythemia], in adults with anemia. Subsequent to this approval, the USPTO received patent term restoration applications for OJJAARA (U.S. Patent Nos. 8,486,941 and RE48,285) from GlaxoSmithKline LLC, and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated January 30, 2024, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of OJJAARA represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for OJJAARA is 5,127 days. Of this time, 4,670 days occurred during the testing phase of the regulatory review period, while 457 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* September 3, 2009. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on September 3, 2009.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* June 16, 2022. FDA has verified the applicant's claim that the new drug application (NDA) for OJJAARA (NDA 216873) was initially submitted on June 16, 2022.

3. *The date the application was approved:* September 15, 2023. FDA has verified the applicant's claim that NDA 216873 was approved on September 15, 2023.

This determination of the regulatory review period establishes the maximum

potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 828 days or 5 years of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: September 18, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–21844 Filed 9–23–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–E–2584]

Determination of Regulatory Review Period for Purposes of Patent Extension; QUVIVIQ

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for QUVIVIQ and is publishing this notice of that determination as required by law. FDA has made the determination because of the

submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by November 25, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 24, 2025. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 25, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2023-E-2584 for “Determination of Regulatory Review Period for Purposes of Patent Extension; QUVIVIQ.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the

heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT:

Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 301-796-3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product’s regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA’s determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, QUVIVIQ (daridorexant hydrochloride) indicated for the treatment of adult patients with insomnia characterized by difficulties with sleep onset and/or sleep maintenance. Subsequent to this approval, the USPTO received a patent term restoration application for QUVIVIQ (U.S. Patent No. 9,732,075) from Idorsia Pharmaceuticals Ltd. and the USPTO requested FDA’s assistance in determining the patent’s eligibility

for patent term restoration. In a letter dated September 28, 2023, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of QUVIVIQ represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product’s regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for QUVIVIQ is 2,115 days. Of this time, 1,660 days occurred during the testing phase of the regulatory review period, while 455 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* June 24, 2016. FDA has verified the applicant’s claim that the date the investigational new drug application became effective was on June 24, 2016.
2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* January 8, 2021. FDA has verified the applicant’s claim that the new drug application (NDA) for QUVIVIQ (NDA 214985) was initially submitted on January 8, 2021.
3. *The date the application was approved or the date of issuance of the interim final rule controlling the drug under section 201(j) of the Controlled Substances Act:* April 7, 2022. FDA has verified the applicant’s claim that NDA 214985 was approved by FDA on January 7, 2022. However, the Drug Enforcement Agency issued an interim final rule controlling the product under section 201(j) of the Controlled Substances Act on April 7, 2022.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,030 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of

§ 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: September 19, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–21836 Filed 9–23–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Building Interdisciplinary Research Careers in Women's Health (BIRCWH)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The Building Interdisciplinary Research Careers in Women's Health (BIRCWH) is an institutional mentored career-development program designed to connect junior faculty, known as BIRCWH Scholars, to senior faculty mentors with shared interest in women's health and sex differences research. The BIRCWH Annual Meeting is a gathering of senior and junior faculty that provides an opportunity to network and share scientific advances.

DATES: The meeting will be held on October 1, 2024, from 8 a.m. to 5 p.m. EDT.

ADDRESSES: The meeting will be in person; registration is at <https://www.eventbrite.com/e/2024-bircwh-annual-meeting-tickets-893884130497>. The meeting is viewable at <https://videocast.nih.gov/watch=55110>.

FOR FURTHER INFORMATION CONTACT: For information concerning this meeting, visit <https://orwh.od.nih.gov/about/newsroom/events/2024-building-interdisciplinary-research-careers-in-womens-health-bircwh-annual-meeting>, or contact Dr. Marquitta White, Senior Research Program Officer, Careers

Section, in the Office of Research on Women's Health (ORWH), 6707 Democracy Boulevard, Suite 400, Bethesda, MD 20817, telephone: 301–402–1770; email: marquitta.white@nih.gov.

SUPPLEMENTARY INFORMATION: This notice is in accordance with 42 U.S.C. 287d of the Public Health Service Act, as amended. Created by the ORWH in partnership with NIH Institutes, Centers, and Offices.

This year, the BIRCWH abstracts have been grouped into nine categories with the following number of abstracts, from highest to lowest: Public Health (12), Reproductive Health (10), Sex and Gender Differences (9), Health Disparities (9), Cancer (9), Neuroscience (8), Clinical Research (7), Basic Research (6), and Bioengineering/Bioinformatics (3). The number and quality of abstracts centered on Public Health and Basic Research has increased this year, indicating a growing focus on women's health and the influence of biological sex on health and disease in these important areas. Specifically, several abstracts in these categories focus on maternal morbidity, perinatal health, and how biological sex and gender transition impact health and disease. The meeting will include the 2024 Ruth L. Kirschstein Memorial Lecture by Abbey B. Berenson M.D., MMS, Ph.D., and the 2024 Legacy of Leadership Lecture by Nina F. Schor, M.D., Ph.D.

Individuals interested in in-person attendance can register online at <https://www.eventbrite.com/e/2024-bircwh-annual-meeting-tickets-893884130497>.

More information about the speakers and agenda can be found at <https://orwh.od.nih.gov/about/newsroom/events/2024-building-interdisciplinary-research-careers-in-womens-health-bircwh-annual-meeting>.

This event is free.

Dated: September 16, 2024.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2024–21717 Filed 9–23–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Public Health Service (PHS) Applications and Pre-Award Reporting Requirements (Office of the Director)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and recommendations for the proposed 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.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Ms. Mikia P. Currie, Program Analyst, Office of Policy for Extramural Research Administration, 6705 Rockledge Drive, Suite 350, Bethesda, Maryland 20892, or call a non-toll-free number 301–435–0941 or email your request, including your address to ProjectClearanceBranch@mail.nih.gov. Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on May 22, 2024, pages 45001–45003 (89 FR 45001) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

The Office of the Director (OD), Office of Extramural Research (OER), National Institutes of Health (NIH), may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid Office of Management and Budget (OMB) control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, NIH has submitted to OMB a request for review and approval of the information collection listed below.

Proposed Collection Title: Public Health Service (PHS) Applications and

Pre-Award Reporting Requirements, Revision, OMB 0925–0001, Expiration Date 01/31/2026, Office of the Director (OD), National Institutes of Health (NIH).

Need and Use of Information

Collection: Effective for due dates on or after January 25, 2025, NIH will be implementing several trans-NIH initiatives to simplify the grants process for applicants and recipients as well as for peer review. NIH will be updating fellowship applications to improve fellowship peer review to facilitate the mission of these programs to identify the most promising candidates and individualized training opportunities that will assist them along their paths to support the advancement of the biomedical research enterprise. NIH will be reducing the number of required attachments and updating instructions for the PHS Fellowship Supplemental Form to align with the revised scored review criteria. NIH will also be updating institutional training grant applications, including adding a new attachment field to the PHS 398 Research Training Program Plan form for the transparent collection of the Recruitment Plan to Enhance Diversity while also providing additional space for applicants within the Program Plan page limit where this information was previously collected. The Training Data Tables will also be updated to reduce burden and promote consistent information collection, including limiting the scope of information collection to data only relevant to the training stage(s) of the proposed program in table 1 and removing instructions in table 8 that are reported within the Research Performance Progress Report (RPPR). Effective for

due dates on or after May 25, 2025, NIH will be adopting the Common Forms for Biographical Sketch and Current and Pending (Other) Support as part of the directive from Guidance for Implementing National Security Presidential Memorandum (NSPM)-33. The Common Forms are part of a separate OMB collection, currently approved under 3145–0279. As such, elements that will be collected within the Common Forms will be removed from NIH's current NIH Biosketch and Other Support formats. NIH will continue to collect additional information not captured on the Common Forms to adhere to the agency's implementation of the NIH Peer Review Regulations at 42 CFR part 52 as part of the NIH Biosketch form, which will be renamed the NIH Biographical Sketch Supplement to reflect the supplemental information requested. The application and progress report forms and associated instructions will be updated to align with these new requirements. This collection also continues to include PHS applications and pre-award reporting requirements: PHS 398 [paper] Public Health Service Grant Application forms and instructions; PHS 398 [electronic] PHS Grant Application component forms and agency specific instructions used in combination with the SF424 Research & Related (R&R); PHS Fellowship Supplemental Form and agency specific instructions used in combination with the SF424 (R&R) forms/instructions for Fellowships [electronic]; PHS 416–1 Ruth L. Kirschstein National Research Service Award Individual Fellowship Application Instructions and Forms used only for a change of sponsoring institution application [paper];

Instructions for a Change of Sponsoring Institution for National Research Service Award (NRSA) Fellowships (F30, F31, F32 and F33) and non-NRSA Fellowships; PHS 416–5 Ruth L. Kirschstein National Research Service Award Individual Fellowship Activation Notice; and PHS 6031 Payback Agreement. The PHS 398 (paper and electronic) are currently approved under 0925–0001. All forms expire 01/31/2026. Post-award reporting requirements are simultaneously consolidated under 0925–0002 and include the RPPR. The PHS 398 and SF424 applications are used by applicants to request Federal assistance funds for traditional investigator-initiated research projects and to request access to databases and other PHS resources. The PHS 416–1 is used only for a change of sponsoring institution application. PHS Fellowship Supplemental Form and agency specific instructions is used in combination with the SF424 (R&R) forms/instructions for Fellowships and is used by individuals to apply for direct research training support. Awards are made to individual applicants for specified training proposals in biomedical and behavioral research, selected as a result of a national competition. The PHS 416–5 is used by individuals to indicate the start of their NRSA awards. The PHS 6031 Payback Agreement is used by individuals at the time of activation to certify agreement to fulfill the payback provisions.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 2,175,670.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
PHS 398—Paper	Grant Applicant	4,247	1	35	148,645
PHS 398/424—Electronic					
PHS Assignment Request Form	Grant Applicant	37,120	1	30/60	18,560
PHS 398 Cover Page Supplement	Grant Applicant	74,239	1	1	74,239
PHS 398 Modular Budget	Grant Applicant	56,693	1	1	56,693
PHS 398 Training Budget	Grant Applicant	1,122	1	2	2,244
PHS 398 Training Subaward Budget Attachment(s) Form.	Grant Applicant	561	1	90/60	842
PHS 398 Research Plan	Grant Applicant	70,866	1	10	708,660
PHS 398 Research Training Program Plan	Grant Applicant	1,122	1	10	11,220
Data Tables	Grant Applicant	1,515	1	4	6,060
PHS 398 Career Development Award Supplemental Form.	Grant Applicant	2,251	1	10	22,510
PHS Human Subjects and Clinical Trial Information.	Grant Applicant	54,838	1	13	712,894
Biosketch (424 Electronic)	Grant Applicant	80,946	1	2	161,892

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Data Management and Sharing Plan	Grant Applicant	73,117	1	2	146,234
VCOC Certification	Grant Applicant	6	1	5/60	1
SBIR/STTR Funding Agreement Certification	Grant Applicant	1,500	1	15/60	375
PHS Fellowship—Electronic					
PHS Fellowship Supplemental Form (includes F reference letters).	Fellowship Grant Applicant.	6,707	1	13	87,191
Biosketch (Fellowship)	Fellowship Grant Applicant.	6,707	1	2	13,414
416–1	Fellowship Grant Applicant.	29	1	10	290
PHS 416–5	Fellowship Grant Applicant.	6,707	1	5/60	559
PHS 6031	Fellowship Grant Applicant.	6,217	1	5/60	518
NIH Other Transaction					
NIH Other Transaction Application Form	Other Transaction Applicant.	239	1	11	2,629
Total .....	.....	486,749	486,749	.....	2,175,670

Dated: September 16, 2024.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2024–21801 Filed 9–23–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 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 grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Cystic Fibrosis Research and Translation Centers.

Date: October 31–November 1, 2024.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDDK, Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ryan G. Morris, Ph.D., Scientific Review Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Boulevard, Rm 7015, Bethesda, MD 20892–2542, 301–594–4721, ryan.morris@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 18, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–21739 Filed 9–23–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Post-Award Reporting Requirements Including Research Performance Progress Report Collection (Office of the Director)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and recommendations for the proposed 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.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Ms. Mikia P. Currie, Program Analyst, Office of Policy for Extramural Research Administration, 6705 Rockledge Drive, Suite 350, Bethesda, Maryland 20892, or call a non-toll-free number 301–435–0941 or email your request, including your address to ProjectClearanceBranch@mail.nih.gov. Formal requests for additional plans and

instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on May 22, 2024, pages 45000–45001 (89 FR 45000) and allowed 60 days for comment. One public comment was received. The purpose of this notice is to allow an additional 30 days for public comment.

The Office of the Director (OD), Office of Extramural Research (OER), National Institutes of Health (NIH), may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid Office of Management and Budget (OMB) control number.

In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, NIH has submitted to OMB a request for review and approval of the information collection listed below.

Proposed Collection Title: Public Health Service (PHS) Post-award Reporting Requirements Revision, OMB 0925–0002, Expiration Date 01/31/2026, Office of the Director (OD), National Institutes of Health (NIH).

Need and Use of Information Collection: Starting in Fiscal Year 2025, NIH will require applicable recipients to address progress in association with their approved Data Management and Sharing (DMS) Plans within the Research Performance Progress Report

(RPPR) in accordance with the final NIH Policy for Data Management and Sharing (DMS Policy) to promote the management and sharing of scientific data generated from NIH-funded or conducted research. The progress report forms will be updated to align with this requirement. The Training Data Tables will also be updated to reduce burden and promote consistent information collection, including limiting the scope of information collection to data only relevant to the training stage(s) of the proposed program in table 1 and removing instructions in table 8 that are reported within the RPPR. Effective for May 2025, NIH will be adopting the Common Forms for Biographical Sketch and Current and Pending (Other) Support as part of the directive from Guidance for Implementing National Security Presidential Memorandum-33. The Common Forms are part of a separate OMB collection, currently approved under 3145–0279 (Expiration Date 10/31/2026). As such, elements that will be collected within the Common Forms will be removed from NIH's current NIH Biosketch and Other Support formats. NIH will continue to collect additional information not captured on the Common Forms to adhere to the agency's implementation of the NIH Peer Review Regulations at 42 CFR part 52 as part of the NIH Biosketch form, which will be renamed the NIH Biographical Sketch Supplement to reflect the supplemental information requested. The application and progress report forms and associated instructions will be updated

to align with these new requirements. The RPPR is required to be used by all NIH, Food and Drug Administration, Centers for Disease Control and Prevention, and Agency for Healthcare Research and Quality recipients. Interim progress reports are required to continue support of a PHS grant for each budget year within a competitive segment. This collection also includes other PHS post-award reporting requirements: PHS 416–7 National Research Service Award (NRSA) Termination Notice, PHS 2271 Statement of Appointment, 6031–1 NRSA Annual Payback Activities Certification, Department of Health and Human Services (HHS) 568 Final Invention Statement and Certification, and PHS 3734 Statement Relinquishing Interests and Rights in a PHS Research Grant. The PHS 416–7, 2271, and 6031–1 is used by NRSA recipients to activate, terminate, and provide for payback of a NRSA. Closeout of an award requires a Final Invention Statement (HHS 568) and Final Progress Report. The PHS 3734 serves as the official record of recipient relinquishment of a PHS award when an award is transferred from one recipient institution to another. Pre-award reporting requirements are simultaneously consolidated under 0925–0001 and the changes to the collection here are related.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 629,463.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Reporting					
PHS 416–7	Recipient	12,580	1	30/60	6,290
PHS 6031–1	Recipient	1,778	1	20/60	593
PHS 568	Recipient	11,180	1	5/60	932
PHS 2271	Recipient	22,035	1	15/60	5,509
PHS 2590	Recipient	243	1	18	4,374
RPPR—Core Data	Recipient	32,098	1	9	288,882
Biosketch (Part of RPPR)	Recipient	2,544	1	2	5,088
Data Tables (Part of RPPR)	Recipient	758	1	4	3,032
Trainee Diversity Report (Part of RPPR)	Recipient	480	1	15/60	120
PHS Human Subjects and Clinical Trial Information.	Recipient	6,420	1	3	25,680
Publication Reporting	Recipient	97,023	3	5/60	24,256
Final RPPR—Core Data	Recipient	18,000	1	11	198,000
Data Tables (Part of Final RPPR)	Recipient	758	1	4	3,032
Trainee Diversity Report (Part of Final RPPR)	Recipient	480	1	15/60	120
PHS Human Subjects and Clinical Trial Information (Part of Final RPPR).	Recipient	3,600	1	4	14,400
PHS 3734	Recipient	479	1	30/60	240
Data Management and Sharing Plan (Part of RPPR).	Recipient	15,649	1	2	31,298

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Data Management and Sharing Plan (Part of Final RPPR).	Recipient	8,621	1	2	17,242
Reporting Burden Total .....	.....	.....	.....	.....	629,088
Recording Keeping					
SBIR/STTR Life Cycle Certification	Recipient	1,500	1	15/60	375
Grand Total .....	.....	236,226	430,272	.....	629,463

Dated: September 16, 2024.

Lawrence A. Tabak,
Principal Deputy Director, National Institutes of Health.

[FR Doc. 2024–21802 Filed 9–23–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the NIH Clinical Center Research Hospital Board.

This will be a hybrid meeting held in-person and virtually and will be open to the public as indicated below. Individuals who plan to attend in-person or view the virtual meeting and need special assistance or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting can be accessed from the NIH Videocast at the following link: <https://videocast.nih.gov/>.

Name of Committee: NIH Clinical Center Research Hospital Board.

Date: October 18, 2024.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: NIH and Clinical Center (CC) Leadership Announcements, CC CEO Update of Recent Activities and Organizational Priorities, Status Report on Key CC Strategic Plan Initiatives, and Other Business of the Clinical Center Research Hospital Board (CCRHB).

Place: National Institutes of Health, Building 31, Conference Room 6C02 A & B, 9000 Rockville Pike, Bethesda, MD 20892 (In-Person and Virtual)

Contact Persons:

Patricia Piringer, RN, MSN (C), National Institutes of Health Clinical Center, 10 Center Drive, Bethesda, MD 20892 ppiringer@cc.nih.gov, (301) 402–2435, (202) 460–7542 (direct).

Natascha Pointer, Management Analyst, Executive Assistant to Dr. Gilman Office of the Chief Executive Officer, National Institutes of Health Clinical Center, 10 Center Drive, Bethesda, MD 20892, npointer@cc.nih.gov, (301) 496–4114, (301) 402–2434 (direct).

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person(s) listed on this notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at <https://www.nih.gov/about-nih/visitor-information/campus-access-security> for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the CCRHB website: <https://www.ccrhb.od.nih.gov/> where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: September 19, 2024.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–21838 Filed 9–23–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 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 grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Palliative Care Research Consortium.

Date: November 7, 2024.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, 5601 Fishers Lane, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Janetta Lun, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institutes of Health, 5601 Fishers Lane, Rm. 213, Rockville, MD 20814, (301) 496–9666, janetta.lun@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 18, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–21738 Filed 9–23–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting**

Pursuant to section 1009 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 grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; HIV COMORBIDITIES AND RESERVOIRS.

Date: November 8, 2024.

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

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDDK, Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maria E. Davila-Bloom, Ph.D., Scientific Review Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Boulevard, Rm. 7017, Bethesda, MD 20892–5452, (301) 594–7637, davila-bloom@extra.nidk.nih.gov. (Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 18, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–21736 Filed 9–23–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute of General Medical Sciences; Notice of Closed Meeting**

Pursuant to section 1009 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 grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of Support for Research Excellence (SuRE) Program and Support for Research Excellence—First Independent Research (SuRE-First) Award (R16).

Date: October 31–November 1, 2024.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, Maryland 20892 (Virtual Meeting).

Contact Person: John J. Laffan, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, 45 Center Drive, Room 3AN18J, Bethesda, Maryland 20892, 301–594–2773, laffanjo@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program No. 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: September 18, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–21740 Filed 9–23–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Government-Owned Inventions; Availability for Licensing**

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT:

Haiqing Li at 240–627–3708, or [\[mail.nih.gov\]\(mailto:mail.nih.gov\). Licensing information may be obtained by communicating with the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852; tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished information related to the invention.](mailto:lihai@</p></div><div data-bbox=)

SUPPLEMENTARY INFORMATION: Technology description follows:

Monoclonal Antibodies That Bind to the Underside of Influenza Viral Neuraminidase*Description of Technology*

Current influenza vaccines mainly induce antibodies against the surface glycoprotein hemagglutinin (HA) that block viral attachment to its host receptors and viral membrane fusion to the host cell. The immunodominant head region of HA undergoes antigenic drift and antibodies directed to the head confer little cross-protections between strains or subtypes.

Researchers at the Vaccine Research Center of the National Institute of Allergy and Infectious Diseases have identified human monoclonal antibodies that each bind distinct epitopes on the less abundant yet critical viral surface glycoprotein neuraminidase (NA). These antibodies, isolated from convalescent individuals with confirmed influenza A H3N2 infection, inhibit viral propagation of a wide range of human H3N2, swine-origin variant H3N2, and H2N2 viruses and confer pre-exposure and post-exposure protection from lethal H3N2 infection in mice. Cryo-electron microscopy revealed that two of these antibodies bind non-overlapping epitopes covering the underside of the NA head, thus defining a potential vaccine target.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404.

Potential Commercial Applications

- Prevention or treatment of influenza infection
- Testing influenza antigens

Competitive Advantages

- Improved breadth of protection relative to influenza HA-targeting antibodies

Development Stage: Preclinical.

Inventors: Masaru Kanekiyo (NIAID), Sarah Andrews (NIAID), Julia Lederhofer (NIAID), Yaroslav Tsybovsky (Leidos Biomedical Research).

Publications: Protective human monoclonal antibodies target conserved sites of vulnerability on the underside of influenza virus neuraminidase. Lederhofer, Julia et al. *Immunity*, Volume 57, Issue 3, 574–586.e7.

Intellectual Property: PCT/US2023/071194 filed 28 July 2023 (NIH Ref. No. E-177–2022).

Licensing Contact: To license this technology, please contact Haiqing Li at 240–627–3708, or lihai@mail.nih.gov, and reference E-177–2022.

Dated: September 18, 2024.

Christopher M. Kornak,

Acting Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2024–21742 Filed 9–23–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 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 grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Time-Sensitive Obesity review.

Date: October 29, 2024.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDDK Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, National Institute of Diabetes and Digestive and Kidney, National Institute of Health, 6707 Democracy Boulevard, Rm. 7353, Bethesda, MD 20892–2542, (301) 594–8898, barnardm@extra.niddk.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition

Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 18, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–21737 Filed 9–23–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

Proposed Project: New: The Center for Substance Abuse Prevention Online Reporting Tool and Grant Programmatic Progress Report to replace Division of State Programs—Management Reporting Tool (DSP–MRT) (OMB No. 0930–0354).

The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Substance Abuse Prevention (CSAP) is requesting approval from the Office of Management and Budget (OMB) to monitor CSAP discretionary grant programs through administration of a suite of data collection instruments for grant compliance and programmatic performance monitoring.

This package describes the data collection activities and proposed instruments. Grant compliance monitoring will be conducted via a single data collection instrument to be completed by all CSAP discretionary grant recipients. Programmatic performance monitoring will be conducted via a suite of data collection instruments with each instrument tailored to a specific CSAP discretionary program. This request for data collection will replace OMB No. 0930–0354: Division of State Programs—Management Reporting Tool.

CSAP intends to monitor six grant programs through this data collection effort:

- *Strategic Prevention Framework—Partnerships for Success (SPF–PFS):* The purpose of the SPF–PFS program is to help reduce the onset and progression of

substance misuse and its related problems by supporting the development and delivery of state and community substance misuse prevention and mental health promotion services. This program is intended to promote substance use prevention throughout a state jurisdiction for individuals and families by building and expanding the capacity of local community prevention providers to implement evidence-based programs. In addition, the program is intended to expand and strengthen the capacity of local community prevention providers to implement evidence-based prevention programs. With this program, SAMHSA aims to strengthen state and community level prevention capacity to identify and address local substance use prevention concerns, such as underage drinking, marijuana, tobacco, electronic cigarettes, opioids, methamphetamine, and heroin.

- *Sober Truth on Preventing Underage Drinking (STOP Act):* The purpose of this program is to prevent and reduce alcohol use among youth and young adults ages 12–20 in communities throughout the United States through evidence-based screening, programs and curricula, brief intervention strategies, consistent policy enforcement, and environmental changes that limit underage access to alcohol as authorized by 42 U.S.C. 290bb–25b. The program aims to: (1) address norms regarding alcohol use by youth, (2) reduce opportunities for underage drinking, (3) create changes in underage drinking enforcement efforts, (4) address penalties for underage use, and/or (5) reduce negative consequences associated with underage drinking.

- *Strategic Prevention Framework for Prescription Drugs (SPF Rx):* The purpose of the SPF Rx grant program is to provide resources to help prevent and address prescription drug misuse within a State or locality. The program is designed to raise awareness about the dangers of sharing medications as well as the risks of fake or counterfeit pills purchased over social media or other unknown sources, and work with pharmaceutical and medical communities on the risks of overprescribing. Whether addressed at the state level or by an informed community-based organization, the SPF Rx program will raise community awareness and bring prescription substance misuse prevention activities and education to schools, communities, parents, prescribers, and their patients. In addition, grant recipients will be required to track reductions in opioid related overdoses and incorporate relevant prescription and overdose data

into strategic planning and future programming.

• *First Responders-Comprehensive Addiction and Recovery Act (FR CARA):*

The purpose of this program is to allow first responders and members of other key community sectors to administer a drug or device approved or cleared under the Federal Food, Drug, and Cosmetic Act for emergency treatment of known or suspected opioid overdose.

• *Grants to Prevent Prescription Drug/Opioid Overdose-Related Deaths (PDO):*

The purpose of this program is to support first responders and members of other key community sectors to administer a drug or device approved or cleared under the Federal Food, Drug, and Cosmetic Act (FD&C Act) for emergency reversal of known or suspected opioid overdose. Recipients will train and provide resources to first responders and members of other key community sectors at the state, tribal, and local levels on carrying and administering a drug or device approved or cleared under the FD&C Act for emergency treatment of known or suspected opioid overdose.

• *Improving Access to Overdose Treatment (ODTA):* The purpose of this program is to expand access to naloxone and other Food and Drug Administration (FDA) approved overdose reversal medications for

emergency treatment of known or suspected opioid overdose. The recipients will collaborate with other prescribers at the community level to implement trainings on policies, procedures, and models of care for prescribing, co-prescribing, and expanding access to naloxone and other FDA-approved overdose reversal medications to the specified population of focus (*i.e.*, rural or urban). With this program SAMHSA aims to expand access to naloxone and other FDA approved overdose reversal medications for emergency treatment of known or suspected opioid overdose.

Grant compliance monitoring: All SAMHSA awards require grantees to submit performance and progress reports through the electronic Research Administration (eRA) Commons, an end-to-end Grants Management system. The frequency and program-specific instructions for preparation and submission of these reports are identified in the terms and conditions found in the Notice of Award. CSAP discretionary grant compliance monitoring will be conducted through the submission of the Programmatic Progress Report (PPR). The PPR contains fields for grantees to enter information on activities and accomplishments that occurred during the reporting period

based on identified goals and objectives. It also contains fields for grantees to share evaluation updates and outcomes as well as planned activities for the upcoming reporting period as well as any challenges that grantees have experienced.

The Center for Substance Abuse Prevention Online Reporting Tool (CORT) is comprised of two components. The first provides fields for grantees to enter annual goals for key programmatic measures. The second provides fields for reporting quarterly progress toward achieving these goals. CSAP intends to have grantees report progress on a quarterly basis to allow for consistent, periodic analyses which will allow for the administration of technical assistance supports when grantees are falling behind in achieving these goals. Quarterly reporting will also allow the Center to review the overall progress of grant programs. Program specific instruments have been developed to ensure optimal alignment with individual grant requirements. These instruments were developed based on instruments approved in OMB 0930–0391: Harm Reduction Grant Program Annual Targets and Quarterly Progress Reports.

Annualized Data Collection Burden

TABLE 1—BURDEN TABLE: ANNUALIZED BURDEN—ANNUAL TARGETS

Instrument	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total burden hours	Average hourly wage ¹	Total respondent cost
STOP Act	202	1	202	1	202	\$48.35	9,766.70
SPF-PFS	315	1	315	1	315	48.35	15,230.25
FR CARA	87	1	87	1	87	48.35	4,206.45
PDO	18	1	18	1	18	48.35	870.30
ODTA	8	1	8	1	8	48.35	386.80
SPF-Rx	27	1	27	1	27	48.35	1,305.45
Total	657	.....	657	.....	657	.....	31,765.96

TABLE 2—BURDEN TABLE: CENTER FOR SUBSTANCE ABUSE PREVENTION ON-LINE REPORT TOOL (CORT)—QUARTERLY PERFORMANCE ANNUALIZED BURDEN

Instrument	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total burden hours	Average hourly wage ¹	Total respondent cost
STOP Act	202	4	808	5.75	4,646	\$48.35	224,634.10
SPF-PFS	315	4	1,260	6	7,560	48.35	365,526.00
FR CARA	87	4	348	6	2,088	48.35	100,954.80
PDO	18	4	72	6	432	48.35	20,887.20
ODTA	8	4	32	6	192	48.35	9,283.20
SPF-Rx	27	4	108	6	648	48.35	31,330.80
Total	657	.....	2,628	.....	15,566	.....	752,616.10

¹ Grantee Project Director or Evaluator hourly wage is based on the mean hourly wage for state government managers, as reported in the 2022 Occupational Employment (OES) by the Bureau of Labor Statistics (BLS) found at https://www.bls.gov/oes/current/naics4_999200.htm#11-0000. Accessed on December 13, 2023.

TABLE 3—ANNUALIZED BURDEN TABLE: CSAP'S GRANT PROGRAMMATIC PROGRESS REPORT

CSAP grant program	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total burden hours	Average hourly wage ¹	Total respondent cost
STOP Act	202	1	202	4	808	\$48.35	39,066.80
SPF-PFS	315	1	315	4	1,260	48.35	60,921.00
FR CARA	87	1	87	4	348	48.35	16,825.80
PDO	18	1	18	4	72	48.35	3,481.20
ODTA	8	1	8	4	32	48.35	1,547.20
SPF Rx	27	1	27	4	108	48.35	5,221.80
Total	657				2,628		127,063.80

TABLE 4—BURDEN TOTALS BY YEAR: ALL DATA COLLECTION INSTRUMENTS

Year	Number of grantees	Annual burden hours	Total burden hours	Average hourly wage ¹	Total cost
Year 1	657	~28–29	18,851	\$48.35	911,445.85
Year 2	700	29	20,088	48.35	971,254.80
Year 3	700	29	20,088	48.35	971,254.80
Year 4	700	29	20,088	48.35	971,254.80
Year 5	700	29	20,088	48.35	971,254.80
Total	3,457		99,203		4,796,465.05

The instruments have been revised to reflect comments received during the 60-day **Federal Register** comment period and cognitive testing. Changes include adding/updating instructions for clarification, added skip patterns, adding/revising definitions, standardizing language, collapsing of response items, and removal of measures. This will ease burden on respondents. Additionally, adjustments have been made in the language related to reporting race/ethnicity and sexual orientation and gender identity.

Written comments and recommendations for the proposed 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.

Alicia Broadus,
Public Health Advisor.

[FR Doc. 2024–21789 Filed 9–23–24; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

Project: Revision of Mental Health Client/Participant Outcome Measures and Infrastructure, Prevention, and Promotion Indicators (OMB No. 0930–0285)

SAMHSA is requesting approval from OMB for a revision to extend the expiration date for the previously approved instruments and data collection activities for the Center for Mental Health Services Mental Health Client/Participant Outcome Measures and Infrastructure, Prevention, and Promotion Indicators (OMB No 0930–0285) that expires on March 30, 2025.

To be fully accountable for the spending of Federal funds, SAMHSA requires all programs to collect and report data to ensure that program goals and objectives are met. Data are collected and used to monitor and

improve performance of each program and ensure appropriate and thoughtful spending of Federal funds.

SAMHSA requests to continue using and extend the expiration date for the currently approved Client-level Mental Health Client/Participant Outcome measures and Infrastructure, Prevention, and Promotion indicators and to extend the expiration date.

These two data collections maintain capacity and requirements to report qualitative performance and quantitative outcomes for all Center for Mental Health Services discretionary grant programs, including: demographic characteristics of clients served; social determinants of health of clients served before, during, and at end of services; numbers of clients served; and process measures, outputs, outcomes, of grant program required activities.

Currently, the information collected from these data collections is entered and stored on SAMHSA's Performance Accountability and Reporting System (SPARS), which is a real-time, performance management system that captures information on mental health and substance abuse treatment services delivered in the United States through discretionary grantees. Continued approval of this information collection will allow SAMHSA to continue to meet Government Performance and Results Modernization Act of 2010 (GPRMA) reporting requirements that quantify the effects and accomplishments of its discretionary grant programs, which are consistent with OMB guidance.

SAMHSA and its Centers will use the data collected for annual reporting required by GPRMA, to describe clients and individuals served and to summarize outputs and outcomes of grant program activities. SAMHSA and its Centers will use the data for annual reporting. SAMHSA's report for each fiscal year will include actual results of performance monitoring for the three preceding fiscal years. Information collected through this request will allow SAMHSA to report on the results of

these performance outcomes as well as be consistent with SAMHSA-specific performance domains, and to assess the accountability and performance of its discretionary grant programs. The information collected through this request will allow SAMHSA to improve its ability to assess the impact of its programs on key outcomes of interest and to gather vital descriptive characteristics about clients served by discretionary grant programs.

Currently, there are 76,209 total burden hours in the two data collections. SAMHSA is requesting an increase to 139,178 hours to account for additional grantees having reporting requirements and to account more fully for the time needed to report quarterly on the IPP indicators. The proposed estimate of time to collect data and complete the instruments is shown in table 1.

TABLE1—ESTIMATES OF ANNUALIZED HOUR BURDEN

SAMHSA tool	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
Client-level baseline assessment—interview	75,600	1	75,600	0.3	22,680
Client-level baseline assessment—administrative	84,000	1	84,000	0.1	8,400
Client-level 3- or 6-month reassessment—interview	53,760	1	53,760	0.3	16,128
Client-level 3- or 6-month reassessment—administrative	67,200	1	67,200	0.1	6,720
Client-level discharge assessment—interview	12,500	1	12,500	0.3	3,750
Client-level discharge assessment—administrative	25,000	1	25,000	0.1	2,500
Section H Program Specific Data: baseline, 3- or 6-month reassessment, and/or clinical discharge	75,000	2	150,000	0.1	15,000
Subtotal	393,060	.....	468,060	.....	75,178
Infrastructure development, prevention, and mental health promotion quarterly record abstraction	2,000	4	8,000	8	64,000
Subtotal	2,000	.....	8,000	.....	64,000
Total	395,060	.....	476,060	.....	139,178

Written comments and recommendations for the proposed 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.

Krishna Palipudi,
Social Science Analyst.

[FR Doc. 2024–21790 Filed 9–23–24; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds of Customs Duties

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice advises the public that the quarterly Internal Revenue

Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties will remain the same as the previous quarter. For the calendar quarter beginning October 1, 2024, the interest rates for underpayments will be 8 percent for both corporations and non-corporations. The interest rate for overpayments will be 8 percent for non-corporations and 7 percent for corporations. This notice is published for the convenience of the importing public and U.S. Customs and Border Protection personnel.

DATES: The rates announced in this notice are applicable as of October 1, 2024.

FOR FURTHER INFORMATION CONTACT:

Bruce Ingalls, Revenue Division, Collection Refunds & Analysis Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 298–1107.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or

underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 provides different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2024–18, the IRS determined the rates of interest for the calendar quarter beginning October 1, 2024, and ending on December 31, 2024. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (5%) plus three percentage points (3%) for a total of eight percent (8%) for both corporations and non-corporations. For overpayments made by non-corporations, the rate is the Federal short-term rate (5%) plus three percentage points (3%) for a total of eight percent (8%). For corporate overpayments, the rate is the Federal short-term rate (5%) plus two

percentage points (2%) for a total of seven percent (7%). These interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties remain the same as the previous quarter.

These interest rates are subject to change for the calendar quarter beginning January 1, 2025, and ending on March 31, 2025.

For the convenience of the importing public and U.S. Customs and Border

Protection personnel, the following list of IRS interest rates used, covering the period from July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate overpayments (eff. 1–1–99) (percent)
070174	063075	6	6	.....
070175	013176	9	9	.....
020176	013178	7	7	.....
020178	013180	6	6	.....
020180	013182	12	12	.....
020182	123182	20	20	.....
010183	063083	16	16	.....
070183	123184	11	11	.....
010185	063085	13	13	.....
070185	123185	11	11	.....
010186	063086	10	10	.....
070186	123186	9	9	.....
010187	093087	9	8	.....
100187	123187	10	9	.....
010188	033188	11	10	.....
040188	093088	10	9	.....
100188	033189	11	10	.....
040189	093089	12	11	.....
100189	033191	11	10	.....
040191	123191	10	9	.....
010192	033192	9	8	.....
040192	093092	8	7	.....
100192	063094	7	6	.....
070194	093094	8	7	.....
100194	033195	9	8	.....
040195	063095	10	9	.....
070195	033196	9	8	.....
040196	063096	8	7	.....
070196	033198	9	8	.....
040198	123198	8	7	.....
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4
100103	033104	4	4	3
040104	063004	5	5	4
070104	093004	4	4	3
100104	033105	5	5	4
040105	093005	6	6	5
100105	063006	7	7	6
070106	123107	8	8	7
010108	033108	7	7	6
040108	063008	6	6	5
070108	093008	5	5	4
100108	123108	6	6	5
010109	033109	5	5	4
040109	123110	4	4	3
010111	033111	3	3	2
040111	093011	4	4	3
100111	033116	3	3	2
040116	033118	4	4	3
040118	123118	5	5	4
010119	063019	6	6	5
070119	063020	5	5	4
070120	033122	3	3	2
040122	063022	4	4	3
070122	093022	5	5	4
100122	123122	6	6	5
010123	093023	7	7	6
100123	123124	8	8	7

Crinley S. Hoover,
Acting Chief Financial Officer, U.S. Customs
and Border Protection.

[FR Doc. 2024-21785 Filed 9-23-24; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Revocation of Customs Brokers' National Permits

AGENCY: U.S. Customs and Border
Protection, Department of Homeland
Security.

ACTION: Revocation of customs brokers'
national permits.

SUMMARY: This document provides
notice of the revocation by operation of
law of customs brokers' national permits
for calendar years 2023 and 2024.

FOR FURTHER INFORMATION CONTACT:
Mohammad O. Qureshi, Chief, Broker
Management Branch, Office of Trade,
(202) 909-3753, or
mohammad.o.qureshi@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION: This
document provides notice that,
pursuant to section 641 of the Tariff Act
of 1930, as amended (19 U.S.C. 1641),
and sections 111.45(b) and 111.96(c) of

title 19 of the Code of Federal
Regulations (19 CFR 111.45(b) and 19
CFR 111.96(c)), the following customs
brokers' national permits were revoked
by operation of law, without prejudice,
for failure to pay the annual permit user
fee for calendar year 2023 by February
24, 2023, or calendar year 2024 by
February 9, 2024.¹ Pursuant to 19 CFR
111.45(c), a list of revoked customs
brokers' national permits appears below.

Last name/company name	First name	Permit No.
Acosta	Martha L	2022-0348
Ampac Customs Service Inc .....	.....	2022-0220
Bansard Anker International LLC .....	.....	17-157
BRi Boise Inc .....	.....	06-0108
Bruno	Mary Jo	17-016
Bustard	Michelle J	2022-0487
Casso	Luis R	2022-0415
Chariez	Jose	19-133
Christiansen	Michael Brian	2022-0218
Daniel D. Casale Customs Broker Inc .....	.....	99-0123
Diaz	Benny	2020-0085
Dubon	Eduardo	2022-0290
Duncan	Robert A	12-039
eDrawback LLC .....	.....	2022-0103
F.C. Felhaber & Co., Inc .....	.....	13-019
Gateway CHB, Ltd .....	.....	99-00643
GEFCO Forwarding USA, Inc .....	.....	99-00429
Golovets	Alexander	2022-0450
Hart Worldwide Logistics Inc .....	.....	08-0064
Heimark	David Preston	2022-0269
Hellstrom	Lenny Dean	15-019
Hossain	Amir	2022-0212
Indigo Trade Solutions LLC .....	.....	19-036
Jarrett	Deborah Anne	11-060
Kim	Chong H	2022-0179
Krief	Gerald Jacob	2022-0485
Labay/Summers International, Inc .....	.....	2022-0209
Liao	Mike	09-0058
Logicargo Trade Group LLC .....	.....	2021-0003
Lu	Cindy Yu	2020-0032
Michaud	Peggy G	2022-0213
Moyer	Peter C	07-0149
Nistal Intl Inc .....	.....	17-123
Noah	Frank Seung	06-0120
Nobel Cargo Customs Inc .....	.....	11-019
Oliva-Hardison	Angel A	2022-0336
PCU Customs Brokers .....	.....	19-072
Preferred Services Inc .....	.....	12-056
Prologix LLC .....	.....	19-017
Riggs	Kathleen Tansey	08-0040
Tri-Port Clearance Corp .....	.....	99-00205
Voight	Paul	2022-0263
Whittingham	David	04-00010

¹ U.S. Customs and Border Protection publishes
the date by which the permit user fee must be paid

annually. See 87 FR 77132 (December 16, 2022) and
88 FR 82910 (November 27, 2023).

Dated: September 18, 2024.

AnnMarie R. Highsmith,

Executive Assistant Commissioner, Office of Trade.

[FR Doc. 2024–21768 Filed 9–23–24; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Extension From OMB of One Current Public Collection of Information: TSA infoBoards

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0065, abstracted below that we will submit to OMB for an extension in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. TSA infoBoards (formerly WebBoards) are an information-sharing environment designed to serve stakeholders in the transportation security community and are used to disseminate mission-critical information. Utilizing and inputting information into TSA infoBoards is completely voluntary.

DATES: Send your comments by November 25, 2024.

ADDRESSES: Comments may be emailed to TSAPRA@tsa.dhs.gov or delivered to the TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227–2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at <https://www.reginfo.gov> upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0065; TSA infoBoards. TSA infoBoards were developed by TSA as part of its broad responsibilities and authorities under the Aviation and Transportation Security Act (ATSA), and delegated authority from the Secretary of Homeland Security, for “security in all modes of transportation . . . including security responsibilities . . . over modes of transportation that are exercised by the Department of Transportation.”¹

The TSA infoBoards are a data management system that provides coordination and collaboration with parties that have an interest in transportation security and an appropriate level of need to access transportation security information, such as regulated parties and other industry stakeholders, Federal agencies, and state and local governments. It is located in a secure online environment and is accessible from the Homeland Security Information Network (HSIN) and TSA (for TSA staff only). The TSA infoBoards system disseminates mission-critical information to users inside and outside of the TSA organization. It provides an online portal allowing authorized users to obtain, post, and exchange information, access common resources, and communicate with similarly situated

individuals. This system also integrates other security-related information and communications at the sensitive security information (SSI) level.

TSA infoBoards are primarily used for disseminating TSA mission-critical information, such as Security Directives (SD), compliance status, policy updates, and watchlists; however, some groups of stakeholders utilize infoBoards for collaboration and to upload transportation security information. InfoBoards allow stakeholders to filter alerts and information based on their particular needs, such as their regulated areas of operation or their treaty relationship for foreign government staff.

TSA infoBoards are used primarily by individuals with transportation security responsibilities, such as aircraft operators, airport security coordinators, and international transportation security coordinators. These individuals can voluntarily contact TSA to request access to TSA infoBoards; TSA does not require participation in TSA infoBoards.

TSA collects two types of information through TSA infoBoards, as described below. The collection is voluntary. TSA infoBoards users are not required to provide all information requested, but users who choose to withhold information may not receive the benefits of TSA infoBoards associated with that information collection.

1. *User registration information.* TSA collects this information to ensure only those members of the transportation community with a relevant interest in transportation security and with an appropriate level of need to access transportation security information can be allowed onto TSA infoBoards. Such registration information includes the user's name, professional contact information, agency/company, job title, employer, airport (optional), citizenship, regulatory interest, and employment verification contact information.

2. *User's choice of infoBoards.* TSA collects this information to select TSA infoBoards community(ies) appropriate for the particular user. Users are asked to submit their transportation security interest(s) and desired infoBoard(s) (to assess the user's qualifications and needs together with the user registration information).

TSA uses TSA Form 1427, *TSA infoBoards User Account Request/Renewal*, to collect the information. The form references an additional instrument, TSA Form 1430, *Computer Access Agreement (CAA) External Personnel Only*. This form is intended for the public, non-Department and TSA infoBoards users, and certifies

¹ See Pub. L. 107–71 (115 Stat. 597, Nov. 19, 2001), codified at 49 U.S.C. 114 (d). The TSA Assistant Secretary's current authorities under ATSA have been delegated to him by the Secretary of Homeland Security. Section 403(2) of the Homeland Security Act (HSA) of 2002, Pub. L. 107–296 (116 Stat. 2315, Nov. 25, 2002), transferred all functions of TSA, including those of the Secretary of Transportation and the Under Secretary of Transportation of Security related to TSA, to the Secretary of Homeland Security. Pursuant to DHS Delegation Number 7060.2, the Secretary delegated to the Assistant Secretary (then referred to as the Administrator of TSA), subject to the Secretary's guidance and control, the authority vested in the Secretary with respect to TSA, including that in section 403(2) of the HSA.

understanding and acceptance of applicable policy and legal requirements concerning access to network resources within DHS/TSA.

Based on data observed since the previous approval, TSA estimates that there will be approximately 5,000 public users annually. Given this information, the total annual hour burden for this information collection for all respondents is estimated to be approximately 10,000 hours.

Dated: September 19, 2024.

Christina A. Walsh,
*TSA Paperwork Reduction Act Officer,
Information Technology.*

[FR Doc. 2024–21792 Filed 9–23–24; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Extension From OMB of One Current Public Collection of Information: Sensitive Security Information Threat Assessment Application

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0042, abstracted below that we will submit to OMB for an extension in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves TSA determining whether certain individuals seeking access to sensitive security information (SSI) may be granted access to the SSI.

DATES: Send your comments by November 25, 2024.

ADDRESSES: Comments may be emailed to TSAPRA@tsa.dhs.gov or delivered to the TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227–2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501

et seq.), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at <https://www.reginfo.gov> upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0042; Sensitive Security Information Threat Assessment. Section 525(d) of the Department of Homeland Security Appropriations Act of 2007 (DHS Appropriations Act, Public Law 109–295, 120 Stat 1382), as reenacted, requires TSA to establish a process by which a party seeking access to SSI in a civil proceeding in federal district court can make a request to receive a record designated as SSI. TSA's process applies to parties who demonstrate a substantial need for relevant SSI in the preparation of the party's case and without the record, it would create an undue hardship to obtain the substantial equivalent of the information in the records by other means. Under this process, the party's representative may request and be granted conditional access to the SSI at issue in the case.

This process also applies to additional categories of individuals seeking access to SSI. For example, they apply to witnesses retained by a party as experts or consultants and court reporters that are required to record or transcribe testimony containing specific SSI and who do not have a current security clearance required for access to classified national security information as defined by E.O. 12958, as amended. The process is also used by a prospective bidder to submit a proposal in response to a Request for Proposal (RFP) issued by TSA. TSA may request certain SSI in order for a prospective bidder to perfect their bid. RFPs are sent

to an individual involved in the performance of non-traditional contractual agreements (for example, bailments) or other transaction agreements, or an individual receiving access to SSI under 49 CFR 1520.15(e) regarding other conditional disclosures.

Applicants seeking access to SSI in federal district court litigation must complete TSA Form 2817A, *SSI Access Threat Assessment Questionnaire—Litigation*. Bidders and certain other applicants will be required to complete TSA Form 2817B, *SSI Access Threat Assessment Questionnaire—Standard* in order to have a security threat assessment completed before they can receive the requested SSI. TSA will use the information collected to conduct the security threat assessment for the purpose of determining whether the provision of such access to the information for the proceeding or other reason presents a risk of harm to the Nation.

This assessment includes: (1) a fingerprint-based criminal history records check (CHRC); (2) a name-based check to determine whether the individual poses or is suspected of posing a threat to transportation or national security, including checks against terrorism, immigration, or other databases TSA maintains or uses; and/or (3) implement other procedures and requirements for safeguarding SSI that are satisfactory to TSA including a professional responsibility check (for attorneys and court reporters). Based on the results of the security threat assessment, TSA will make a final determination on whether the individual may be granted access to the SSI.

Individuals who are members of TSA PreCheck™ (also known as TSA Pre✓® Application Program) may provide their known traveler number to facilitate the security threat assessment process. TSA permits this use of TSA PreCheck™ status based on a determination that the threat assessment for TSA PreCheck™ membership is comparable to that required for access to SSI.

TSA estimates that the total annual hour burden for this collection will be 275 hours, based on an estimated 256 annual respondents with a one-hour burden per respondent, plus 7 SSI litigant respondents with a 2.68-hour burden per respondent.

Dated: September 19, 2024.

Christina A. Walsh,
*TSA Paperwork Reduction Act Officer,
Information Technology.*

[FR Doc. 2024–21791 Filed 9–23–24; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Extension From OMB of One Current Public Collection of Information: Military Severely Injured Joint Support Operations Center (MSIJSOC) and Travel Protocol Office (TPO) Programs

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652-0069, abstracted below that we will submit to OMB for an extension in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves the submission of travel information to TSA to provide wounded warriors, severely injured military personnel, and certain other travelers with assistance through the airport security screening process.

DATES: Send your comments by November 25, 2024.

ADDRESSES: Comments may be emailed to TSAPRA@tsa.dhs.gov or delivered to the TSA PRA Officer, Information Technology (IT), TSA-11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598-6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227-2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be made available at <https://www.reginfo.gov> upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652-0069; Military Severely Injured Joint Support Operations Center (MSIJSOC) and Travel Protocol Office (TPO) Programs. TSA established the MSIJSOC and the TPO programs to support and facilitate the movement of wounded warriors, severely injured military personnel, veterans, and other travelers requiring an escort through the airport security screening process. The MSIJSOC and TPO programs are available at commercial airports within the continental United States and its territories.

The MSIJSOC program works with passengers who are wounded warriors, severely injured military members, and veterans. Once flight arrangements are made with the airlines, the traveler, his or her family, or other representative may contact the TSA Cares Hotline no later than 72 hours prior to their scheduled flight time with the details of the itinerary. TSA collects the traveler's name, travel itinerary (flight departure and arrival information), and a point-of-contact's mobile phone number. Once TSA collects this information, TSA Cares contacts MSIJSOC, where the staff vets the request via the appropriate Wounded Warrior Care Coordinator to verify the eligibility for an escort of a wounded warrior, severely injured military member, or veteran. After verifying eligibility, the MSIJSOC contacts the respective TSA official at the appropriate airport for action.

Additionally, the TPO program facilitates the movement of foreign dignitaries, accredited Ambassadors to the United States, and others who may require an escort through the airport security screening process. These travelers may contact the TPO office by submitting a request for travel support via telephone. Travelers and their points-of-contact should submit their travel support requests no later than 72 hours prior to the respective scheduled flight to allow TSA to make timely notification regarding the travel. TSA collects the traveler's name, travel itinerary (flight departure and arrival information), and a point-of-contact's mobile phone number.

The estimated annual burden for this collection is 444.7 hours. The estimated number of annual respondents is 5,336, with each response taking approximately 0.08333 hours ($444.7 = 5,336 \times 0.08333$).

Dated: September 19, 2024.

Christina A. Walsh,
TSA Paperwork Reduction Act Officer,
Information Technology.

[FR Doc. 2024-21795 Filed 9-23-24; 8:45 am]

BILLING CODE 9110-05-P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA-2002-11602]

Intent To Request Extension From OMB of One Current Public Collection of Information: Security Programs for Foreign Air Carriers

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652-0005, abstracted below that we will submit to OMB for an extension in compliance with the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. This information collection is mandatory for foreign air carriers and must be submitted prior to entry into the United States.

DATES: Send your comments by November 25, 2024.

ADDRESSES: Comments may be emailed to TSAPRA@tsa.dhs.gov or delivered to the TSA PRA Officer, Information Technology, TSA-11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598-6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227-2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at <http://www.reginfo.gov> upon its submission to OMB. Therefore,

in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652-0005; Security Programs for Foreign Air Carriers, 49 CFR part 1546. TSA uses the information collected to determine compliance with 49 CFR part 1546 and to ensure passenger safety by monitoring foreign air carrier security procedures. Foreign air carriers must carry out security measures to provide for the safety and security of persons, property, and cargo transported on aircraft provided by the foreign air carrier against acts of criminal violence and air piracy, and the introduction of unauthorized explosives, incendiaries, or other destructive devices, items, or substances aboard an aircraft. The information TSA collects includes identifying information on foreign air carriers' flight crews, passengers, and cargo. Specifically, TSA requires foreign air carriers to electronically submit the following information: (1) a master crew list of all flight and cabin crew members flying to and from the United States; (2) the flight crew list on a flight-by-flight basis; (3) passenger identifying information on a flight-by-flight basis; and (4) cargo shipment information. This information collection is mandatory for foreign air carriers and must be submitted before entry into the United States.

Additionally, foreign air carriers must maintain these records, as well as training records for crew members and individuals performing security-related functions and other records of compliance associated with the security programs, and make them available to TSA for inspection upon request. TSA will continue to collect information described above to determine foreign air carrier compliance with requirements of 49 CFR part 1546. TSA estimates that there will be approximately 180

respondents to the information collection, with an annual burden estimate of 241,485 hours.

Dated: September 19, 2024.

Christina A. Walsh,

*TSA Paperwork Reduction Act Officer,
Information Technology.*

[FR Doc. 2024-21787 Filed 9-23-24; 8:45 am]

BILLING CODE 9110-05-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2781-24; DHS Docket No. USCIS-2022-0007]

Implementation of Employment Authorization for Individuals Covered by Deferred Enforced Departure for Liberia

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

ACTION: Notice of Employment Authorization for Individuals Covered by Deferred Enforced Departure (DED).

SUMMARY: On June 28, 2024, President Joseph Biden issued a memorandum to the Secretary of State and the Secretary of Homeland Security (Secretary) determining that it was in the foreign policy interest of the United States to defer until June 30, 2026, the removal of certain Liberians present in the United States and to provide them with employment authorization documentation. This notice provides information about Deferred Enforced Departure (DED) for Liberians and how eligible individuals may apply for DED-based Employment Authorization Documents (EADs) with USCIS, as well as for travel authorization.

DATES: The extension of DED began on June 28, 2024, and ends on June 30, 2026, for eligible noncitizens who are nationals of Liberia (or persons having no nationality who last habitually resided in Liberia) who are covered under DED by the June 28, 2024, Presidential Memorandum.

FOR FURTHER INFORMATION CONTACT:

• You may contact Rená Cutlip-Mason, Chief, Humanitarian Affairs Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by mail at 5900 Capital Gateway Drive, Camp Springs, MD 20746, or by phone at 240-721-3000.

• For further information on DED, including additional information on

eligibility, please visit the USCIS DED web page at <https://www.uscis.gov/humanitarian/deferred-enforced-departure>. You can find specific information about DED for Liberia by selecting "DED Covered Country—Liberia" from the menu on the left of the DED web page.

• If you have additional questions about DED, please visit <https://www.uscis.gov/tools>. Our online virtual assistant, Emma, can answer many of your questions and point you to additional information on our website. If you are unable to find your answers there, you may also call our USCIS Contact Center at 800-375-5283 (TTY 800-767-1833).

• Applicants seeking information about the status of their individual Form I-765, Application for Employment Authorization, or Form I-131, Application for Travel Document, may check Case Status Online, available on the USCIS website at <https://www.uscis.gov>, or visit the USCIS Contact Center at <https://www.uscis.gov/contactcenter>.

• You can also find more information at local USCIS offices, listed on the USCIS website at <https://www.uscis.gov/about-us/find-a-uscis-office>, after this notice is published.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

CFR—Code of Federal Regulations
DED—Deferred Enforced Departure
DHS—U.S. Department of Homeland Security
DoS—Department of State
EAD—Employment Authorization Document
FNC—Final Non-confirmation
Form I-131—Application for Travel Document
Form I-765—Application for Employment Authorization
Form I-797—Notice of Action
Form I-9—Employment Eligibility Verification
Form I-912—Request for Fee Waiver
Form I-94—Arrival/Departure Record
FR—Federal Register
Government—U.S. Government
IER—U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section
INA—Immigration and Nationality Act
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TTY—Text Telephone
USCIS—U.S. Citizenship and Immigration Services
U.S.C.—United States Code

Purpose of This Action

Under the President's constitutional authority to conduct the foreign relations of the United States, President Biden has determined that it is in the

foreign policy interest of the United States to defer through June 30, 2026, the removal of certain Liberians who have been continually present in the United States since May 20, 2017, and were eligible for a grant of DED under the President's 2022 memorandum.¹ Through this Notice, as directed by the President, DHS is establishing procedures for Liberian individuals covered by DED to apply for EADs valid through June 30, 2026, and is automatically extending the validity of DED-related EADs bearing a Category Code of (a)(11) and a "Card Expires" date of March 30, 2020, January 10, 2021, June 30, 2022, and June 30, 2024, through June 30, 2026. Employment authorization and the procedures for obtaining EADs in this notice apply to any of the following individuals who are not subject to any of the ineligibilities described in President Biden's June 28, 2024, memorandum to the secretaries of State and Homeland Security: noncitizens of the United States who are nationals of Liberia, or individuals having no nationality who last habitually resided in Liberia, regardless of country of birth, who have been continuously physically present in the United States since May 20, 2017. Liberians must meet all eligibility criteria, including required documentation, for DED described in this notice. Finally, this notice provides instructions for eligible Liberians in the United States on how to request advance travel authorization.

What is DED?

- DED is an administrative deferral of removal ordered by the President. The authority to extend DED arises from the President's constitutional authority to conduct the foreign relations of the United States. DED has been authorized in situations where certain groups of noncitizens may face danger if required to return to countries, or any part of such countries, experiencing political instability, conflict, or other unsafe conditions, or when there are other foreign policy reasons for allowing a designated group of noncitizens to remain in the United States temporarily.
- Although DED is not a specific immigration status and does not require Liberians to file an application with USCIS, individuals covered by DED are not subject to removal from the United States, usually for a designated period. Furthermore, the President may direct

the Secretary to provide certain benefits that are authorized under the immigration laws, such as employment authorization, to noncitizens covered by the DED directive during the designated period.

- USCIS publishes a **Federal Register** notice to inform the covered population on how to apply for any benefits provided. See instructions for Form I-765.

- The eligibility requirements for individuals who are covered by DED are based on the terms of the President's memorandum regarding DED and any relevant implementing requirements established by DHS. Since DED is a directive to defer removal of an individual, rather than a specific immigration status like Temporary Protected Status (TPS), there is no DED application form required for an individual to be covered by DED. If an individual covered by DED wants to apply for an EAD, they must file Form I-765. Similarly, if an individual covered by DED wants to apply for advance travel authorization, they must file Form I-131.

Background

The President has determined that there are compelling foreign policy reasons to extend DED for Liberians. Since 1991, the United States has provided safe haven for Liberians who were forced to flee their country as a result of armed conflict and widespread civil strife:

- Due to ongoing civil war, Liberia was first designated for TPS for 12 months effective March 27, 1991, with successive extensions by Attorneys General under President George H.W. Bush and President Clinton to September 28, 1998,² and a new designation (also termed "redesignation") from September 29, 1998, until September 28, 1999.³
- Although Attorney General (AG) Reno announced the termination of TPS effective September 28, 1999,⁴ President

Clinton authorized DED for certain Liberians in the United States until September 29, 2000, citing the fragile political and economic situation in the country at the time,⁵ and DED was subsequently extended through September 29, 2002.⁶

- In October 2002, due to the outbreak of another civil war, AG Ashcroft designated Liberia for TPS from October 1, 2002 to October 1, 2003 and subsequently, Secretaries of Homeland Security redesignated Liberia for TPS and extended the designation through October 1, 2006.⁷ Secretary Chertoff announced the termination of TPS for Liberia effective October 1, 2007.⁸ In September 2007, President Bush announced DED for certain Liberians in the United States for 18 months, from October 1, 2007 until March 31, 2009.⁹ Following this DED authorization, DED was extended 5 times: (1) from March 31, 2009, for 18 months;¹⁰ (2) from March 31, 2010, for 18 months;¹¹ (3) from September 30, 2011, for 18 months;¹² (4) from March

⁵ See Presidential Memorandum for the Attorney General on Measures Regarding Certain Liberians in the United States, Sept. 27, 1999, <https://clintonwhitehouse6.archives.gov/1999/09/1999-09-27-memorandum-on-liberians.html>.

⁶ See Presidential Memorandum for the Attorney General on Measures Regarding Certain Liberians in the United States, Sept. 25, 2001, <https://georgewbush-whitehouse.archives.gov/news/releases/2001/09/text/20010925-7.html>.

⁷ See *Designation of Liberia Under the Temporary Protected Status Program*, 67 FR 61664 (Oct. 1, 2002), *Extension of the Designation of Liberia Under the Temporary Protected Status Program*, 68 FR 46648 (Aug. 6, 2003), *Termination and Redesignation of Liberia for Temporary Protected Status*, 69 FR 52297 (Aug. 25, 2004), and *Extension of the Designation of Liberia for Temporary Protected Status*, 70 FR 48176 (Aug. 16, 2005).

⁸ See *Termination of the Designation of Liberia for Temporary Protected Status; Automatic Extension of Employment Authorization Documentation for Liberia TPS Beneficiaries*, 71 FR 55000 (Sept. 20, 2006).

⁹ See Presidential Memorandum for the Secretary of Homeland Security on Measures Regarding Certain Liberians in the United States, Sept. 12, 2007, <https://georgewbush-whitehouse.archives.gov/news/releases/2007/09/20070912-10.html>.

¹⁰ See Presidential Memorandum for the Secretary of Homeland Security on Deferred Enforced Departure for Liberians, Mar. 23, 2009, <https://obamawhitehouse.archives.gov/the-press-office/presidential-memorandum-regarding-deferred-enforced-departure-liberians>.

¹¹ See Presidential Memorandum for the Secretary of Homeland Security on Deferred Enforced Departure for Liberians, Mar. 19, 2010, <https://obamawhitehouse.archives.gov/the-press-office/presidential-memorandum-deferred-enforced-departure-liberians>.

¹² See Presidential Memorandum for the Secretary of Homeland Security on Deferred Enforced Departure for Liberians, Aug. 16, 2011, <https://obamawhitehouse.archives.gov/the-press-office/2011/08/16/memorandum-president-regarding-deferred-enforced-departure-liberians>.

¹ See Memorandum on Extending Eligibility for Deferred Enforced Departure for Liberians, June 28, 2024, <https://www.whitehouse.gov/briefing-room/statements-releases/2024/06/28/memorandum-on-extending-eligibility-for-deferred-enforced-departure-for-liberians/>.

² See *Designation of Liberia Under Temporary Protected Status Program*, 56 FR 12746 (Mar. 27, 1991) and *Extension of Designation of Liberia Under Temporary Protected Status Program*, 57 FR 2932 (Jan. 24, 1992), 58 FR 7898 (Feb. 10, 1993), 59 FR 9997 (Mar. 2, 1994), 60 FR 16163 (Mar. 29, 1995), 61 FR 8076 (Mar. 1, 1996), *Extension of Designation and Redesignation of Liberia Under Temporary Protected Status Program*, 62 FR 16608 (Apr. 7, 1997), and *Termination of Designation of Liberia Under Temporary Protected Status Program After Final 6-Month Extension*, 63 FR 15437 (Mar. 31, 1998).

³ See *Redesignation of Liberia Under Temporary Protected Status Program*, 63 FR 51958 (Sept. 29, 1998).

⁴ See *Termination of Designation of Liberia Under the Temporary Protected Status Program*, 64 FR 41463 (Jul. 30, 1999).

31, 2013, for 18 months;¹³ and (5) from October 1, 2014, for 24 months.¹⁴

- In November 2014, Secretary Johnson designated Liberia for TPS from November 21, 2014, through May 21, 2016, due to an outbreak of Ebola virus disease in West Africa.¹⁵ TPS for Liberia was then extended from May 22, 2016, through November 21, 2016.¹⁶ In September 2016, Secretary Johnson announced a six-month extension of TPS benefits for an orderly transition before termination of Liberia's TPS designation effective May 21, 2017.¹⁷

- In September 2016, President Obama extended DED for Liberians from October 1, 2016, for 18 months.¹⁸ In March 2018, President Trump announced the expiration of DED for Liberians effective March 31, 2019, following a 12-month wind-down period.¹⁹ In March 2019, President Trump announced the extension of DED for Liberians for an additional 12-month wind-down period through March 30, 2020.²⁰

- On December 20, 2019, President Trump signed the National Defense Authorization Act (NDAA) for Fiscal Year 2020 (Pub. L. 116–92) which included a provision titled “Liberian Refugee Immigration Fairness” (LRIF). LRIF provided certain Liberians, including those who had been continuously physically present in the United States since November 20, 2014,

as well as their spouses, children, and unmarried sons or daughters, the ability to adjust their status to that of a U.S. Lawful Permanent Resident. Under this provision, eligible Liberian nationals and eligible family members had until December 20, 2020, to apply for adjustment of status.²¹

- In March 2020, President Trump issued a memorandum extending the wind-down period for DED for Liberians through January 10, 2021.²² In December 2020, the Consolidated Appropriations Act, 2021 (Pub. L. 116–260) extended the LRIF application deadline for an additional year, from December 20, 2020, to December 20, 2021.²³

- In January 2021, President Biden reinstated DED for Liberians from January 10, 2021, through June 30, 2022, with limited exclusions for certain ineligibilities.²⁴ In June 2022, President Biden extended and expanded DED for Liberians from June 30, 2022, through June 30, 2024.²⁵ In addition to those individuals who were covered by DED on June 30, 2022, President Biden expanded DED coverage to certain Liberians, and individuals without nationality who last habitually resided in Liberia, who had been continuously physically present in the United States since May 20, 2017, and were not subject to the categories of individuals excluded from DED by the President's Memorandum. In June 2024, President Biden again extended DED for Liberians

from June 30, 2024, through June 30, 2026.²⁶

Ur M. Jaddou,

Director, U.S. Citizenship and Immigration Services.

Eligibility and Employment Authorization for DED

How will I know if I am eligible for employment authorization under the DED presidential memorandum for Liberians?

Consistent with the President's June 28, 2024, DED memorandum,²⁷ the procedures for employment authorization in this notice apply to noncitizens of the United States who are nationals of Liberia (or individuals having no nationality who last habitually resided in Liberia), who have been continuously physically present in the United States since May 20, 2017, and who were eligible for a grant of DED under the President's 2022 memorandum, except for those:

- individuals who would be ineligible for TPS for the reasons provided in section 244(c)(2)(B) of the Immigration and Nationality Act, 8 U.S.C. 1254a(c)(2)(B);

- individuals who sought or seek LPR status under the LRIF provision but whose applications have been or are denied by the Secretary of Homeland Security due to ineligibility for the LRIF provision under sections 7611(b)(1)(C) and (b)(3) of the NDAA;

- individuals whose removal the Secretary of Homeland Security determines is in the interest of the United States, subject to the LRIF provision;

- individuals whose presence or activities in the United States the Secretary of State has reasonable grounds to believe would have potentially serious adverse foreign policy consequences for the United States;

- individuals who have voluntarily returned to Liberia or their country of last habitual residence outside the United States for an aggregate period of 180 days or more, as specified in subsection (c)(2) of the LRIF provision; or

²⁶ See Memorandum on Extending Eligibility for Deferred Enforced Departure for Liberians, June 28, 2024, <https://www.whitehouse.gov/briefing-room/statements-releases/2024/06/28/memorandum-on-extending-eligibility-for-deferred-enforced-departure-for-liberians/>.

²⁷ See Memorandum on Extending Eligibility for Deferred Enforced Departure for Liberians, June 28, 2024, <https://www.whitehouse.gov/briefing-room/statements-releases/2024/06/28/memorandum-on-extending-eligibility-for-deferred-enforced-departure-for-liberians/>.

¹³ See Presidential Memorandum for the Secretary of Homeland Security on Deferred Enforced Departure for Liberians, Mar. 15, 2013, <https://obamawhitehouse.archives.gov/the-press-office/2013/03/15/presidential-memorandum-deferred-enforced-departure-liberians>.

¹⁴ See Presidential Memorandum for the Secretary of Homeland Security on Deferred Enforced Departure for Liberians, Sept. 26, 2014, <https://obamawhitehouse.archives.gov/the-press-office/2014/09/26/presidential-memorandum-deferred-enforced-departure-liberians>.

¹⁵ See Designation of Liberia for Temporary Protected Status, 79 FR 69502 (Nov. 21, 2014).

¹⁶ See Extension of the Designation of Liberia for Temporary Protected Status, 81 FR 15328 (Mar. 22, 2016).

¹⁷ See Six-Month Extension of Temporary Protected Status Benefits for Orderly Transition Before Termination of Liberia's Designation for Temporary Protected Status, 81 FR 66059 (Sept. 26, 2016).

¹⁸ See Presidential Memorandum for the Secretary of Homeland Security on Deferred Enforced Departure for Liberians, Sept. 28, 2016, <https://obamawhitehouse.archives.gov/the-press-office/2016/09/28/presidential-memorandum-deferred-enforced-departure-liberians>.

¹⁹ See Presidential Memorandum for the Secretary of State and the Secretary of Homeland Security, Mar. 27, 2018, <https://trumpwhitehouse.archives.gov/presidential-actions/presidential-memorandum-secretary-state-secretary-homeland-security/>.

²⁰ See Presidential Memorandum on Extension of Deferred Enforced Departure for Liberians, Mar. 28, 2019, <https://trumpwhitehouse.archives.gov/presidential-actions/memorandum-extension-deferred-enforced-departure-liberians/>.

²¹ See National Defense Authorization Act for Fiscal Year 2020, Public Law 116–92, Title LXXVI—Other Matters, Sec. 7611 Liberian Refugee Immigration Fairness, <https://www.govinfo.gov/content/pkg/PLAW-116publ92/html/PLAW-116publ92.htm>.

²² See Presidential Memorandum for the Secretary of State and the Secretary of Homeland Security on Extending the Wind-Down Period for Deferred Enforced Departure for Liberians, Mar. 30, 2020, <https://trumpwhitehouse.archives.gov/presidential-actions/memorandum-extending-wind-period-deferred-enforced-departure-liberians/>.

²³ See Consolidated Appropriations Act, 2021, Part 1, Public Law 116–260, Dec. 27, 2020, Division O—Extensions and Technical Corrections, Title IX—Adjustment of Status for Liberian Nationals Extension, Sec. 901, <https://www.congress.gov/116/plaws/publ260/PLAW-116publ260.pdf>.

²⁴ See Presidential Memorandum for the Secretary of State and the Secretary of Homeland Security on Reinstating Deferred Enforced Departure for Liberians, Jan. 20, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/reinstating-deferred-enforced-departure-for-liberians/>.

²⁵ See Presidential Memorandum for the Secretary of State and the Secretary of Homeland Security on Extending and Expanding Eligibility for Deferred Enforced Departure for Liberians, June 27, 2022, <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/06/27/memorandum-on-extending-and-expanding-eligibility-for-deferred-enforced-departure-for-liberians/>.

• individuals who are subject to extradition.

What will I need to file if I am covered by DED and would like to obtain an EAD?

If you are a Liberian covered by DED and want a DED-based EAD, you must file Form I-765. Please carefully follow the Form I-765 instructions when completing the application for an EAD. When filing Form I-765, you must:

- Indicate that you are eligible for DED by entering “(a)(11)” in response to Question 27 on Form I-765; and
- Submit the fee for Form I-765 (or request a fee waiver,²⁸ which you may submit on Form I-912, Request for Fee Waiver). See Fee Schedule (Form G-1055).

Supporting Documentation

The filing instructions on Form I-765 list all the documents needed to apply. You may also find information on the initial required documents on the USCIS website at <https://www.uscis.gov/i-765>. If USCIS determines after reviewing your submission that it needs additional information, we will send you a request for evidence.

How will I know if I must submit my biometrics to USCIS?

If USCIS needs biometrics to produce your EAD after you apply, we will send you a biometrics services appointment notice with the time and location of your appointment. You can prepare for your biometrics appointment by visiting the *Preparing for Your Biometric*

Services Appointment web page at <https://www.uscis.gov/forms/filing-guidance/preparing-for-your-biometric-services-appointment>. Be sure to bring valid photo identification to your appointment.

Where do I find the fees for a DED-based Form I-765?

You can find the most current filing fees for individuals covered by DED by visiting the Form I-765 page at <https://www.uscis.gov/i-765>. No biometrics fees are required when you file.

Where do I submit my completed DED-based Form I-765?

For a DED-based EAD, mail your completed Form I-765 and supporting documentation to the proper address in Table 1.

TABLE 1—MAILING ADDRESSES	
If you are . . .	Mail to . . .
Using the U.S. Postal Service (USPS)	USCIS, Attn: DED Liberia, P.O. Box 805283, Chicago, IL 60680–5283.
Using FedEx, UPS, or DHL	USCIS, Attn: DED Liberia, (Box 805283), 131 S Dearborn Street, 3rd Floor, Chicago, IL 60603–5517.

You may file Form I-765 and Form I-131 together or separately. If you are filing multiple applications, petitions, or requests, USCIS recommends sending separate payments for each application. If you submit one payment covering all your applications and we reject one of the applications, petitions, or requests, we will need to reject all the others as well. Find more information below on filing Form I-131.

Can I file my DED-based Form I-765 electronically?

No. Electronic filing is not available to file a DED-based Form I-765.

What happens after June 30, 2026, to DED-based EADs?

This DED authorization is set to end on June 30, 2026. After that date, employers can no longer accept EADs with the Category (a)(11) and a Card Expires date of June 30, 2026. You will need to present other evidence of continued employment authorization, if any, to your employer by July 1, 2026.

Travel

Liberians covered by DED may also apply for and be granted travel authorization as a matter of discretion. You must file for travel authorization if you wish to travel outside of the United

States and be eligible to reenter the United States. If USCIS grants travel authorization, we generally give you permission to leave the United States and return during a specific period. To request travel authorization, you must file Form I-131, available at <https://www.uscis.gov/i-131>. You may file Form I-131 together with your Form I-765 or separately. When completing Form I-131, carefully review the form instructions.

If you leave the United States without first receiving travel authorization, you may no longer be eligible for DED and may not be permitted to reenter the United States. Please also be advised that if you return to Liberia or your country of last habitual residence, even with advance travel authorization, you may not be permitted to resume DED in the United States because the presidential memorandum providing for DED excludes individuals who have voluntarily returned to Liberia or their country of last habitual residence for an aggregate period of 180 days or more.²⁹

Mailing Information

Mail your completed Form I-131 to the proper address provided in Table 1.

Supporting Documentation

The filing instructions for Form I-131 list all the documents you need to include with your application. You may also find information on the acceptable documentation and DED eligibility on the USCIS website at <https://www.uscis.gov/humanitarian/deferred-enforced-departure>. If USCIS needs additional evidence, we will send you a request for evidence.

General Employment-Related Information for Individuals With DED-Based EADs and Their Employers

How can I obtain information on the status of my EAD request?

To get case status information about your DED-based EAD request, you can check Case Status Online at <https://www.uscis.gov>, or visit the USCIS Contact Center at <https://www.uscis.gov/contactcenter>. If you still need assistance, you may ask a question about your case online at <https://egov.uscis.gov/e-request/Intro.do> or call the USCIS Contact Center at 800-375-5283 (TTY 800-767-1833).

²⁸ For information about filing fee waiver requests including through Form I-912, Request for Fee Waiver, see <https://www.uscis.gov/forms/filing-fees/additional-information-on-filing-a-fee-waiver>.

²⁹ See Memorandum on Extending Eligibility for Deferred Enforced Departure for Liberians, June 28, 2024, <https://www.whitehouse.gov/briefing-room/statements-releases/2024/06/28/memorandum-on-extending-eligibility-for-deferred-enforced-departure-for-liberians/>.

Does this Federal Register notice automatically extend my current EAD through June 30, 2026?

Regardless of your country of birth, if you are a national of Liberia (or a person having no nationality who last habitually resided in Liberia) and you are covered under DED by the June 28, 2024 Presidential Memorandum, this notice automatically extends your DED-based EAD bearing a March 30, 2020, January 10, 2021, June 30, 2022, or June 30, 2024, "Card Expires" date and an (a)(11) Category Code through June 30, 2026. This means that your EAD is valid through June 30, 2026, even though the expiration date on the face of the document has passed.

When I am hired, what documentation may I show to my employer as evidence of identity and employment authorization when completing Form I-9?

You can find the Lists of Acceptable Documents on Form I-9, Employment Eligibility Verification, as well as the Acceptable Documents web page at <https://www.uscis.gov/i-9-central/acceptable-documents>. Employers must complete Form I-9 to verify the identity and employment authorization of all new employees. Within three business days of hire, employees must present acceptable documents to their employers as evidence of identity and employment authorization to satisfy Form I-9 requirements.

You may present any documentation from List A (which provides evidence of both identity and employment authorization) or documentation from List B (which provides evidence of your identity) together with documentation from List C (which provides evidence of employment authorization), or you may present an acceptable receipt as described in the Form I-9 Instructions. Employers may not reject a document based on a future expiration date. You can find additional information about Form I-9 on the I-9 Central web page at <https://www.uscis.gov/I-9Central>. An EAD is an acceptable document under List A. If your EAD states (a)(11) under "Category" and has a "Card Expires" date of March 30, 2020, January 10, 2021, June 30, 2022, or June 30, 2024, this notice extends it automatically, and you may choose to present your EAD to your employer as proof of identity and employment eligibility for Form I-9 through June 30, 2026.

If I have an EAD based on another immigration status, can I obtain a new DED-based EAD?

Yes, if you are covered by DED, you can obtain a new DED-based EAD, even if you already have an EAD or employment authorization based on another immigration status or category. If you want to obtain a DED-based EAD valid through June 30, 2026, you must file Form I-765 and pay the associated fee (unless USCIS grants your fee waiver request).

Can my employer require that I provide any other documentation to complete Form I-9, such as evidence of my status or proof of my Liberian citizenship?

No. When completing Form I-9, employers must accept any unexpired documentation that appears on the Form I-9 Lists of Acceptable Documents that reasonably appears to be genuine and that relates to you, or an acceptable List A, List B, or List C receipt. Employers may not request proof of Liberian citizenship when completing Form I-9 for new hires or reverifying the employment authorization of current employees. Refer to the "Note to Employees" section of this **Federal Register** notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This **Federal Register** notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules listing reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888-464-4218 (TTY 877-875-6028) or email USCIS at I-9Central@dhs.gov. USCIS accepts calls and emails in English, Spanish, and many other languages. For questions about avoiding discrimination during the employment eligibility verification process (Form I-9 and E-Verify), employers may call the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (IER) Employer Hotline at 800-255-8155 (TTY 800-237-2515). IER offers language interpretation in numerous languages. Employers may

also email IER at IER@usdoj.gov or get more information online at <https://www.justice.gov/ier>.

Note to Employees

For general questions about the employment eligibility verification process, employees may call USCIS at 888-897-7781 (TTY 877-875-6028) or email USCIS at I-9Central@dhs.gov. USCIS accepts calls and emails in English, Spanish and many other languages. Employees or applicants may also call the IER Worker Hotline at 800-255-7688 (TTY 800-237-2515) for information regarding employment discrimination based on citizenship, immigration status, or national origin, including discrimination related to Form I-9 and E-Verify. The IER Worker Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt as described in the Form I-9 instructions. Employers may not require extra or additional documentation beyond what is required for Form I-9 completion. Further, employers participating in E-Verify who receive an E-Verify case result of "Tentative Nonconfirmation" (mismatch) must promptly inform employees of the mismatch and give such employees an opportunity to resolve the mismatch. A mismatch means that the information entered into E-Verify from Form I-9 differs from records available to DHS.

Employers may not terminate, suspend, delay training, withhold or lower pay, or take any adverse action against an employee because of a mismatch while the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result occurs if E-Verify cannot confirm an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Employment-authorized employees who receive an FNC may call USCIS for assistance at 888-897-7781 (TTY 877-875-6028). For more information about E-Verify-related discrimination or to report an employer for discrimination in the E-Verify process based on citizenship, immigration status, or national origin, contact IER's Worker Hotline at 800-255-7688 (TTY 800-237-2515). Additional information about proper nondiscriminatory Form I-9 and E-Verify procedures is available on the IER website at <https://www.justice.gov/ier> and the USCIS and E-Verify websites

at <https://www.uscis.gov/i-9-central> and <https://www.e-verify.gov>.

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

If you are applying for a Federal, state, or local government benefit, you may need to provide the government agency with documents that show you are covered under DED or authorized to work based on DED or both. Check with the government agency requesting documentation about which documents the agency will accept.

Some government agencies use SAVE, <https://www.uscis.gov/save>, to confirm the current immigration status of applicants for public benefits and licenses. SAVE can verify that an individual is covered by DED based on an EAD with category (a)(11) or a Form I-797, Notice of Action, reflecting approval of your Form I-765 for an EAD with a DED category of (a)(11). In most cases, SAVE provides an automated electronic response to benefit-granting agencies within seconds, but occasionally verification can be delayed.

You can check the status of your SAVE verification by using CaseCheck at <https://www.uscis.gov/save/save-casecheck>. CaseCheck is a free service that lets you follow the progress of your SAVE verification case using your date of birth and one immigration identifier number (such as your A-Number or USCIS number) or Verification Case Number. If an agency has denied your application based solely or in part on a SAVE response, the agency must allow you to appeal the decision in accordance with the agency's procedures. If the agency has received and acted on or will act on a SAVE verification, and you do not believe the SAVE response is correct, the SAVE website, <https://www.uscis.gov/save/for-benefit-applicants>, has detailed information on how to correct or update your immigration record, make an appointment, or submit a written request to correct records.

[FR Doc. 2024-21661 Filed 9-23-24; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7082-N-09]

60-Day Notice of Proposed Information Collection: CDBG Urban County Qualification/New York Towns Qualification/Requalification Process, Notice; OMB Control No.: 2506-0170

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* November 25, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal.

Written comments and recommendations for the proposed information collection can be sent within 60 days of publication of this notice to www.regulations.gov. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and can be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410-5000; telephone (202) 402-3400 (this is not a toll-free number) or email at Colette.Pollard@hud.gov for a copy of the proposed forms or other available information.

FOR FURTHER INFORMATION CONTACT:

Gloria Coates, Senior Community Planning and Development Specialist, Entitlement Communities Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street SW, Room 7282, Washington, DC 20410-5000; email at gloria.l.coates@hud.gov or telephone (202) 402-2184. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

Copies of available documents submitted to OMB may be obtained from Ms. Coates.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: CDBG Urban County Qualification/New York Towns Qualification/Requalification Process.

OMB Approval Number: 2506-0170.

Type of Request: Extension.

Form Number: N/A.

Description of the need for the information and proposed use: The Housing and Community Development Act of 1974, as amended (the Act), at sections 102(a)(6) and 102(e) requires that any county seeking qualification as an urban county notify each unit of general local government within the county that such unit may elect to have its population excluded from that of the urban county. Section 102(d) of the Act specifies that the period of qualification will be three years. Based on these statutory provisions, counties seeking qualification or requalification as urban counties under the CDBG program must provide information to HUD every three years identifying the units of general local governments (UGLGs) within the county participating as a part of the county for purposes of receiving CDBG funds. The population of UGLGs for each eligible urban county is used in HUD's allocation of CDBG funds for all entitlement and State CDBG grantees.

New York Towns may qualify as metropolitan cities if they are able to secure the participation of all of the villages located within their boundaries. Any New York Town that is located in an urban county may choose to leave that urban county when that county is requalifying. A New York Town will be required to notify the urban county in advance of its decision to decline participation in the urban county's CDBG program and complete the metropolitan city qualification process.

Respondents: Urban counties that are eligible as entitlement grantees of the CDBG program.

Estimation Number of Respondents: There are currently 195 qualified urban counties participating in the CDBG program that must requalify every three years.

Estimation Number of Responses: The proposed frequency of the response to the collection is on an annual basis.

Frequency of Response: On average, two new counties qualify each year. The burden on new counties is greater than for existing counties that requalify. The Department estimates new grantees use, on average, 120 hours to review instructions, contact communities in the county, prepare and review agreements, obtain legal opinions, have agreements executed at the local and county level, and prepare and transmit copies of required documents to HUD. The Department estimates that counties that are requalifying use, on average, 67 hours to complete these actions. The time savings on requalification is primarily a result of a grantee's ability

to use agreements with no specified end date. Use of such “renewable” agreements enables the grantee to merely notify affected participating UGLGs in writing that their agreement will automatically be renewed unless the UGLG terminates the agreement in writing, rather than executing a new agreement every three years.

Average of 2 new urban counties qualify per year $2 \times 120 \text{ hrs} = 240 \text{ hrs}$.

195 grantees requalify on triennial basis; average annual number of respondents = 65 $65 \times 67 \text{ hrs.} = 4,355 \text{ hrs}$.

Total combined burden hours: 4,595 hours

This total number of combined burden hours can be expected to increase annually by 1,200 hours, given the average of two new urban counties becoming eligible entitlement grantees each year.

B. Solicitation of Public of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Marion M. McFadden,

Principal Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2024-21793 Filed 9-23-24; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-HQ-IA-2024-0138; FXIA1671090000-245-FF09A30000]

Foreign Endangered Species; Receipt of Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications to conduct certain activities with foreign species that are listed as endangered under the Endangered Species Act (ESA). With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is issued that allows such activities. The ESA also requires that we invite public comment before issuing permits for any activity otherwise prohibited by the ESA with respect to any endangered species.

DATES: We must receive comments by October 24, 2024.

ADDRESSES:

Obtaining Documents: The applications, application supporting materials, and any comments and other materials that we receive will be available for public inspection at <https://www.regulations.gov> in Docket No. FWS-HQ-IA-2024-0138.

Submitting Comments: When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- **Internet:** <https://www.regulations.gov>. Search for and submit comments on Docket No. FWS-HQ-IA-2024-0138.

- **U.S. mail:** Public Comments Processing, Attn: Docket No. FWS-HQ-IA-2024-0138; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041-3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT:

Timothy MacDonald, by phone at 703-358-2185 or via email at DMAFR@fws.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make

international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I comment on submitted applications?

We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments at <https://www.regulations.gov> unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment at <https://www.regulations.gov>, your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(c) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, the ESA prohibits certain activities with listed species unless Federal authorization is issued that allows such activities. Permits issued under section 10(a)(1)(A) of the ESA allow otherwise prohibited activities for scientific purposes or to enhance the propagation or survival of the affected species. Service regulations regarding prohibited activities with endangered species, captive-bred wildlife registrations, and permits for any activity otherwise prohibited by the ESA with respect to any endangered species are available in title 50 of the Code of Federal Regulations in part 17.

III. Permit Applications

We invite comments on the following applications.

Applicant: University of Washington dba Center for Environmental Forensic Science, Seattle, WA; Permit No. PER3472978

The applicant requests a permit to import biological specimens derived from animals of unknown origin within the family Rhinocerotidae for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: San Diego Zoo Wildlife Alliance, San Diego, CA; Permit No. PER11846441

The applicant requests a permit to import one wild Fiji banded iguana (*Brachylophus fasciatus*) from Saipan for the purpose of enhancing the propagation or survival of the species. This notification is for a single import.

Applicant: Cornell University Museum of Vertebrates, Ithaca, NY; Permit No. PER12124015

The applicant requests authorization to export and re-import nonliving museum specimens of endangered species previously accessioned into the applicant's collection for scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Panther Ridge Conservation Center Inc., Loxahatchee, FL; Permit No. PER10708981

The applicant requests a permit to import two captive-bred ocelots

(*Leopardus pardalis*), one male and one female, from Mystic Monkeys and Feathers Wildlife Park, Rust de Winter, Limpopo, South Africa, for the purpose of enhancing the propagation or survival of the species. This notification is for a single import.

Applicant: SeaWorld California, San Diego, CA; Permit No. PER11660838

The applicant requests a permit to import and release into the wild one loggerhead sea turtle (*Caretta caretta*), which was rescued from the wild in Canada, for the purpose of enhancing the propagation or survival of the species. This notification is for a single import.

Applicant: Michael Damron, Houston, TX; Permit No. PER12034353

The applicant requests a permit to import the sport-hunted trophy of one male black rhinoceros (*Diceros bicornis*) from Namibia for the purpose of enhancing the propagation or survival of the species. This notification is for a single import.

Applicant: Tucker Knight, Houston, TX; Permit No. PER12034355

The applicant requests a permit to import the sport-hunted trophy of one male black rhinoceros (*Diceros bicornis*) from Namibia for the purpose of enhancing the propagation or survival of the species. This notification is for a single import.

Applicant: University of Texas-Austin, Austin, TX; Permit No. PER11948527

The applicant requests authorization to import up to 120 tubes containing 2-millimeter (mm) or 3-mm wild-collected Verreaux's sifaka (*Propithecus verreauxi*) ear tissue samples, for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Thomas Motlow, Dallas, TX; Permit No. PER11844490

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for radiated tortoise (*Geochelone radiata*) to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Center for the Conservation of Tropical Ungulates, Punta Gorda, FL; Permit No. PER12064268

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species, to enhance the propagation or survival of

the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Common name	Scientific name
Lowland anoa	<i>Bubalus depressicornis</i> .
Banteng	<i>Bos javanicus</i> .
Red lechwe	<i>Kobus leche</i> .
South American tapir	<i>Tapirus terrestris</i> .
Asian tapir	<i>Tapirus indicus</i> .
Great Indian rhinoceros.	<i>Rhinoceros unicornis</i> .
Black rhinoceros	<i>Diceros bicornis</i> .
Southern white rhino	<i>Ceratotherium simum simum</i> .

Multiple Trophy Applicants

The following applicants request permits to import sport-hunted trophies of male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancing the propagation or survival of the species.

- Applicant: Keith R. Warren, Seguin, TX; Permit No. PER12017464
- Applicant: Daniel Macerelli, McKeesport, PA; Permit No. PER12034356

IV. Next Steps

After the comment period closes, we will make decisions regarding permit issuance. If we issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching <https://www.regulations.gov> for the permit number listed above in this document. For example, to find information about the potential issuance of Permit No. 12345A, you would go to [regulations.gov](https://www.regulations.gov) and search for "12345A".

V. Authority

We issue this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations.

Timothy MacDonald,
Government Information Specialist, Branch of Permits, Division of Management Authority.

[FR Doc. 2024–21718 Filed 9–23–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****[BLM_OR_FRN_MO4500183400]****Notice of Cancellation and Rescheduling of the Public Meeting for the Southeast Oregon Resource Advisory Council****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Meeting notice.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) is giving notice that the Southeast Oregon Resource Advisory Council has rescheduled the public meeting and field tour originally scheduled for September 24–25, 2024.

DATES: The RAC will meet on November 19, 2024, from 9 a.m. to 4:30 p.m. Pacific time (PT). The RAC will participate in a field tour on November 20, 2024, from 9 a.m. to 12 p.m. PT.

ADDRESSES: The November 19, 2024, meeting will be held at the BLM Burns District Office, 28910 Highway 20 West, Hines, Oregon, 97738, and a virtual participation option will be available. The November 20, 2024, field tour will commence and conclude at the BLM's Oregon Wild Horse Corral, 26755 Highway 20 W, Hines, Oregon 97738. Instructions for participating virtually, final agendas, and additional meeting details will be posted at least 10 days in advance of the meeting on the RAC's web page: <https://www.blm.gov/get-involved/resource-advisory-council/near-you/oregon-washington/southeast-oregon-rac>.

FOR FURTHER INFORMATION CONTACT: Lisa McNee, Public Affairs Officer, 1301 South G Street, Lakeview, OR 97630; (541) 219–9180; lmcnnee@blm.gov. Individuals in the United States who are deaf, blind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The 15-member RAC serves in an advisory capacity concerning issues relating to land use planning and the management of the public land resources located within the boundaries of the BLM's Vale, Burns, and Lakeview Districts and

the Fremont-Winema and Malheur National Forests. Agenda items for the November 19 meeting include presentations on the Conservation and Landscape Health Rule, the Blueprint for 21st Century Outdoor Recreation, and technology and fuels monitoring. The November 20, 2024, field tour is to the BLM's Oregon Wild Horse Corral, which will provide an opportunity to view wild horses and burros gathered from Oregon, California, and Arizona that are being prepared for adoption. Members of the public who wish to participate in the field tour must provide their own transportation and meals.

Requests for Accommodations: Please make requests in advance for sign language interpreter services, assistive listening devices, language translation services, or other reasonable accommodations. We ask that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least 14 business days prior to the meeting to give the Department of the Interior sufficient time to process the request. All reasonable accommodation requests are managed on a case-by-case basis.

Interested persons may choose to make oral comments at the meeting during the designated time for this purpose. Depending on the number of persons wishing to speak and the time available, the amount of time for oral comments may be limited. Information to be distributed to the RAC is requested before the start of each meeting. Written comments can be mailed in advance to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. All comments received will be provided to the RAC. Before including your address, phone number, email address, or other personal identifying information in your comments, please 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 we will be able to do so.

(Authority: 43 CFR 1784.4–2)

James Forbes,
Lakeview District Manager.

[FR Doc. 2024–21800 Filed 9–23–24; 8:45 am]

BILLING CODE 4331–21–P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****[BLM_AZ_FRN: MO#4500181293]****Notice of Segregation of Public Land for the Socorro Solar Project, Parker Solar Project, and Eagle Eye Solar Project, La Paz County, Arizona****AGENCY:** Bureau of Land Management, Department of the Interior.**ACTION:** Notice of segregation.

SUMMARY: Through this notice the Bureau of Land Management (BLM) is segregating public lands included in the right-of-way applications for the Socorro Solar Project, Parker Solar Project, and Eagle Eye Solar Project from appropriation under the public land laws, including the Mining Law, but not the Mineral Leasing or Material Sales Acts, for a period of 2 years from the date of publication of this notice, subject to valid existing rights. This segregation is to allow for the orderly administration of the public lands to facilitate consideration of development of renewable energy resources. The public lands segregated by this notice total 11,560.28 acres.

DATES: This segregation for the lands identified in this notice is effective on September 24, 2024.

FOR FURTHER INFORMATION CONTACT: Derek Eysenbach, Project Manager, telephone: 601–417–9505; address: Bureau of Land Management, Arizona State Office, 1 North Central Ave, Suite 800, Phoenix, Arizona 85004; email: deysenbach@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Derek Eysenbach. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: Regulations found at 43 CFR 2091.3–1(e) and 2804.25(f) allow the BLM to temporarily segregate public lands within a right-of-way application area for solar energy development from the operation of the public land laws, including the Mining Law, by publication of a Federal Register notice. The BLM uses this temporary segregation authority to preserve its ability to approve, approve with modifications, or deny proposed rights-of-way, and to facilitate the orderly administration of the public lands. This

temporary segregation is subject to valid existing rights, including existing mining claims located before this segregation notice. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature that would not impact lands identified in this notice may be allowed with the approval of an authorized officer of the BLM during the segregation period. The lands segregated under this notice are legally described as follows:

Socorro Solar Project

Gila and Salt River Meridian, Arizona

- T. 3 N., R. 13 W.,
 Sec. 1;
 Sec. 2, lot 1, SE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$,
 NE $\frac{1}{4}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 3, S $\frac{1}{2}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 4, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 9, NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, and N $\frac{1}{2}$ SE $\frac{1}{4}$;
 Secs. 10 thru 12;
 Sec. 13, N $\frac{1}{2}$ NE $\frac{1}{4}$.
 T. 4 N., R. 13 W., unsurveyed
 Sec. 35, SE $\frac{1}{4}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 36, NW $\frac{1}{4}$ and S $\frac{1}{2}$.

The area described contains 3,919.56 acres, according to the official plats of the surveys of the said lands and protraction diagram on file with the BLM.

Parker Solar Project

Gila and Salt River Meridian, Arizona

- T. 8 N., R. 19 W.,
 Sec. 13, W $\frac{1}{2}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 14, NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$,
 S $\frac{1}{2}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$;
 Sec. 23;
 Sec. 24, W $\frac{1}{2}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 25, NW $\frac{1}{4}$;
 Sec. 26, N $\frac{1}{2}$.

The area described contains 1,960 acres, according to the official plat of the survey of said land on file with the BLM.

Eagle Eye Solar Project

Gila and Salt River Meridian

- T. 6 N., R. 12 W.,
 Sec. 1, lots 1 thru 4, S $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$,
 and N $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 2, lots 1 thru 4, S $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$,
 SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 3;
 Sec. 4, lots 1 thru 4, S $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$,
 N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$;
 Sec. 9, W $\frac{1}{2}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ NW $\frac{1}{4}$;
 Sec. 10, NE $\frac{1}{4}$;
 Sec. 11, N $\frac{1}{2}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 12, W $\frac{1}{2}$ NW $\frac{1}{4}$.
 T. 7 N., R. 12 W.,
 Sec. 26, S $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 27, W $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 28, S $\frac{1}{2}$;
 Sec. 29, E $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 32, E $\frac{1}{2}$ NE $\frac{1}{4}$;
 Secs. 33 thru 35.

The area described contains 5,680.72 acres, according to the official plats of the surveys of the said lands on file with the BLM.

As provided in the regulations, the segregation of lands in this notice will not exceed 2 years from the date of publication unless extended for an additional 2 years through publication of a new notice in the **Federal Register**. The segregation period will terminate and the land will automatically reopen to appropriation under the public land laws, including the Mining Law, at the earliest of the following dates: upon issuance of a decision by the authorized officer granting, granting with modifications, or denying the application for a right-of-way automatically at the end of the segregation; or upon publication of a **Federal Register** notice terminating the segregation.

Upon termination of the segregation of these lands, all lands subject to this segregation would automatically reopen to appropriation under the public land laws, including the Mining Law.

Authority: 43 CFR 2091.3–1(e) and 43 CFR 2804.25(f)

Raymond Suazo,

State Director—Arizona State Office.

[FR Doc. 2024–21734 Filed 9–23–24; 8:45 am]

BILLING CODE 4310–32–P

INTERNATIONAL TRADE COMMISSION

Appointment of Individuals To Serve as Members of the Performance Review Board

AGENCY: United States International Trade Commission.

ACTION: Appointment of individuals to serve as members of Performance Review Board.

DATES: Applicable Date: September 18, 2024.

FOR FURTHER INFORMATION CONTACT: Eric Mozie, Director of Human Resources, or Ronald Johnson, Deputy Director of Human Resources, U.S. International Trade Commission, (202) 205–2651.

SUPPLEMENTARY INFORMATION: The Chair of the U.S. International Trade Commission has appointed the following individuals to serve on the Commission's Performance Review Board (PRB):

Chair of the PRB: Commissioner David Johanson
 Vice Chair of the PRB: Commissioner Rhonda Schmidlein
 Member—Dominic Bianchi
 Member—Nannette Christ

Member—Catherine DeFilippo
 Member—Silvia Galluch
 Member—Katie Higginbotham
 Member—Margaret Macdonald
 Member—William Powers
 Member—Keith Vaughn
 Member—Jeremy Wise

This notice is published in the **Federal Register** pursuant to the requirement of 5 U.S.C. 4314(c)(4). Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

By order of the Chair.

Issued: September 18, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–21733 Filed 9–23–24; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB 1140–0117]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Financial Responsibility Acknowledgement—ATF Form 8620.28

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until October 24, 2024.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Jacklyn Wiltshire/Taiya Jarrett, Personnel Security Division, by email at Jaclyn.Wiltshire@atf.gov, or telephone at 202–648–9260.

SUPPLEMENTARY INFORMATION: The proposed information collection was previously published in the **Federal Register** on Thursday, July 18, 2024 at 89 FR 58416, allowing a 60-day comment period.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of

information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and/or
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website 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 and entering either the title of the information collection or the OMB Control Number 1140–0117. This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.

2. *Title of the Form/Collection:* Financial Responsibility Acknowledgement.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* ATF Form 8620.28.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected Public: Individuals or households.

Abstract: The proposed information collection (IC) OMB #1140–0117—Financial Responsibility Acknowledgement—ATF Form 8620.28 (previously titled 'Financial History Questionnaire') is being revised to remove the requirement for a candidate to provide specific financial obligation information to ATF and replace it with an acknowledgment that the candidate understands the financial obligation information provided on the form, acknowledges that ATF will conduct a review of the candidate's financial records, and agrees to provide proof of resolution to ATF if requested to do so.

5. *Obligation to Respond:* Voluntary.

6. *Total Estimated Number of Respondents:* 2,000 respondents.

7. *Estimated Time per Respondent:* 3 minutes.

8. *Frequency:* Once annually.

9. *Total Estimated Annual Time Burden:* 100 hours.

10. *Total Estimated Annual Other Costs Burden:* \$0.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC 20530.

Dated: September 19, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–21816 Filed 9–23–24; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0059]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; Registration for Controlled Substances Act Data-Use Request

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Drug Enforcement Administration (DEA), Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until November 25, 2024.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Heather E. Achbach, Regulatory Drafting and Policy Support Section, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152; Telephone: (571) 362–3261; Email: DEA.PRA@dea.gov or Heather.E.Achbach@dea.gov.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Abstract: In accordance with the Controlled Substance Act (CSA), every person who manufactures, distributes, dispenses, conducts research with, imports, or exports any controlled substance to obtain a registration issued by the Attorney General. 21 U.S.C. 822, 823, and 957. While DEA registrants are able to self-verify their registration status, non-registrants do not have an obligation to register under the CSA, and therefore does not have an automatic means to verify the registration of a DEA-registrant. Non-registrants have obligations to verify the registration statuses before doing things such as hiring practitioners, paying for controlled substance prescriptions covered by Medicaid or Medicare, and

other means that are apart of commerce. This proposed collection would allow non-registrants to register for access to the CSA Database System, which gives the names and registration statuses of all DEA-registrants. Applicants would be required to re-apply annually by completing this form and submitting to DEA.

Overview of this information collection:

1. *Type of Information Collection:*
Extension of a previously approved collection.
2. *The Title of the Form/Collection:*
Registration for CSA Data-Use Request.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*
No form number is associated with this collection. The applicable component within the Department of Justice is the Drug Enforcement Administration, Diversion Control Division.
4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public: (Primary) Business or other for-profit.
5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The DEA estimates that 9,000

- registrants participate in this information collection. The time per response is 15 minutes for Registration for CSA Data-Use Request.
6. An estimate of the total annual burden (in hours) associated with the collection: DEA estimates that this collection takes 2,250 annual burden hours.
7. An estimate of the total annual cost burden associated with the collection, if applicable: \$0.

TOTAL BURDEN HOURS

Activity	Number of respondents	Total annual responses	Time per response (hours)	Total annual burden (hours)
Registration for CSA Data-Use Request	9,000	9,000	.25 mins	2,250
Unduplicated Totals	9,000	9,000	.....	2,250

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W-218, Washington, DC 20530.

Dated: September 19, 2024.

Darwin Arceo,
Department Clearance Officer for PRA, U.S. Department of Justice.
[FR Doc. 2024-21780 Filed 9-23-24; 8:45 am]
BILLING CODE 4410-09-P

For general information: Ms. Lisa Long, Acting Deputy Director, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone: (202) 693-2049; email: long.lisa@dol.gov.

SUPPLEMENTARY INFORMATION:

1. Correction

On September 12, 2024, OSHA published a notice announcing the renewal of the NACOSH charter (89 FR 74295). That notice incorrectly stated that the renewed charter will expire on September 4, 2026. This notice is to correct the expiration date. The renewed NACOSH charter will expire September 16, 2026, two years from its filing date.

Authority and Signature: James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice under the authority granted by 29 U.S.C. 656; 5 U.S.C. 10; 29 CFR part 1912a; 41 CFR part 102-3; and Secretary of Labor’s Order No. 8-2020 (85 FR 58393, Sept. 18, 2020).

Signed at Washington, DC.

James S. Frederick,
Deputy Assistant Secretary of Labor for Occupational Safety and Health.
[FR Doc. 2024-21766 Filed 9-23-24; 8:45 am]
BILLING CODE 4510-26-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 24-065]

LunaRecycle Challenge Phase 1

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: The National Aeronautics and Space Administration (NASA) is announcing Phase 1 of The LunaRecycle Challenge, and teams that wish to compete in this public prize competition may now enter.

DATES: Phase 1 registration opens September 30, 2024, and will remain open until March 31, 2025 (4 p.m. Eastern). No further requests for registration will be accepted after this timeframe.

Other important dates, including deadlines for key deliverables from the Teams, are listed on the Challenge website: <https://lunarecyclechallenge.ua.edu/>.

ADDRESSES: Competitors in the LunaRecycle Challenge Phase 1 will develop solutions and submit from their own location.

FOR FURTHER INFORMATION CONTACT: To register for or get additional information regarding the LunaRecycle Challenge, please visit:<https://lunarecyclechallenge.ua.edu/>.

General questions and comments regarding the program should be addressed to Kim Krome, Centennial Challenges Program, NASA Marshall Space Flight Center, Huntsville, AL 35812. Email address: hq-stmd-

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2024-0005]

National Advisory Committee on Occupational Safety and Health (NACOSH); Charter Renewal; Correction

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of NACOSH charter renewal; correction.

SUMMARY: OSHA is issuing a correction to the expiration date of the renewed NACOSH charter.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693-1999; email: meilinger.francis@dol.gov.

centennialchallenges@mail.nasa.gov.
Phone: 256-544-1265.

SUPPLEMENTARY INFORMATION: NASA seeks to stimulate research and technology solutions to support future missions and inspire new national aerospace capabilities through public prize competitions called Centennial Challenges. The LunaRecycle Challenge is one such competition. Centennial Challenges are managed at NASA's Marshall Space Flight Center in Huntsville, Alabama and are part of the Prizes, Challenges, and Crowdsourcing program within NASA's Space Technology Mission Directorate (STMD) at the agency's Headquarters in Washington.

The LunaRecycle Challenge is a prize competition with up to a \$3,000,000.00 USD total prize purse to incentivize innovative approaches to develop and demonstrate novel recycling technologies and/or systems to convert solid (non-gaseous, non-biological, and non-metabolic) lunar waste streams into usable resources. This challenge has two tracks, Digital Twin track and Prototype Build track. At this time, NASA is opening Phase 1 of the competition, which has a \$1,000,000 USD prize purse. In this phase of competition, teams in the Digital Twin track will design a preliminary (low-fidelity) digital twin and visualization of their solution and teams in the Prototype Build track will develop a detailed design of their solution. Teams are not required to build or submit any hardware in Phase 1.

NASA is providing the prize purse for U.S. Teams, and the University of Alabama will be conducting the Challenge on behalf of NASA. NASA is considering a Phase 2 of the competition depending on the outcome of the Phase 1 competition.

Summary

NASA is committed to sustainable space exploration. As NASA prepares for future human space missions, there will be a need to consider how various waste streams, including solid waste, can be minimized as well as how waste can be stored, processed, and recycled in a space environment so that little or no waste will need to be returned to Earth. In addition, NASA's STMD, which leads the development and demonstration of transformational technologies, has identified a number of research areas requiring further investment to meet future exploration, science, and other mission needs. These include topics such as trash management for habitation, in-space and on-surface manufacturing from recycled materials, and digital

transformation technologies for terrestrial, in-Space, on-Surface manufacturing and operations—all of which may be addressed through this challenge. By utilizing open innovation strategies in this area, NASA has the opportunity to incentivize novel solutions to the challenges of waste in space and ensure the sustainability of future space exploration, industrial activities, and habitats.

Through LunaRecycle challenge, NASA seeks to incentivize the design and development of innovative, sustainable recycling solutions that can address the types of solid waste expected to accumulate during longer-term missions on the lunar surface.

Phase 1 of the LunaRecycle challenge is focused on incentivizing recycling solutions for the lunar surface that maximize the amount of waste that can be recycled from a list of waste categories and items that are relevant to a hypothetical 365-day lunar mission. NASA is seeking designs that minimize resource inputs; unusable outputs; and the mass and/or volume of hardware components and systems needed for recycling. For the Digital Twin track, NASA is also seeking highly innovative and imaginative solutions that harness the full potential of a digital twin. In Phase 1, Teams will have approximately six (6) months to register and submit solutions. Phase 1 will last a total of eight (8) months, including approximately two (2) months of judging.

I. Prize Amounts

The LunaRecycle Challenge offers a total prize purse up to \$3,000,000.00 USD (three million United States dollars) to be awarded across two (2) phases of competition.

Prize purse for Phase 1 will total up to \$1,000,000.00 USD (one million United States dollars), with the following prize distribution:

- Up to 8 top scoring U.S. Teams in the Digital Twin Track will receive \$50,000.00 each.
- Up to 8 top scoring U.S. Teams in the Prototype Build Track will receive \$75,000.00 each.

The Prize Purse for Phase 2, should there be promising submissions in Phase 1 that demonstrate a viable approach, will be worth up to \$2,000,000.00.

II. Eligibility To Participate and Win Prize Money

To be eligible to win a prize, competitors must register and comply with all requirements in the Official Rules. Interested Teams should refer to the Official Challenge website ([https://](https://lunarecyclechallenge.ua.edu/)

lunarecyclechallenge.ua.edu/) for full details on eligibility and registration.

III. Official Rules

The complete rules for the LunaRecycle Challenge, can be found at: <https://lunarecyclechallenge.ua.edu/>.

IV. Further Information

For general information on the NASA Centennial Challenges please visit: <https://www.nasa.gov/prizes-challenges-and-crowdsourcing/centennial-challenges/>.

For general information on NASA prize competitions, challenges, and crowdsourcing opportunities, please visit: <https://www.nasa.gov/prizes-challenges-and-crowdsourcing/>.

Emily Pellegrino,

Federal Register Liaison Officer, National Aeronautics and Space Administration.

[FR Doc. 2024-21743 Filed 9-23-24; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; NSF Small Business Innovation Research (SBIR) Program Phase I, NSF Small Business Technology Transfer (STTR) Program Phase I, and NSF SBIR/STTR Fast-Track Pilot Pre-Submission Project Pitch Form

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register**, and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Written comments and recommendations for the proposed 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.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation,

2415 Eisenhower Avenue, Alexandria, Virginia 22314; telephone (703) 292-7556; or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION:

Comments: Comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the NSF, including whether the information shall have practical utility; (b) the accuracy of the NSF's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to the points of contact in the **FOR FURTHER INFORMATION CONTACT** section.

Copies of the submission may be obtained by calling 703-292-7556. NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number, and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Title of Collection: NSF Small Business Innovation Research (SBIR) Program Phase I, NSF Small Business Technology Transfer (STTR) Program Phase I, and NSF Fast-Track Pilot Pre-submission Project Pitch Form.

OMB Control No.: 3145-NEW.

Abstract: The NSF Small Business Innovation Research Program (SBIR) Phase I, Small Business Technology Transfer Program (STTR) Phase I, and SBIR/STTR Fast-Track Pilot Project Pitch is an NSF SBIR/STTR pre-submission process that conveys information needed to direct the proposed SBIR/STTR project to the appropriate NSF Program Director (PD) for review and possible proposal submission invitation. The Project Pitch is to be submitted by the applying small business concern (as "proposer") to the relevant NSF SBIR/STTR Phase I or Fast-Track Pilot technology topic. The Project Pitch outlines solicitation-

specific aspects of the project (such as the proposed technology innovation)) and captures the same requested information, as outlined in the NSF SBIR/STTR Phase I and Fast-Track Program solicitations, but all within one secure, web-based form. Specifically, the form collects the submitting proposer company and team information, the proposed technology innovation; the technical objectives and challenges, and the market opportunity. The form also allows the proposer to choose (from a drop-down menu) the most relevant NSF SBIR/STTR Phase I and Fast-Track Pilot technical topic area, ensuring that the submitted Project Pitch goes to the most appropriate Program Director. For the SBIR/STTR Fast-Track Pilot submission, the Project Pitch encompasses the same questions as outlined in the Phase I Project Pitch but also seeks responses to three key eligibility requirements: NSF lineage, customer-discovery experience, and confirmation that the team members are currently employed by the company. These requirements expand on the details of the previously required information on the proposed technology innovation, the market opportunity, and the company and team, respectively.

Respondents: Small business concerns who submit proposals to NSF's SBIR/STTR Phase I and Fast-Track Pilot Programs.

Estimated Number of Annual Respondents: 2,500.

Burden on the Public: 3 hours (per response) for an annual total of 7,500 hours.

Dated: September 19, 2024.

Suzanne H. Plimpton,
Reports Clearance Officer, National Science Foundation.

[FR Doc. 2024-21843 Filed 9-23-24; 8:45 am]

BILLING CODE 7555-01-P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Louis Stokes Alliances for Minority Participation (LSAMP) Program Evaluation

AGENCY: National Science Foundation.
ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to establish this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing the opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting

Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by November 25, 2024 to be assured consideration. Comments received after that date will be considered to the extent Practicable. Send comments to the address below.

FOR FURTHER INFORMATION CONTACT:

Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite E6447, Alexandria, Virginia 22314; telephone (703) 292-7556; or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION:

Comments: Comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the NSF, including whether the information shall have practical utility; (b) the accuracy of the NSF's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to the points of contact in the **FOR FURTHER INFORMATION CONTACT** section.

Title of Collection: Louis Stokes Alliances for Minority Participation (LSAMP) Program Evaluation.

OMB Control No.: 3145-NEW.

Expiration Date of Approval: Not applicable.

Abstract: This proposed data collection is a core component of a larger comprehensive evaluation strategy to assess the effectiveness and functioning of the Louis Stokes Alliances for Minority Participation (LSAMP) program, funded through grants from the National Science Foundation (NSF). LSAMP alliances are entities at member higher education institutions that support the learning and development of STEM undergraduates from underrepresented backgrounds.

This current research seeks to consider the experiences of those leading and participating in LSAMP since the last full evaluation (which

concluded in 2007), as well as current experiences, at ten select site locations. The ten sites were selected by the NSF in collaboration with our research partner who will conduct all data collection, NORC at the University of Chicago. A key component of the site selection process has been to assure variability in site representation, to include sites with more remote geographies, differing populations, and alliance types.

This work will enable the program to better understand where successes can be modeled and opportunities can be identified to better support the underrepresented students in these fields, by encouraging greater inclusion in academic and professional development opportunities. Currently, we are seeking approval to conduct interviews and focus groups with individuals who are affiliated with the LSAMP alliances at these pre-identified sites using the procedures discussed below.

As of FY2021, there were 61 LSAMP alliances, 55 of which were led by four-year institutions. There are three groups of LSAMP alliances: 11 STEM Pathways Implementation Only (SPIO) alliances in existence less than 10 years, 22 STEM Pathways Research Alliances (SPRA) in existence at least 10 years, and 22 alliances that had not yet applied for funding under the 2018 solicitation. Ten of the alliances in existence at least 10 years also have Bridge to the Doctorate (BD) projects that provide additional funding to support students' graduate work. An additional 6 alliances are Bridge to the Baccalaureate (B2B) alliances led by two-year institutions. Each alliance consists of a lead institution and several other affiliated institutions all operating towards the same alliance goals. Affiliated institutions typically are in the same geographic region and may vary by type (e.g., two-year institutions). Participating underrepresented minority (URM) STEM students in alliance schools could be defined in three groups: Level 1 students who receive direct financial support through the alliance for activities, Level 2 students who attended activities sponsored by LSAMP funds, and Level 3 students who are students at LSAMP institutions who did not receive funds or participate in LSAMP activities.

Research suggests that collaboratives, such as the alliances funded by the LSAMP program can improve STEM degree completion rates, but long-term success requires sustained change at the institutional level (Center for Urban Education, 2019; May & Bridger, 2010). LSAMP has a 30-year history of

increasing the diversity of science, technology, engineering, and mathematics (STEM) disciplines and the STEM workforce.

NORC at the University of Chicago's (NORC) is leading the present approach for evaluating the operations, success, and opportunities of LSAMP, under the guidance and sponsorship of the NSF Directorate for Education and Human Resources (EHR) Division of Human Resource Development (HRD). This evaluation aims to identify and characterize the organizational structure and institutionalization of LSAMP alliances and assess the impact of LSAMP strategies to strengthen pathways and increase undergraduate and graduate STEM degrees earned by students from populations underrepresented in STEM on all educational levels.

As part of this comprehensive evaluation, and with a focus on fully utilizing all preexisting data, NORC has completed a thorough review of available data (e.g., annual reports). The LSAMP program anticipates using the results of this evaluation (both the review of existing data and data from site visits) to identify "LSAMP best practices" that can be implemented by both LSAMP grantee/alliance institutions and non-LSAMP grantees/alliance institutions to sustain and grow impacts of the LSAMP programming on diversity in STEM and inform the LSAMP program on sustainability mechanisms and goals appropriate for LSAMP alliance institutions to maintain their successful outcomes.

Respondents: LSAMP Faculty and Staff (200); LSAMP Students (120).

Estimated Number of Annual Respondents: 320.

Burden on the Public: Estimated 1–3 hours to participate in an interview or focus group (1 hour for staff and students, 3 hours for coordinators/provosts or other leaders). The estimated burden time is 750 hours.

Dated: September 19, 2024.

Suzanne H. Plimpton,
Reports Clearance Officer, National Science Foundation.

[FR Doc. 2024–21845 Filed 9–23–24; 8:45 am]

BILLING CODE 7555–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Revision and Consolidation of Two Existing Information Collections Related to Health Benefits Election Forms

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection request (ICR) for two forms: SF 2809 Health Benefits Election Form and OPM 2809 Health Benefits Election Form.

DATES: Comments are encouraged and will be accepted until October 24, 2024. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection request by selecting "Office of Personnel Management" under "Currently Under Review," then check "Only Show ICR for Public Comment" checkbox.

FOR FURTHER INFORMATION CONTACT: For specific questions related to these information collection activities, please contact: Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to RSPublicationsTeam@opm.gov or faxed to (202) 606–0910 or via telephone at (202) 936–0401.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the public with an opportunity to comment on proposed, revised, and continuing collections of information. This helps OPM assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand OPM's information collection requirements and provide the requested data in the desired format. On May 5, 2024, OPM published notice of its intent to combine OMB Control Nos. 3206–0160 and 3206–0141 into a single, updated collection in the **Federal Register** at 89 FR 37269.

The SF 2809 and the OPM 2809 forms are generally very similar in terms of the information collected, with only a few different data points to reflect differences between an employee and an annuitant. Nonetheless, the forms were historically managed under two different information collections. OPM is not currently planning to consolidate the forms into a single form because the

instructions for annuitants are different than the instructions for an employee. OPM expects that retaining separate forms helps annuitants better understand what information is required.

OPM anticipates that both forms will generally require revisions at the same time and that comments relevant to one form will generally apply equally to the other form. Therefore, because the forms serve the same purpose (for two different populations) and collect virtually identical information, OPM is proposing to combine the two information collections and to manage the two forms under a single information collection, OMB Control No. 3206–0160, going forward.

As part of this process, the forms have been updated to improve clarity and ease of use. OPM consulted with Agency Benefit Officers, Federal benefit electronic enrollment systems, FEHB insurance carriers and conducted several employee focus groups to determine proposed changes. Some changes to instructions for the SF 2809 form have not been made to the OPM 2809 form to accommodate a larger use of paper forms by the annuitant population.

OPM received fourteen comments in response to its 60-day notice, including six unique comments and one comment representing eight submissions. We have made additional edits to the SF 2809 form based on these comments. Specifically, the form will now allow a respondent to list addresses for minor children who live at a different location than the enrollee; the form will provide an option to remove a family member; and the form will also include a date field for the Initial Opportunity to Enroll. The SF 2809 form also makes a technical correction by noting that a common law spouse is eligible only if the marriage was initiated in a “state, the District of Columbia, or other jurisdiction” (instead of just “state”) that recognizes such marriages; this technical correction is necessary to account for common law marriages in the District of Columbia.

We declined several comments. Specifically, we declined comments about formatting of the paper form because most enrollees will use electronic systems to enroll. There were comments about the electronic Official Personnel Folder (eOPF) that were beyond the scope of this information collection request.

One commenter questioned the use of drop-down menus in some areas of the application. Drop-down menus are not functional for manually printed forms. We are declining to remove these

because they are intended for use when completing an electronic fillable, printable form, and are only used for short, direct answers. Drop-down choices are listed in the instructions of the form so employees using a printed version will have them available.

There were also comments related to adding a checkbox or fillable section for family member eligibility documents and a reminder that, without required documents, family members are not enrolled. We are declining these suggestions because we wish to limit freeform text and believe this information is available in many other places related to enrollment including the form instructions, FEHB Handbook, and OPM brochures.

A commenter noted that the requirement to enter Event Codes 1A and 1B have been removed, noting that processing may need these codes which represent Initial Opportunity to Enroll and Open Season. We are declining to implement this suggestion because these codes relating to the Initial Opportunity to Enroll (1A) and Open Season (1B) are among the most popular codes and we want to make it relatively easy for users to check the box rather than find an event code. Moreover, agencies should have these event codes programmed in their automated enrollment systems.

Finally, as part of the establishment of the new Postal Service Health Benefits (PSHB) Program, a separate Program with the FEHB Program, OPM will be offering the use of a new online enrollment system. The information collected using the system will be identical to the paper and electronic PDF versions of the SF 2809 and OPM 2809 forms; however, users will be able to enter the information using a series of prompts that provide additional instructions and guidance.

The information collection for form SF 2809 (OMB Control number 3206–0160) is currently approved with an estimated public burden of 9,000 hours for 18,000 responses. The information collection for form OPM 2809 (OMB Control number 3206–0141) is currently approved with an estimated public burden of 11,667 hours for 30,000 responses. As OPM is proposing to combine these information collections, the collective estimated public burden for both forms for the revised information collection is 20,667 hours for 48,000 responses.

The purpose of this notice is to notify the public that OPM is submitting the information collection to the Office of Management and Budget (OMB) for review and to allow an additional 30 days for public comments. OPM is soliciting comments on the proposed

information collection request (ICR) that is described below. OMB is especially interested in public comment addressing the following issues: (1) whether this collection is necessary to the proper functions of OPM; (2) whether this information will be processed and used in a timely manner; (3) the accuracy of the burden estimates; (4) ways in which OPM might enhance the quality, utility, and clarity of the information to be collected; and (5) ways in which OPM might minimize the burden of this collection on the respondents, including through the use of information technology. Written comments received in response to this notice will be considered public records.

Analysis

Agency: Office of Personnel Management.

Title: Health Benefits Election Forms.
OMB Number: 3206–0160.

Frequency: Annually.

Affected Public: Eligible individuals who wish to enroll in FEHB (including the new, separate Postal Service Health Benefits Program) for the first time or to change an existing enrollment.

Number of Respondents: 48,000 [SF 2809—18,000; OPM 2809—30,000 (20,000—written & 10,000 verbal)].

Estimated Time per Respondent: SF 2809 [30 minutes]; OPM 2809 [30 minutes (written) & 10 minutes (verbal)].

Total Burden Hours: 20,667 [SF 2809—9,000; OPM 2809—11,667 (written—10,000 & verbal—1,667)].

Office of Personnel Management.

Alexys Stanley,

Federal Register Liaison.

[FR Doc. 2024–21803 Filed 9–23–24; 8:45 am]

BILLING CODE 6325–38–P

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service®.

ACTION: Notice of modified systems of records.

SUMMARY: The United States Postal Service® (USPS or Postal Service) is proposing to modify one General Privacy Act System of Records (SOR) to support the implementation of the Postal Service Health Benefits (PSHB) program as required by the Postal Service Reform Act of 2022 and the USPS Flexible Spending Account (FSA) Program. The PSHB program is a new, separate program within the Federal Employees Health Benefits (FEHB)

Program, administered by the Office of Personnel Management (OPM). Modifications to this SOR are also being proposed to provide added transparency to an existing health benefits program for USPS non-career employees. The USPS Non-Career Employee Health Benefits Program is separate and distinct from the PSHB. Finally, SOR 100.400 is being modified to document the Office of Personnel Management (OPM) requirement to verify eligibility of dependents to receive health benefits under PSHB or FEHB.

DATES: These revisions will become effective without further notice on October 24, 2024 unless response to comments received on or before that date result in a contrary determination.

ADDRESSES: Comments may be submitted via email to the Privacy and Records Management Office, United States Postal Service Headquarters (uspsprivacyfedregnotice@usps.gov). To facilitate public inspection, arrangements to view copies of any written comments received will be made upon request.

FOR FURTHER INFORMATION CONTACT: Janine Castorina, Chief Privacy and Records Management Officer, Privacy and Records Management Office, 202–268–2000 or uspsprivacyfedregnotice@usps.gov.

SUPPLEMENTARY INFORMATION:

As stated above, the Postal Service is implementing the Postal Service Health Benefits (PSHB) program to meet the requirements of the Postal Service Reform Act of 2022.

The Postal Service continuously strives to improve the comprehensive benefits that are offered to employees. The FSA program is a valuable benefit to postal employees. As a pre-tax cafeteria plan, employees can set pre-tax monies aside to pay for routine and customary medical, dental, vision, and dependent care related expenses that meet eligibility requirements. In conjunction with the implementation of PSHB, the Postal Service has contracted with a private sector vendor to administer the FSA program, which is separate and distinct from the OPM affiliated vendor for the PSHB Program.

Modifications to this SOR are also being proposed to provide added transparency to an existing health benefits program for USPS non-career employees. The USPS Non-Career Employee Health Benefits Program is separate and distinct from the PSHB. The Postal Service maintains a contract with a healthcare provider to manage the medical and pharmacy benefits provided through the Non-Career Employee Health Benefits Program. The

Postal Service does not request Personal Health Information (PHI) from the healthcare provider for non-career employees. The Postal Service does not receive itemized invoices to reimburse the healthcare provider for claims but does receive aggregated invoices that do not list individual services provided to employees or family members by name or other personal identifiers.

This notice is in accordance with the Privacy Act requirement that agencies publish their systems of records in the **Federal Register** when there is a revision, change, or addition, or when the agency establishes a new system of records. The Postal Service is proposing revisions to an existing system of records (SOR) to support the implementation of the PSHB and USPS FSA programs. In addition, revisions are proposed to document and promote transparency for an existing healthcare benefits program for non-career employees and to document OPM requirements to verify eligibility of dependents for healthcare benefits.

I. Background

The new PSHB Program will provide health insurance to eligible Postal Service employees, Postal Service annuitants and their eligible family members starting in 2025. The PSHB Program coverage will replace Federal Employees Health Benefit (FEHB) Program coverage for these groups. The new PSHB program takes effect January 1, 2025. Enrollment opportunities for USPS employees, annuitants (retirees) and their eligible family members will be made available during Open Season between November and December of 2024.

The Postal Service has participated in the Flexible Spending Account (FSA) Program administered by the Office of Personnel Management (OPM) since 2017. Currently, career employees of the United States Postal Service and non-career employees with more than one year of career postal employment are eligible for the FSA program. There is no employer (Postal Service) FSA contribution, nor is there an administrative fee charged for employees to participate. Participation is voluntary and re-enrollment is required each year to continue participation. The plan year is the calendar year. The annual open season is held for approximately four weeks aligned with the Federal benefits Open Season period that begins on the 2nd Monday in November and continues thru the 2nd Monday in December each year. The Postal Service Health Benefits (PSHB) Program and the new Postal

Service FSA Program is being implemented simultaneously.

The private sector vendor for the FSA Program will utilize an Explanation of Benefits (EOB) statement to process claims. The employee may voluntarily consent to have their PSHB summary information transferred to the FSA vendor to provide ease of use when processing their FSA claims. The FSA EOB will contain information describing the out-of-pocket cost for employees such as, co-insurance, copays, deductibles, and eligible dependent care expenses. The EOB will include summary information from the medical benefits plan for type of visit or general service received (office visit, outpatient service, lab diagnostic, etc.), the billed amount, the amount the plan allows, the amount the plan will pay (or has paid) and the patients' out-of-pocket responsibility.

The EOB does not include any medical diagnosis, medical procedures or other Personal Health Information (PHI) but is limited to a listing of FSA eligible expenses for FSA claim filing purposes. FSA claims are paid to participants and providers based on employee preferences. The Postal Service will not request, collect or maintain any PHI data. The Postal Service will receive an aggregate bill invoice file that will include the amount of claims paid out on a periodic basis. The aggregate invoice will be used to assure accurate reimbursement to the private sector vendor for claims paid during a period of time.

The Postal Service currently offers non-career employees a healthcare plan with a Postal subsidy. This healthcare benefits program has been offered to meet the requirements of the Affordable Care Act of 2010. This program is separate and apart from the PSHB and FEHB Programs for career employees. A career employee is defined as one who is in a position covered by the Civil Service Retirement System (CSRS) or Federal Employees Retirement System (FERS). A non-career employee is not eligible to participate in either CSRS or FERS. The Postal Service intends to continue providing its non-career employees with a health benefit plan outside of PSHB.

USPS SOR 100.400 is also being modified to reflect the OPM requirement to verify eligibility of dependents to receive health benefits under PSHB or FEHB.

II. Rationale for Changes to USPS Privacy Act Systems of Records

The Postal Service is proposing modifications to USPS SOR 100.400, Personnel Compensation and Payroll

Records to support the implementation of the Postal Service Health Benefits (PSHB) Program and the new USPS Flexible Spending Account (FSA) Program. In addition, modifications to SOR 100.400 are being proposed to provide transparency for an existing health benefits program for non-career employees and to document OPM requirements to determine dependent eligibility for health benefits. Summary of Changes to USPS SOR 100.400:

- *Purpose(s) of the System:* Added new Purposes # 16 through 22.
- *Categories of Individuals Covered by the System:* Added annuitants to category # 2; Added new categories of individuals # 4 and 5.
- *Categories of Records in the System:* Added health benefits enrollment code and payroll deduction to category # 1; Added new Categories of Records 4 through 6.
- *Record Source Categories:* Added annuitants to category # 1 and added new category # 3 for Employees who voluntarily participate in the USPS FSA program.
- *Policies and Practices for Retention and Disposal of Records:* Added new retention and disposal of records #12 through 14.

III. Description of the Modified Systems of Records

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed revisions to these SORs has been sent to Congress and to the Office of Management and Budget for their evaluations. The Postal Service does not expect that this modified system of records will have any adverse effect on individual privacy rights. Accordingly, for the reasons stated above, the Postal Service proposes revisions to SOR 100.400 presented below in its entirety:

SYSTEM NAME AND NUMBER:

USPS 100.400 Personnel Compensation and Payroll Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

USPS Area and District Human Resources offices, the Human Resources Shared Services Center, Integrated Business Solutions Services Centers, Computer Operations Services Centers, Accounting Services Centers, other area and district facilities, USPS Headquarters, contractor sites, and all organizational units.

SYSTEM MANAGER(S):

Deputy Postmaster General and Chief Human Resources Officer, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

Vice President, Human Resources, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

Vice President, Controller, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 409, 410, 1001, 1003, 1004, 1005, and 1206; 5 U.S.C 8903c; and 29 U.S.C. 2601 *et seq.*

PURPOSE(S) OF THE SYSTEM:

1. To support all necessary compensation and payroll activities and related management functions.
2. To generate lists of employee information for home mailings, dues membership, and other personnel support functions.
3. To generate retirement eligibility information and analysis of employees in various salary ranges.
4. To administer the purchase of uniforms.
5. To administer monetary awards programs and employee contests.
6. To detect improper payment related to injury compensation claims.
7. To adjudicate employee claims for loss or damage to their personal property in connection with or incident to their postal duties.
8. To process garnishment of employee wages.
9. To support statistical research and reporting.
10. To generate W-2 and 1095-C information for use with external third-party tax preparation services at the request of the individual employee.
11. To administer the USPS fleet card program used to purchase commercial fuel and oil, maintenance repair, polishing and washing, servicing, shuttling, and towing.
12. To develop and administer voluntary wellness challenges and programs to support individual employee wellness goals.
13. To track and summarize voluntary wellness challenge activities during each program cycle for individual employees and employee team participants.
14. To facilitate communication between the Postal Service and current and former employees.
15. To share relevant information and topics about the Postal Service with current and former employees.
16. To facilitate enrollment of Postal Service career employee and annuitants

for healthcare plans offered under the Postal Service Health Benefit (PSHB) Program.

17. To administer payroll deductions for PSHB participants for employee healthcare premium contributions.

18. To facilitate enrollment in, and to administer the USPS Flexible Spending Account (FSA) Program and claims processing.

19. To administer payroll deductions for employees participating in the USPS FSA program.

20. To facilitate enrollment in, and to administer the USPS Non-Career Employee Health Benefits Program and claims processing.

21. To administer payroll deductions for USPS Non-Career Health Benefits Program participants for employee healthcare premium contributions.

22. To meet the Office of Personnel Management (OPM) requirements for verification of eligibility of dependents for healthcare benefit programs.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Current and former USPS employees and postmaster relief/leave replacement employees.
2. Current and former employees, annuitants, and their family members, beneficiaries, and former spouses who apply and qualify for benefits.
3. An agent or survivor of an employee who makes a claim for loss or damage to personal property.
4. Non-career employees eligible to participate in the USPS Non-Career Employee Health Benefits Program.
5. Career employees of the United States Postal Service and non-career employees with more than one year of career postal employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Employee and family member information: Name(s), Social Security Number(s), Employee Identification Number, ACE ID, date(s) of birth, postal assignment information, work contact information, home address(es) and phone number(s), SMS text message number, personal email address, finance number(s), occupation code, occupation title, duty location, and pay location, health benefits enrollment code, health benefits payroll deduction and Fuel Purchase Fleet Card Personal Identification Number (PIN).
2. Compensation and payroll information: Records related to payroll, annual salary, hourly rate, Rate Schedule Code (RSC) or pay type, payments, deductions, compensation, and benefits; uniform items purchased; proposals and decisions under monetary awards; suggestion programs and

contests; injury compensation; monetary claims for personal property loss or damage; and garnishment of wages.

3. Voluntary Employee Wellness Participant Challenge and Program Tracking and Reporting Activities: Type of wellness activity or program, wellness activities and points tracked and reported, self-selected alias names for participants, department or team name, work duty location, gender, weight, reporting of top tier final results and/or prize winners by wellness challenge or program with employee permission.

4. FSA Program records: Name(s) of participating employees and their eligible family members, Employee Identification Number, home address(es) and phone number(s), plan year election date, account type and election amount(s).

5. USPS Non-Career Employee Health Benefits Program records: Name(s), Social Security Number(s), Employee Identification Number, ACE ID, date(s) of birth, postal assignment information, work contact information, home address(es) and phone number(s), SMS text message number, personal email address, finance number(s), occupation code, occupation title, duty location, and pay location.

6. Eligible Dependents for Health Benefits: Validation of dependent eligibility for healthcare benefits during enrollment.

RECORD SOURCE CATEGORIES:

1. Employees, annuitants, employees' supervisor or manager; other systems of records; claimants or their survivors or agents who make monetary claims; witnesses; investigative sources; courts; and insurance companies.

2. Voluntary employee wellness participant challenge and program initiative records.

3. Employees who voluntarily participate in the USPS FSA program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Standard routine uses 1. through 9. apply.

In addition:

(a) Records pertaining to financial institutions and to nonfederal insurance carriers and benefits providers elected by an employee may be disclosed for the purposes of salary payment or allotments, eligibility determination, claims, and payment of benefits.

(b) Records pertaining to supervisors and postmasters may be disclosed to supervisory and other managerial organizations recognized by USPS.

(c) Records pertaining to recipients of monetary awards may be disclosed to

the news media when the information is of news interest and consistent with the public's right to know.

(d) Disclosure of records about current or former Postal Service employees may be made to requesting states under an approved computer matching program to determine employee participation in, and eligibility under, unemployment insurance programs administered by the states (and by those states to local governments), to improve program integrity, and to collect debts and overpayments owed to those governments and their components.

(e) Disclosure of records about current or former Postal Service employees may be made to requesting federal agencies or nonfederal entities under approved computer matching programs to make a determination of employee participation in, and eligibility under, particular benefit programs administered by those agencies or entities or by USPS; to improve program integrity; to collect debts and overpayments owed under those programs and to provide employees with due process rights prior to initiating any salary offset; and to identify those employees who are absent parents owing child support obligations and to collect debts owed as a result.

(f) Disclosure of records about current or former Postal Service employees may be made, upon request, to the Department of Defense (DoD) under approved computer matching programs to identify Postal Service employees who are ready reservists for the purposes of updating DoD's listings of ready reservists and to report reserve status information to USPS and the Congress; and to identify retired military employees who are subject to restrictions under the Dual Compensation Act and to take subsequent actions to reduce military retired pay or collect debts and overpayments.

(g) Disclosure of records may be made to the Internal Revenue Service under approved computer matching programs to identify current or former Postal Service employees who owe delinquent federal taxes or returns and to collect the unpaid taxes by levy on the salary of those individuals pursuant to Internal Revenue Code; and to make a determination as to the proper reporting of income tax purposes of an employee's wages, expenses, compensation, reimbursement, and taxes withheld and to take corrective action as warranted.

(h) Disclosure of the records about current or recently terminated Postal Service employees may be made to the Department of Transportation (DOT) under an approved computer matching program to identify individuals who

appear in DOT's National Driver Register Problem Driver Pointer System. The matching results are used only to determine as a general matter whether commercial license suspension information within the pointer system would be beneficial in making selections of USPS motor vehicle and tractor-trailer operator personnel and will not be used for actual selection decisions.

(i) Disclosure of records about current or former Postal Service employees may be made to the Department of Health and Human Services under an approved computer matching program for further release to state child support enforcement agencies when needed to locate noncustodial parents, to establish and/or enforce child support obligations, and to locate parents who may be involved in parental kidnapping or child custody cases.

(j) Disclosure of records about current or former Postal Service employees may be made to the Department of the Treasury under Treasury Offset Program computer matching to establish the identity of the employee as an individual owing a delinquent debt to another federal agency and to offset the salary of the employee to repay that debt.

(k) Disclosure of employment and wage data records about current Postal Service employees may be made to the Bureau of Labor Statistics for use in their Occupational Employment Statistics program for the purpose of developing estimates of the number of jobs in certain occupations, and estimates of the wages paid to them.

(l) Disclosure of W-2 and 1095-C tax information records to external third-party tax preparation services.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Automated database, computer storage media, digital files, and paper files.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

By employee name, Social Security Number, Employee Identification Number, Fuel Purchase Fleet Card Personal Identification Number (PIN), or duty or pay location.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

1. Leave application and unauthorized overtime records are retained 3 years. Time and attendance records (other than payroll) and local payroll records are retained 3 years. Automated payroll records are retained 10 years.

2. Uniform allowance case files are retained 3 years; and automated records are retained 6 years.

3. Records of monetary awards with a status that they have been processed, failed processing, cancelled, or reported (Service Award Pins, Retirement Service Awards, Posthumous Service Awards) are retained 7 years, as payroll records would have been affected/processed. Records of award submissions with the status approved, deleted, or as a draft are retained 31 days, as payroll records would not have been affected/processed.

4. Records of employee-submitted ideas are maintained for 90 days after being closed.

5. Injury compensation records are retained 5 years. Records resulting in affirmative identifications become part of a research case file, which if research determines applicability, become either part of an investigative case record or a remuneration case record that is retained 2 years beyond the determination.

6. Monetary claims records are retained 3 years.

7. Automated records of garnishment cases are retained 6 months. Records located at a Post Office are retained 3 years.

8. Overtime administrative records are retained for 7 years.

9. Tax preparation records are limited to an employee's previous year's wages, tax documentation, and health insurance coverage as required by the Affordable Care Act.

10. Records pertaining to the USPS fuel fleet card purchase program are retained for 10 years.

11. Records related to voluntary wellness challenges and programs will be retained for 30 days after the conclusion of each challenge or program cycle.

12. Records related to the PSHB Program will be retained for duration of the employee's career.

13. Records related to the USPS Non-Career Employee Health Benefits Program will be retained for duration of the employee's career.

14. Records related to the USPS FSA program will be retained for 7 years.

Records existing on paper are destroyed by burning, pulping, or shredding. Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under

supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge. Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections.

Computers are protected by mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software.

For the voluntary employee wellness initiative, employees will create their own profile and enter their own challenge activity progress. Employees without access to U.S. Postal Service computers and employees voluntarily participating in the weight loss challenges may opt-in to a manual process to have their profile created and entries updated by a designated wellness challenge coordinator for their geographic location. Participant alias names will be used in all wellness program dashboard participant input and activity reporting to protect the privacy of individuals. In addition, weight loss challenge dashboards will only display the percentage of weight loss for the employee by alias names, rather than actual weights.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.5.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

NOTIFICATION PROCEDURES:

Individuals wanting to know if information about them is maintained in this system must address inquiries to the facility head where currently or last employed. Headquarters employees must submit inquiries to Corporate Personnel Management, 475 L'Enfant Plaza SW, Washington, DC 20260. Inquiries must include full name, Social Security Number or Employee Identification Number, name and address of facility where last employed, and dates of USPS employment.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Records in this system relating to injury compensation that have been

compiled in reasonable anticipation of a civil action or proceeding are exempt from individual access as permitted by 5 U.S.C. 552a(d)(5). The USPS has also claimed exemption from certain provisions of the Act for several of its other systems of records at 39 CFR 266.9. To the extent that copies of exempted records from those other systems are incorporated into this system, the exemptions applicable to the original primary system continue to apply to the incorporated records.

HISTORY:

August 18, 2021, 86 FR 46281; June 15, 2020, 85 FR 29492; February 25, 2019, 84 FR 6022; February 23, 2017, 82 FR 11489; March 2, 2015, 80 FR 11241; June 17, 2011, 76 FR 35483; April 29, 2005, 70 FR 22516.

Christopher Doyle,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2024-21660 Filed 9-23-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101077; File No. SR-MRX-2024-36]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand Its Co-Location Services

September 18, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 5, 2024, Nasdaq MRX, LLC ("MRX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to expand its co-location services.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/mrx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to expand its co-location services by offering new cabinet, power, and power distribution unit options in the Exchange's expanded data center.³

The Exchange's current data center ("NY11") in Carteret, NJ is undergoing an expansion ("NY11-4") in response to demand for power and cabinets. NY11-4 is not a new or distinct co-location facility. Instead, NY11-4 is simply an expansion of the existing Nasdaq NY11 data center,⁴ and Nasdaq intends to operate it generally in the same manner as existing aspects of NY11.⁵ Client connections to the matching engine will be equal across the board, within and among NY11 and NY11-4. In 2010, the Exchange undertook a similar expansion to its data center, where connectivity to the Exchange remained equalized, as is the case with the NY11-4 expansion.

The Exchange submits this filing to propose offering new services in NY11-4, as described below, and to the extent the Exchange offers additional new services, whether in the existing NY11 data halls or in the new NY11-4 data

hall, the Exchange will submit additional filings with the Commission.

New and Upgraded Services in NY11-4

NY11-4 Expanded Cabinet Optionality: Ultra High Density Cabinet

Currently, co-location customers have the option of obtaining cabinets of various sizes and power densities. Co-location customers may obtain a Half Cabinet,⁶ a Low Density Cabinet with power density less than or equal to 2.88 kilowatts ("kW"), a Medium Density Cabinet with power density greater than 2.88 kW and less than or equal to 5 kW, a Medium-High Density Cabinet with power density greater than 5 kW and less than or equal to 7 kW, a High Density Cabinet with power density greater than 7 kW and less than 10 kW, and a Super High Density Cabinet with power density greater than 10 kW and less than or equal to 17.3 kW.

The Exchange proposes to introduce a new cabinet choice in NY11-4, an "Ultra High Density Cabinet," with power density greater than 10 kW and less than or equal to 15 kW. Based on demand, the Exchange wishes to introduce the Ultra High Density Cabinet as an option for customers between the High Density Cabinet and the Super High Density Cabinet. The Ultra High Density Cabinet option would only be offered in NY11-4 because of the power configuration necessary for such cabinets, which is not possible or available in other portions of the data center due to different power distribution. Because of the addition of the Ultra High Density Cabinet option in NY11-4, the Super High Density Cabinet in NY11-4 would have power density greater than 15 kW and less than or equal to 17.3 kW.

In addition to the Ultra High Density Cabinet, the Exchange would offer the other, existing cabinet options in NY11-4, with the exception of the Low Density Cabinet and Half Cabinet due to a lack of demand for such cabinets. The cabinets in NY11-4 will include certain features, including but not limited to: uniform, wider cabinets⁷ (32" W x 48" D x 91" H), cable management, and a rear split door and combo lock.

NY-11 4 Cabinet Power and Power Distribution Units

The Exchange currently provides various cabinet power options, including: 2x20 amp 110 volt, 2x30 amp 110 volt, 2x20 amp 208 volt, 2x30 amp 208 volt, Phase 3 2x 20 amp 208 volt, Phase 3 2x 30 amp 208 volt, 2x60 amp 208 volt, Phase 3 2x 40 amp 208 volt, Phase 3 2x 50 amp 208 volt, Phase 3 2x 60 amp 208 volt, and 2x30 amp 48 volt DC. For NY11-4, the data center operator is bringing in higher voltage power options, which are more consistent with power options used in other data centers across the globe. The Exchange proposes to amend General 8, Section 1(c) to add the cabinet power options for NY11-4, which include: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, Phase 1 40 amp 240 volt, Phase 3 20 amp 415 volt, and Phase 3 32 amp 415 volt. The Exchange also proposes to specify in its Rules that these cabinet power options are specific to NY11-4 and that one of these options must be selected for cabinets in NY11-4. Although different cabinet power options will be offered in NY11 and NY11-4 due to differing power configurations, the new cabinet power options are not inherently preferable to the existing cabinet power options and the Exchange does not anticipate material differences in equipment performance based on the power distribution. Due to higher voltage options being offered in NY11-4, the data center operator is likely to experience increased power distribution efficiencies across the data center. As between the various cabinet power options, customers choose power based on their preference and capacity needs.

The Exchange also proposes to offer power distribution units ("PDUs")⁸ in NY11-4 as a convenience to customers. Rather than sourcing PDUs on a customer-by-customer basis, as the Exchange does for customers in NY11, the Exchange wishes to simplify and standardize its PDU offering in NY11-4 by offering Phase 1 and Phase 3⁹ power distribution units. This service is optional and customers may choose to provide their own PDUs appropriate for

³ The Exchange previously submitted a similar proposal earlier this year, *see* Securities Exchange Act Release No. 34-100564 (July 19, 2024), 89 FR 60458 (July 25, 2024) (SR-MRX-2024-023) (the "Prior Proposal"), but withdrew it on August 29, 2024 to allow for the Exchange to address outstanding comments and concerns raised by the Commission Staff and commenters.

⁴ NY11-4 is not a standalone facility. Equinix considers the site as NY11 with three expansions: NY11 Phase 1, NY11 Phase 2 and NY11-4.

⁵ As discussed below in further detail, one aspect of the data center that will be different (temporarily) in NY11-4 as compared to NY11 is telecommunications access and inter-client connectivity. In NY11-4 at its launch, connections between colocated client cabinets and the carrier cage will be equalized as will be inter-client connectivity. Presently, such connectivity is not equalized in NY11, but the Exchange intends to retrofit NY11 to be equalized in the months ahead.

⁶ Half cabinets are not available to new subscribers. *See* General 8, Section 1(a).

⁷ In the existing data halls, clients may bring their own cabinets or use Exchange-provided cabinets. Because of the cooling system in NY11-4 (hot aisle containment), all cabinets must be uniform and therefore, the Exchange will provide all cabinets. The existing data halls utilize cold aisle containment to manage temperatures. Hot aisle containment is a more effective way to manage heat in the data center.

⁸ PDUs are devices fitted with multiple outputs designed to distribute electric power. The standardized PDUs would only be offered for NY11-4.

⁹ Phase 1 PDUs would be compatible with the following power options: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, and Phase 1 40 amp 240 volt. Phase 3 PDUs would be compatible with the following power options: Phase 3 20 amp 415 volt and Phase 3 32 amp 415 volt. Phase 1 and Phase 3 are available in NY11 and NY11-4. Phase 3 PDUs provide greater power density than Phase 1 PDUs by delivering power over three wires as opposed to one wire.

their power installation choices. The Exchange also proposes to offer a switch monitored PDU add on in NY11–4, which would allow customers to connect remotely to their PDU and control the power sockets. With the switch monitored PDU option, customers would be able to power cycle or shut off power remotely. This option is optional as well and customers may choose to provide their own switch monitored PDU, if desired.

Implementation

Although the timing is subject to change,¹⁰ the Exchange anticipates opening NY11–4 Exchange access on November 4, 2024. In concert with this filing, the Exchange will allow customers to place orders for NY11–4, which would not be fee liable until customers are provided access to the space.¹¹ The Exchange will submit a fee filing to establish fees for the services described herein. Allowing customers to place orders in advance of opening its doors will allow the Exchange to plan ahead for capacity and demand for services, as well as procure necessary equipment.

Equalization of Telecommunications Connectivity in NY11–4 and NY11

Although the Exchange has constructed NY11–4 to address capacity constraints associated with its existing data center footprint, as well as to enable the provision of upgraded power for customer equipment, an ancillary design feature of NY11–4 will be that it will include, at launch, equalized cabling between customer equipment and equipment owned and operated by third-party telecommunications providers (“telco connectivity”). This design feature is incident, but not strictly relevant to the Proposal at hand. Nevertheless, we discuss it below insofar as it garnered attention in the Prior Proposal, by one commenter, in particular.¹²

¹⁰ The Exchange will announce modifications to the proposed timing via the Nasdaq Customer Portal, which is the web portal used for order and inventory management of colocation services, and email communication to all colocation customers.

¹¹ Charging customers once access is provided is consistent with current practice and allows customers to set up equipment and begin using power.

¹² See Ltr. From J. Considine, McKay Brothers LLC, to V. Countryman, SEC, dated July 24, 2024, available at <https://www.sec.gov/comments/sr-nasdaq-2024-026/srnasdaq2024026-496995-1434326.pdf> (the “McKay Letter”). Akuna Securities LLC also filed a comment letter that largely echoed the arguments in the McKay Letter. See Ltr. From D. DeSalle-Baron, Akuna Securities LLC to V. Countryman, SEC, dated July 24, 2024, available at <https://www.sec.gov/comments/sr-nasdaq-2024-026/srnasdaq2024026-497096-1434386.pdf>.

Presently, the Exchange does not have equalized telco connectivity in NY11, much like several of its peers, IEX, MEMX, and Cboe, all of which operate through their Secaucus data center without equalized telco connectivity.¹³ The present architecture of NY11 is a product of its history and that of technology; the Exchange designed NY11 at a time when latency differences were measured by customers in terms of miles of cable *between* customer facilities and exchange data centers, rather than in feet or inches *within* exchange data centers, as is the case today. As the technology paradigm shifted, and as variances in telco connectivity became more meaningful to some market participants, the Exchange reevaluated its design of its data center and determined that telco connectivity equalization would be in the best interests of the markets going forward. Thus, on its own initiative, the Exchange has embarked on an ambitious project to equalize telco connectivity across its entire data center campus, including both its existing NY11 facility and the NY11–4 expansion (the “Equalization Project”). The launch of NY11–4 will constitute phase 1 of the Equalization Project.

The Equalization Project will be complex, time consuming, and costly to complete, especially as to NY11, where the existing facility must be retrofitted with equalized cabling. In NY11, thousands of existing customer cables threaded throughout the facility will need to be removed and replaced with new infrastructure to support equidistant connectivity relative to all other customers’ locations in the data center. This painstaking project will cost millions of dollars in design, equipment, and labor costs. Due to its complexity, the Equalization Project cannot and will not be accomplished instantaneously.¹⁴ Instead, the Exchange estimates that the Project will require 18–24 months to complete, commencing as of the launch of NY11–4. Moreover, it will occur in a methodical and phased manner to

¹³ The structure of the Secaucus data center is a generally known fact within the industry and one of which the Exchange is itself aware due, among other things, to its own status as a tenant of the Secaucus data center.

¹⁴ The McKay Letter asserts incorrectly and without any evidentiary basis that the Exchange is capable of equalizing telco connectivity quickly and can do so before launching NY11–4 with only a minor ensuing delay to the launch. See *id.* at 4, n.15. As we explain herein, equalization of NY11 will take many months to accomplish, even at an aggressive pace, including because of factors outside of its control. The Exchange notes, for example, that the fiber needed to re-cable NY11 is in short supply and orders are subject to substantial waiting periods.

ensure proper design, testing, and workmanship, as well as to minimize the customer disruptions that, unfortunately, will be unavoidable during the process. The launch of NY11–4 with equalized telco connectivity will be the first phase of the Equalization Project, with the equalization of NY11 constituting the remaining phases of the Project. For the phased transition of NY11, the Exchange expects the migration to occur in tranches over the course of several weekends at the tail end of the 18–24 project period.

Concerns About the Sequencing of the Equalization Project Are Unfounded

In the Prior Proposal, the commenter objected to the Exchange’s plan to accomplish the Equalization Project by first launching equalized telco connectivity in NY11–4 before launching it in NY11.¹⁵ The commenter argued that this sequencing of the Equalization Project would be unfairly discriminatory in that it would exacerbate existing inequalities in the Exchange’s Data Center while also compelling customers to secure unneeded space in NY11–4 to ensure that they obtain or maintain the closest possible geographic proximity to their telecommunications providers’ equipment.¹⁶ These arguments are simply wrong.

The Exchange’s Plan for the Launch of NY11–4 to Constitute Phase One of the Equalization Project is Fair and Reasonable and in the Best Interests of the Markets

The Exchange’s Plan to Proceed with NY11–4 as the First Phase of the Equalization Project is in the Best Interests of the Markets

The fact of the matter is that the Exchange needs to launch NY11–4—and needs to do so in November 2024—to ensure that it remains capable of meeting the growing power and capacity demands of its customers. Regulation SCI requires the Exchange to reasonably anticipate its capacity needs. NY11–4, which has been three years in the making, is a product of the SCI planning process. Delaying the launch of NY11–4 to accommodate the equalization of NY11 would jeopardize the sound and orderly operation of the Exchange’s markets. Such a danger readily outweighs any concerns that some may have about the fairness of the Exchange’s plan to sequence the Equalization Project, even if such

¹⁵ See *id.*

¹⁶ See *id.* at 1–2, 5–6.

concerns were well-founded, which they are not.

We note that our customers generally support this view. One customer sent the Exchange a letter stating the following about the Exchange's plans:

As noted in your August 12, 2024, comment letter response to the SEC, the addition of NY11-4 is needed to meet the growing customer demands for space, power, and upgraded technological capabilities. OMC echoes these concerns as one of those customers, with an immediate and significant need to expand its colocation space to accommodate the growing demands of OMC's business. OMC is a registered member of the Nasdaq Stock Market and eight other options and equities exchanges operated by Nasdaq (the "Exchanges"), with more than half of those memberships added within roughly the last year. As a registered Market Maker for hundreds of listed symbols, OMC actively provides liquidity across the Exchanges. Also, as a Designated Liquidity Provider, OMC plays a key role in supporting the active and efficient trading of many new and existing products listed on the Exchanges. To support this significant amount of trading activity on the Exchanges, OMC urgently needs the additional colocation space made available in NY11-4. Any halt or delay of the NY11-4 launch would prevent OMC's planned expansion and would endanger OMC's ability to grow and meet the liquidity provision demands of the Exchanges and their customers.¹⁷

The Exchange's Sequencing Plan is Also Pragmatic and Efficient

Expanding the existing data center by building a new wing (NY11-4) from scratch afforded the Exchange an opportunity to design the expansion efficiently with telco connectivity equalization incorporated therein from the outset. This approach avoids the need to later engage in a wasteful process of retrofitting NY11-4 for telco connectivity equalization—a process in which the Exchange must now engage with respect to NY11.

Launching NY11-4 Before Equalizing NY11 Will Not Worsen Inequality

The latency profile of a customer collocating in NY11-4 would be no better than that of the lowest latency customer and no worse than that of the highest latency customer collocating presently in NY11. In fact, the launch of a full-equalized NY11-4 before equalizing NY11 would actually diminish the overall average latency differential among collocated customers' telecom provider connections because NY11-4 introduces connections at a single latency value in between the slowest and fastest latencies. That is, the shortest current telco connection

possible into NY11 is 160 ft while the longest current telco connection possible into NY11 is 680 feet; the equidistant telco connections into NY11-4 will be 590 feet, which falls between these two extremes.

Moreover, although the Exchange does not know the precise latency profiles of each of its colocation customers, it has provided those customers with the latency profile for NY11-4 and interhall connectivity through its distribution of a technical specification document via the Customer Portal. This technical specification document will allow customers to determine for themselves whether their current location in NY11 or alternative space in NY11-4 will optimize their latency profile. It will provide a means for customers to plan ahead and avoid undesirable outcomes associated with the launch of NY11-4. Contrary to assertions made by the commenter in connection with the Prior Proposal,¹⁸ the technical specification document alleviates uncertainty that might otherwise compel customers to waste money to secure unnecessary space in NY11-4 as a defensive means of assuring themselves the most advantageous position available in the Exchange's data center campus.

Any Advantage Attainable From the Launch of NY11-4 First Will Be Temporary

Even if a customer was to gain a latency advantage from the launch of NY11-4 before equalization of NY11, such an advantage would be temporary given the fact that equalization of NY11 will follow soon after the launch of NY11-4. The fleeting nature of any such advantage should also disincentivize colocation customers from engaging in a "land grab" for what they perceive to be the most geographically advantageous space in NY11-4. Indeed, the Exchange sees no evidence of such a land grab actually occurring with respect to customers' expressions of interest in NY11-4, notwithstanding warnings to that effect from the same commenter. As of the date of submission of this filing, only roughly 10 percent of existing customers, representing a mix of business models and latency sensitive activities, have requested space in NY11-4. Moreover, interest in NY11-4

thus far involves a mix of customers wanting to expand upon their existing space in NY11 and others that want to move their existing space in NY11 entirely to NY11-4.

Equalizing NY11 First Will Not Avoid Creating Temporary Customer Disparities

Finally, the commenter's argument is incorrect that equalizing NY11 before launching NY11-4 would avoid creating disparities among customers with respect to their telco connections.¹⁹ Equalizing telecommunications connectivity in NY11 before launching NY11-4 would not avoid the reality that full telco connectivity equalization—however accomplished—will require the introduction of temporary disparities in the lengths of the cables running between telecommunications providers and customers in the data center complex. Even if the Exchange were to pursue equalization of NY11 first, doing so would necessarily entail certain customers in NY11 experiencing changes to their telco cable lengths before others during the phased transition period. Thus, re-sequencing the Equalization Project to start with NY11 will do nothing to affect these temporary customer disparities, but instead will needlessly place the markets at risk by delaying the availability of expanded data center capacity.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,²¹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Today, the Exchange offers various cabinet choices and power options in the data center for colocation customers. The proposal would expand the cabinet and power options available, by introducing an additional cabinet option, the Ultra High Density Cabinet, and new power choices. The proposal would benefit the public interest by providing customers more cabinet and power options to choose from, thereby enhancing their ability to tailor their colocation operations to the requirements of their business operations. In general, the proposal is consistent with the Act

¹⁷ Ltr. From F. Zucek, Old Mission, to B. Kitt, Nasdaq, dated Aug. 21, 2024.

¹⁸ See McKay Ltr., *supra*, at 3-4 (asserting that "introduction of NY11-4 before equalizing NY11 will compel many customers to establish a third point of presence—at a cost in incremental fees paid to Nasdaq alone of at least \$2.5 million on a three-year commitment—to eliminate the risk that the NY11-4 connection is a superior connection to one (or both) of their existing NY11 points of presence.").

¹⁹ See *id.* at 2.

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

because the Exchange's expansion of the data center and expansion of available power and cabinets will enable the Exchange to meet customer needs and address demand for both cabinets and power. In lieu of collocating directly with the Exchange, market participants may choose not to collocate at all or to collocate indirectly through a vendor.

The Exchange also believes that the proposal will not be unfairly discriminatory, consistent with the objectives of Section 6(b)(5) of the Act²² because the expanded cabinet and power options in the data center would be offered equally to all customers. Although certain optionality is only offered in NY11-4 because of different power configurations in NY11-4 as compared to NY11, NY11-4 is merely an expansion of the data center, and any customer may order cabinets and power in NY11-4 (and across the data center broadly) on the same terms as any other customer.

The Equalization Project Is Consistent With the Act

In addition to the above, and although not strictly relevant to the proposal at hand, the Exchange also believes that the Equalization Project, as outlined above and which will begin with the launch of NY11-4, is consistent with the Act.

Concerns About the Sequencing of the Equalization Project Are Unfounded

In the Prior Proposal, the commenter objected to the Exchange's plan to accomplish the Equalization Project by first launching equalized telco connectivity in NY11-4 before launching it in NY11.²³ The commenter argued that this sequencing of the Equalization Project would be unfairly discriminatory in that it would exacerbate existing inequalities in the Exchange's Data Center while also compelling customers to secure unneeded space in NY11-4 to ensure that they obtain or maintain the closest possible geographic proximity to their telecommunications providers' equipment.²⁴ These arguments are simply wrong.

The Exchange's Plan for the Launch of NY11-4 to Constitute Phase One of the Equalization Project is Fair and Reasonable and in the Best Interests of the Markets

The Exchange's Plan To Proceed With NY11-4 as the First Phase of the Equalization Project is in the Best Interests of the Markets

The fact of the matter is that the Exchange needs to launch NY11-4—and needs to do so in November 2024—to ensure that it remains capable of meeting the growing power and capacity demands of its customers. Regulation SCI requires the Exchange to reasonably anticipate its capacity needs. NY11-4, which has been three years in the making, is a product of the SCI planning process. Delaying the launch of NY11-4 to accommodate the equalization of NY11 would jeopardize the sound and orderly operation of the Exchange's markets. Such a danger readily outweighs any concerns that some may have about the fairness of the Exchange's plan to sequence the Equalization Project, even if such concerns were well-founded, which they are not.

We note that our customers generally support this view. One customer sent the Exchange a letter stating the following about the Exchange's plans:

As noted in your August 12, 2024, comment letter response to the SEC, the addition of NY11-4 is needed to meet the growing customer demands for space, power, and upgraded technological capabilities. OMC echoes these concerns as one of those customers, with an immediate and significant need to expand its colocation space to accommodate the growing demands of OMC's business. OMC is a registered member of the Nasdaq Stock Market and eight other options and equities exchanges operated by Nasdaq (the "Exchanges"), with more than half of those memberships added within roughly the last year. As a registered Market Maker for hundreds of listed symbols, OMC actively provides liquidity across the Exchanges. Also, as a Designated Liquidity Provider, OMC plays a key role in supporting the active and efficient trading of many new and existing products listed on the Exchanges. To support this significant amount of trading activity on the Exchanges, OMC urgently needs the additional colocation space made available in NY11-4. Any halt or delay of the NY11-4 launch would prevent OMC's planned expansion and would endanger OMC's ability to grow and meet the liquidity provision demands of the Exchanges and their customers.²⁵

The Exchange's Sequencing Plan Is Also Pragmatic and Efficient

Expanding the existing data center by building a new wing (NY11-4) from scratch afforded the Exchange an opportunity to design the expansion efficiently with telco connectivity equalization incorporated therein from the outset. This approach avoids the need to later engage in a wasteful process of retrofitting NY11-4 for telco connectivity equalization—a process in which the Exchange must now engage with respect to NY11.

Launching NY11-4 Before Equalizing NY11 Will Not Worsen Inequality

The latency profile of a customer collocating in NY11-4 would be no better than that of the lowest latency customer and no worse than that of the highest latency customer collocating presently in NY11. In fact, the launch of a full-equalized NY11-4 before equalizing NY11 would actually diminish the overall average latency differential among collocated customers' telecom provider connections because NY11-4 introduces connections at a single latency value in between the slowest and fastest latencies. That is, the shortest current telco connection possible into NY11 is 160 ft while the longest current telco connection possible into NY11 is 680 feet; the equidistant telco connections into NY11-4 will be 590 feet, which falls between these two extremes.

Moreover, although the Exchange does not know the precise latency profiles of each of its colocation customers, it has provided those customers with the latency profile for NY11-4 and interhall connectivity through its distribution of a technical specification document via the Customer Portal. This technical specification document will allow customers to determine for themselves whether their current location in NY11 or alternative space in NY11-4 will optimize their latency profile. It will provide a means for customers to plan ahead and avoid undesirable outcomes associated with the launch of NY11-4. Contrary to assertions made by the commenter in connection with the Prior Proposal,²⁶ the technical specification document alleviates uncertainty that might otherwise compel customers to

²² *Id.*

²³ See McKay Ltr., *supra*.

²⁴ See *id.* at 1–2, 5–6.

²⁵ Ltr. From F. Zucek, Old Mission, to B. Kitt, Nasdaq, dated Aug. 21, 2024.

²⁶ See McKay Ltr., *supra*, at 3–4 (asserting that "introduction of NY11-4 before equalizing NY11 will compel many customers to establish a third point of presence—at a cost in incremental fees paid to Nasdaq alone of at least \$2.5 million on a three-year commitment—to eliminate the risk that the NY11-4 connection is a superior connection to one (or both) of their existing NY11 points of presence.").

waste money to secure unnecessary space in NY11–4 as a defensive means of assuring themselves the most advantageous position available in the Exchange's data center campus.

Any Advantage Attainable From the Launch of NY11–4 First Will Be Temporary

Even if a customer was to gain a latency advantage from the launch of NY11–4 before equalization of NY11, such an advantage would be temporary given the fact that equalization of NY11 will follow soon after the launch of NY11–4. The fleeting nature of any such advantage should also disincentivize colocation customers from engaging in a “land grab” for what they perceive to be the most geographically advantageous space in NY11–4. Indeed, the Exchange sees no evidence of such a land grab actually occurring with respect to customers' expressions of interest in NY11–4, notwithstanding warnings to that effect from the same commenter. As of the date of submission of this filing, only roughly 10 percent of existing customers, representing a mix of business models and latency sensitive activities, have requested space in NY11–4. Moreover, interest in NY11–4 thus far involves a mix of customers wanting to expand upon their existing space in NY11 and others that want to move their existing space in NY11 entirely to NY11–4.

Equalizing NY11 First Will Not Avoid Creating Temporary Customer Disparities

Finally, the commenter's argument is incorrect that equalizing NY11 before launching NY11–4 would avoid creating disparities among customers with respect to their telco connections.²⁷ Equalizing telecommunications connectivity in NY11 before launching NY11–4 would not avoid the reality that full telco connectivity equalization—however accomplished—will require the introduction of temporary disparities in the lengths of the cables running between telecommunications providers and customers in the data center complex.

Even if the Exchange were to pursue equalization of NY11 first, doing so would necessarily entail certain customers in NY11 experiencing changes to their telco cable lengths before others during the phased transition period. Thus, re-sequencing the Equalization Project to start with NY11 will do nothing to affect these temporary customer disparities, but instead will needlessly place the

markets at risk by delaying the availability of expanded data center capacity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal imposes any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which exchanges and other vendors offer colocation services as a means to facilitate the trading and other market activities of those market participants who believe that colocation enhances the efficiency of their operations. As part of its colocation offering, the Exchange currently offers similar cabinets and power, as do other exchanges.

Nothing in the Proposal burdens intra-market competition because the Exchange's colocation services, including those proposed herein, are available to any customer and customers that wish to order cabinets and power can do so on a non-discriminatory basis. Use of any colocation service is completely voluntary, and each market participant is able to determine whether to use colocation services based on the requirements of its business operations.

Additionally, and although not strictly relevant to the Proposal, nothing about the Equalization Plan, as described above, would impose an undue burden on competition. The Exchange intends for the Equalization Plan to facilitate increased competition among its colocation customers by eliminating telco connectivity disparities that currently provide some customers with latency advantages relative to others. For the reasons discussed above, the Exchange believes that it is fair and necessary to sequence the Equalization Project by beginning with the launch of NY11–4 with an equalized design, rather than with NY11. Specifically, the timely launch of NY11–4 is necessary for the Exchange to meet its capacity needs and those of its customers, while retrofitting NY11 will be a complex process that will require many months to complete. Moreover, the current sequencing plan will not worsen existing inequalities, but instead will improve the overall average disparity in telco cable lengths in the data center. Even though the sequencing plan will cause some customers to be subject to telco connectivity equalization before others, this result is unavoidable even if the Exchange were

to equalize NY11 first. Any customer advantage or disadvantage that might arise from the Equalization Project would be temporary. Finally, the Exchange has been transparent about its plans and afforded opportunities to customers to make informed choices about how to mitigate any adverse consequences, competitive or otherwise.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange received a written letter of support from Old Mission Capital LLC, dated August 21, 2024.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act²⁸ and subparagraph (f)(6) of Rule 19b-4 thereunder.²⁹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or

²⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²⁷ See *id.* at 2.

• Send an email to rule-comments@sec.gov. Please include file number SR-MRX-2024-36 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-MRX-2024-36. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-MRX-2024-36 and should be submitted on or before October 15, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-21749 Filed 9-23-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101080; File No. SR-CboeBZX-2024-084]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the ARK 21Shares Bitcoin ETF and the 21Shares Core Ethereum ETF To Add Two New Custodians to Each Trust

September 18, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 12, 2024, Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. ("BZX" or the "Exchange") is filing with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change to amend the ARK 21Shares Bitcoin ETF (the "Bitcoin Trust") and the 21Shares Core Ethereum ETF (the "Eth Trust"), shares of which have been approved by the Commission to list and trade on the Exchange pursuant to BZX Rule 14.11(e)(4), to add two new custodians to each trust.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission approved the listing and trading of shares (the "Bitcoin ETP Shares") of the ARK 21Shares Bitcoin ETF (the "Bitcoin Trust") on the Exchange pursuant to Exchange Rule 14.11(e)(4), Commodity-Based Trust Shares, on January 10, 2024.³ The Commission also approved the listing and trading of shares (the "Eth ETP Shares") of the 21Shares Core Ethereum ETF (the "Eth Trust") on the Exchange pursuant to Exchange Rule 14.11(e)(4), Commodity-Based Trust Shares, on May 23, 2024.⁴ Exchange Rule 14.11(e)(4) governs the listing and trading of Commodity-Based Trust Shares, which means a security (a) that is issued by a trust that holds (1) a specified commodity deposited with the trust, or (2) a specified commodity and, in addition to such specified commodity, cash; (b) that is issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity and/or cash; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity and/or cash. The Bitcoin ETP Shares are issued by the Bitcoin Trust and the Eth ETP Shares are issued by the Eth Trust. The Bitcoin Trust was formed as a Delaware statutory trust on June 22, 2021 and the

³ See Securities Exchange Act Release No. 99306 (January 10, 2024) 89 FR 3008 (January 17, 2024) (SR-CboeBZX-2023-028) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units) (the "Bitcoin ETP Approval Order").

⁴ See Securities Exchange Act Release No. 100224 (May 23, 2024) 89 FR 46937 (May 30, 2024) (SR-CboeBZX-2023-070) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Shares of Ether-Based Exchange-Traded Products) (the "Eth ETP Approval Order"). The Eth Trust was originally named the ARK 21Shares Ethereum ETF, as reflected in the Eth ETP Approval Order. However, the Exchange later submitted an amendment, in part, to rename the Eth Trust to the 21Shares Core Ethereum ETF. See Securities Exchange Act Release No. 100306 (June 10, 2024) 89 FR 50656 (June 14, 2024) (SR-CboeBZX-2024-050) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the ARK 21Shares Ethereum ETF To Amend the Trust Name and Reflect That the Trust Will No Longer Have a Sub-Adviser).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³⁰ 17 CFR 200.30-3(a)(12).

Eth Trust was formed as a Delaware statutory trust on September 5, 2023.

The Exchange proposes to amend a representation set forth in the Exchange's previous rule filing to list and trade Bitcoin ETP Shares to reflect the addition of two new custodians that will provide bitcoin custody services to the Bitcoin Trust in addition to the existing custodian. Specifically, the Bitcoin ETP Amendment No. 5⁵ represented that Coinbase Trust Company, LLC is the custodian (the "Current Custodian") and will be responsible for custody of the Bitcoin Trust's bitcoin. Now, the Exchange proposes to provide that Anchorage Digital Bank N.A. ("Anchorage") and BitGo New York Trust Company, LLC ("BitGo" and together with Anchorage, the "New Custodians" and collectively, with Coinbase Trust Company, LLC, the "Custodians") will also provide bitcoin custody services to the Bitcoin Trust in addition to the Current Custodian.

The Exchange similarly proposes to amend a representation set forth in the Exchange's previous rule filings to list and trade the Eth ETP Shares to reflect that the two New Custodians will provide ether custody services to the Eth Trust in addition to the Current Custodian.⁶ Specifically, the Eth ETP Amendment No. 2,⁷ as amended,⁸ represented that the Current Custodian will be responsible for custody of the Eth Trust's ether. Now, the Exchange proposes to provide that Anchorage and BitGo will provide ether custody services to the Eth Trust in addition to the Current Custodian.

BitGo is a New York chartered trust companies overseen by the New York Department of Financial Services ("NYDFS"). Anchorage is a South Dakota chartered trust company and a National Bank Trust chartered by the Office of the Comptroller of the Currency. The New Custodians are qualified custodians under Rule 206–4 of the Investment Adviser Act. The New Custodians will each custody the

Bitcoin Trust's bitcoin pursuant to a custody agreement. The new Custodians will each custody the Eth Trust's ether pursuant to a custody agreement. Such custody agreements with the Bitcoin Trust requires the New Custodians to maintain the Bitcoin Trust's bitcoin in segregated accounts that clearly identify the Bitcoin Trust as owner of the respective accounts and assets held on those accounts; the segregation will be both from the proprietary property of the New Custodians and the assets of any other customer. Such custody agreements with the Eth Trust requires the New Custodians to maintain the Eth Trust's ether in segregated accounts that clearly identify the Eth Trust as owner of the respective accounts and assets held on those accounts; the segregation will be both from the proprietary property of the New Custodians and the assets of any other customer. Such an arrangement is generally deemed to be "bankruptcy remote," that is, in the event of an insolvency of either New Custodian, assets held in such segregated accounts would not become property of the New Custodian's estate and would not be available to satisfy claims of creditors of the New Custodian. In addition, the New Custodians carry fidelity insurance, which covers assets held by the New Custodians in custody from risks such as theft of funds.

Bitcoin owned by the Bitcoin Trust will at all times be held by, and in the control of, the Custodians, and transfer of such bitcoin to or from the Custodians will occur only in connection with creation and redemptions of Bitcoin ETP Shares or allocations among the Custodians. The New Custodians will be bound by all representations made in the Bitcoin ETP Amendment No. 5 applicable to the Current Custodian.

Ether owned by the Eth Trust will at all times be held by, and in the control of, the Custodians, and transfer of such ether to or from the Custodians will occur only in connection with creation and redemptions of Eth ETP Shares or allocations among the Custodians. Like the Current Custodian, the New Custodians will not, directly or indirectly, engage in action where any portion of the Eth Trust's ether becomes subject to the ethereum proof-of-stake validation or is used to earn additional ether or generate income or other earnings. The New Custodians will be bound by all representations made in Eth ETP Amendment No. 2, as amended,⁹ applicable to the Current Custodian.

Except for the above changes, all other representations in the Bitcoin ETP Amendment No. 5 and Eth ETP Amendment No. 2, as amended,¹⁰ remain unchanged and will continue to constitute continuing listing requirements. In addition, the Bitcoin Trust will continue to comply with the terms of Bitcoin ETP Amendment No. 5 and the Eth Trust will continue to comply with the terms of Eth ETP Amendment No. 2, as amended,¹¹ and both the Bitcoin Trust and Eth Trust will continue to comply with the requirements of Rule 14.11(e)(4).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹² Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹³ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest because it would update a representation in Bitcoin ETP Amendment No. 5 regarding the custodian responsible for the custody of the Bitcoin Trust's bitcoin to provide for the two New Custodians, in addition to the Current Custodian. Similarly, the proposed rule change would update a representation in the Eth ETP Amendment No. 2, as amended,¹⁴ regarding the custodian responsible for the custody of the Eth Trust's ether to provide for the two New Custodians, in addition to the Current Custodian. The Exchange believes the addition of two New Custodians for both the Bitcoin Trust and Eth Trust would mitigate and diversify potential third-party service provider risk in the event that the

⁵ See Securities Exchange Act Release No. 99288 (January 8, 2024) 89 FR 2387 (January 12, 2024) (SR–CboeBZX–2023–028) (Notice of Filing of Amendment No. 5 to a Proposed Rule Change To List and Trade Shares of the ARK 21Shares Bitcoin ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares) ("Bitcoin ETP Amendment No. 5").

⁶ The Exchange notes that the Current Custodian to the Eth Trust is also Coinbase Trust Company, LLC.

⁷ See Securities Exchange Act Release No. 100216 (May 22, 2024) 89 FR 46514 (May 29, 2024) (SR–CboeBZX–2023–070) (Notice of Filing of Amendment No. 2 to a Proposed Rule Change to List and Trade Shares of the ARK 21Shares Ethereum ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares) ("Eth ETP Amendment No. 2").

⁸ Supra note 4.

⁹ Supra note 4.

¹⁰ Supra note 4.

¹¹ Supra note 4.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ Supra note 4.

Current Custodian was unable to provide custody services.

Except for the addition of the two New Custodians for the Bitcoin Trust all other representations made in the Bitcoin ETP Amendment No. 5 remain unchanged and will continue to constitute continuing listing requirements for the Bitcoin Trust. The New Custodians will be bound by all representations made in the Bitcoin ETP Amendment No. 5 applicable to the Current Custodian. Similarly, except for the addition of the two New Custodians for the Eth Trust all other representations made in the Eth ETP Amendment No. 2, as amended,¹⁵ remain unchanged and will continue to constitute continuing listing requirements for the Eth Trust. The New Custodians will be bound by all representations made in the Eth ETP Amendment No. 2, as amended,¹⁶ applicable to the Current Custodian.

Accordingly, the Exchange believes that this proposed rule change raises no novel regulatory issues.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, the proposed amendment is intended to reflect that the two New Custodians will have the ability to custody the Bitcoin Trust's bitcoin. Those two New Custodians will also have the ability to custody the Eth Trust's ether. The Exchange believes these changes will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on

competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.¹⁹

A proposed rule change filed under Rule 19b-4(f)(6)²⁰ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²¹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the proposed rule change would reflect the addition of the two New Custodians for each of the Bitcoin Trust and the Eth Trust. The New Custodians will be bound by all representations made in the Bitcoin ETP Amendment No. 5 and the Eth ETP Amendment No. 2, as amended,²² applicable to the Current Custodian. The Bitcoin Trust and Eth Trust will continue to comply with the requirements of Rule 14.11(e) and, except for the addition of the two New Custodians, all other representations made in the Bitcoin ETP Amendment No. 5 and the Eth ETP Amendment No. 2, as amended,²³ remain unchanged and will continue to constitute continuing listing requirements for the Bitcoin Trust and the Eth Trust, as applicable. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal does not raise any new or novel regulatory issues. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.²⁴

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of

investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2024-084 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-CboeBZX-2024-084. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeBZX-2024-084 and should be submitted on or before October 15, 2024.

¹⁵ Supra note 4.

¹⁶ Supra note 4.

¹⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²⁰ 17 CFR 240.19b-4(f)(6).

²¹ 17 CFR 240.19b-4(f)(6)(iii).

²² See supra note 4.

²³ Id.

²⁴ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024–21752 Filed 9–23–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101096; File No. SR–ISE–2024–46]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Codify the Definition of ISE Open/Close Trade Profile

September 18, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on September 6, 2024, Nasdaq ISE, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to codify the definition of ISE Open/Close Trade Profile in the ISE rulebook. This filing also incorporates previously proposed fee changes that: (i) adjusted fees for ISE Open/Close End of Day and Intraday Trade Profile; (ii) reduced fees for 36 months of historical data for current customers; and (iii) allowed unlimited external distribution of ISE Open/Close End of Day and Intraday Trade Profile for a fixed monthly fee.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/ise/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for

the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to codify the definition of ISE Open/Close Trade Profile in the ISE rulebook. This filing also incorporates previously proposed fee changes that: (i) adjusted fees for ISE Open/Close End of Day and Intraday Trade Profile; (ii) reduced fees for 36 months of historical data for current customers; and (iii) allowed unlimited external distribution of ISE Open/Close End of Day and Intraday Trade Profile for a fixed monthly fee.³

ISE Open/Close Trade Profile

ISE currently sells a market data offering comprised of the entire opening and closing trade data of ISE-listed options of both customers and firms, called the ISE Open/Close Trade Profile.⁴ This product is designed to

³ The previously introduced fee proposal was initially filed on July 1, 2024, as SR–ISE–2024–25. On July 15, 2024, that filing was withdrawn and refiled as SR–ISE–2024–32. On July 29, 2024, that filing was withdrawn and refiled as SR–ISE–2024–36. On August 12, 2024, that proposal was withdrawn and replaced with SR–ISE–2024–40 to incorporate those fees into a filing that codifies the definition of ISE Open/Close Trade Profile. On August 23, 2024, SR–ISE–2024–40 was withdrawn and replaced with SR–ISE–2024–43 to provide additional information. On September 6, 2024, SR–ISE–2024–43 was withdrawn and replaced with the instant filing to provide further information.

⁴ See Securities Exchange Act Release No. 77907 (May 25, 2016), 81 FR 35079 (June 1, 2016) (SR–ISE–2016–14) (adopting a flat fee for the Complete Set of historical data); Securities Exchange Act Release No. 76501 (November 20, 2015), 80 FR 74181 (November 27, 2015) (SR–ISE–2015–40) (offering a one month free trial to new customers); Securities Exchange Act Release No. 67955 (October 1, 2012), 77 FR 61037 (October 5, 2012) (SR–ISE–2012–76) (adopting reduced fees for historical data for academic institutions); Securities Exchange Act Release No. 61317 (January 8, 2010), 75 FR 2915 (January 19, 2010) (SR–ISE–2009–103) (establishing the current fees for the end of day and intra-day products); Securities Exchange Act Release No. 60859 (October 21, 2009), 74 FR 55610 (October 28, 2009) (SR–ISE–2009–64) (adjusting fees for academic institutions); Securities Exchange Act Release No. 60654 (September 11, 2009), 74 FR 47848 (September 17, 2009) (SR–ISE–2009–64) (adjusting fees for academic institutions); Securities Exchange Act Release No. 56957 (December 13, 2007), 72 FR 71988 (December 19, 2007) (SR–ISE–2007–115) (establishing the sale of historical data); Securities Exchange Act Release No. 56254 (August

provide data to subscribers regarding investor sentiment and trading activity.

The ISE Open/Close Trade Profile provides aggregate quantity and volume information for trades on the Exchange for all series⁵ during a trading session. Information is provided in the following categories: (i) total exchange volume for Intra-Day information and total exchange and industry volume for End of Day information for each reported series; (ii) open interest for the series; (iii) aggregate quantity of trades and aggregate trade volume effected to open a position, characterized by origin type (Priority Customer,⁶ Broker-Dealer,⁷ Firm Proprietary,⁸ and Professional Customer⁹), and for Priority Customers and Professional Customers, further subdivided by trade size buckets; and (iv) aggregate quantity of trades and aggregate trade volume effected to close a position, characterized by origin type (Priority Customer, Broker-Dealer, Firm Proprietary, and Professional Customer), and for Priority Customers and Professional Customers, further subdivided by trade size buckets.

ISE Open/Close Trade Profile End of Day also provides opening buy, closing buy, opening sell and closing sell information, which includes underlying close, option close, and moneyness.

End of Day information is available the next business day. Intra-Day information is updated at 10-minute intervals over the course of the trading day. Historical information is available upon request.

The ISE Open/Close Trade Profile provides proprietary Exchange trade data and does not include any intraday trade data from any other exchange.¹⁰ The information provided, both in End of Day and Intraday formats, is not a real-time data feed.

15, 2007), 72 FR 47104 (August 22, 2007) (SR–ISE–2007–70) (initial offering of ISE Open/Close Trade Profile).

⁵ Every options series trades as a distinct symbol; the terms “series” and “symbol” are therefore synonyms.

⁶ A “Priority Customer” is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq ISE Options 1, Section 1(a)(37). See Options 7, Section 1(c).

⁷ A “Broker-Dealer” order is an order submitted by a member for a broker-dealer account that is not its own proprietary account. See Options 7, Section 1(c).

⁸ A “Firm Proprietary” order is an order submitted by a member for its own proprietary account. See Options 7, Section 1(c).

⁹ A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer. See Options 7, Section 1(c).

¹⁰ The End of Day report includes a field that presents Total Industry Volume for the Series.

²⁵ 17 CFR 200.30–3(a)(12), (59).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

ISE Open/Close Trade Profile is a completely voluntary product in that the Exchange is not required by any rule or regulation to make this data available and potential subscribers may purchase it only if they voluntarily choose to do so.

This information is available to all market participants, including both members and non-members, for all series and symbols in End of Day, Intra-Day, and historical files (upon request).

The information provided is designed to provide the ability to analyze option trade and volume data and create and test trading models and analytical strategies, as well as build customized sentiment indicators.

The End of Day file is updated during an overnight process with additional fields¹¹ and is available the following morning.

The Intraday product is captured in “snapshots” taken every 10 minutes throughout the trading day, available to subscribers within 2 minutes of the conclusion of each period. Subscribers receive the first calculation at 9:42 a.m. ET, representing data captured from 9:30 a.m. to 9:39 a.m., and the second calculation at 9:52 a.m., representing data from both the most recent snapshot and previous snapshots, continuing over the course of the trading day.

The current subscription rate for both members and non-members for ISE Trade Profile Open/Close End of Day is \$750 per month. The current fee for ISE Open/Close Trade Profile Intraday is \$2,000 per month. An annual subscription for end of day and Intraday Trade Profile is \$2,500 per month. These fees have not changed since 2010.¹²

ISE also sells historical ISE Open/Close Trade Profile data about the past activity of all option series traded on the Exchange for each trading session conducted during a prior calendar month selected by the subscriber. This data is intended to enhance a purchaser's ability to analyze option trade and volume data, evaluate historical trends in the trading activity of a particular option series, and create and test trading models and analytical strategies. Historical Trade Profile provides the same fields of information as the End of Day and Intraday files, respectively. This market data offering is comprised of the entire opening and

closing trade data of both customers and firms starting in January 2006 for End of Day and October 2009 for Intraday.¹³ Ad-hoc subscribers can purchase this data for any number of months through the current month.

Trade Profile is designed to enhance the ability of customers to understand market sentiment on the Exchange and to create and test trading models and analytical strategies useful in both options and equities markets. It is not necessary to execute a trade, but it supplies the customer with information about underlying market trends designed to improve the quality of that customer's investment decisions. Customers can, and often do, elect to forego this information.

Products similar to Trade Profile have been available on multiple exchanges for many years and are well-established in the market. Such products are available from Nasdaq Phlx LLC (“Phlx”),¹⁴ Nasdaq Options Market (“NOM”),¹⁵ Nasdaq GEMX LLC (“GEMX”),¹⁶ Cboe Options Exchange,¹⁷ NYSE American Options,¹⁸ NYSE Arca Options,¹⁹ BOX Options Market LLC,²⁰ MIAX Pearl Options Exchange,²¹ and

others. In general, the relative value of these products depends on the volume of transactions included; the greater the volume of transactions, the greater the value of the data. The current purchasers of Trade Profile are investment banks, market makers, asset managers and other buy-side investors.

Proposed Changes

Definition of ISE Open/Close Trade Profile

The Exchange proposes to codify the definition of ISE Open/Close Trade Profile. Nothing in this codification is intended to change the product in any way, but rather is intended to describe the product exactly as it exists. Specifically, the Exchange proposes the following definition:

ISE Open/Close Trade Profile provides aggregate quantity and volume information for trades on the Exchange for all series during a trading session. Information is provided in the following categories: (i) total exchange volume for Intra-Day information and total exchange and industry volume for End of Day information for each reported series; (ii) open interest for the series; (iii) aggregate quantity of trades and aggregate trade volume effected to open a position, characterized by origin type (Priority Customer, Broker-Dealer, Firm Proprietary, and Professional Customer), and for Priority Customers and Professional Customers, further subdivided by trade size buckets; and (iv) aggregate quantity of trades and aggregate trade volume effected to close a position, characterized by origin type (Priority Customer, Broker-Dealer, Firm Proprietary, and Professional Customer), and for Priority Customers and Professional Customers, further subdivided by trade size buckets.

ISE Open/Close Trade Profile End of Day will also provide opening buy, closing buy, opening sell and closing sell information, which shall include option first trade price, underlying close, option close, and moneyness.

End of Day information will be available the next business day. Intra-Day information is updated at 10-minute intervals over the course of the trading day. Historical information will be available upon request.

The purpose of the proposed change is to add clarity and specificity to the ISE rulebook.

Previously Introduced Fee Changes

Fee Changes for End of Day and Intraday Products

The Exchange proposes to increase the fee for the End of Day product from \$750 to \$850, and the Intraday Product from \$2,000 to \$2,500. The discounted rate of \$2,500 per month for both end of day and intraday information will be increased to \$3,100 to reflect the new fees while preserving the \$250 discount.

In addition, the Exchange proposes to insert a comma after the phrase “or the

¹¹ The additional fields are: First Trade Price, Last Trade Price, Underlying Close, Moneyness, Total Exchange volume, and Total Industry Volume for the Series.

¹² See Securities Exchange Act Release No. 61317 (January 8, 2010), 75 FR 2915 (January 19, 2010) (SR-ISE-2009-103) (establishing the current fees for the end of day and intra-day products).

¹³ The current ISE rulebook states that historical End of Day information is available starting in May 2005. The Exchange is updating this information to correct the starting date to January 2006.

¹⁴ See Securities Exchange Act Release No. 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR-Phlx-2010-121) (introducing PHOTO on September 1, 2010).

¹⁵ See Nasdaq Stock Market Rules, Options 7, Section 4 (Nasdaq Options Market Data Distributor Fees).

¹⁶ See Nasdaq GEMX Rules, Options 7, Sections 7(D) (Nasdaq GEMX Open/Close End of Day Trade Profile) and 7(E) (Nasdaq GEMX Open/Close Intraday Trade Profile).

¹⁷ See, e.g., Securities Exchange Act Release No. 94913 (May 13, 2022), 87 FR 30534 (May 19, 2022) (SR-Cboe-2022-023) (describing End of Day and Intra-day Open-Close Data as a summary of trading activity on the exchange at the option level by origin, side of the market, price and transaction type).

¹⁸ See, e.g., Securities Exchange Act Release No. 93803 (December 16, 2021), 86 FR 72647 (December 22, 2021) (SR-NYSEAMER-2021-46) (describing the NYSE Options Open-Close Volume Summary as a volume summary of trading activity on the exchange at the option level by origin, side of the market, contract volume and transaction type).

¹⁹ See, e.g., Securities Exchange Act Release No. 93132 (September 27, 2021), 86 FR 54499 (October 1, 2021) (SR-NYSEArca-2021-82) (describing the NYSE Options Open-Close Volume Summary as a volume summary of trading activity on the exchange at the option level by origin, side of the market, contract volume and transaction type).

²⁰ See, e.g., Securities Exchange Act Release No. 97174 (March 21, 2023), 88 FR 18201 (March 27, 2023) (SR-BOX-2023-09) (describing the BOX exchange Open-Close Data report as providing volume by origin, buying/selling, and opening/closing criteria).

²¹ See, e.g., Securities Exchange Act Release No. 91964 (May 21, 2021), 86 FR 28667 (May 27, 2021) (SR-PEARL-2021-24) (introducing the Open-Close Report).

Intraday Product for the current month” into the definition of Current Distributor. The revised sentence will read as follows:

A “Current Distributor” is any firm that purchases either the End of Day Product for the current month, or the Intraday Product for the current month, in the same month that the 36 months of historical End of Day or Intraday data is ordered.

The change is designed to clarify that the phrase “the same month that the 36 months of historical End of Day or Intraday data is ordered” applies to both firms that purchase End of Day data in the current month and firms that purchase Intraday data for the current month. The clarification will not change how the fee is charged.

Discount for Historical Data

The Exchange proposes to alter discounts for historical end of day and intraday data for Current Distributors.²² Specifically, the Exchange proposes to offer the most recent 36 months of end of day data for \$7,200, and the most recent 36 months intraday data for \$12,000.

Ad-hoc requests for historical end of day data are currently \$600 per request per month. A complete set of historical end of day data is \$27,500 per request. For intraday data, there is a sliding scale of charges: \$1,000 per request per month; \$2,000 per request per quarter; and \$8,000 per request per year.

The proposed rates are a substantial discount from current fees. With respect to end of day data, ad hoc requests are \$600 per request per month. Three years of such data would cost \$21,600. The proposed rate of \$7,200 is far below this level. With respect to intraday information, the current rates are \$1,000 per request per month, \$2,000 per request per quarter, and \$8,000 per request per year. Using the lowest rate of \$8,000 per request per year, the most recent 36 months of intraday information would cost \$24,000. The proposed rate of \$12,000 for the most recent 36 months of intraday data is a substantial discount from the current rate.

For customers that request more than three years of information, end of day historical information can still be purchased for \$600 per request per month, and intraday information can be purchased at \$1,000 per request per month. The discount for a complete set of historical end of day data is \$27,500

per request is being removed because the Exchange has found that the most recent three years of data is sufficient for most customer needs. Many customers use historical data to test their strategies and models, and our discussions with current and former customers and experience indicate that 36 months of data is sufficient for most customer needs, and is an effective baseline for review.

The historical data will continue to provide the same categories of information available for current subscribers under the new proposal.

Eligibility for the discount will depend on the type of current subscription. A current purchaser of End of Day data would be eligible for the historical End of Day product at the reduced rate. A current purchaser of the Intraday product would similarly be able to purchase the historical Intraday product at the reduced rate. A purchaser of both the current End of Day and Intraday products would be entitled to purchase both types of history at the reduced rate.

The 36-month period will be based on the date of purchase of the 36 months of data by a Current Distributor. For example, a customer that buys the End of Day product for the first time in July 2024 would also be able to purchase historical End of Day data for the period July 2021 through July 2024 (inclusive) at the discounted rate. Similarly, a customer with an existing End of Day subscription in July 2024 would be able to purchase the historical End of Day data from July 2021 through July 2024 at the discounted rate. The same reasoning would apply to Intraday customers.²³

The fees for historical data are linked to the current product because effective historical testing requires a comparison of similar licenses. Effective testing of the End of Day product, for example, requires End of Day historical data, and the same would hold true for Intraday data.

Historical data for Intraday information is currently offered in three tiers, depending on the time period requested: \$1,000 per request per month, \$2,000 per request per quarter, and \$8,000 per request per year. The Exchange receives almost no requests

for information on a quarterly or yearly basis. If a potential customer were interested in quarterly or yearly data, the Exchange believes that such a customer would be able to obtain more data at a lower cost using the proposed 36-month discount. As such, the Exchange expects that removal of the quarterly and yearly pricing tiers will have no material impact on customers. The monthly tier will remain for customers who wish to purchase data outside of the 36-month window.

The Exchange proposes to remove the fee of \$2,000 per request per quarter and \$8,000 per request per year as no longer useful in light of the much lower discount being proposed for 36 months of historical data.

Historical data is useful in analyzing option trade and volume data, evaluating historical trends in the trading activity of a particular option series, and creating and testing trading models and analytical strategies, and is often purchased concurrently with a new subscription to ISE Open/Close Trade Profile. Many customers use historical data to test their strategies and models, and our discussions with current and past customers and experience indicate that 36 months of data is sufficient for most customer needs, and is an effective baseline for review.

External Distribution of Derived Data

The Exchange proposes to offer a license for the unlimited external distribution of Derived Data from ISE Trade Profile for \$4,500 per month. Derived Data is “any information generated in whole or in part from Exchange Information²⁴ such that the information generated cannot be reverse engineered to recreate Exchange Information, or be used to create other data that is recognizable as a reasonable substitute for such Exchange Information.”

Fees for external distribution of Derived Data from ISE Trade Profile are in addition to fees for the End of Day product or the Intraday product, or both, as applicable.

This is a new license to be offered by the Exchange; external distribution of

²² The Exchange proposes to define “Current Distributor” as any firm that purchases either the End of Day Product for the current month, or the Intraday Product for the current month in the same month that the 36 months of historical End of Day or Intraday data is ordered.

²³ A customer may use the proposed historical data discount more than once. For example, a Current Distributor that purchases 36 months of historical data at a discount, but later terminates that subscription, would be eligible to purchase another 36 months of historical data (based on the date of purchase) upon renewing that subscription. (Current Distributors that never terminate would have no need for a second purchase, as they would already possess the most recent months of historical data.)

²⁴ “Exchange Information” is any data or information that has been collected, validated, processed and/or recorded by the Exchange and made available for transmission relating to: (i) Eligible securities or other financial instruments, markets, products, vehicles, indicators, or devices; (ii) activities of the Exchange; or (iii) other information or data from the Exchange. Information includes, but is not limited to, any element of information used or processed in such a way that Exchange Information or a substitute for such Information can be identified, recalculated or re-engineered from the processed information.

Derived Data is not currently permitted. The proposal, based on a similar license offered by the Phlx Exchange,²⁵ will allow the external distribution of analytic products derived from ISE Trade Profile to the general investing public. A similar product is also being proposed for the Nasdaq Options Market and the GEMX Exchange.

Experience with the Phlx Exchange indicates that this license provides an effective mechanism for market data vendors to identify, develop, and sell derived market data products, such as sentiment indicators, harnessing the power of the competitive marketplace to promote innovation. The Exchange expects that this product will have the greatest utility for the general investing public.

2. Statutory Basis

The Exchange believes that its proposal to codify the definition of ISE Open/Close Trade Profile is consistent with Section 6(b) of the Act,²⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁷ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Adding the definition of ISE Open/Close Trade Profile will provide additional clarity and specificity to the ISE rulebook. Nothing in this codification is intended to change the product or the way it functions, but rather is intended to describe the product exactly as it exists today. Providing additional clarity about an exchange product will help investors make better informed decisions about ISE Open/Close Trade Profile, and therefore will help protect investors and promote the public interest.

Similarly, clarifying the definition of Current Distributor will also add clarity and specificity to the rulebook without changing the underlying fees. This additional clarity will help investors make better informed decisions about ISE Open/Close Trade Profile, and thereby help protect investors and promote the public interest.

The Exchange also believes that its proposal to change fees is consistent with Section 6(b) of the Act,²⁸ in general, and furthers the objectives of

Sections 6(b)(4) and 6(b)(5) of the Act,²⁹ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Equitable Allocation of Reasonable Dues, Fees and Other Charges

The proposed changes are an equitable allocation of reasonable dues, fees and other charges because: (i) the trade profile products offered by multiple exchanges are substitutes, and customers are free to choose which product they purchase; and (ii) the proposed fees are comparable to the fees charged by other exchanges, and customers are free to purchase other products if the Exchange has mistaken the value of its product.

Substitution

As noted above, products similar to Trade Profile have been available on multiple exchanges for many years and are well-established in the market. Such products are available from Phlx,³⁰ ISE,³¹ GEMX,³² Cboe,³³ NYSE American,³⁴ NYSE Arca,³⁵ BOX,³⁶ MIAIX Pearl,³⁷ and others.

²⁹ 15 U.S.C. 78f(b)(4) and (5).

³⁰ See Securities Exchange Act Release No. 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR-Phlx-2010-121) (introducing PHOTO on September 1, 2010).

³¹ See Nasdaq ISE Rules, Options 7, Section 10(A) and (B) (Nasdaq ISE Open/Close Trade Profile End of Day; Nasdaq ISE Open/Close Trade Profile Intraday).

³² See Nasdaq GEMX Rules, Options 7, Sections 7(D) (Nasdaq GEMX Open/Close End of Day Trade Profile) and 7(E) (Nasdaq GEMX Open/Close Intraday Trade Profile).

³³ See, e.g., Securities Exchange Act Release No. 94913 (May 13, 2022), 87 FR 30534 (May 19, 2022) (SR-Cboe-2022-023) (describing End of Day and Intra-day Open-Close Data as a summary of trading activity on the exchange at the option level by origin, side of the market, price and transaction type).

³⁴ See, e.g., Securities Exchange Act Release No. 93803 (December 16, 2021), 86 FR 72647 (December 22, 2021) (SR-NYSEAMER-2021-46) (describing the NYSE Options Open-Close Volume Summary as a volume summary of trading activity on the exchange at the option level by origin, side of the market, contract volume and transaction type).

³⁵ See, e.g., Securities Exchange Act Release No. 93132 (September 27, 2021), 86 FR 54499 (October 1, 2021) (SR-NYSEARCA-2021-82) (describing the NYSE Options Open-Close Volume Summary as a volume summary of trading activity on the exchange at the option level by origin, side of the market, contract volume and transaction type).

³⁶ See, e.g., Securities Exchange Act Release No. 97174 (March 21, 2023), 88 FR 18201 (March 27, 2023) (SR-BOX-2023-09) (describing the BOX exchange Open-Close Data report as providing volume by origin, buying/selling, and opening/closing criteria).

³⁷ See, e.g., Securities Exchange Act Release No. 91964 (May 21, 2021), 86 FR 28667 (May 27, 2021)

Trade outline products offer the same categories of data through end of day or intraday reports. The information provided by one exchange is generally similar to that provided by other exchanges because order flow can move from one exchange to another, and market sentiment trends that appear on one exchange are likely to be similar to the sentiment trends on other exchanges. The key differentiator in the quality of the data depends on the volume of transactions on a given exchange; the greater the volume of transactions, the greater the value of the data. Customers can choose not to purchase the trade outline product of one exchange and substitute it for that of another exchange.

Customers can also choose not to purchase a trade outline product at all. Trade outline products are designed to help investors understand underlying market trends to improve the quality of investment decisions, but is not necessary to execute a trade. Customers can, and do, choose to forego the information from Trade Profile or any of its competitor products when making a trade.

Nasdaq and its affiliates have observed that customers purchase sufficient data to provide a view of the market, but not more, as the value of data from each additional exchange yields diminishing returns. As a result, all exchanges are limited in what they will be able to charge for a trade outline product.

As the Commission and courts³⁸ have recognized, “[i]f competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or

(SR-PEARL-2021-24) (introducing the Open-Close Report).

³⁸ The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010) upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. “In fact, the legislative history indicates that the Congress intended that the market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed and that the SEC wield its regulatory power in those situations where competition may not be sufficient, such as in the creation of a consolidated transactional reporting system.” *NetCoalition I* at 535 (quoting H.R. Rep. No. 94-229, at 92 (1975), as reprinted in 1975 U.S.C.A.N. 321, 323) (internal quotation marks omitted). The court agreed with the Commission's conclusion that “Congress intended that competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.” *Id.* (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74771 (December 9, 2008) (SR-NYSEARCA-2006-21)).

²⁵ See Securities Exchange Act Release No. 93293 (October 12, 2021), 86 FR 57716 (October 18, 2021) (SR-Phlx-2021-58).

²⁶ 15 U.S.C. 78f(b).

²⁷ 15 U.S.C. 78f(b)(5).

²⁸ 15 U.S.C. 78f(b).

unfair behavior.”³⁹ Accordingly, “the existence of significant competition provides a substantial basis for finding that the terms of an exchange’s fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.”⁴⁰ The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁴¹ Trade Profile is in direct competition with multiple exchanges that offer similar products in end of day and intraday formats.⁴²

The license to allow the external distribution of Derived Data, like the purchase of the end of day and intraday licenses, is also subject to competition. Any exchange that wishes to allow distribution of a Derived Data product based on options trading information would be able to do so with an immediately effective fee filing similar to this proposal.

Moreover, as explained above, the proposal is designed to promote the dissemination of a variety of analytical insights—generally used only by investment banks, market makers, asset managers and other buy-side investors—to the general investing public by creating an incentive for market data vendors to identify, develop, and sell such indicators. As such, the proposal will spur competition among not only exchanges, but vendors as well.

The discounted fees for historical data and the \$250 discount for the purchase of both end of day and intraday data together, like the purchase of the end of day, intraday and Derived Data licenses, is also subject to competition. Any exchange that wishes to provide discounts for historical data or the joint usage of end of day and intraday

information would be able to do so with an immediately effective fee filing in response.

Comparability of Proposed Fees

The proposed fees are comparable to the fees charged by similarly situated exchanges.

As explained above, the value of Trade Profile is determined in part by the number of underlying transactions reflected in the data.

ISE has a market share comparable to NYSE American, MIAx, and MIAx Pearl at approximately 6% to 7% in the second quarter of 2024.⁴³ For intraday products, NYSE American charges \$2,000,⁴⁴ MIAx charges \$2,000,⁴⁵ and MIAx Pearl charges \$2,000.⁴⁶ The proposed fees of \$2,500 for ISE are above this because ISE believes that the other exchanges are not accurately reflecting the value of the data. CBOE C1, at a slightly larger market share of approximately 9%,⁴⁷ charges \$3,000 for intraday data,⁴⁸ and we believe the proposed fee of \$2,500 is more in line with the overall market for trade outline information than the \$2,000 charged by other exchanges.

For end of day data, NYSE American charges \$750,⁴⁹ MIAx charges \$600,⁵⁰ and MIAx Pearl charges \$600.⁵¹ The proposed fees of \$850 are higher than

this range, but the Exchange believes that its competitors are underestimating the value of the product.

Nasdaq is not aware of another exchange that provides a similar discount for historical data other than its own affiliates. The Phlx exchange, which is affiliated with Nasdaq, offers the most recent 36 months of historical End of Day data to Current Distributors for \$6,000, and the most recent 36 months of Intraday data for \$12,000. Nasdaq believes that the proposed ISE fees are reasonable in comparison to Phlx because, although Phlx has a somewhat larger market share (approximately 9% for Phlx vs. about 7% for “ISE”), the historical Phlx data is somewhat undervalued. As such, ISE’s proposed fees of \$7,200 for 36 months of ISE’s historical End of Day data and \$12,000 for 36 months of ISE’s Intraday data are reasonable.

If the Exchange is wrong in these assessments, it will lose sales as a result.

As noted above, clarifying the definition of Current Distributor will not change fees, and therefore will not impact the equitable allocation of reasonable dues, fees and other charges.

The Proposal Does Not Permit Unfair Discrimination

Nothing in the proposal treats any category of market participant any differently from any other category of market participant. On the contrary, the proposal expands distribution of Trade Profile beyond investment banks, market makers, asset managers and other buy-side investors to market data vendors and the general investing public. Allowing the distribution of Derived Data to the general investing public will broaden the availability of such information while not treating any current recipient of the product differently in any way. The new fee structure, which modifies fees to reflect current market value and offers historical data at a discount, applies equally to all current and potential distributors. Trade Profile is available to all market participants, including members and non-members, and all market participants receive the same information in the Trade Profile data feed.

With respect to the specific fee changes, it is reasonable and not unfair discrimination to charge an external distributor of Derived Data a \$4,500 licensing fee. Vendors will ordinarily charge a fee to their downstream customers for this service, and, even if the vendor is not charging a specific fee for this particular service, Derived Data products from the Exchange will be part of a suite of offerings that generally

³⁹ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21).

⁴⁰ See *id.*

⁴¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

⁴² These substitute products include NOTO, ISE Trade Profile, GEMX Trade Profile data; open-close data from Cboe C1, C2, BZX, and EDGX; and Open Close Reports from MIAx Options, Pearl, and Emerald.

⁴³ See NasdaqTrader.com, “Options Market Statistics,” available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>.

⁴⁴ See NYSE American, “NYSE American Options Proprietary Market Data Fees as of November 1, 2023,” available at https://www.nyse.com/publicdocs/nyse/data/NYSE_American_Options_Market_Data_Fee_Schedule.pdf

⁴⁵ See MIAx Options Exchange, “Fee Schedule as of April 23, 2024,” available at https://www.miaxglobal.com/sites/default/files/fee-schedule-files/MIAx_Options_Fee_Schedule_04232024.pdf

⁴⁶ See MIAx Pearl Options Exchange, “Fee Schedule as of April 15, 2024,” available at https://www.miaxglobal.com/sites/default/files/fee-schedule-files/MIAx_Pearl_Options_Fee_Schedule_04152024.pdf

⁴⁷ See NasdaqTrader.com, “Options Market Statistics,” available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>.

⁴⁸ See Cboe DataShop, “Cboe Open-Close Volume Summary,” available at <https://datashop.cboe.com/cboe-options-open-close-volume-summary>.

⁴⁹ See NYSE American, “NYSE American Options Proprietary Market Data Fees as of November 1, 2023,” available at https://www.nyse.com/publicdocs/nyse/data/NYSE_American_Options_Market_Data_Fee_Schedule.pdf.

⁵⁰ See MIAx Options Exchange, “Fee Schedule as of April 23, 2024,” available at https://www.miaxglobal.com/sites/default/files/fee-schedule-files/MIAx_Options_Fee_Schedule_04232024.pdf.

⁵¹ See MIAx Pearl Options Exchange, “Fee Schedule as of April 15, 2024,” available at https://www.miaxglobal.com/sites/default/files/fee-schedule-files/MIAx_Pearl_Options_Fee_Schedule_04152024.pdf.

promote sales. External distribution is fundamentally different than internal use, in that the former generates revenue from external sales while the latter does not. It is not unfair discrimination to charge a licensing fee for a product that generates downstream revenue.

Nor is it unfair discrimination to allow the redistribution of Derived Data, but not the underlying information, to the general investing public. As explained above, neither exchanges nor vendors ordinarily allow redistribution of analytic products—such products are typically designed solely for the use of direct customers, not for redistribution to the customers of customers in the manner of a data feed. Allowing the redistribution of Derived Data provides an incentive for vendors to innovate with new compelling and varied analytic products for the general investing public that will provide access to market sentiment insights currently available only to sophisticated investors. This proposal is therefore not unfair discrimination, but rather allows for more equitable access to market sentiment information for the general investing public.

It is also not unfair discrimination to provide a discount for 36 months of historical data to Current Distributors, but not former distributors or firms that have never purchased the product. Any firm would be able to become a Current Distributor at any time by subscribing to Trade Profile, and would be able to cancel the subscription at any time after receiving the 36 months of historical data for the proposed discounted fee. More specifically, a firm that is not a Current Distributor may obtain access to the 36 months of historical data at a discount by becoming a Current Distributor for a limited time and then terminating the subscription.

It is not unfair discrimination to limit the historical data discount to Current Distributors. Historical information is generally used by Current Distributors to test their strategies and trading models, and Current Distributors are therefore in the best position to benefit from the historical data. Outside of the 36 month period, all firms will have the opportunity to purchase historical data on an ad hoc basis.

For all of these reasons, the proposal does not permit unfair discrimination.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of intermarket competition, the Exchange

notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Adding the definition of ISE Open/Close Trade Profile will promote competition by helping investors make better informed decisions about ISE Open/Close Trade Profile. Nothing about the addition of a definition will impact inter-market competition or intra-market competition negatively.

Intermarket Competition

Nothing in the proposal burdens inter-market competition (the competition among self-regulatory organizations).

As discussed above, ISE Open/Close Trade Profile is subject to direct competition from other options exchanges that offer substitutes. Any of these exchanges can replicate this proposal in full or in part, and nothing in the proposal would interfere with the ability of any exchange to do so.

Intra-Market Competition

Nothing in the proposal burdens intra-market competition (the competition among consumers of exchange data). Trade Profile is available to any customer under the same fee schedule as any other customer, and any market participant that wishes to purchase these products can do so on a non-discriminatory basis. Indeed, the proposal will foster competition by expanding dissemination of data to vendors and the general investing public, and by encouraging more market participants to use Trade Profile data to help inform their investments strategies and analytic models.

Offering the 36 months of historical data to Current Distributors, but not former distributors or firms that have never purchased the product, will not burden competition because non-subscribers are free to purchase a

current subscription. Moreover, a firm that is not a Current Distributor may become a Current Distributor and then cancel the product after receiving the historical discount. As such, firms that are not Current Distributors will have an opportunity to pay the same fees for the most recent 36 months of historical data as Current Distributors. Outside of the 36 month period, all firms will have the opportunity to purchase historical data on an ad hoc basis.

Adding language to clarify the definition of Current Distributor will not change fees, and will promote competition by better informing investors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁵² and Rule 19b-4(f)(6)⁵³ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)⁵⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),⁵⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that adding

⁵² 15 U.S.C. 78s(b)(3)(A).

⁵³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

⁵⁴ 17 CFR 240.19b-4(f)(6).

⁵⁵ 17 CFR 240.19b-4(f)(6)(iii).

the definition of ISE Open/Close Trade Profile will provide additional clarity and specificity to the ISE rulebook, and nothing in the clarification changes the product or the way it functions, but rather describes the product exactly as it exists today. The Exchange also states that the fees included in this filing have been in effect since July 1, 2024, and waiver of the operative delay will allow application of those fees to continue uninterrupted. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.⁵⁶

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-ISE-2024-46 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-ISE-2024-46. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/>

[rules/sro.shtml](https://www.sec.gov/rules/sro.shtml)). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-ISE-2024-46 and should be submitted on or before October 15, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁷

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024-21744 Filed 9-23-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101094; File No. SR-LCH SA-2024-002]

Self-Regulatory Organizations; LCH SA; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Relating to the CDS Clear Select Membership Model

September 18, 2024.

On March 13, 2024, Banque Centrale de Compensation, which conducts business under the name LCH SA ("LCH SA"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-LCH SA-2024-002 (the "Proposed Rule Change") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4²

thereunder to amend its CDS Clearing Rule Book and CDS Clearing Procedures to incorporate new terms and to make conforming, clarifying, and clean-up changes to implement a new model of CDS Clear select membership. The Proposed Rule Change was published for public comment in the **Federal Register** on March 28, 2024.³ The Commission has not received comments regarding the Proposed Rule Change.

On May 9, 2024, pursuant to Section 19(b)(2) of the Exchange Act,⁴ the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change, until June 26, 2024.⁵ On June 21, 2024, the Commission instituted proceedings, pursuant to Section 19(b)(2)(B) of the Exchange Act,⁶ to determine whether to approve or disapprove the Proposed Rule Change.⁷

Section 19(b)(2) of the Exchange Act⁸ provides that proceedings to determine whether to approve or disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of filing of the proposed rule change. The time for conclusion of the proceedings may be extended for up to 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination.⁹ The 180th day after publication of the Notice in the **Federal Register** is September 24, 2024.

The Commission is extending the period for Commission action on the Proposed Rule Change. The Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change so that the Commission has sufficient time to consider the issues raised by the Proposed Rule Change and to take action on the Proposed Rule Change. Accordingly, pursuant to Section 19(b)(2)(B)(ii)(II) of the Exchange Act,¹⁰ the Commission designates November 23, 2024, as the date by which the Commission should either approve or

³ Self-Regulatory Organizations; LCH SA; Notice of Filing of Proposed Rule Change Relating to the CDS Clear Select Membership Model, Exchange Act Release No. 34-99847 (Mar. 22, 2024); 89 FR 21579 (Mar. 28, 2024) (SR-LCH SA-2024-002) ("Notice").

⁴ 15 U.S.C. 78s(b)(2).

⁵ Exchange Act Release No. 100094 (May 9, 2024), 89 FR 42515 (May 15, 2024) (File No. SR-LCH SA-2024-002).

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ Securities Exchange Act Release No. 100394 (June 21, 2024), 89 FR 53685 (June 27, 2024) (File No. SR-LCH SA-2024-002).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 15 U.S.C. 78s(b)(2)(B)(ii)(III).

¹⁰ *Id.*

⁵⁶ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

disapprove the Proposed Rule Change SR-LCH SA-2024-002.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-21765 Filed 9-23-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101084; File No. SR-NSCC-2024-003]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Amend the Clearing Agency Risk Management Framework

September 18, 2024.

On March 11, 2024, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-NSCC-2024-003 ("Proposed Rule Change") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4² thereunder to amend the Clearing Agency Risk Management Framework of NSCC and its affiliates, The Depository Trust Company ("DTC") and Fixed Income Clearing Corporation ("FICC," and together with NSCC and DTC, the "Clearing Agencies") to describe how the Clearing Agencies may solicit views of participants and other industry stakeholders, and to provide for the annual assessment and subsequent review of FICC's Government Securities Division access models by FICC's Board of Directors.³ The Proposed Rule Change was published for public comment in the *Federal Register* on March 26, 2024.⁴ The Commission has received comments regarding the substance of the changes proposed in the Proposed Rule Change.⁵

On May 8, 2024, pursuant to Section 19(b)(2) of the Act,⁶ the Commission designated a longer period within which

to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.⁷ On June 21, 2024, pursuant to Section 19(b)(2)(B) of the Exchange Act,⁸ the Commission instituted proceedings to determine whether to approve or disapprove the Proposed Rule Change.⁹

Section 19(b)(2) of the Exchange Act¹⁰ provides that proceedings to determine whether to approve or deny a proposed rule change must be concluded within 180 days of the date of a publication of the notice of filing of the proposed rule change. The Commission may extend the time for conclusion of such proceedings for up to 60 days if the Commission finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents.¹¹ The 180th day after publication of the Notice for the Proposed Rule Change is September 22, 2024.

The Commission is extending the period for Commission action on the Proposed Rule Change. The Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change so that the Commission has sufficient time to consider the issues raised by the Proposed Rule Change and to take action on the Proposed Rule Change. Accordingly, pursuant to Section 19(b)(2)(B)(ii)(II) of the Act,¹² the Commission designates November 21, 2024, as the date by which the Commission should either approve or disapprove the Proposed Rule Change SR-FICC-2024-006.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-21756 Filed 9-23-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101074; File No. SR-GEMX-2024-34]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand Its Co-Location Services

September 18, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 5, 2024, Nasdaq GEMX, LLC ("GEMX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to expand its co-location services.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/gemx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to expand its co-location services by offering new cabinet, power, and power distribution

¹¹ 17 CFR 200.30-3(a)(57).

¹² 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Notice of Filing *infra* note 4, at 89 FR 21091.

⁴ Securities Exchange Act Release No. 99803 (March 20, 2024), 89 FR 21091 (March 26, 2024) (File No. SR-NSCC-2024-003) ("Notice of Filing").

⁵ Comments on the Proposed Rule Change were received under an affiliated filing and are available at <https://www.sec.gov/comments/sr-ficc-2024-006/srficc2024006.htm>.

⁶ 15 U.S.C. 78s(b)(2).

⁷ Securities Exchange Act Release No. 100077 (May 8, 2024), 89 FR 42005 (May 14, 2024).

⁸ 15 U.S.C. 78s(b)(2)(B).

⁹ Securities Exchange Act Release No. 100400 (June 21, 2024), 89 FR 53674 (June 27, 2024).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 15 U.S.C. 78s(b)(2)(B)(ii)(II).

¹² *Id.*

¹³ 17 CFR 200.30-3(a)(57).

¹⁴ 15 U.S.C. 78s(b)(1).

¹⁵ 17 CFR 240.19b-4.

unit options in the Exchange's expanded data center.³

The Exchange's current data center ("NY11") in Carteret, NJ is undergoing an expansion ("NY11-4") in response to demand for power and cabinets. NY11-4 is not a new or distinct co-location facility. Instead, NY11-4 is simply an expansion of the existing Nasdaq NY11 data center,⁴ and Nasdaq intends to operate it generally in the same manner as existing aspects of NY11.⁵ Client connections to the matching engine will be equal across the board, within and among NY11 and NY11-4. In 2010, the Exchange undertook a similar expansion to its data center, where connectivity to the Exchange remained equalized, as is the case with the NY11-4 expansion.

The Exchange submits this filing to propose offering new services in NY11-4, as described below, and to the extent the Exchange offers additional new services, whether in the existing NY11 data halls or in the new NY11-4 data hall, the Exchange will submit additional filings with the Commission.

New and Upgraded Services in NY11-4

NY11-4 Expanded Cabinet Optionality: Ultra High Density Cabinet

Currently, co-location customers have the option of obtaining cabinets of various sizes and power densities. Co-location customers may obtain a Half Cabinet,⁶ a Low Density Cabinet with power density less than or equal to 2.88 kilowatts ("kW"), a Medium Density Cabinet with power density greater than 2.88 kW and less than or equal to 5 kW, a Medium-High Density Cabinet with power density greater than 5 kW and less than or equal to 7 kW, a High Density Cabinet with power density greater than 7 kW and less than 10 kW, and a Super High Density Cabinet with

power density greater than 10 kW and less than or equal to 17.3 kW.

The Exchange proposes to introduce a new cabinet choice in NY11-4, an "Ultra High Density Cabinet," with power density greater than 10 kW and less than or equal to 15 kW. Based on demand, the Exchange wishes to introduce the Ultra High Density Cabinet as an option for customers between the High Density Cabinet and the Super High Density Cabinet. The Ultra High Density Cabinet option would only be offered in NY11-4 because of the power configuration necessary for such cabinets, which is not possible or available in other portions of the data center due to different power distribution. Because of the addition of the Ultra High Density Cabinet option in NY11-4, the Super High Density Cabinet in NY11-4 would have power density greater than 15 kW and less than or equal to 17.3 kW.

In addition to the Ultra High Density Cabinet, the Exchange would offer the other, existing cabinet options in NY11-4, with the exception of the Low Density Cabinet and Half Cabinet due to a lack of demand for such cabinets. The cabinets in NY11-4 will include certain features, including but not limited to: uniform, wider cabinets⁷ (32" W x 48" D x 91" H), cable management, and a rear split door and combo lock.

NY-11 4 Cabinet Power and Power Distribution Units

The Exchange currently provides various cabinet power options, including: 2x20 amp 110 volt, 2x30 amp 110 volt, 2x20 amp 208 volt, 2x30 amp 208 volt, Phase 3 2x20 amp 208 volt, Phase 3 2x30 amp 208 volt, 2x60 amp 208 volt, Phase 3 2x40 amp 208 volt, Phase 3 2x50 amp 208 volt, Phase 3 2x60 amp 208 volt, and 2x30 amp 48 volt DC. For NY11-4, the data center operator is bringing in higher voltage power options, which are more consistent with power options used in other data centers across the globe. The Exchange proposes to amend General 8, Section 1(c) to add the cabinet power options for NY11-4, which include: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, Phase 1 40 amp 240 volt, Phase 3 20 amp 415 volt, and Phase 3 32 amp 415 volt. The Exchange also proposes to specify in its Rules that

these cabinet power options are specific to NY11-4 and that one of these options must be selected for cabinets in NY11-4. Although different cabinet power options will be offered in NY11 and NY11-4 due to differing power configurations, the new cabinet power options are not inherently preferable to the existing cabinet power options and the Exchange does not anticipate material differences in equipment performance based on the power distribution. Due to higher voltage options being offered in NY11-4, the data center operator is likely to experience increased power distribution efficiencies across the data center. As between the various cabinet power options, customers choose power based on their preference and capacity needs.

The Exchange also proposes to offer power distribution units ("PDUs")⁸ in NY11-4 as a convenience to customers. Rather than sourcing PDUs on a customer-by-customer basis, as the Exchange does for customers in NY11, the Exchange wishes to simplify and standardize its PDU offering in NY11-4 by offering Phase 1 and Phase 3⁹ power distribution units. This service is optional and customers may choose to provide their own PDUs appropriate for their power installation choices. The Exchange also proposes to offer a switch monitored PDU add on in NY11-4, which would allow customers to connect remotely to their PDU and control the power sockets. With the switch monitored PDU option, customers would be able to power cycle or shut off power remotely. This option is optional as well and customers may choose to provide their own switch monitored PDU, if desired.

Implementation

Although the timing is subject to change,¹⁰ the Exchange anticipates opening NY11-4 Exchange access on November 4, 2024. In concert with this filing, the Exchange will allow customers to place orders for NY11-4,

⁸ PDUs are devices fitted with multiple outputs designed to distribute electric power. The standardized PDUs would only be offered for NY11-4.

⁹ Phase 1 PDUs would be compatible with the following power options: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, and Phase 1 40 amp 240 volt. Phase 3 PDUs would be compatible with the following power options: Phase 3 20 amp 415 volt and Phase 3 32 amp 415 volt. Phase 1 and Phase 3 are available in NY11 and NY11-4. Phase 3 PDUs provide greater power density than Phase 1 PDUs by delivering power over three wires as opposed to one wire.

¹⁰ The Exchange will announce modifications to the proposed timing via the Nasdaq Customer Portal, which is the web portal used for order and inventory management of colocation services, and email communication to all colocation customers.

³ The Exchange previously submitted a similar proposal earlier this year, *see* Securities Exchange Act Release No. 34-100562 (July 19, 2024), 89 FR 60474 (July 25, 2024) (SR-GEMX-2024-21) (the "Prior Proposal"), but withdrew it on August 29, 2024 to allow for the Exchange to address outstanding comments and concerns raised by the Commission Staff and commenters.

⁴ NY11-4 is not a standalone facility. Equinix considers the site as NY11 with three expansions: NY11 Phase 1, NY11 Phase 2 and NY11-4.

⁵ As discussed below in further detail, one aspect of the data center that will be different (temporarily) in NY11-4 as compared to NY11 is telecommunications access and inter-client connectivity. In NY11-4 at its launch, connections between colocated client cabinets and the carrier cage will be equalized as will be inter-client connectivity. Presently, such connectivity is not equalized in NY11, but the Exchange intends to retrofit NY11 to be equalized in the months ahead.

⁶ Half cabinets are not available to new subscribers. *See* General 8, Section 1(a).

⁷ In the existing data halls, clients may bring their own cabinets or use Exchange-provided cabinets. Because of the cooling system in NY11-4 (hot aisle containment), all cabinets must be uniform and therefore, the Exchange will provide all cabinets. The existing data halls utilize cold aisle containment to manage temperatures. Hot aisle containment is a more effective way to manage heat in the data center.

which would not be fee liable until customers are provided access to the space.¹¹ The Exchange will submit a fee filing to establish fees for the services described herein. Allowing customers to place orders in advance of opening its doors will allow the Exchange to plan ahead for capacity and demand for services, as well as procure necessary equipment.

Equalization of Telecommunications Connectivity in NY11–4 and NY11

Although the Exchange has constructed NY11–4 to address capacity constraints associated with its existing data center footprint, as well as to enable the provision of upgraded power for customer equipment, an ancillary design feature of NY11–4 will be that it will include, at launch, equalized cabling between customer equipment and equipment owned and operated by third-party telecommunications providers (“telco connectivity”). This design feature is incident, but not strictly relevant to the Proposal at hand. Nevertheless, we discuss it below insofar as it garnered attention in the Prior Proposal, by one commenter, in particular.¹²

Presently, the Exchange does not have equalized telco connectivity in NY11, much like several of its peers, IEX, MEMX, and Cboe, all of which operate through their Secaucus data center without equalized telco connectivity.¹³ The present architecture of NY11 is a product of its history and that of technology; the Exchange designed NY11 at a time when latency differences were measured by customers in terms of miles of cable *between* customer facilities and exchange data centers, rather than in feet or inches *within* exchange data centers, as is the case today. As the technology paradigm shifted, and as variances in telco connectivity became more meaningful to some market participants, the Exchange reevaluated its design of its

data center and determined that telco connectivity equalization would be in the best interests of the markets going forward. Thus, on its own initiative, the Exchange has embarked on an ambitious project to equalize telco connectivity across its entire data center campus, including both its existing NY11 facility and the NY11–4 expansion (the “Equalization Project”). The launch of NY11–4 will constitute phase 1 of the Equalization Project.

The Equalization Project will be complex, time consuming, and costly to complete, especially as to NY11, where the existing facility must be retrofitted with equalized cabling. In NY11, thousands of existing customer cables threaded throughout the facility will need to be removed and replaced with new infrastructure to support equidistant connectivity relative to all other customers’ locations in the data center. This painstaking project will cost millions of dollars in design, equipment, and labor costs. Due to its complexity, the Equalization Project cannot and will not be accomplished instantaneously.¹⁴ Instead, the Exchange estimates that the Project will require 18–24 months to complete, commencing as of the launch of NY11–4. Moreover, it will occur in a methodical and phased manner to ensure proper design, testing, and workmanship, as well as to minimize the customer disruptions that, unfortunately, will be unavoidable during the process. The launch of NY11–4 with equalized telco connectivity will be the first phase of the Equalization Project, with the equalization of NY11 constituting the remaining phases of the Project. For the phased transition of NY11, the Exchange expects the migration to occur in tranches over the course of several weekends at the tail end of the 18–24 project period.

Concerns About the Sequencing of the Equalization Project Are Unfounded

In the Prior Proposal, the commenter objected to the Exchange’s plan to accomplish the Equalization Project by first launching equalized telco connectivity in NY11–4 before

launching it in NY11.¹⁵ The commenter argued that this sequencing of the Equalization Project would be unfairly discriminatory in that it would exacerbate existing inequalities in the Exchange’s Data Center while also compelling customers to secure unneeded space in NY11–4 to ensure that they obtain or maintain the closest possible geographic proximity to their telecommunications providers’ equipment.¹⁶ These arguments are simply wrong.

The Exchange’s Plan for the Launch of NY11–4 To Constitute Phase One of the Equalization Project Is Fair and Reasonable and in the Best Interests of the Markets

The Exchange’s Plan To Proceed With NY11–4 as the First Phase of the Equalization Project Is in the Best Interests of the Markets

The fact of the matter is that the Exchange needs to launch NY11–4—and needs to do so in November 2024—to ensure that it remains capable of meeting the growing power and capacity demands of its customers. Regulation SCI requires the Exchange to reasonably anticipate its capacity needs. NY11–4, which has been three years in the making, is a product of the SCI planning process. Delaying the launch of NY11–4 to accommodate the equalization of NY11 would jeopardize the sound and orderly operation of the Exchange’s markets. Such a danger readily outweighs any concerns that some may have about the fairness of the Exchange’s plan to sequence the Equalization Project, even if such concerns were well-founded, which they are not.

We note that our customers generally support this view. One customer sent the Exchange a letter stating the following about the Exchange’s plans:

As noted in your August 12, 2024, comment letter response to the SEC, the addition of NY11–4 is needed to meet the growing customer demands for space, power, and upgraded technological capabilities. OMC echoes these concerns as one of those customers, with an immediate and significant need to expand its colocation space to accommodate the growing demands of OMC’s business. OMC is a registered member of the Nasdaq Stock Market and eight other options and equities exchanges operated by Nasdaq (the “Exchanges”), with more than half of those memberships added within roughly the last year. As a registered Market Maker for hundreds of listed symbols, OMC actively provides liquidity across the Exchanges. Also, as a Designated Liquidity Provider, OMC plays a key role in supporting

¹¹ Charging customers once access is provided is consistent with current practice and allows customers to set up equipment and begin using power.

¹² See Ltr. From J. Considine, McKay Brothers LLC, to V. Countryman, SEC, dated July 24, 2024, available at <https://www.sec.gov/comments/sr-nasdaq-2024-026/srnasdaq2024026-496995-1434326.pdf> (the “McKay Letter”). Akuna Securities LLC also filed a comment letter that largely echoed the arguments in the McKay Letter. See Ltr. From D. DeSalle-Baron, Akuna Securities LLC to V. Countryman, SEC, dated July 24, 2024, available at <https://www.sec.gov/comments/sr-nasdaq-2024-026/srnasdaq2024026-497096-1434386.pdf>.

¹³ The structure of the Secaucus data center is a generally known fact within the industry and one of which the Exchange is itself aware due, among other things, to its own status as a tenant of the Secaucus data center.

¹⁴ The McKay Letter asserts incorrectly and without any evidentiary basis that the Exchange is capable of equalizing telco connectivity quickly and can do so before launching NY11–4 with only a minor ensuing delay to the launch. See *id.* at 4, n.15. As we explain herein, equalization of NY11 will take many months to accomplish, even at an aggressive pace, including because of factors outside of its control. The Exchange notes, for example, that the fiber needed to re-cable NY11 is in short supply and orders are subject to substantial waiting periods.

¹⁵ See *id.*

¹⁶ See *id.* at 1–2, 5–6.

the active and efficient trading of many new and existing products listed on the Exchanges. To support this significant amount of trading activity on the Exchanges, OMC urgently needs the additional colocation space made available in NY11–4. Any halt or delay of the NY11–4 launch would prevent OMC’s planned expansion and would endanger OMC’s ability to grow and meet the liquidity provision demands of the Exchanges and their customers.¹⁷

The Exchange’s Sequencing Plan Is Also Pragmatic and Efficient

Expanding the existing data center by building a new wing (NY11–4) from scratch afforded the Exchange an opportunity to design the expansion efficiently with telco connectivity equalization incorporated therein from the outset. This approach avoids the need to later engage in a wasteful process of retrofitting NY11–4 for telco connectivity equalization—a process in which the Exchange must now engage with respect to NY11.

Launching NY11–4 Before Equalizing NY11 Will Not Worsen Inequality

The latency profile of a customer collocating in NY11–4 would be no better than that of the lowest latency customer and no worse than that of the highest latency customer collocating presently in NY11. In fact, the launch of a full-equalized NY11–4 before equalizing NY11 would actually diminish the overall average latency differential among collocated customers’ telecom provider connections because NY11–4 introduces connections at a single latency value in between the slowest and fastest latencies. That is, the shortest current telco connection possible into NY11 is 160 ft while the longest current telco connection possible into NY11 is 680 feet; the equidistant telco connections into NY11–4 will be 590 feet, which falls between these two extremes.

Moreover, although the Exchange does not know the precise latency profiles of each of its colocation customers, it has provided those customers with the latency profile for NY11–4 and interhall connectivity through its distribution of a technical specification document via the Customer Portal. This technical specification document will allow customers to determine for themselves whether their current location in NY11 or alternative space in NY11–4 will optimize their latency profile. It will provide a means for customers to plan ahead and avoid undesirable outcomes associated with the launch of NY11–4.

Contrary to assertions made by the commenter in connection with the Prior Proposal,¹⁸ the technical specification document alleviates uncertainty that might otherwise compel customers to waste money to secure unnecessary space in NY11–4 as a defensive means of assuring themselves the most advantageous position available in the Exchange’s data center campus.

Any Advantage Attainable From the Launch of NY11–4 First Will Be Temporary

Even if a customer was to gain a latency advantage from the launch of NY11–4 before equalization of NY11, such an advantage would be temporary given the fact that equalization of NY11 will follow soon after the launch of NY11–4. The fleeting nature of any such advantage should also disincentivize colocation customers from engaging in a “land grab” for what they perceive to be the most geographically advantageous space in NY11–4. Indeed, the Exchange sees no evidence of such a land grab actually occurring with respect to customers’ expressions of interest in NY11–4, notwithstanding warnings to that effect from the same commenter. As of the date of submission of this filing, only roughly 10 percent of existing customers, representing a mix of business models and latency sensitive activities, have requested space in NY11–4. Moreover, interest in NY11–4 thus far involves a mix of customers wanting to expand upon their existing space in NY11 and others that want to move their existing space in NY11 entirely to NY11–4.

Equalizing NY11 First Will Not Avoid Creating Temporary Customer Disparities

Finally, the commenter’s argument is incorrect that equalizing NY11 before launching NY11–4 would avoid creating disparities among customers with respect to their telco connections.¹⁹ Equalizing telecommunications connectivity in NY11 before launching NY11–4 would not avoid the reality that full telco connectivity equalization—however accomplished—will require the introduction of temporary disparities in the lengths of the cables running between telecommunications providers and customers in the data

center complex. Even if the Exchange were to pursue equalization of NY11 first, doing so would necessarily entail certain customers in NY11 experiencing changes to their telco cable lengths before others during the phased transition period. Thus, re-sequencing the Equalization Project to start with NY11 will do nothing to affect these temporary customer disparities, but instead will needlessly place the markets at risk by delaying the availability of expanded data center capacity.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,²¹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Today, the Exchange offers various cabinet choices and power options in the data center for colocation customers. The proposal would expand the cabinet and power options available, by introducing an additional cabinet option, the Ultra High Density Cabinet, and new power choices. The proposal would benefit the public interest by providing customers more cabinet and power options to choose from, thereby enhancing their ability to tailor their colocation operations to the requirements of their business operations. In general, the proposal is consistent with the Act because the Exchange’s expansion of the data center and expansion of available power and cabinets will enable the Exchange to meet customer needs and address demand for both cabinets and power. In lieu of collocating directly with the Exchange, market participants may choose not to collocate at all or to collocate indirectly through a vendor.

The Exchange also believes that the proposal will not be unfairly discriminatory, consistent with the objectives of Section 6(b)(5) of the Act²² because the expanded cabinet and power options in the data center would be offered equally to all customers. Although certain optionality is only offered in NY11–4 because of different power configurations in NY11–4 as compared to NY11, NY11–4 is merely an expansion of the data center, and any customer may order cabinets and power in NY11–4 (and across the data center

¹⁷ Ltr. From F. Zucek, Old Mission, to B. Kitt, Nasdaq, dated Aug. 21, 2024.

¹⁸ See McKay Ltr., *supra*, at 3–4 (asserting that “introduction of NY11–4 before equalizing NY11 will compel many customers to establish a third point of presence—at a cost in incremental fees paid to Nasdaq alone of at least \$2.5 million on a three-year commitment—to eliminate the risk that the NY11–4 connection is a superior connection to one (or both) of their existing NY11 points of presence.”).

¹⁹ See *id.* at 2.

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

²² *Id.*

broadly) on the same terms as any other customer.

The Equalization Project Is Consistent With the Act

In addition to the above, and although not strictly relevant to the proposal at hand, the Exchange also believes that the Equalization Project, as outlined above and which will begin with the launch of NY11–4, is consistent with the Act.

Concerns About the Sequencing of the Equalization Project Are Unfounded

In the Prior Proposal, the commenter objected to the Exchange's plan to accomplish the Equalization Project by first launching equalized telco connectivity in NY11–4 before launching it in NY11.²³ The commenter argued that this sequencing of the Equalization Project would be unfairly discriminatory in that it would exacerbate existing inequalities in the Exchange's Data Center while also compelling customers to secure unneeded space in NY11–4 to ensure that they obtain or maintain the closest possible geographic proximity to their telecommunications providers' equipment.²⁴ These arguments are simply wrong.

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Expanding the existing data center by building a new wing (NY11–4) from scratch afforded the Exchange an opportunity to design the expansion efficiently with telco connectivity equalization incorporated therein from the outset. This approach avoids the need to later engage in a wasteful process of retrofitting NY11–4 for telco connectivity equalization—a process in which the Exchange must now engage with respect to NY11.

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NY11–4 will be 590 feet, which falls between these two extremes.

Moreover, although the Exchange does not know the precise latency profiles of each of its colocation customers, it has provided those customers with the latency profile for NY11–4 and interhall connectivity through its distribution of a technical specification document via the Customer Portal. This technical specification document will allow customers to determine for themselves whether their current location in NY11 or alternative space in NY11–4 will optimize their latency profile. It will provide a means for customers to plan ahead and avoid undesirable outcomes associated with the launch of NY11–4. Contrary to assertions made by the commenter in connection with the Prior Proposal,²⁶ the technical specification document alleviates uncertainty that might otherwise compel customers to waste money to secure unnecessary space in NY11–4 as a defensive means of assuring themselves the most advantageous position available in the Exchange's data center campus.

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Even if a customer was to gain a latency advantage from the launch of NY11–4 before equalization of NY11, such an advantage would be temporary given the fact that equalization of NY11 will follow soon after the launch of NY11–4. The fleeting nature of any such advantage should also disincentivize colocation customers from engaging in a "land grab" for what they perceive to be the most geographically advantageous space in NY11–4. Indeed, the Exchange sees no evidence of such a land grab actually occurring with respect to customers' expressions of interest in NY11–4, notwithstanding warnings to that effect from the same commenter. As of the date of submission of this filing, only roughly 10 percent of existing customers, representing a mix of business models and latency sensitive activities, have requested space in NY11–4. Moreover, interest in NY11–4 thus far involves a mix of customers wanting to expand upon their existing space in NY11 and others that want to

²⁶ See McKay Ltr., *supra*, at 3–4 (asserting that "introduction of NY11–4 before equalizing NY11 will compel many customers to establish a third point of presence—at a cost in incremental fees paid to Nasdaq alone of at least \$2.5 million on a three-year commitment—to eliminate the risk that the NY11–4 connection is a superior connection to one (or both) of their existing NY11 points of presence.").

²³ See McKay Ltr., *supra*.

²⁴ See *id.* at 1–2, 5–6.

²⁵ Ltr. From F. Zucek, Old Mission, to B. Kitt, Nasdaq, dated Aug. 21, 2024.

move their existing space in NY11 entirely to NY11–4.

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Finally, the commenter's argument is incorrect that equalizing NY11 before launching NY11–4 would avoid creating disparities among customers with respect to their telco connections.²⁷ Equalizing telecommunications connectivity in NY11 before launching NY11–4 would not avoid the reality that full telco connectivity equalization—however accomplished—will require the introduction of temporary disparities in the lengths of the cables running between telecommunications providers and customers in the data center complex.

Even if the Exchange were to pursue equalization of NY11 first, doing so would necessarily entail certain customers in NY11 experiencing changes to their telco cable lengths before others during the phased transition period. Thus, re-sequencing the Equalization Project to start with NY11 will do nothing to affect these temporary customer disparities, but instead will needlessly place the markets at risk by delaying the availability of expanded data center capacity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal imposes any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which exchanges and other vendors offer colocation services as a means to facilitate the trading and other market activities of those market participants who believe that colocation enhances the efficiency of their operations. As part of its colocation offering, the Exchange currently offers similar cabinets and power, as do other exchanges.

Nothing in the Proposal burdens intra-market competition because the Exchange's colocation services, including those proposed herein, are available to any customer and customers that wish to order cabinets and power can do so on a non-discriminatory basis. Use of any colocation service is completely voluntary, and each market participant is able to determine whether

to use colocation services based on the requirements of its business operations.

Additionally, and although not strictly relevant to the Proposal, nothing about the Equalization Plan, as described above, would impose an undue burden on competition. The Exchange intends for the Equalization Plan to facilitate increased competition among its colocation customers by eliminating telco connectivity disparities that currently provide some customers with latency advantages relative to others. For the reasons discussed above, the Exchange believes that it is fair and necessary to sequence the Equalization Project by beginning with the launch of NY11–4 with an equalized design, rather than with NY11. Specifically, the timely launch of NY11–4 is necessary for the Exchange to meet its capacity needs and those of its customers, while retrofitting NY11 will be a complex process that will require many months to complete. Moreover, the current sequencing plan will not worsen existing inequalities, but instead will improve the overall average disparity in telco cable lengths in the data center. Even though the sequencing plan will cause some customers to be subject to telco connectivity equalization before others, this result is unavoidable even if the Exchange were to equalize NY11 first. Any customer advantage or disadvantage that might arise from the Equalization Project would be temporary. Finally, the Exchange has been transparent about its plans and afforded opportunities to customers to make informed choices about how to mitigate any adverse consequences, competitive or otherwise.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange received a written letter of support from Old Mission Capital LLC, dated August 21, 2024.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act²⁸ and

subparagraph (f)(6) of Rule 19b–4 thereunder.²⁹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR–GEMX–2024–34 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–GEMX–2024–34. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public

²⁷ See *id.* at 2.

²⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁹ 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–GEMX–2024–34 and should be submitted on or before October 15, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024–21747 Filed 9–23–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101073; File No. SR–BX–2024–035]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand Its Co-Location Services

September 18, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on September 5, 2024, Nasdaq BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to expand its co-location services.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to expand its co-location services by offering new cabinet, power, and power distribution unit options in the Exchange’s expanded data center.³

The Exchange’s current data center (“NY11”) in Carteret, NJ is undergoing an expansion (“NY11–4”) in response to demand for power and cabinets. NY11–4 is not a new or distinct co-location facility. Instead, NY11–4 is simply an expansion of the existing Nasdaq NY11 data center,⁴ and Nasdaq intends to operate it generally in the same manner as existing aspects of NY11.⁵ Client connections to the matching engine will be equal across the board, within and among NY11 and NY11–4. In 2010, the Exchange undertook a similar expansion to its data center, where connectivity to the Exchange remained equalized, as is the case with the NY11–4 expansion.

The Exchange submits this filing to propose offering new services in NY11–4, as described below, and to the extent the Exchange offers additional new services, whether in the existing NY11 data halls or in the new NY11–4 data

³ The Exchange previously submitted a similar proposal earlier this year, *see* Securities Exchange Act Release No. 34–100558 (July 18, 2024), 89 FR 59949 (July 24, 2024) (SR–BX–2024–024) (the “Prior Proposal”), but withdrew it on August 29, 2024 to allow for the Exchange to address outstanding comments and concerns raised by the Commission Staff and commenters.

⁴ NY11–4 is not a standalone facility. Equinix considers the site as NY11 with three expansions: NY11 Phase 1, NY11 Phase 2 and NY11–4.

⁵ As discussed below in further detail, one aspect of the data center that will be different (temporarily) in NY11–4 as compared to NY11 is telecommunications access and inter-client connectivity. In NY11–4 at its launch, connections between colocated client cabinets and the carrier cage will be equalized as will be inter-client connectivity. Presently, such connectivity is not equalized in NY11, but the Exchange intends to retrofit NY11 to be equalized in the months ahead.

hall, the Exchange will submit additional filings with the Commission.

New and Upgraded Services in NY11–4

NY11–4 Expanded Cabinet Optionality: Ultra High Density Cabinet

Currently, co-location customers have the option of obtaining cabinets of various sizes and power densities. Co-location customers may obtain a Half Cabinet,⁶ a Low Density Cabinet with power density less than or equal to 2.88 kilowatts (“kW”), a Medium Density Cabinet with power density greater than 2.88 kW and less than or equal to 5 kW, a Medium-High Density Cabinet with power density greater than 5 kW and less than or equal to 7 kW, a High Density Cabinet with power density greater than 7 kW and less than 10 kW, and a Super High Density Cabinet with power density greater than 10 kW and less than or equal to 17.3 kW.

The Exchange proposes to introduce a new cabinet choice in NY11–4, an “Ultra High Density Cabinet,” with power density greater than 10 kW and less than or equal to 15 kW. Based on demand, the Exchange wishes to introduce the Ultra High Density Cabinet as an option for customers between the High Density Cabinet and the Super High Density Cabinet. The Ultra High Density Cabinet option would only be offered in NY11–4 because of the power configuration necessary for such cabinets, which is not possible or available in other portions of the data center due to different power distribution. Because of the addition of the Ultra High Density Cabinet option in NY11–4, the Super High Density Cabinet in NY11–4 would have power density greater than 15 kW and less than or equal to 17.3 kW.

In addition to the Ultra High Density Cabinet, the Exchange would offer the other, existing cabinet options in NY11–4, with the exception of the Low Density Cabinet and Half Cabinet due to a lack of demand for such cabinets. The cabinets in NY11–4 will include certain features, including but not limited to: uniform, wider cabinets⁷ (32” W x 48” D x 91” H), cable management, and a rear split door and combo lock.

⁶ Half cabinets are not available to new subscribers. *See* General 8, Section 1(a).

⁷ In the existing data halls, clients may bring their own cabinets or use Exchange-provided cabinets. Because of the cooling system in NY11–4 (hot aisle containment), all cabinets must be uniform and therefore, the Exchange will provide all cabinets. The existing data halls utilize cold aisle containment to manage temperatures. Hot aisle containment is a more effective way to manage heat in the data center.

³⁰ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

NY-11 4 Cabinet Power and Power Distribution Units

The Exchange currently provides various cabinet power options, including: 2x20 amp 110 volt, 2x30 amp 110 volt, 2x20 amp 208 volt, 2x30 amp 208 volt, Phase 3 2x20 amp 208 volt, Phase 3 2x30 amp 208 volt, 2x60 amp 208 volt, Phase 3 2x40 amp 208 volt, Phase 3 2x50 amp 208 volt, Phase 3 2x60 amp 208 volt, and 2x30 amp 48 volt DC. For NY11-4, the data center operator is bringing in higher voltage power options, which are more consistent with power options used in other data centers across the globe. The Exchange proposes to amend General 8, Section 1(c) to add the cabinet power options for NY11-4, which include: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, Phase 1 40 amp 240 volt, Phase 3 20 amp 415 volt, and Phase 3 32 amp 415 volt. The Exchange also proposes to specify in its Rules that these cabinet power options are specific to NY11-4 and that one of these options must be selected for cabinets in NY11-4. Although different cabinet power options will be offered in NY11 and NY11-4 due to differing power configurations, the new cabinet power options are not inherently preferable to the existing cabinet power options and the Exchange does not anticipate material differences in equipment performance based on the power distribution. Due to higher voltage options being offered in NY11-4, the data center operator is likely to experience increased power distribution efficiencies across the data center. As between the various cabinet power options, customers choose power based on their preference and capacity needs.

The Exchange also proposes to offer power distribution units (“PDUs”) ⁸ in NY11-4 as a convenience to customers. Rather than sourcing PDUs on a customer-by-customer basis, as the Exchange does for customers in NY11, the Exchange wishes to simplify and standardize its PDU offering in NY11-4 by offering Phase 1 and Phase 3 ⁹ power distribution units. This service is optional and customers may choose to provide their own PDUs appropriate for

their power installation choices. The Exchange also proposes to offer a switch monitored PDU add on in NY11-4, which would allow customers to connect remotely to their PDU and control the power sockets. With the switch monitored PDU option, customers would be able to power cycle or shut off power remotely. This option is optional as well and customers may choose to provide their own switch monitored PDU, if desired.

Implementation

Although the timing is subject to change,¹⁰ the Exchange anticipates opening NY11-4 Exchange access on November 4, 2024. In concert with this filing, the Exchange will allow customers to place orders for NY11-4, which would not be fee liable until customers are provided access to the space.¹¹ The Exchange will submit a fee filing to establish fees for the services described herein. Allowing customers to place orders in advance of opening its doors will allow the Exchange to plan ahead for capacity and demand for services, as well as procure necessary equipment.

Equalization of Telecommunications Connectivity in NY11-4 and NY11

Although the Exchange has constructed NY11-4 to address capacity constraints associated with its existing data center footprint, as well as to enable the provision of upgraded power for customer equipment, an ancillary design feature of NY11-4 will be that it will include, at launch, equalized cabling between customer equipment and equipment owned and operated by third-party telecommunications providers (“telco connectivity”). This design feature is incident, but not strictly relevant to the Proposal at hand. Nevertheless, we discuss it below insofar as it garnered attention in the Prior Proposal, by one commenter, in particular.¹²

¹⁰ The Exchange will announce modifications to the proposed timing via the Nasdaq Customer Portal, which is the web portal used for order and inventory management of colocation services, and email communication to all colocation customers.

¹¹ Charging customers once access is provided is consistent with current practice and allows customers to set up equipment and begin using power.

¹² See Ltr. From J. Considine, McKay Brothers LLC, to V. Countryman, SEC, dated July 24, 2024, available at <https://www.sec.gov/comments/sr-nasdaq-2024-026/srnasdaq2024026-496995-1434326.pdf> (the “McKay Letter”). Akuna Securities LLC also filed a comment letter that largely echoed the arguments in the McKay Letter. See Ltr. From D. DeSalle-Baron, Akuna Securities LLC to V. Countryman, SEC, dated July 24, 2024, available at <https://www.sec.gov/comments/sr-nasdaq-2024-026/srnasdaq2024026-497096-1434386.pdf>.

Presently, the Exchange does not have equalized telco connectivity in NY11, much like several of its peers, IEX, MEMX, and Cboe, all of which operate through their Secaucus data center without equalized telco connectivity.¹³ The present architecture of NY11 is a product of its history and that of technology; the Exchange designed NY11 at a time when latency differences were measured by customers in terms of miles of cable *between* customer facilities and exchange data centers, rather than in feet or inches *within* exchange data centers, as is the case today. As the technology paradigm shifted, and as variances in telco connectivity became more meaningful to some market participants, the Exchange reevaluated its design of its data center and determined that telco connectivity equalization would be in the best interests of the markets going forward. Thus, on its own initiative, the Exchange has embarked on an ambitious project to equalize telco connectivity across its entire data center campus, including both its existing NY11 facility and the NY11-4 expansion (the “Equalization Project”). The launch of NY11-4 will constitute phase 1 of the Equalization Project.

The Equalization Project will be complex, time consuming, and costly to complete, especially as to NY11, where the existing facility must be retrofitted with equalized cabling. In NY11, thousands of existing customer cables threaded throughout the facility will need to be removed and replaced with new infrastructure to support equidistant connectivity relative to all other customers’ locations in the data center. This painstaking project will cost millions of dollars in design, equipment, and labor costs. Due to its complexity, the Equalization Project cannot and will not be accomplished instantaneously.¹⁴ Instead, the Exchange estimates that the Project will require 18–24 months to complete, commencing as of the launch of NY11-4. Moreover, it will occur in a methodical and phased manner to

¹³ The structure of the Secaucus data center is a generally known fact within the industry and one of which the Exchange is itself aware due, among other things, to its own status as a tenant of the Secaucus data center.

¹⁴ The McKay Letter asserts incorrectly and without any evidentiary basis that the Exchange is capable of equalizing telco connectivity quickly and can do so before launching NY11-4 with only a minor ensuing delay to the launch. See *id.* at 4, n.15. As we explain herein, equalization of NY11 will take many months to accomplish, even at an aggressive pace, including because of factors outside of its control. The Exchange notes, for example, that the fiber needed to re-cable NY11 is in short supply and orders are subject to substantial waiting periods.

⁸ PDUs are devices fitted with multiple outputs designed to distribute electric power. The standardized PDUs would only be offered for NY11-4.

⁹ Phase 1 PDUs would be compatible with the following power options: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, and Phase 1 40 amp 240 volt. Phase 3 PDUs would be compatible with the following power options: Phase 3 20 amp 415 volt and Phase 3 32 amp 415 volt. Phase 1 and Phase 3 are available in NY11 and NY11-4. Phase 3 PDUs provide greater power density than Phase 1 PDUs by delivering power over three wires as opposed to one wire.

ensure proper design, testing, and workmanship, as well as to minimize the customer disruptions that, unfortunately, will be unavoidable during the process. The launch of NY11-4 with equalized telco connectivity will be the first phase of the Equalization Project, with the equalization of NY11 constituting the remaining phases of the Project. For the phased transition of NY11, the Exchange expects the migration to occur in tranches over the course of several weekends at the tail end of the 18–24 project period.

Concerns About the Sequencing of the Equalization Project Are Unfounded

In the Prior Proposal, the commenter objected to the Exchange's plan to accomplish the Equalization Project by first launching equalized telco connectivity in NY11-4 before launching it in NY11.¹⁵ The commenter argued that this sequencing of the Equalization Project would be unfairly discriminatory in that it would exacerbate existing inequalities in the Exchange's Data Center while also compelling customers to secure unneeded space in NY11-4 to ensure that they obtain or maintain the closest possible geographic proximity to their telecommunications providers' equipment.¹⁶ These arguments are simply wrong.

The Exchange's Plan for the Launch of NY11-4 To Constitute Phase One of the Equalization Project Is Fair and Reasonable and in the Best Interests of the Markets

The Exchange's Plan To Proceed With NY11-4 as the First Phase of the Equalization Project Is in the Best Interests of the Markets

The fact of the matter is that the Exchange needs to launch NY11-4—and needs to do so in November 2024—to ensure that it remains capable of meeting the growing power and capacity demands of its customers. Regulation SCI requires the Exchange to reasonably anticipate its capacity needs. NY11-4, which has been three years in the making, is a product of the SCI planning process. Delaying the launch of NY11-4 to accommodate the equalization of NY11 would jeopardize the sound and orderly operation of the Exchange's markets. Such a danger readily outweighs any concerns that some may have about the fairness of the Exchange's plan to sequence the Equalization Project, even if such

concerns were well-founded, which they are not.

We note that our customers generally support this view. One customer sent the Exchange a letter stating the following about the Exchange's plans:

As noted in your August 12, 2024, comment letter response to the SEC, the addition of NY11-4 is needed to meet the growing customer demands for space, power, and upgraded technological capabilities. OMC echoes these concerns as one of those customers, with an immediate and significant need to expand its colocation space to accommodate the growing demands of OMC's business. OMC is a registered member of the Nasdaq Stock Market and eight other options and equities exchanges operated by Nasdaq (the "Exchanges"), with more than half of those memberships added within roughly the last year. As a registered Market Maker for hundreds of listed symbols, OMC actively provides liquidity across the Exchanges. Also, as a Designated Liquidity Provider, OMC plays a key role in supporting the active and efficient trading of many new and existing products listed on the Exchanges. To support this significant amount of trading activity on the Exchanges, OMC urgently needs the additional colocation space made available in NY11-4. Any halt or delay of the NY11-4 launch would prevent OMC's planned expansion and would endanger OMC's ability to grow and meet the liquidity provision demands of the Exchanges and their customers.¹⁷

The Exchange's Sequencing Plan Is Also Pragmatic and Efficient

Expanding the existing data center by building a new wing (NY11-4) from scratch afforded the Exchange an opportunity to design the expansion efficiently with telco connectivity equalization incorporated therein from the outset. This approach avoids the need to later engage in a wasteful process of retrofitting NY11-4 for telco connectivity equalization—a process in which the Exchange must now engage with respect to NY11.

Launching NY11-4 Before Equalizing NY11 Will Not Worsen Inequality

The latency profile of a customer collocated in NY11-4 would be no better than that of the lowest latency customer and no worse than that of the highest latency customer collocated presently in NY11. In fact, the launch of a full-equalized NY11-4 before equalizing NY11 would actually diminish the overall average latency differential among collocated customers' telecom provider connections because NY11-4 introduces connections at a single latency value in between the slowest and fastest latencies. That is, the shortest current telco connection

possible into NY11 is 160 ft while the longest current telco connection possible into NY11 is 680 feet; the equidistant telco connections into NY11-4 will be 590 feet, which falls between these two extremes.

Moreover, although the Exchange does not know the precise latency profiles of each of its colocation customers, it has provided those customers with the latency profile for NY11-4 and interhall connectivity through its distribution of a technical specification document via the Customer Portal. This technical specification document will allow customers to determine for themselves whether their current location in NY11 or alternative space in NY11-4 will optimize their latency profile. It will provide a means for customers to plan ahead and avoid undesirable outcomes associated with the launch of NY11-4. Contrary to assertions made by the commenter in connection with the Prior Proposal,¹⁸ the technical specification document alleviates uncertainty that might otherwise compel customers to waste money to secure unnecessary space in NY11-4 as a defensive means of assuring themselves the most advantageous position available in the Exchange's data center campus.

Any Advantage Attainable From the Launch of NY11-4 First Will Be Temporary

Even if a customer was to gain a latency advantage from the launch of NY11-4 before equalization of NY11, such an advantage would be temporary given the fact that equalization of NY11 will follow soon after the launch of NY11-4. The fleeting nature of any such advantage should also disincentivize colocation customers from engaging in a "land grab" for what they perceive to be the most geographically advantageous space in NY11-4. Indeed, the Exchange sees no evidence of such a land grab actually occurring with respect to customers' expressions of interest in NY11-4, notwithstanding warnings to that effect from the same commenter. As of the date of submission of this filing, only roughly 10 percent of existing customers, representing a mix of business models and latency sensitive activities, have requested space in NY11-4. Moreover, interest in NY11-4

¹⁵ See *id.*

¹⁶ See *id.* at 1–2, 5–6.

¹⁷ Ltr. From F. Zucek, Old Mission, to B. Kitt, Nasdaq, dated Aug. 21, 2024.

¹⁸ See McKay Ltr., *supra*, at 3–4 (asserting that "introduction of NY11-4 before equalizing NY11 will compel many customers to establish a third point of presence—at a cost in incremental fees paid to Nasdaq alone of at least \$2.5 million on a three-year commitment—to eliminate the risk that the NY11-4 connection is a superior connection to one (or both) of their existing NY11 points of presence.").

thus far involves a mix of customers wanting to expand upon their existing space in NY11 and others that want to move their existing space in NY11 entirely to NY11–4.

Equalizing NY11 First Will Not Avoid Creating Temporary Customer Disparities

Finally, the commenter's argument is incorrect that equalizing NY11 before launching NY11–4 would avoid creating disparities among customers with respect to their telco connections.¹⁹ Equalizing telecommunications connectivity in NY11 before launching NY11–4 would not avoid the reality that full telco connectivity equalization—however accomplished—will require the introduction of temporary disparities in the lengths of the cables running between telecommunications providers and customers in the data center complex. Even if the Exchange were to pursue equalization of NY11 first, doing so would necessarily entail certain customers in NY11 experiencing changes to their telco cable lengths before others during the phased transition period. Thus, re-sequencing the Equalization Project to start with NY11 will do nothing to affect these temporary customer disparities, but instead will needlessly place the markets at risk by delaying the availability of expanded data center capacity.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,²¹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Today, the Exchange offers various cabinet choices and power options in the data center for colocation customers. The proposal would expand the cabinet and power options available, by introducing an additional cabinet option, the Ultra High Density Cabinet, and new power choices. The proposal would benefit the public interest by providing customers more cabinet and power options to choose from, thereby enhancing their ability to tailor their colocation operations to the requirements of their business operations. In general, the proposal is consistent with the Act

because the Exchange's expansion of the data center and expansion of available power and cabinets will enable the Exchange to meet customer needs and address demand for both cabinets and power. In lieu of collocating directly with the Exchange, market participants may choose not to collocate at all or to collocate indirectly through a vendor.

The Exchange also believes that the proposal will not be unfairly discriminatory, consistent with the objectives of Section 6(b)(5) of the Act²² because the expanded cabinet and power options in the data center would be offered equally to all customers. Although certain optionality is only offered in NY11–4 because of different power configurations in NY11–4 as compared to NY11, NY11–4 is merely an expansion of the data center, and any customer may order cabinets and power in NY11–4 (and across the data center broadly) on the same terms as any other customer.

The Equalization Project Is Consistent With the Act

In addition to the above, and although not strictly relevant to the proposal at hand, the Exchange also believes that the Equalization Project, as outlined above and which will begin with the launch of NY11–4, is consistent with the Act.

Concerns About the Sequencing of the Equalization Project Are Unfounded

In the Prior Proposal, the commenter objected to the Exchange's plan to accomplish the Equalization Project by first launching equalized telco connectivity in NY11–4 before launching it in NY11.²³ The commenter argued that this sequencing of the Equalization Project would be unfairly discriminatory in that it would exacerbate existing inequalities in the Exchange's Data Center while also compelling customers to secure unneeded space in NY11–4 to ensure that they obtain or maintain the closest possible geographic proximity to their telecommunications providers' equipment.²⁴ These arguments are simply wrong.

The Exchange's Plan for the Launch of NY11–4 To Constitute Phase One of the Equalization Project Is Fair and Reasonable and in the Best Interests of the Markets

The Exchange's Plan To Proceed With NY11–4 as the First Phase of the Equalization Project Is in the Best Interests of the Markets

The fact of the matter is that the Exchange needs to launch NY11–4—and needs to do so in November 2024—to ensure that it remains capable of meeting the growing power and capacity demands of its customers. Regulation SCI requires the Exchange to reasonably anticipate its capacity needs. NY11–4, which has been three years in the making, is a product of the SCI planning process. Delaying the launch of NY11–4 to accommodate the equalization of NY11 would jeopardize the sound and orderly operation of the Exchange's markets. Such a danger readily outweighs any concerns that some may have about the fairness of the Exchange's plan to sequence the Equalization Project, even if such concerns were well-founded, which they are not.

We note that our customers generally support this view. One customer sent the Exchange a letter stating the following about the Exchange's plans:

As noted in your August 12, 2024, comment letter response to the SEC, the addition of NY11–4 is needed to meet the growing customer demands for space, power, and upgraded technological capabilities. OMC echoes these concerns as one of those customers, with an immediate and significant need to expand its colocation space to accommodate the growing demands of OMC's business. OMC is a registered member of the Nasdaq Stock Market and eight other options and equities exchanges operated by Nasdaq (the "Exchanges"), with more than half of those memberships added within roughly the last year. As a registered Market Maker for hundreds of listed symbols, OMC actively provides liquidity across the Exchanges. Also, as a Designated Liquidity Provider, OMC plays a key role in supporting the active and efficient trading of many new and existing products listed on the Exchanges. To support this significant amount of trading activity on the Exchanges, OMC urgently needs the additional colocation space made available in NY11–4. Any halt or delay of the NY11–4 launch would prevent OMC's planned expansion and would endanger OMC's ability to grow and meet the liquidity provision demands of the Exchanges and their customers.²⁵

¹⁹ See *id.* at 2.

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

²² *Id.*

²³ See McKay Ltr., *supra*.

²⁴ See *id.* at 1–2, 5–6.

²⁵ Ltr. From F. Zucek, Old Mission, to B. Kitt, Nasdaq, dated Aug. 21, 2024.

The Exchange's Sequencing Plan Is Also Pragmatic and Efficient

Expanding the existing data center by building a new wing (NY11-4) from scratch afforded the Exchange an opportunity to design the expansion efficiently with telco connectivity equalization incorporated therein from the outset. This approach avoids the need to later engage in a wasteful process of retrofitting NY11-4 for telco connectivity equalization—a process in which the Exchange must now engage with respect to NY11.

Launching NY11-4 Before Equalizing NY11 Will Not Worsen Inequality

The latency profile of a customer collocating in NY11-4 would be no better than that of the lowest latency customer and no worse than that of the highest latency customer collocating presently in NY11. In fact, the launch of a full-equalized NY11-4 before equalizing NY11 would actually diminish the overall average latency differential among collocated customers' telecom provider connections because NY11-4 introduces connections at a single latency value in between the slowest and fastest latencies. That is, the shortest current telco connection possible into NY11 is 160 ft while the longest current telco connection possible into NY11 is 680 feet; the equidistant telco connections into NY11-4 will be 590 feet, which falls between these two extremes.

Moreover, although the Exchange does not know the precise latency profiles of each of its collocation customers, it has provided those customers with the latency profile for NY11-4 and interhall connectivity through its distribution of a technical specification document via the Customer Portal. This technical specification document will allow customers to determine for themselves whether their current location in NY11 or alternative space in NY11-4 will optimize their latency profile. It will provide a means for customers to plan ahead and avoid undesirable outcomes associated with the launch of NY11-4. Contrary to assertions made by the commenter in connection with the Prior Proposal,²⁶ the technical specification document alleviates uncertainty that might otherwise compel customers to

waste money to secure unnecessary space in NY11-4 as a defensive means of assuring themselves the most advantageous position available in the Exchange's data center campus.

Any Advantage Attainable From the Launch of NY11-4 First Will Be Temporary

Even if a customer was to gain a latency advantage from the launch of NY11-4 before equalization of NY11, such an advantage would be temporary given the fact that equalization of NY11 will follow soon after the launch of NY11-4. The fleeting nature of any such advantage should also disincentivize collocation customers from engaging in a "land grab" for what they perceive to be the most geographically advantageous space in NY11-4. Indeed, the Exchange sees no evidence of such a land grab actually occurring with respect to customers' expressions of interest in NY11-4, notwithstanding warnings to that effect from the same commenter. As of the date of submission of this filing, only roughly 10 percent of existing customers, representing a mix of business models and latency sensitive activities, have requested space in NY11-4. Moreover, interest in NY11-4 thus far involves a mix of customers wanting to expand upon their existing space in NY11 and others that want to move their existing space in NY11 entirely to NY11-4.

Equalizing NY11 First Will Not Avoid Creating Temporary Customer Disparities

Finally, the commenter's argument is incorrect that equalizing NY11 before launching NY11-4 would avoid creating disparities among customers with respect to their telco connections.²⁷ Equalizing telecommunications connectivity in NY11 before launching NY11-4 would not avoid the reality that full telco connectivity equalization—however accomplished—will require the introduction of temporary disparities in the lengths of the cables running between telecommunications providers and customers in the data center complex.

Even if the Exchange were to pursue equalization of NY11 first, doing so would necessarily entail certain customers in NY11 experiencing changes to their telco cable lengths before others during the phased transition period. Thus, re-sequencing the Equalization Project to start with NY11 will do nothing to affect these temporary customer disparities, but instead will needlessly place the

markets at risk by delaying the availability of expanded data center capacity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal imposes any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which exchanges and other vendors offer collocation services as a means to facilitate the trading and other market activities of those market participants who believe that collocation enhances the efficiency of their operations. As part of its collocation offering, the Exchange currently offers similar cabinets and power, as do other exchanges.

Nothing in the Proposal burdens intra-market competition because the Exchange's collocation services, including those proposed herein, are available to any customer and customers that wish to order cabinets and power can do so on a non-discriminatory basis. Use of any collocation service is completely voluntary, and each market participant is able to determine whether to use collocation services based on the requirements of its business operations.

Additionally, and although not strictly relevant to the Proposal, nothing about the Equalization Plan, as described above, would impose an undue burden on competition. The Exchange intends for the Equalization Plan to facilitate increased competition among its collocation customers by eliminating telco connectivity disparities that currently provide some customers with latency advantages relative to others. For the reasons discussed above, the Exchange believes that it is fair and necessary to sequence the Equalization Project by beginning with the launch of NY11-4 with an equalized design, rather than with NY11. Specifically, the timely launch of NY11-4 is necessary for the Exchange to meet its capacity needs and those of its customers, while retrofitting NY11 will be a complex process that will require many months to complete. Moreover, the current sequencing plan will not worsen existing inequalities, but instead will improve the overall average disparity in telco cable lengths in the data center. Even though the sequencing plan will cause some customers to be subject to telco connectivity equalization before others, this result is unavoidable even if the Exchange were

²⁶ See McKay Ltr., *supra*, at 3-4 (asserting that "introduction of NY11-4 before equalizing NY11 will compel many customers to establish a third point of presence—at a cost in incremental fees paid to Nasdaq alone of at least \$2.5 million on a three-year commitment—to eliminate the risk that the NY11-4 connection is a superior connection to one (or both) of their existing NY11 points of presence.").

²⁷ See *id.* at 2.

to equalize NY11 first. Any customer advantage or disadvantage that might arise from the Equalization Project would be temporary. Finally, the Exchange has been transparent about its plans and afforded opportunities to customers to make informed choices about how to mitigate any adverse consequences, competitive or otherwise.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange received a written letter of support from Old Mission Capital LLC, dated August 21, 2024.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act²⁸ and subparagraph (f)(6) of Rule 19b-4 thereunder.²⁹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or

- Send an email to rule-comments@sec.gov. Please include file number SR-BX-2024-035 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-BX-2024-035. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-BX-2024-035 and should be submitted on or before October 15, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-21746 Filed 9-23-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101079; File No. SR-Phlx-2024-47]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand Its Co-Location Services

September 18, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 5, 2024, Nasdaq PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to expand its co-location services.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to expand its co-location services by offering new cabinet, power, and power distribution

²⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

³⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

unit options in the Exchange's expanded data center.³

The Exchange's current data center ("NY11") in Carteret, NJ is undergoing an expansion ("NY11-4") in response to demand for power and cabinets. NY11-4 is not a new or distinct co-location facility. Instead, NY11-4 is simply an expansion of the existing Nasdaq NY11 data center,⁴ and Nasdaq intends to operate it generally in the same manner as existing aspects of NY11.⁵ Client connections to the matching engine will be equal across the board, within and among NY11 and NY11-4. In 2010, the Exchange undertook a similar expansion to its data center, where connectivity to the Exchange remained equalized, as is the case with the NY11-4 expansion.

The Exchange submits this filing to propose offering new services in NY11-4, as described below, and to the extent the Exchange offers additional new services, whether in the existing NY11 data halls or in the new NY11-4 data hall, the Exchange will submit additional filings with the Commission.

New and Upgraded Services in NY11-4

NY11-4 Expanded Cabinet Optionality: Ultra High Density Cabinet

Currently, co-location customers have the option of obtaining cabinets of various sizes and power densities. Co-location customers may obtain a Half Cabinet,⁶ a Low Density Cabinet with power density less than or equal to 2.88 kilowatts ("kW"), a Medium Density Cabinet with power density greater than 2.88 kW and less than or equal to 5 kW, a Medium-High Density Cabinet with power density greater than 5 kW and less than or equal to 7 kW, a High Density Cabinet with power density greater than 7 kW and less than 10 kW, and a Super High Density Cabinet with

power density greater than 10 kW and less than or equal to 17.3 kW.

The Exchange proposes to introduce a new cabinet choice in NY11-4, an "Ultra High Density Cabinet," with power density greater than 10 kW and less than or equal to 15 kW. Based on demand, the Exchange wishes to introduce the Ultra High Density Cabinet as an option for customers between the High Density Cabinet and the Super High Density Cabinet. The Ultra High Density Cabinet option would only be offered in NY11-4 because of the power configuration necessary for such cabinets, which is not possible or available in other portions of the data center due to different power distribution. Because of the addition of the Ultra High Density Cabinet option in NY11-4, the Super High Density Cabinet in NY11-4 would have power density greater than 15 kW and less than or equal to 17.3 kW.

In addition to the Ultra High Density Cabinet, the Exchange would offer the other, existing cabinet options in NY11-4, with the exception of the Low Density Cabinet and Half Cabinet due to a lack of demand for such cabinets. The cabinets in NY11-4 will include certain features, including but not limited to: uniform, wider cabinets⁷ (32" W x 48" D x 91" H), cable management, and a rear split door and combo lock.

NY-11 4 Cabinet Power and Power Distribution Units

The Exchange currently provides various cabinet power options, including: 2x20 amp 110 volt, 2x30 amp 110 volt, 2x20 amp 208 volt, 2x30 amp 208 volt, Phase 3 2x 20 amp 208 volt, Phase 3 2x 30 amp 208 volt, 2x60 amp 208 volt, Phase 3 2x 40 amp 208 volt, Phase 3 2x 50 amp 208 volt, Phase 3 2x 60 amp 208 volt, and 2x30 amp 48 volt DC. For NY11-4, the data center operator is bringing in higher voltage power options, which are more consistent with power options used in other data centers across the globe. The Exchange proposes to amend General 8, Section 1(c) to add the cabinet power options for NY11-4, which include: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, Phase 1 40 amp 240 volt, Phase 3 20 amp 415 volt, and Phase 3 32 amp 415 volt. The Exchange also proposes to specify in its Rules that

these cabinet power options are specific to NY11-4 and that one of these options must be selected for cabinets in NY11-4. Although different cabinet power options will be offered in NY11 and NY11-4 due to differing power configurations, the new cabinet power options are not inherently preferable to the existing cabinet power options and the Exchange does not anticipate material differences in equipment performance based on the power distribution. Due to higher voltage options being offered in NY11-4, the data center operator is likely to experience increased power distribution efficiencies across the data center. As between the various cabinet power options, customers choose power based on their preference and capacity needs.

The Exchange also proposes to offer power distribution units ("PDUs")⁸ in NY11-4 as a convenience to customers. Rather than sourcing PDUs on a customer-by-customer basis, as the Exchange does for customers in NY11, the Exchange wishes to simplify and standardize its PDU offering in NY11-4 by offering Phase 1 and Phase 3⁹ power distribution units. This service is optional and customers may choose to provide their own PDUs appropriate for their power installation choices. The Exchange also proposes to offer a switch monitored PDU add on in NY11-4, which would allow customers to connect remotely to their PDU and control the power sockets. With the switch monitored PDU option, customers would be able to power cycle or shut off power remotely. This option is optional as well and customers may choose to provide their own switch monitored PDU, if desired.

Implementation

Although the timing is subject to change,¹⁰ the Exchange anticipates opening NY11-4 Exchange access on November 4, 2024. In concert with this filing, the Exchange will allow customers to place orders for NY11-4,

⁸ PDUs are devices fitted with multiple outputs designed to distribute electric power. The standardized PDUs would only be offered for NY11-4.

⁹ Phase 1 PDUs would be compatible with the following power options: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, and Phase 1 40 amp 240 volt. Phase 3 PDUs would be compatible with the following power options: Phase 3 20 amp 415 volt and Phase 3 32 amp 415 volt. Phase 1 and Phase 3 are available in NY11 and NY11-4. Phase 3 PDUs provide greater power density than Phase 1 PDUs by delivering power over three wires as opposed to one wire.

¹⁰ The Exchange will announce modifications to the proposed timing via the Nasdaq Customer Portal, which is the web portal used for order and inventory management of colocation services, and email communication to all colocation customers.

³ The Exchange previously submitted a similar proposal earlier this year, *see* Securities Exchange Act Release No. 34-100559 (July 18, 2024), 89 FR 69952 (July 24, 2024) (SR-PHLX-2024-32) (the "Prior Proposal"), but withdrew it on August 29, 2024 to allow for the Exchange to address outstanding comments and concerns raised by the Commission Staff and commenters.

⁴ NY11-4 is not a standalone facility. Equinix considers the site as NY11 with three expansions: NY11 Phase 1, NY11 Phase 2 and NY11-4.

⁵ As discussed below in further detail, one aspect of the data center that will be different (temporarily) in NY11-4 as compared to NY11 is telecommunications access and inter-client connectivity. In NY11-4 at its launch, connections between colocated client cabinets and the carrier cage will be equalized as will be inter-client connectivity. Presently, such connectivity is not equalized in NY11, but the Exchange intends to retrofit NY11 to be equalized in the months ahead.

⁶ Half cabinets are not available to new subscribers. *See* General 8, Section 1(a).

⁷ In the existing data halls, clients may bring their own cabinets or use Exchange-provided cabinets. Because of the cooling system in NY11-4 (hot aisle containment), all cabinets must be uniform and therefore, the Exchange will provide all cabinets. The existing data halls utilize cold aisle containment to manage temperatures. Hot aisle containment is a more effective way to manage heat in the data center.

which would not be fee liable until customers are provided access to the space.¹¹ The Exchange will submit a fee filing to establish fees for the services described herein. Allowing customers to place orders in advance of opening its doors will allow the Exchange to plan ahead for capacity and demand for services, as well as procure necessary equipment.

Equalization of Telecommunications Connectivity in NY11-4 and NY11

Although the Exchange has constructed NY11-4 to address capacity constraints associated with its existing data center footprint, as well as to enable the provision of upgraded power for customer equipment, an ancillary design feature of NY11-4 will be that it will include, at launch, equalized cabling between customer equipment and equipment owned and operated by third-party telecommunications providers (“telco connectivity”). This design feature is incident, but not strictly relevant to the Proposal at hand. Nevertheless, we discuss it below insofar as it garnered attention in the Prior Proposal, by one commenter, in particular.¹²

Presently, the Exchange does not have equalized telco connectivity in NY11, much like several of its peers, IEX, MEMX, and Cboe, all of which operate through their Secaucus data center without equalized telco connectivity.¹³ The present architecture of NY11 is a product of its history and that of technology; the Exchange designed NY11 at a time when latency differences were measured by customers in terms of miles of cable *between* customer facilities and exchange data centers, rather than in feet or inches *within* exchange data centers, as is the case today. As the technology paradigm shifted, and as variances in telco connectivity became more meaningful to some market participants, the Exchange reevaluated its design of its

data center and determined that telco connectivity equalization would be in the best interests of the markets going forward. Thus, on its own initiative, the Exchange has embarked on an ambitious project to equalize telco connectivity across its entire data center campus, including both its existing NY11 facility and the NY11-4 expansion (the “Equalization Project”). The launch of NY11-4 will constitute phase 1 of the Equalization Project.

The Equalization Project will be complex, time consuming, and costly to complete, especially as to NY11, where the existing facility must be retrofitted with equalized cabling. In NY11, thousands of existing customer cables threaded throughout the facility will need to be removed and replaced with new infrastructure to support equidistant connectivity relative to all other customers’ locations in the data center. This painstaking project will cost millions of dollars in design, equipment, and labor costs. Due to its complexity, the Equalization Project cannot and will not be accomplished instantaneously.¹⁴ Instead, the Exchange estimates that the Project will require 18–24 months to complete, commencing as of the launch of NY11-4. Moreover, it will occur in a methodical and phased manner to ensure proper design, testing, and workmanship, as well as to minimize the customer disruptions that, unfortunately, will be unavoidable during the process. The launch of NY11-4 with equalized telco connectivity will be the first phase of the Equalization Project, with the equalization of NY11 constituting the remaining phases of the Project. For the phased transition of NY11, the Exchange expects the migration to occur in tranches over the course of several weekends at the tail end of the 18–24 project period.

Concerns About the Sequencing of the Equalization Project are Unfounded

In the Prior Proposal, the commenter objected to the Exchange’s plan to accomplish the Equalization Project by first launching equalized telco connectivity in NY11-4 before

launching it in NY11.¹⁵ The commenter argued that this sequencing of the Equalization Project would be unfairly discriminatory in that it would exacerbate existing inequalities in the Exchange’s Data Center while also compelling customers to secure unneeded space in NY11-4 to ensure that they obtain or maintain the closest possible geographic proximity to their telecommunications providers’ equipment.¹⁶ These arguments are simply wrong.

The Exchange’s Plan for the Launch of NY11-4 To Constitute Phase One of the Equalization Project is Fair and Reasonable and in the Best Interests of the Markets

The Exchange’s Plan To Proceed With NY11-4 as the First Phase of the Equalization Project is in the Best Interests of the Markets

The fact of the matter is that the Exchange needs to launch NY11-4—and needs to do so in November 2024—to ensure that it remains capable of meeting the growing power and capacity demands of its customers. Regulation SCI requires the Exchange to reasonably anticipate its capacity needs. NY11-4, which has been three years in the making, is a product of the SCI planning process. Delaying the launch of NY11-4 to accommodate the equalization of NY11 would jeopardize the sound and orderly operation of the Exchange’s markets. Such a danger readily outweighs any concerns that some may have about the fairness of the Exchange’s plan to sequence the Equalization Project, even if such concerns were well-founded, which they are not.

We note that our customers generally support this view. One customer sent the Exchange a letter stating the following about the Exchange’s plans:

As noted in your August 12, 2024, comment letter response to the SEC, the addition of NY11-4 is needed to meet the growing customer demands for space, power, and upgraded technological capabilities. OMC echoes these concerns as one of those customers, with an immediate and significant need to expand its colocation space to accommodate the growing demands of OMC’s business. OMC is a registered member of the Nasdaq Stock Market and eight other options and equities exchanges operated by Nasdaq (the “Exchanges”), with more than half of those memberships added within roughly the last year. As a registered Market Maker for hundreds of listed symbols, OMC actively provides liquidity across the Exchanges. Also, as a Designated Liquidity Provider, OMC plays a key role in supporting

¹¹ Charging customers once access is provided is consistent with current practice and allows customers to set up equipment and begin using power.

¹² See Ltr. From J. Considine, McKay Brothers LLC, to V. Countryman, SEC, dated July 24, 2024, available at <https://www.sec.gov/comments/sr-nasdaq-2024-026/srnasdaq2024026-496995-1434326.pdf> (the “McKay Letter”). Akuna Securities LLC also filed a comment letter that largely echoed the arguments in the McKay Letter. See Ltr. From D. DeSalle-Baron, Akuna Securities LLC to V. Countryman, SEC, dated July 24, 2024, available at <https://www.sec.gov/comments/sr-nasdaq-2024-026/srnasdaq2024026-497096-1434386.pdf>.

¹³ The structure of the Secaucus data center is a generally known fact within the industry and one of which the Exchange is itself aware due, among other things, to its own status as a tenant of the Secaucus data center.

¹⁴ The McKay Letter asserts incorrectly and without any evidentiary basis that the Exchange is capable of equalizing telco connectivity quickly and can do so before launching NY11-4 with only a minor ensuing delay to the launch. See *id.* at 4, n.15. As we explain herein, equalization of NY11 will take many months to accomplish, even at an aggressive pace, including because of factors outside of its control. The Exchange notes, for example, that the fiber needed to re-cable NY11 is in short supply and orders are subject to substantial waiting periods.

¹⁵ See *id.*

¹⁶ See *id.* at 1–2, 5–6.

the active and efficient trading of many new and existing products listed on the Exchanges. To support this significant amount of trading activity on the Exchanges, OMC urgently needs the additional colocation space made available in NY11–4. Any halt or delay of the NY11–4 launch would prevent OMC’s planned expansion and would endanger OMC’s ability to grow and meet the liquidity provision demands of the Exchanges and their customers.¹⁷

The Exchange’s Sequencing Plan is Also Pragmatic and Efficient

Expanding the existing data center by building a new wing (NY11–4) from scratch afforded the Exchange an opportunity to design the expansion efficiently with telco connectivity equalization incorporated therein from the outset. This approach avoids the need to later engage in a wasteful process of retrofitting NY11–4 for telco connectivity equalization—a process in which the Exchange must now engage with respect to NY11.

Launching NY11–4 Before Equalizing NY11 Will Not Worsen Inequality

The latency profile of a customer collocating in NY11–4 would be no better than that of the lowest latency customer and no worse than that of the highest latency customer collocating presently in NY11. In fact, the launch of a full-equalized NY11–4 before equalizing NY11 would actually diminish the overall average latency differential among collocated customers’ telecom provider connections because NY11–4 introduces connections at a single latency value in between the slowest and fastest latencies. That is, the shortest current telco connection possible into NY11 is 160 ft while the longest current telco connection possible into NY11 is 680 feet; the equidistant telco connections into NY11–4 will be 590 feet, which falls between these two extremes.

Moreover, although the Exchange does not know the precise latency profiles of each of its colocation customers, it has provided those customers with the latency profile for NY11–4 and interhall connectivity through its distribution of a technical specification document via the Customer Portal. This technical specification document will allow customers to determine for themselves whether their current location in NY11 or alternative space in NY11–4 will optimize their latency profile. It will provide a means for customers to plan ahead and avoid undesirable outcomes associated with the launch of NY11–4.

Contrary to assertions made by the commenter in connection with the Prior Proposal,¹⁸ the technical specification document alleviates uncertainty that might otherwise compel customers to waste money to secure unnecessary space in NY11–4 as a defensive means of assuring themselves the most advantageous position available in the Exchange’s data center campus.

Any Advantage Attainable From the Launch of NY11–4 First Will Be Temporary

Even if a customer was to gain a latency advantage from the launch of NY11–4 before equalization of NY11, such an advantage would be temporary given the fact that equalization of NY11 will follow soon after the launch of NY11–4. The fleeting nature of any such advantage should also disincentivize colocation customers from engaging in a “land grab” for what they perceive to be the most geographically advantageous space in NY11–4. Indeed, the Exchange sees no evidence of such a land grab actually occurring with respect to customers’ expressions of interest in NY11–4, notwithstanding warnings to that effect from the same commenter. As of the date of submission of this filing, only roughly 10 percent of existing customers, representing a mix of business models and latency sensitive activities, have requested space in NY11–4. Moreover, interest in NY11–4 thus far involves a mix of customers wanting to expand upon their existing space in NY11 and others that want to move their existing space in NY11 entirely to NY11–4.

Equalizing NY11 First Will Not Avoid Creating Temporary Customer Disparities

Finally, the commenter’s argument is incorrect that equalizing NY11 before launching NY11–4 would avoid creating disparities among customers with respect to their telco connections.¹⁹ Equalizing telecommunications connectivity in NY11 before launching NY11–4 would not avoid the reality that full telco connectivity equalization—however accomplished—will require the introduction of temporary disparities in the lengths of the cables running between telecommunications providers and customers in the data

center complex. Even if the Exchange were to pursue equalization of NY11 first, doing so would necessarily entail certain customers in NY11 experiencing changes to their telco cable lengths before others during the phased transition period. Thus, re-sequencing the Equalization Project to start with NY11 will do nothing to affect these temporary customer disparities, but instead will needlessly place the markets at risk by delaying the availability of expanded data center capacity.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,²¹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Today, the Exchange offers various cabinet choices and power options in the data center for colocation customers. The proposal would expand the cabinet and power options available, by introducing an additional cabinet option, the Ultra High Density Cabinet, and new power choices. The proposal would benefit the public interest by providing customers more cabinet and power options to choose from, thereby enhancing their ability to tailor their colocation operations to the requirements of their business operations. In general, the proposal is consistent with the Act because the Exchange’s expansion of the data center and expansion of available power and cabinets will enable the Exchange to meet customer needs and address demand for both cabinets and power. In lieu of collocating directly with the Exchange, market participants may choose not to collocate at all or to collocate indirectly through a vendor.

The Exchange also believes that the proposal will not be unfairly discriminatory, consistent with the objectives of Section 6(b)(5) of the Act²² because the expanded cabinet and power options in the data center would be offered equally to all customers. Although certain optionality is only offered in NY11–4 because of different power configurations in NY11–4 as compared to NY11, NY11–4 is merely an expansion of the data center, and any customer may order cabinets and power in NY11–4 (and across the data center

¹⁷ Ltr. From F. Zucek, Old Mission, to B. Kitt, Nasdaq, dated Aug. 21, 2024.

¹⁸ See McKay Ltr., *supra*, at 3–4 (asserting that “introduction of NY11–4 before equalizing NY11 will compel many customers to establish a third point of presence—at a cost in incremental fees paid to Nasdaq alone of at least \$2.5 million on a three-year commitment—to eliminate the risk that the NY11–4 connection is a superior connection to one (or both) of their existing NY11 points of presence.”).

¹⁹ See *id.* at 2.

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

²² *Id.*

broadly) on the same terms as any other customer.

The Equalization Project is Consistent With the Act

In addition to the above, and although not strictly relevant to the proposal at hand, the Exchange also believes that the Equalization Project, as outlined above and which will begin with the launch of NY11–4, is consistent with the Act.

Concerns About the Sequencing of the Equalization Project Are Unfounded

In the Prior Proposal, the commenter objected to the Exchange's plan to accomplish the Equalization Project by first launching equalized telco connectivity in NY11–4 before launching it in NY11.²³ The commenter argued that this sequencing of the Equalization Project would be unfairly discriminatory in that it would exacerbate existing inequalities in the Exchange's Data Center while also compelling customers to secure unneeded space in NY11–4 to ensure that they obtain or maintain the closest possible geographic proximity to their telecommunications providers' equipment.²⁴ These arguments are simply wrong.

The Exchange's Plan for the Launch of NY11–4 To Constitute Phase One of the Equalization Project is Fair and Reasonable and in the Best Interests of the Markets

The Exchange's Plan To Proceed With NY11–4 as the First Phase of the Equalization Project is in the Best Interests of the Markets

The fact of the matter is that the Exchange needs to launch NY11–4—and needs to do so in November 2024—to ensure that it remains capable of meeting the growing power and capacity demands of its customers. Regulation SCI requires the Exchange to reasonably anticipate its capacity needs. NY11–4, which has been three years in the making, is a product of the SCI planning process. Delaying the launch of NY11–4 to accommodate the equalization of NY11 would jeopardize the sound and orderly operation of the Exchange's markets. Such a danger readily outweighs any concerns that some may have about the fairness of the Exchange's plan to sequence the Equalization Project, even if such concerns were well-founded, which they are not.

We note that our customers generally support this view. One customer sent

the Exchange a letter stating the following about the Exchange's plans:

As noted in your August 12, 2024, comment letter response to the SEC, the addition of NY11–4 is needed to meet the growing customer demands for space, power, and upgraded technological capabilities. OMC echoes these concerns as one of those customers, with an immediate and significant need to expand its colocation space to accommodate the growing demands of OMC's business. OMC is a registered member of the Nasdaq Stock Market and eight other options and equities exchanges operated by Nasdaq (the "Exchanges"), with more than half of those memberships added within roughly the last year. As a registered Market Maker for hundreds of listed symbols, OMC actively provides liquidity across the Exchanges. Also, as a Designated Liquidity Provider, OMC plays a key role in supporting the active and efficient trading of many new and existing products listed on the Exchanges. To support this significant amount of trading activity on the Exchanges, OMC urgently needs the additional colocation space made available in NY11–4. Any halt or delay of the NY11–4 launch would prevent OMC's planned expansion and would endanger OMC's ability to grow and meet the liquidity provision demands of the Exchanges and their customers.²⁵

The Exchange's Sequencing Plan is Also Pragmatic and Efficient

Expanding the existing data center by building a new wing (NY11–4) from scratch afforded the Exchange an opportunity to design the expansion efficiently with telco connectivity equalization incorporated therein from the outset. This approach avoids the need to later engage in a wasteful process of retrofitting NY11–4 for telco connectivity equalization—a process in which the Exchange must now engage with respect to NY11.

Launching NY11–4 Before Equalizing NY11 Will Not Worsen Inequality

The latency profile of a customer collocating in NY11–4 would be no better than that of the lowest latency customer and no worse than that of the highest latency customer collocating presently in NY11. In fact, the launch of a full-equalized NY11–4 before equalizing NY11 would actually diminish the overall average latency differential among colocated customers' telecom provider connections because NY11–4 introduces connections at a single latency value in between the slowest and fastest latencies. That is, the shortest current telco connection possible into NY11 is 160 ft while the longest current telco connection possible into NY11 is 680 feet; the equidistant telco connections into

NY11–4 will be 590 feet, which falls between these two extremes.

Moreover, although the Exchange does not know the precise latency profiles of each of its colocation customers, it has provided those customers with the latency profile for NY11–4 and interhall connectivity through its distribution of a technical specification document via the Customer Portal. This technical specification document will allow customers to determine for themselves whether their current location in NY11 or alternative space in NY11–4 will optimize their latency profile. It will provide a means for customers to plan ahead and avoid undesirable outcomes associated with the launch of NY11–4. Contrary to assertions made by the commenter in connection with the Prior Proposal,²⁶ the technical specification document alleviates uncertainty that might otherwise compel customers to waste money to secure unnecessary space in NY11–4 as a defensive means of assuring themselves the most advantageous position available in the Exchange's data center campus.

Any Advantage Attainable From the Launch of NY11–4 First Will Be Temporary

Even if a customer was to gain a latency advantage from the launch of NY11–4 before equalization of NY11, such an advantage would be temporary given the fact that equalization of NY11 will follow soon after the launch of NY11–4. The fleeting nature of any such advantage should also disincentivize colocation customers from engaging in a "land grab" for what they perceive to be the most geographically advantageous space in NY11–4. Indeed, the Exchange sees no evidence of such a land grab actually occurring with respect to customers' expressions of interest in NY11–4, notwithstanding warnings to that effect from the same commenter. As of the date of submission of this filing, only roughly 10 percent of existing customers, representing a mix of business models and latency sensitive activities, have requested space in NY11–4. Moreover, interest in NY11–4 thus far involves a mix of customers wanting to expand upon their existing space in NY11 and others that want to

²⁶ See McKay Ltr., *supra*, at 3–4 (asserting that "introduction of NY11–4 before equalizing NY11 will compel many customers to establish a third point of presence—at a cost in incremental fees paid to Nasdaq alone of at least \$2.5 million on a three-year commitment—to eliminate the risk that the NY11–4 connection is a superior connection to one (or both) of their existing NY11 points of presence.").

²³ See McKay Ltr., *supra*.

²⁴ See *id.* at 1–2, 5–6.

²⁵ Ltr. From F. Zucek, Old Mission, to B. Kitt, Nasdaq, dated Aug. 21, 2024.

move their existing space in NY11 entirely to NY11–4.

Equalizing NY11 First Will Not Avoid Creating Temporary Customer Disparities

Finally, the commenter's argument is incorrect that equalizing NY11 before launching NY11–4 would avoid creating disparities among customers with respect to their telco connections.²⁷ Equalizing telecommunications connectivity in NY11 before launching NY11–4 would not avoid the reality that full telco connectivity equalization—however accomplished—will require the introduction of temporary disparities in the lengths of the cables running between telecommunications providers and customers in the data center complex.

Even if the Exchange were to pursue equalization of NY11 first, doing so would necessarily entail certain customers in NY11 experiencing changes to their telco cable lengths before others during the phased transition period. Thus, re-sequencing the Equalization Project to start with NY11 will do nothing to affect these temporary customer disparities, but instead will needlessly place the markets at risk by delaying the availability of expanded data center capacity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal imposes any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which exchanges and other vendors offer colocation services as a means to facilitate the trading and other market activities of those market participants who believe that colocation enhances the efficiency of their operations. As part of its colocation offering, the Exchange currently offers similar cabinets and power, as do other exchanges.

Nothing in the Proposal burdens intra-market competition because the Exchange's colocation services, including those proposed herein, are available to any customer and customers that wish to order cabinets and power can do so on a non-discriminatory basis. Use of any colocation service is completely voluntary, and each market participant is able to determine whether

to use colocation services based on the requirements of its business operations.

Additionally, and although not strictly relevant to the Proposal, nothing about the Equalization Plan, as described above, would impose an undue burden on competition. The Exchange intends for the Equalization Plan to facilitate increased competition among its colocation customers by eliminating telco connectivity disparities that currently provide some customers with latency advantages relative to others. For the reasons discussed above, the Exchange believes that it is fair and necessary to sequence the Equalization Project by beginning with the launch of NY11–4 with an equalized design, rather than with NY11. Specifically, the timely launch of NY11–4 is necessary for the Exchange to meet its capacity needs and those of its customers, while retrofitting NY11 will be a complex process that will require many months to complete. Moreover, the current sequencing plan will not worsen existing inequalities, but instead will improve the overall average disparity in telco cable lengths in the data center. Even though the sequencing plan will cause some customers to be subject to telco connectivity equalization before others, this result is unavoidable even if the Exchange were to equalize NY11 first. Any customer advantage or disadvantage that might arise from the Equalization Project would be temporary. Finally, the Exchange has been transparent about its plans and afforded opportunities to customers to make informed choices about how to mitigate any adverse consequences, competitive or otherwise.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange received a written letter of support from Old Mission Capital LLC, dated August 21, 2024.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act²⁸ and

subparagraph (f)(6) of Rule 19b–4 thereunder.²⁹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR–Phlx–2024–47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–Phlx–2024–47. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public

²⁷ See *id.* at 2.

²⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁹ 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-Phlx-2024-47 and should be submitted on or before October 15, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-21751 Filed 9-23-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101078; File No. SR-NASDAQ-2024-054]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand Its Co-Location Services

September 18, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 5, 2024, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to expand its co-location services. The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of

the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to expand its co-location services by offering new cabinet, power, and power distribution unit options in the Exchange’s expanded data center.³

The Exchange’s current data center (“NY11”) in Carteret, NJ is undergoing an expansion (“NY11-4”) in response to demand for power and cabinets. NY11-4 is not a new or distinct co-location facility. Instead, NY11-4 is simply an expansion of the existing Nasdaq NY11 data center,⁴ and Nasdaq intends to operate it generally in the same manner as existing aspects of NY11.⁵ Client connections to the matching engine will be equal across the board, within and among NY11 and NY11-4. In 2010, the Exchange undertook a similar expansion to its data center, where connectivity to the Exchange remained equalized, as is the case with the NY11-4 expansion.

The Exchange submits this filing to propose offering new services in NY11-4, as described below, and to the extent

³ The Exchange previously submitted a similar proposal earlier this year, *see* Securities Exchange Act Release No. 34-100440 (June 27, 2024), 89 FR 55294 (July 3, 2024) (SR-NASDAQ-2024-026) (the “Prior Proposal”), but withdrew it on August 13, 2024 to allow for the Exchange to address outstanding comments and concerns raised by the Commission Staff and commenters.

⁴ NY11-4 is not a standalone facility. Equinix considers the site as NY11 with three expansions: NY11 Phase 1, NY11 Phase 2 and NY11-4.

⁵ As discussed below in further detail, one aspect of the data center that will be different (temporarily) in NY11-4 as compared to NY11 is telecommunications access and inter-client connectivity. In NY11-4 at its launch, connections between colocated client cabinets and the carrier cage will be equalized as will be inter-client connectivity. Presently, such connectivity is not equalized in NY11, but the Exchange intends to retrofit NY11 to be equalized in the months ahead.

the Exchange offers additional new services, whether in the existing NY11 data halls or in the new NY11-4 data hall, the Exchange will submit additional filings with the Commission.

New and Upgraded Services in NY11-4

NY11-4 Expanded Cabinet Optionality: Ultra High Density Cabinet

Currently, co-location customers have the option of obtaining cabinets of various sizes and power densities. Co-location customers may obtain a Half Cabinet,⁶ a Low Density Cabinet with power density less than or equal to 2.88 kilowatts (“kW”), a Medium Density Cabinet with power density greater than 2.88 kW and less than or equal to 5 kW, a Medium-High Density Cabinet with power density greater than 5 kW and less than or equal to 7 kW, a High Density Cabinet with power density greater than 7 kW and less than 10 kW, and a Super High Density Cabinet with power density greater than 10 kW and less than or equal to 17.3 kW.

The Exchange proposes to introduce a new cabinet choice in NY11-4, an “Ultra High Density Cabinet,” with power density greater than 10 kW and less than or equal to 15 kW. Based on demand, the Exchange wishes to introduce the Ultra High Density Cabinet as an option for customers between the High Density Cabinet and the Super High Density Cabinet. The Ultra High Density Cabinet option would only be offered in NY11-4 because of the power configuration necessary for such cabinets, which is not possible or available in other portions of the data center due to different power distribution. Because of the addition of the Ultra High Density Cabinet option in NY11-4, the Super High Density Cabinet in NY11-4 would have power density greater than 15 kW and less than or equal to 17.3 kW.

In addition to the Ultra High Density Cabinet, the Exchange would offer the other, existing cabinet options in NY11-4, with the exception of the Low Density Cabinet and Half Cabinet due to a lack of demand for such cabinets. The cabinets in NY11-4 will include certain features, including but not limited to: uniform, wider cabinets⁷ (32” W x 48”

⁶ Half cabinets are not available to new subscribers. *See* General 8, Section 1(a).

⁷ In the existing data halls, clients may bring their own cabinets or use Exchange-provided cabinets. Because of the cooling system in NY11-4 (hot aisle containment), all cabinets must be uniform and therefore, the Exchange will provide all cabinets. The existing data halls utilize cold aisle containment to manage temperatures. Hot aisle containment is a more effective way to manage heat in the data center.

³⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

D x 91" H), cable management, and a rear split door and combo lock.

NY-11 4 Cabinet Power and Power Distribution Units

The Exchange currently provides various cabinet power options, including: 2 x 20 amp 110 volt, 2 x 30 amp 110 volt, 2 x 20 amp 208 volt, 2 x 30 amp 208 volt, Phase 3 2 x 20 amp 208 volt, Phase 3 2 x 30 amp 208 volt, 2 x 60 amp 208 volt, Phase 3 2 x 40 amp 208 volt, Phase 3 2 x 50 amp 208 volt, Phase 3 2 x 60 amp 208 volt, and 2 x 30 amp 48 volt DC. For NY11-4, the data center operator is bringing in higher voltage power options, which are more consistent with power options used in other data centers across the globe. The Exchange proposes to amend General 8, Section 1(c) to add the cabinet power options for NY11-4, which include: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, Phase 1 40 amp 240 volt, Phase 3 20 amp 415 volt, and Phase 3 32 amp 415 volt. The Exchange also proposes to specify in its Rules that these cabinet power options are specific to NY11-4 and that one of these options must be selected for cabinets in NY11-4. Although different cabinet power options will be offered in NY11 and NY11-4 due to differing power configurations, the new cabinet power options are not inherently preferable to the existing cabinet power options and the Exchange does not anticipate material differences in equipment performance based on the power distribution. Due to higher voltage options being offered in NY11-4, the data center operator is likely to experience increased power distribution efficiencies across the data center. As between the various cabinet power options, customers choose power based on their preference and capacity needs.

The Exchange also proposes to offer power distribution units ("PDUs")⁸ in NY11-4 as a convenience to customers. Rather than sourcing PDUs on a customer-by-customer basis, as the Exchange does for customers in NY11, the Exchange wishes to simplify and standardize its PDU offering in NY11-4 by offering Phase 1 and Phase 3⁹

⁸ PDUs are devices fitted with multiple outputs designed to distribute electric power. The standardized PDUs would only be offered for NY11-4.

⁹ Phase 1 PDUs would be compatible with the following power options: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, and Phase 1 40 amp 240 volt. Phase 3 PDUs would be compatible with the following power options: Phase 3 20 amp 415 volt and Phase 3 32 amp 415 volt. Phase 1 and Phase 3 are available in NY11 and NY11-4. Phase 3 PDUs provide greater power density than Phase 1 PDUs by delivering power over three wires as opposed to one wire.

power distribution units. This service is optional and customers may choose to provide their own PDUs appropriate for their power installation choices. The Exchange also proposes to offer a switch monitored PDU add on in NY11-4, which would allow customers to connect remotely to their PDU and control the power sockets. With the switch monitored PDU option, customers would be able to power cycle or shut off power remotely. This option is optional as well and customers may choose to provide their own switch monitored PDU, if desired.

Implementation

Although the timing is subject to change,¹⁰ the Exchange anticipates opening NY11-4 Exchange access on November 4, 2024. In concert with this filing, the Exchange will allow customers to place orders for NY11-4, which would not be fee liable until customers are provided access to the space.¹¹ The Exchange will submit a fee filing to establish fees for the services described herein. Allowing customers to place orders in advance of opening its doors will allow the Exchange to plan ahead for capacity and demand for services, as well as procure necessary equipment.

Equalization of Telecommunications Connectivity in NY11-4 and NY11

Although the Exchange has constructed NY11-4 to address capacity constraints associated with its existing data center footprint, as well as to enable the provision of upgraded power for customer equipment, an ancillary design feature of NY11-4 will be that it will include, at launch, equalized cabling between customer equipment and equipment owned and operated by third-party telecommunications providers ("telco connectivity"). This design feature is incident, but not strictly relevant to the Proposal at hand. Nevertheless, we discuss it below insofar as it garnered attention in the Prior Proposal, by one commenter, in particular.¹²

¹⁰ The Exchange will announce modifications to the proposed timing via the Nasdaq Customer Portal, which is the web portal used for order and inventory management of colocation services, and email communication to all colocation customers.

¹¹ Charging customers once access is provided is consistent with current practice and allows customers to set up equipment and begin using power.

¹² See Ltr. From J. Considine, McKay Brothers LLC, to V. Countryman, SEC, dated July 24, 2024, available at <https://www.sec.gov/comments/sr-nasdaq-2024-026/srnasdaq2024026-496995-1434326.pdf> (the "McKay Letter"). Akuna Securities LLC also filed a comment letter that largely echoed the arguments in the McKay Letter. See Ltr. From D. DeSalle-Baron, Akuna Securities

Presently, the Exchange does not have equalized telco connectivity in NY11, much like several of its peers, IEX, MEMX, and Cboe, all of which operate through their Secaucus data center without equalized telco connectivity.¹³ The present architecture of NY11 is a product of its history and that of technology; the Exchange designed NY11 at a time when latency differences were measured by customers in terms of miles of cable *between* customer facilities and exchange data centers, rather than in feet or inches *within* exchange data centers, as is the case today. As the technology paradigm shifted, and as variances in telco connectivity became more meaningful to some market participants, the Exchange reevaluated its design of its data center and determined that telco connectivity equalization would be in the best interests of the markets going forward. Thus, on its own initiative, the Exchange has embarked on an ambitious project to equalize telco connectivity across its entire data center campus, including both its existing NY11 facility and the NY11-4 expansion (the "Equalization Project"). The launch of NY11-4 will constitute phase 1 of the Equalization Project.

The Equalization Project will be complex, time consuming, and costly to complete, especially as to NY11, where the existing facility must be retrofitted with equalized cabling. In NY11, thousands of existing customer cables threaded throughout the facility will need to be removed and replaced with new infrastructure to support equidistant connectivity relative to all other customers' locations in the data center. This painstaking project will cost millions of dollars in design, equipment, and labor costs. Due to its complexity, the Equalization Project cannot and will not be accomplished instantaneously.¹⁴ Instead, the Exchange estimates that the Project will require 18–24 months to complete,

LLC to V. Countryman, SEC, dated July 24, 2024, available at <https://www.sec.gov/comments/sr-nasdaq-2024-026/srnasdaq2024026-497096-1434386.pdf>.

¹³ The structure of the Secaucus data center is a generally known fact within the industry and one of which the Exchange is itself aware due, among other things, to its own status as a tenant of the Secaucus data center.

¹⁴ The McKay Letter asserts incorrectly and without any evidentiary basis that the Exchange is capable of equalizing telco connectivity quickly and can do so before launching NY11-4 with only a minor ensuing delay to the launch. See *id.* at 4, n.15. As we explain herein, equalization of NY11 will take many months to accomplish, even at an aggressive pace, including because of factors outside of its control. The Exchange notes, for example, that the fiber needed to re-cable NY11 is in short supply and orders are subject to substantial waiting periods.

commencing as of the launch of NY11–4. Moreover, it will occur in a methodical and phased manner to ensure proper design, testing, and workmanship, as well as to minimize the customer disruptions that, unfortunately, will be unavoidable during the process. The launch of NY11–4 with equalized telco connectivity will be the first phase of the Equalization Project, with the equalization of NY11 constituting the remaining phases of the Project. For the phased transition of NY11, the Exchange expects the migration to occur in tranches over the course of several weekends at the tail end of the 18–24 project period.

Concerns About the Sequencing of the Equalization Project Are Unfounded

In the Prior Proposal, the commenter objected to the Exchange's plan to accomplish the Equalization Project by first launching equalized telco connectivity in NY11–4 before launching it in NY11.¹⁵ The commenter argued that this sequencing of the Equalization Project would be unfairly discriminatory in that it would exacerbate existing inequalities in the Exchange's Data Center while also compelling customers to secure unneeded space in NY11–4 to ensure that they obtain or maintain the closest possible geographic proximity to their telecommunications providers' equipment.¹⁶ These arguments are simply wrong.

The Exchange's Plan for the Launch of NY11–4 To Constitute Phase One of the Equalization Project Is Fair and Reasonable and in the Best Interests of the Markets

The Exchange's Plan To Proceed With NY11–4 as the First Phase of the Equalization Project Is in the Best Interests of the Markets

The fact of the matter is that the Exchange needs to launch NY11–4—and needs to do so in November 2024—to ensure that it remains capable of meeting the growing power and capacity demands of its customers. Regulation SCI requires the Exchange to reasonably anticipate its capacity needs. NY11–4, which has been three years in the making, is a product of the SCI planning process. Delaying the launch of NY11–4 to accommodate the equalization of NY11 would jeopardize the sound and orderly operation of the Exchange's markets. Such a danger readily outweighs any concerns that some may have about the fairness of the

Exchange's plan to sequence the Equalization Project, even if such concerns were well-founded, which they are not.

We note that our customers generally support this view. One customer sent the Exchange a letter stating the following about Nasdaq's plans:

As noted in your August 12, 2024, comment letter response to the SEC, the addition of NY11–4 is needed to meet the growing customer demands for space, power, and upgraded technological capabilities. OMC echoes these concerns as one of those customers, with an immediate and significant need to expand its colocation space to accommodate the growing demands of OMC's business. OMC is a registered member of the Nasdaq Stock Market and eight other options and equities exchanges operated by Nasdaq (the "Exchanges"), with more than half of those memberships added within roughly the last year. As a registered Market Maker for hundreds of listed symbols, OMC actively provides liquidity across the Exchanges. Also, as a Designated Liquidity Provider, OMC plays a key role in supporting the active and efficient trading of many new and existing products listed on the Exchanges. To support this significant amount of trading activity on the Exchanges, OMC urgently needs the additional colocation space made available in NY11–4. Any halt or delay of the NY11–4 launch would prevent OMC's planned expansion and would endanger OMC's ability to grow and meet the liquidity provision demands of the Exchanges and their customers.¹⁷

The Exchange's Sequencing Plan Is Also Pragmatic and Efficient

Expanding the existing data center by building a new wing (NY11–4) from scratch afforded the Exchange an opportunity to design the expansion efficiently with telco connectivity equalization incorporated therein from the outset. This approach avoids the need to later engage in a wasteful process of retrofitting NY11–4 for telco connectivity equalization—a process in which the Exchange must now engage with respect to NY11.

Launching NY11–4 Before Equalizing NY11 Will Not Worsen Inequality

The latency profile of a customer collocating in NY11–4 would be no better than that of the lowest latency customer and no worse than that of the highest latency customer collocating presently in NY11. In fact, the launch of a full-equalized NY11–4 before equalizing NY11 would actually diminish the overall average latency differential among colocated customers' telecom provider connections because NY11–4 introduces connections at a single latency value in between the

slowest and fastest latencies. That is, the shortest current telco connection possible into NY11 is 160 ft while the longest current telco connection possible into NY11 is 680 feet; the equidistant telco connections into NY11–4 will be 590 feet, which falls between these two extremes.

Moreover, although the Exchange does not know the precise latency profiles of each of its colocation customers, it has provided those customers with the latency profile for NY11–4 and interhall connectivity through its distribution of a technical specification document via the Customer Portal. This technical specification document will allow customers to determine for themselves whether their current location in NY11 or alternative space in NY11–4 will optimize their latency profile. It will provide a means for customers to plan ahead and avoid undesirable outcomes associated with the launch of NY11–4. Contrary to assertions made by the commenter in connection with the Prior Proposal,¹⁸ the technical specification document alleviates uncertainty that might otherwise compel customers to waste money to secure unnecessary space in NY11–4 as a defensive means of assuring themselves the most advantageous position available in the Exchange's data center campus.

Any Advantage Attainable From the Launch of NY11–4 First Will Be Temporary

Even if a customer was to gain a latency advantage from the launch of NY11–4 before equalization of NY11, such an advantage would be temporary given the fact that equalization of NY11 will follow soon after the launch of NY11–4. The fleeting nature of any such advantage should also disincentivize colocation customers from engaging in a "land grab" for what they perceive to be the most geographically advantageous space in NY11–4. Indeed, the Exchange sees no evidence of such a land grab actually occurring with respect to customers' expressions of interest in NY11–4, notwithstanding warnings to that effect from the same commenter. As of the date of submission of this filing, only roughly 10 percent of existing customers, representing a mix of business models and latency sensitive

¹⁵ See *id.*

¹⁶ See *id.* at 1–2, 5–6.

¹⁷ Ltr. from F. Zucek, Old Mission, to B. Kitt, Nasdaq, dated Aug. 21, 2024.

¹⁸ See McKay Ltr., *supra*, at 3–4 (asserting that "introduction of NY11–4 before equalizing NY11 will compel many customers to establish a third point of presence—at a cost in incremental fees paid to Nasdaq alone of at least \$2.5 million on a three-year commitment—to eliminate the risk that the NY11–4 connection is a superior connection to one (or both) of their existing NY11 points of presence.").

activities, have requested space in NY11–4. Moreover, interest in NY11–4 thus far involves a mix of customers wanting to expand upon their existing space in NY11 and others that want to move their existing space in NY11 entirely to NY11–4.

Equalizing NY11 First Will Not Avoid Creating Temporary Customer Disparities

Finally, the commenter's argument is incorrect that equalizing NY11 before launching NY11–4 would avoid creating disparities among customers with respect to their telco connections.¹⁹ Equalizing telecommunications connectivity in NY11 before launching NY11–4 would not avoid the reality that full telco connectivity equalization—however accomplished—will require the introduction of temporary disparities in the lengths of the cables running between telecommunications providers and customers in the data center complex. Even if the Exchange were to pursue equalization of NY11 first, doing so would necessarily entail certain customers in NY11 experiencing changes to their telco cable lengths before others during the phased transition period. Thus, re-sequencing the Equalization Project to start with NY11 will do nothing to affect these temporary customer disparities, but instead will needlessly place the markets at risk by delaying the availability of expanded data center capacity.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,²¹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Today, the Exchange offers various cabinet choices and power options in the data center for colocation customers. The proposal would expand the cabinet and power options available, by introducing an additional cabinet option, the Ultra High Density Cabinet, and new power choices. The proposal would benefit the public interest by providing customers more cabinet and power options to choose from, thereby enhancing their ability to tailor their colocation operations to the requirements of their

business operations. In general, the proposal is consistent with the Act because the Exchange's expansion of the data center and expansion of available power and cabinets will enable the Exchange to meet customer needs and address demand for both cabinets and power. In lieu of collocating directly with the Exchange, market participants may choose not to collocate at all or to collocate indirectly through a vendor.

The Exchange also believes that the proposal will not be unfairly discriminatory, consistent with the objectives of Section 6(b)(5) of the Act²² because the expanded cabinet and power options in the data center would be offered equally to all customers. Although certain optionality is only offered in NY11–4 because of different power configurations in NY11–4 as compared to NY11, NY11–4 is merely an expansion of the data center, and any customer may order cabinets and power in NY11–4 (and across the data center broadly) on the same terms as any other customer.

The Equalization Project Is Consistent With the Act

In addition to the above, and although not strictly relevant to the proposal at hand, the Exchange also believes that the Equalization Project, as outlined above and which will begin with the launch of NY11–4, is consistent with the Act.

Concerns About the Sequencing of the Equalization Project Are Unfounded

In the Prior Proposal, the commenter objected to the Exchange's plan to accomplish the Equalization Project by first launching equalized telco connectivity in NY11–4 before launching it in NY11.²³ The commenter argued that this sequencing of the Equalization Project would be unfairly discriminatory in that it would exacerbate existing inequalities in the Exchange's Data Center while also compelling customers to secure unneeded space in NY11–4 to ensure that they obtain or maintain the closest possible geographic proximity to their telecommunications providers' equipment.²⁴ These arguments are simply wrong.

The Exchange's Plan for the Launch of NY11–4 To Constitute Phase One of the Equalization Project Is Fair and Reasonable and in the Best Interests of the Markets

The Exchange's Plan To Proceed With NY11–4 as the First Phase of the Equalization Project Is in the Best Interests of the Markets

The fact of the matter is that the Exchange needs to launch NY11–4—and needs to do so in November 2024—to ensure that it remains capable of meeting the growing power and capacity demands of its customers. Regulation SCI requires the Exchange to reasonably anticipate its capacity needs. NY11–4, which has been three years in the making, is a product of the SCI planning process. Delaying the launch of NY11–4 to accommodate the equalization of NY11 would jeopardize the sound and orderly operation of the Exchange's markets. Such a danger readily outweighs any concerns that some may have about the fairness of the Exchange's plan to sequence the Equalization Project, even if such concerns were well-founded, which they are not.

We note that our customers generally support this view. One customer sent the Exchange a letter stating the following about Nasdaq's plans:

As noted in your August 12, 2024, comment letter response to the SEC, the addition of NY11–4 is needed to meet the growing customer demands for space, power, and upgraded technological capabilities. OMC echoes these concerns as one of those customers, with an immediate and significant need to expand its colocation space to accommodate the growing demands of OMC's business. OMC is a registered member of the Nasdaq Stock Market and eight other options and equities exchanges operated by Nasdaq (the "Exchanges"), with more than half of those memberships added within roughly the last year. As a registered Market Maker for hundreds of listed symbols, OMC actively provides liquidity across the Exchanges. Also, as a Designated Liquidity Provider, OMC plays a key role in supporting the active and efficient trading of many new and existing products listed on the Exchanges. To support this significant amount of trading activity on the Exchanges, OMC urgently needs the additional colocation space made available in NY11–4. Any halt or delay of the NY11–4 launch would prevent OMC's planned expansion and would endanger OMC's ability to grow and meet the liquidity provision demands of the Exchanges and their customers.²⁵

¹⁹ See *id.* at 2.

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

²² *Id.*

²³ See McKay Ltr., *supra*.

²⁴ See *id.* at 1–2, 5–6.

²⁵ Ltr. from F. Zucek, Old Mission, to B. Kitt, Nasdaq, dated Aug. 21, 2024.

The Exchange's Sequencing Plan Is Also Pragmatic and Efficient

Expanding the existing data center by building a new wing (NY11-4) from scratch afforded the Exchange an opportunity to design the expansion efficiently with telco connectivity equalization incorporated therein from the outset. This approach avoids the need to later engage in a wasteful process of retrofitting NY11-4 for telco connectivity equalization—a process in which the Exchange must now engage with respect to NY11.

Launching NY11-4 Before Equalizing NY11 Will Not Worsen Inequality

The latency profile of a customer collocating in NY11-4 would be no better than that of the lowest latency customer and no worse than that of the highest latency customer collocating presently in NY11. In fact, the launch of a full-equalized NY11-4 before equalizing NY11 would actually diminish the overall average latency differential among collocated customers' telecom provider connections because NY11-4 introduces connections at a single latency value in between the slowest and fastest latencies. That is, the shortest current telco connection possible into NY11 is 160 ft while the longest current telco connection possible into NY11 is 680 feet; the equidistant telco connections into NY11-4 will be 590 feet, which falls between these two extremes.

Moreover, although the Exchange does not know the precise latency profiles of each of its collocation customers, it has provided those customers with the latency profile for NY11-4 and interhall connectivity through its distribution of a technical specification document via the Customer Portal. This technical specification document will allow customers to determine for themselves whether their current location in NY11 or alternative space in NY11-4 will optimize their latency profile. It will provide a means for customers to plan ahead and avoid undesirable outcomes associated with the launch of NY11-4. Contrary to assertions made by the commenter in connection with the Prior Proposal,²⁶ the technical specification document alleviates uncertainty that might otherwise compel customers to

waste money to secure unnecessary space in NY11-4 as a defensive means of assuring themselves the most advantageous position available in the Exchange's data center campus.

Any Advantage Attainable From the Launch of NY11-4 First Will Be Temporary

Even if a customer was to gain a latency advantage from the launch of NY11-4 before equalization of NY11, such an advantage would be temporary given the fact that equalization of NY11 will follow soon after the launch of NY11-4. The fleeting nature of any such advantage should also disincentivize collocation customers from engaging in a "land grab" for what they perceive to be the most geographically advantageous space in NY11-4. Indeed, the Exchange sees no evidence of such a land grab actually occurring with respect to customers' expressions of interest in NY11-4, notwithstanding warnings to that effect from the same commenter. As of the date of submission of this filing, only roughly 10 percent of existing customers, representing a mix of business models and latency sensitive activities, have requested space in NY11-4. Moreover, interest in NY11-4 thus far involves a mix of customers wanting to expand upon their existing space in NY11 and others that want to move their existing space in NY11 entirely to NY11-4.

Equalizing NY11 First Will Not Avoid Creating Temporary Customer Disparities

Finally, the commenter's argument is incorrect that equalizing NY11 before launching NY11-4 would avoid creating disparities among customers with respect to their telco connections.²⁷ Equalizing telecommunications connectivity in NY11 before launching NY11-4 would not avoid the reality that full telco connectivity equalization—however accomplished—will require the introduction of temporary disparities in the lengths of the cables running between telecommunications providers and customers in the data center complex.

Even if the Exchange were to pursue equalization of NY11 first, doing so would necessarily entail certain customers in NY11 experiencing changes to their telco cable lengths before others during the phased transition period. Thus, re-sequencing the Equalization Project to start with NY11 will do nothing to affect these temporary customer disparities, but instead will needlessly place the

markets at risk by delaying the availability of expanded data center capacity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal imposes any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which exchanges and other vendors offer colocation services as a means to facilitate the trading and other market activities of those market participants who believe that colocation enhances the efficiency of their operations. As part of its colocation offering, the Exchange currently offers similar cabinets and power, as do other exchanges.

Nothing in the Proposal burdens intra-market competition because the Exchange's colocation services, including those proposed herein, are available to any customer and customers that wish to order cabinets and power can do so on a non-discriminatory basis. Use of any colocation service is completely voluntary, and each market participant is able to determine whether to use colocation services based on the requirements of its business operations.

Additionally, and although not strictly relevant to the Proposal, nothing about the Equalization Plan, as described above, would impose an undue burden on competition. The Exchange intends for the Equalization Plan to facilitate increased competition among its colocation customers by eliminating telco connectivity disparities that currently provide some customers with latency advantages relative to others. For the reasons discussed above, the Exchange believes that it is fair and necessary to sequence the Equalization Project by beginning with the launch of NY11-4 with an equalized design, rather than with NY11. Specifically, the timely launch of NY11-4 is necessary for the Exchange to meet its capacity needs and those of its customers, while retrofitting NY11 will be a complex process that will require many months to complete. Moreover, the current sequencing plan will not worsen existing inequalities, but instead will improve the overall average disparity in telco cable lengths in the data center. Even though the sequencing plan will cause some customers to be subject to telco connectivity equalization before others, this result is unavoidable even if the Exchange were

²⁶ See McKay Ltr., *supra*, at 3-4 (asserting that "introduction of NY11-4 before equalizing NY11 will compel many customers to establish a third point of presence—at a cost in incremental fees paid to Nasdaq alone of at least \$2.5 million on a three-year commitment—to eliminate the risk that the NY11-4 connection is a superior connection to one (or both) of their existing NY11 points of presence.").

²⁷ See *id.* at 2.

to equalize NY11 first. Any customer advantage or disadvantage that might arise from the Equalization Project would be temporary. Finally, the Exchange has been transparent about its plans and afforded opportunities to customers to make informed choices about how to mitigate any adverse consequences, competitive or otherwise.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange received a written letter of support from Old Mission Capital LLC, dated August 21, 2024.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act²⁸ and subparagraph (f)(6) of Rule 19b-4 thereunder.²⁹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or

- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2024-054 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NASDAQ-2024-054. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2024-054 and should be submitted on or before October 15, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-21750 Filed 9-23-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101083; File No. SR-DTC-2024-003]

Self-Regulatory Organizations; Depository Trust Company; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Amend the Clearing Agency Risk Management Framework

September 18, 2024.

On March 11, 2024, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-DTC-2024-003 ("Proposed Rule Change") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4² thereunder to amend the Clearing Agency Risk Management Framework of DTC and its affiliates, Fixed Income Clearing Corporation ("FICC") and National Securities Clearing Corporation ("NSCC," and together with FICC and NSCC, the "Clearing Agencies") to describe how the Clearing Agencies may solicit views of participants and other industry stakeholders, and to provide for the annual assessment and subsequent review of FICC's Government Securities Division access models by FICC's Board of Directors.³ The Proposed Rule Change was published for public comment in the **Federal Register** on March 26, 2024.⁴ The Commission has received comments regarding the substance of the changes proposed in the Proposed Rule Change.⁵

On May 8, 2024, pursuant to Section 19(b)(2) of the Act,⁶ the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.⁷ On June 21, 2024, pursuant to Section 19(b)(2)(B) of the Exchange Act,⁸ the Commission instituted proceedings to determine whether to approve or disapprove the Proposed Rule Change.⁹

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Notice of Filing *infra* note 4, at 89 FR 21118.

⁴ Securities Exchange Act Release No. 99802 (March 20, 2024), 89 FR 21118 (March 26, 2024) (File No. SR-DTC-2024-003) ("Notice of Filing").

⁵ Comments on the Proposed Rule Change were received under an affiliated filing and are available at <https://www.sec.gov/comments/sr-ficc-2024-006/srficc2024006.htm>.

⁶ 15 U.S.C. 78s(b)(2).

⁷ Securities Exchange Act Release No. 100076 (May 8, 2024), 89 FR 42006 (May 14, 2024).

⁸ 15 U.S.C. 78s(b)(2)(B).

⁹ Securities Exchange Act Release No. 100400 (June 21, 2024), 89 FR 53674 (June 27, 2024).

²⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

³⁰ 17 CFR 200.30-3(a)(12).

Section 19(b)(2) of the Exchange Act¹⁰ provides that proceedings to determine whether to approve or deny a proposed rule change must be concluded within 180 days of the date of a publication of the notice of filing of the proposed rule change. The Commission may extend the time for conclusion of such proceedings for up to 60 days if the Commission finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents.¹¹ The 180th day after publication of the Notice for the Proposed Rule Change is September 22, 2024.

The Commission is extending the period for Commission action on the Proposed Rule Change. The Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change so that the Commission has sufficient time to consider the issues raised by the Proposed Rule Change and to take action on the Proposed Rule Change. Accordingly, pursuant to Section 19(b)(2)(B)(ii)(II) of the Act,¹² the Commission designates November 21, 2024, as the date by which the Commission should either approve or disapprove the Proposed Rule Change SR-FICC-2024-006.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-21755 Filed 9-23-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101093; File No. SR-NYSE-2024-57]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Section 902.02 of the NYSE Listed Company Manual

September 18, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 10, 2024, New York Stock Exchange LLC (“NYSE” or the

“Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 902.02 of the NYSE Listed Company Manual (the “Manual”) to clarify that for purposes of qualifying for the Investment Management Entity Group Fee Discount, an Investment Management Entity is a company that is listed on the Exchange or another national securities exchange. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange presently offers a discount on annual fees to Investment Management Entities and their Eligible Portfolio Companies.³ The discount equals a 50% reduction on all annual fees of an Investment Management Entity and each of its Eligible Portfolio Companies in any year in which the Investment Management Entity has one or More Eligible Portfolio Companies. Under Section 902.02 of the Manual, an “Investment Management Entity” is defined as “a listed company that manages private investment vehicles not registered under the Investment Company Act.” An “Eligible Portfolio Company” of an Investment

Management Entity is defined as “a company in which the Investment Management Entity has owned at least 20% of the common stock on a continuous basis since prior to that company’s initial listing.”

The Exchange proposes to amend the definition of Investment Management Entity contained in Section 902.02 to specify that it is a company listed on the Exchange or another national securities exchange that manages private investment vehicles not registered under the Investment Company Act. As amended, the definition would not limit qualification as an Investment Management Entity to only those companies listed on the Exchange. Instead, a company meeting the remaining requirements of the definition could qualify as long as it is listed on the Exchange or another national securities exchange.

When the Exchange adopted the Investment Management Entity Group Fee Discount in 2016, it noted that the fee reduction was appropriate because it (i) benefits from its ongoing relationships with Investment Management Entities and (ii) experiences efficiencies when dealing with portfolio companies that are guided by Investment Management Entities. This is, in part, attributable to the fact that Investment Management Companies typically have prior experience with the Exchange and thus the Exchange incurs lower costs in pitching for the listings of their portfolio companies. In addition, because Investment Management Companies generally install experienced management teams at portfolio companies and offer ongoing support after listing, the Exchange’s business and Regulation staff generally have to devote fewer resources to servicing these listings.⁴

The Exchange now believes that many of the efficiencies that warranted the fee discount in the first place, are applicable regardless of whether the Investment Management Entity is listed on the Exchange or another national securities exchange. For example, the Exchange and Nasdaq have similar rules for listed companies, including in the area of corporate governance. Therefore, an Investment Management Entity with experience guiding companies to list on Nasdaq is likely to provide similar levels of support to a portfolio company listing on the Exchange. Therefore, the Exchange believes it is appropriate to amend Section 902.02 of the Manual to

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 15 U.S.C 78s(b)(2)(B)(ii)(II).

¹² *Id.*

¹³ 17 CFR 200.30-3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Section 902.02 of the Manual.

⁴ See Securities Exchange Act Release No. 79582 (December 16, 2016), 81 FR 93976 (December 22, 2016) (concerning SR-NYSE-2016-70).

specify that in order to benefit from the annual fee discount, a qualifying Investment Management Entity can be listed on the Exchange or another national securities exchange.

The Exchange notes that Nasdaq offers a comparable 50% discount on annual fees to investment management entities and eligible portfolio companies and, for purposes of qualifying for this discount, Nasdaq rules expressly permit the investment management company to be listed on Nasdaq or another national securities exchange.⁵ The Exchange's proposed amendment, therefore, simply conforms its fee discount to the comparable discount offered by Nasdaq.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(4)⁷ of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁸ in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that it is not unfairly discriminatory and represents an equitable allocation of reasonable fees to amend Section 902.02 of the Manual to clarify that for purposes of qualifying for the Investment Management Entity Group Fee Discount, an Investment Management Entity is a company that is listed on the Exchange or another national securities exchange.

The Proposed Change Is Reasonable

The Exchange believes that the proposed change to its Investment Management Entity fee discount is reasonable. In that regard, the Exchange notes that the efficiencies that warranted the fee discount in the first place, are largely applicable regardless of whether the Investment Management Entity is listed on the Exchange or

another national securities exchange. For example, the Exchange and Nasdaq have similar rules for listed companies, including in the area of corporate governance. Therefore, an Investment Management Entity with experience guiding companies to list on Nasdaq is likely to provide similar levels of support to a portfolio company listing on the Exchange. Therefore, the Exchange anticipates that it will experience cost efficiencies from servicing the listing of an Eligible Portfolio Company even when the related Investment Management Entity is listed on another national securities exchange.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes its proposal equitably allocates its fees among its market participants.

The Exchange believes that the proposed amendment to the Investment Management Entity fee discount is equitable because it does not change the existing framework for such discount, but instead represents a reasonable extension of the discount. As amended, the proposed rule would state that, for eligibility purposes, an Investment Management Entity can be listed on the Exchange or another national securities exchange. The Exchange believes that the proposed rule change represents an equitable allocation of fees because the Exchange experiences similar cost efficiencies in servicing Eligible Portfolio Companies regardless of whether the related Investment Management Entity is listed on the Exchange or another national securities exchange.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. The proposed fee changes are not unfairly discriminatory among issuers because, as discussed above, the Exchange experiences cost efficiencies in servicing Eligible Portfolio Companies that it does not experience with other operating companies listed on the Exchange. Therefore, the Exchange believes it is not unfairly discriminatory to provide a fee discount to such companies.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or

appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.⁹

The proposed rule change simply aligns the provisions of the existing fee discount that the Exchange provides to Investment Management Companies and their Eligible Portfolio Companies with the comparable fee discount offered by Nasdaq. As such, the Exchange believes that the proposed rule change will enhance competition for listings by enabling the Exchange and Nasdaq to vie for listings on equivalent terms.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)¹⁰ of the Act and paragraph (f) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2024-57 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSE-2024-57. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use

⁵ See Nasdaq Rule 5910(b)(2)(E).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78f(b)(8).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSE-2024-57, and should be submitted on or before October 15, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-21764 Filed 9-23-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101095; File No. SR-OCC-2024-001]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Withdrawal of a Proposed Rule Change by The Options Clearing Corporation Concerning Its Process for Adjusting Certain Parameters in Its Proprietary System for Calculating Margin Requirements During Periods When the Products It Clears and the Markets It Serves Experience High Volatility

September 18, 2024.

On January 10, 2024, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission"), pursuant

to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to codify OCC's process for adjusting certain parameters in its proprietary system for calculating margin requirements during periods when the products OCC clears and the markets it serves experience high volatility ("Proposal").³ The Proposal was published for comment in the **Federal Register** on January 25, 2024.⁴ The Commission has received comments regarding the proposed rule change.⁵

On February 23, 2024, pursuant to the Section 19(b)(2) of the Exchange Act,⁶ the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve the Proposal.⁷ On April 22, 2024, the Commission instituted proceedings, pursuant to Section 19(b)(2)(B) of the Exchange Act,⁸ to determine whether to approve or disapprove the Proposal.⁹ On July 18, 2024, the Commission designated a longer period within which to determine whether to approve or disapprove the Proposal.¹⁰

On September 17, 2024, OCC withdrew the Proposal (SR-OCC-2024-001).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-21745 Filed 9-23-24; 8:45 am]

BILLING CODE 8011-01-P

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Notice of Filing *infra* note 4, at 89 FR 5062.

⁴ See Securities Exchange Act Release No. 99393 (Jan. 19, 2024), 89 FR 5062 (Jan. 25, 2024) (File No. SR-OCC-2024-001).

⁵ Comments on the proposed rule change are available at <https://www.sec.gov/comments/sr-occ-2024-001/srocc2024001.htm>.

⁶ 15 U.S.C. 78s(b)(2).

⁷ See Securities Exchange Act Release No. 99594 (Feb. 23, 2024), 89 FR 14909 (Feb. 29, 2024) (File No. SR-OCC-2024-001).

⁸ 15 U.S.C. 78s(b)(2)(B).

⁹ See Securities Exchange Act Release No. 100009 (Apr. 22, 2024), 89 FR 32469 (Apr. 26, 2024) (File No. SR-OCC-2024-001).

¹⁰ See Securities Exchange Act Release No. 100552 (July 18, 2024), 89 FR 59940 (July 24, 2024) (File No. SR-OCC-2024-001).

¹¹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101092; File No. SR-CBOE-2024-039]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule

September 18, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 3, 2024, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹¹ 17 CFR 200.30-3(a)(12).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule, effective September 3, 2024.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 17 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 15% of the market share.³ Thus, in such a low-concentrated and highly competitive market, no single options exchange possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. In response to competitive pricing, the Exchange, like other options exchanges, offers rebates and assesses fees for certain order types executed on or routed through the Exchange.

The Exchange currently offers a variety of auction mechanisms, which provide price improvement opportunities for eligible orders, whereby the eligible orders are electronically exposed for an Exchange-determined period in accordance with the applicable Exchange Rule, during which time Users may submit responses (collectively referred to herein as "auction responses" or "auction response messages") to an auction message.

For example, the Exchange offers Automated Improvement Mechanism ("AIM"), which includes functionality in which a Trading Permit Holder ("TPH") (an "Initiating TPH") may electronically submit for execution an order it represents as agent on behalf of

a customer, broker dealer, or any other person or entity ("Agency Order") against any other order it represents as agent, as well as against principal interest in AIM only, (an "Initiating Order") provided it submits the Agency Order for electronic execution into the AIM Auctions.⁴ Upon commencement of an auction, market participants may submit responses ("Responder") to trade against the Agency Order. At the conclusion of an auction, depending on the contra-side interest available, the Initiating Order may be allocated a certain percentage of the Agency Order. Other examples of auction mechanisms offered by the Exchange include Solicitation Auction Mechanism ("SAM"), FLEX AIM⁵ and FLEX SAM⁶ auctions.

Additionally, the Exchange offers an electronic FLEX Auction Process, described in Rule 5.72(c). A TPH may electronically submit a FLEX Order (simple or complex) into an electronic FLEX Auction for execution. Upon receipt of a FLEX Order that meets the conditions in Rule 5.72(c)(1), the FLEX Auction commences, and the System initiates a FLEX Auction by sending a FLEX Auction notification message to FLEX Traders detailing the FLEX Order and any FLEX Trader may submit responses to the FLEX Auction. The FLEX Auction concludes at the end of the determined exposure interval, and the System executes the FLEX Order against the FLEX responses at the best price(s), to the price at which the balance of the FLEX Order or the FLEX responses can be fully executed.⁷

The Fees Schedule contains specific transaction fees for orders executed using AIM. For example, the Exchange assesses a fee of \$0.07 per contract for certain AIM Contra orders in index products, yielding fee code YB. The Exchange also assesses a fee of \$0.07 per contract for certain AIM Contra orders in equity, Exchange Traded Funds ("ETF") and ETN options, yielding fee code YC. Additionally, the Exchange assesses no charge for Customer AIM Agency/Primary and Contra orders in equity, ETF and ETN options, yielding fee code CK. The Exchange notes that under the Fees Schedule, fees for AIM Agency/Primary and Contra orders apply uniformly to qualifying orders in SAM, FLEX AIM and FLEX SAM.⁸ Currently, orders in an electronic FLEX

Auction are assessed under the standard transaction fees for electronic orders.

Clarifying Changes

The Exchange notes that currently, within the Rates Table for All Products Excluding Underlying Symbol List A⁹ (the "Rates Table"), fees for "Equity, ETF, and ETN Options" for Clearing TPH ("F" Capacity Code); non-TPH Affiliate ("L" Capacity Code); Market-Maker ("M" capacity code); Broker-Dealer ("B" Capacity Code); Non-TPH Market-Maker ("N" Capacity Code); Joint Back-Office ("J" Capacity Code); and Professional ("U" Capacity Code) capacities are grouped with index products for purposes of transaction fees. As part of the proposed changes, for the aforementioned capacities, the Exchange proposes to separate out fees for equity, ETF, and ETN options as a separate line item within the table. Except as otherwise noted within this filing, the fees for equity, ETF and ETN options remain unchanged.

Next, the Exchange proposes to amend the Rates Table to include fee code YC. Currently, fee code YC is appended to AIM Contra orders in equity and ETF options for the following capacities: Clearing TPH ("F" Capacity Code); non-TPH Affiliate ("L" Capacity Code); Broker-Dealer ("B" Capacity Code); Non-TPH Market-Maker ("N" Capacity Code); Joint Back-Office ("J" Capacity Code); and Professional ("U" Capacity Code). The Exchange inadvertently omitted the fee code (and corresponding fee) from the Rates Table and now proposes to add references to the fee code and its rate, within the Rates Table, as applicable. The Exchange also proposes to amend the Rates Table to clarify that fee code MA is appended to Market-Maker ("M" Capacity Code) AIM Contra orders in equity, ETF, and ETN options.

Fee Code Related Changes

The Exchange proposes to amend fee code YC to also apply to orders in equity, ETF, and ETN options responding to an electronic FLEX Auction ("FLEX Auction Responder") (in addition to AIM Contra orders), for the following capacities: Clearing TPH ("F" Capacity Code); non-TPH Affiliate ("L" Capacity Code); Broker-Dealer ("B" Capacity Code); Non-TPH Market-Maker ("N" Capacity Code); Joint Back-Office ("J" Capacity Code); and Professional ("U" Capacity Code).¹⁰ The charge

⁴ See Rule 5.37 (AIM); Rule 5.39 (SAM); Rule 5.38 (Complex AIM); Rule 5.40 (Complex SAM); Rule 5.73 (FLEX AIM); and Rule 5.74 (FLEX SAM).

⁵ See Rule 5.73.

⁶ See Rule 5.74.

⁷ See Rule 5.72(c)(3).

⁸ See Fees Schedule Footnotes 18 and 19.

⁹ See Fees Schedule Footnote 34.

¹⁰ The proposed changes are added to the column in the Rates Table which sets forth standard transaction fees for electronic orders in Penny and Non-Penny classes; as part of the proposed changes, for F/L and B/N/U/J capacities, the Exchange

³ See Cboe Global Markets U.S. Options Monthly Market Volume Summary (August 29, 2024), available at https://markets.cboe.com/us/options/market_statistics/.

assessed per contract for fee code YC remains the same under the proposed rule change. Further, the Exchange proposes to append fee code CK to Customer (Capacity Code “C”) orders in equity, ETF and ETN options initiating (“FLEX Auction Initiator”) and responding (“FLEX Auction Responder”) to an electronic FLEX Auction.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹¹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹² requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹³ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁴ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities.

The Exchange believes its proposal to amend the Rates Table to separate “Equity, ETF, and ETN Options” fees for Clearing TPH; non-TPH Affiliate; Broker-Dealer; Non-TPH Market-Maker; Joint Back-Office; Professional; and Market-Maker capacities from fees for index products for the aforementioned capacities and to update the Rates Table to correct inadvertent omission to fee codes MA and YC, as applicable, is reasonable, equitable and consistent with the Act. The changes are designed

to provide additional clarity to TPHs with respect to the Exchange’s pricing, in particular in regard to AIM pricing. Further, the Exchange’s proposal to add reference to fee codes MA and YC, as applicable, is intended to correct inadvertent errors where the fee codes should have been placed within the Rates Table. Additionally, the proposed changes promote just and equitable principles of trade and are designed to remove impediments to and perfect the mechanism of a free and open market and a national market system as they provide transparency to TPHs regarding the applicability of fee codes within the Rates Table and eliminate potential for confusion.

Additionally, the Exchange believes the proposed rule change to amend fee code YC to apply to applicable AIM Contra and FLEX Auction Responder orders in equity, ETF and ETN options and to append fee code CK to Customer FLEX Auction Initiator or Responder orders in equity, ETF and ETN options is reasonable, equitable, and not unfairly discriminatory. As stated above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed fee changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange’s FLEX Auctions, which the Exchange believes would enhance market quality to the benefit of all TPHs.

The Exchange notes that the proposed fees in connection with certain FLEX Auction orders do not represent a significant departure from the fees currently offered under the Fees Schedule for market participants for similar offerings. As noted above, the Exchange offers several electronic auction mechanisms, including AIM, SAM, FLEX AIM, FLEX SAM, and the FLEX Auction Process. Under the Fees Schedule, fees for AIM Agency/Primary and Contra orders apply uniformly to qualifying orders in AIM, SAM, FLEX AIM and FLEX SAM.¹⁵ The Exchange believes it is reasonable to generally align the fees for FLEX Auction initiating and response orders in equity, ETF and ETN options, with other auctions designed to promote price improvement.

The Exchange believes that the proposed fees are reasonably designed to incentivize relevant capacities (*i.e.*, Customer, Clearing TPH, non-TPH Affiliate, Broker-Dealer, Non-TPH

Market-Maker, Joint Back-Office, and Professional) to continue to respond, and potentially increase their responses, to electronic FLEX Auctions. Further, the Exchange believes the proposed fees are reasonably designed to incentivize Customers to initiate electronic FLEX Auctions. An overall increase in FLEX Auctions provides additional opportunities for price discovery and execution, to the benefit of all market participants.

The Exchange further notes that excluding orders in Underlying Symbol List A from the proposed FLEX Auction fees is also consistent with the same exclusions under the structure of the Exchange’s fees for AIM Agency/Primary and AIM Contra orders. These specific sets of proprietary products are also commonly excluded from a variety of fee programs, qualification calculations and transaction fees, including the Volume Incentive Program, the Marketing Fee, and the Clearing TPH Fee Cap.

The Exchange also believes that the proposed changes are equitable and not unfairly discriminatory. The charges assessed per contract for fee codes YC and CK remain the same under the proposed rule change. Further, the proposed fees for electronic FLEX Auction Initiator and Responder orders will apply equally to all applicable orders, *i.e.*, all such TPHs will be assessed the same amount.

The Exchange also believes that continuing to assess standard transaction fees for Market-Maker orders in a FLEX Auction is equitable and not unfairly discriminatory because Market-Makers have incentive opportunities not otherwise applicable to market participants, such as the Liquidity Provider Sliding Scale program. Further, the Exchange believes the continuing to assess standard transaction fees for Clearing TPH, non-TPH Affiliate, Broker-Dealer, Non-TPH Market-Maker, Joint Back-Office, and Professional FLEX Auction Initiator orders is equitable and not unfairly discriminatory, because the options industry has a long history of providing preferential pricing to Customers, and the Exchange’s current fees schedule currently does so in many places, as do the fees structures of multiple other exchanges.¹⁶

restated fee codes FB/FC and BB/BC within the column, as appropriate; there are no changes to these fee codes as part of the proposal.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ *Id.*

¹⁴ 15 U.S.C. 78f(b)(4).

¹⁵ See Fees Schedule Footnotes 18 and 19.

¹⁶ See, *e.g.*, NYSE American Options Fee Schedule, Section I(G), “CUBE Auction Fees and Credits”, which assesses a lower transaction fee for customer orders than that of other market participants for executions in CUBE Auctions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

As noted above, the proposal to amend the Rates Table to separate "Equity, ETF, and ETN Options" fees for Clearing TPH; non-TPH Affiliate; Broker-Dealer; Non-TPH Market-Maker; Joint Back-Office; Professional; and Market-Maker capacities from fees for index products for the aforementioned capacities and to update the Rates Table to correct inadvertent omission to fee codes MA and YC, as applicable, is designed to provide additional clarity to TPHs with respect to the Exchange's pricing, provide transparency to TPHs regarding the applicability of fee codes within the Rates Table and eliminate potential for confusion.

Additionally, the Exchange does not believe the proposed rule change to amend fee code YC to apply to applicable AIM Contra and FLEX Auction Responder orders in equity, ETF and ETN options and to append fee code CK to Customer FLEX Auction Initiator or Responder orders in equity, ETF and ETN options will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. All TPH's applicable AIM Contra and FLEX Auction Responder orders in equity, ETF and ETN options will automatically yield fee code YC and uniformly be assessed the corresponding fee. Further, all TPH's applicable Customer FLEX Auction Initiator or Responder orders in equity, ETF and ETN options will yield fee code CK and uniformly be assessed the corresponding fee.

The Exchange does not believe the clarifying changes set forth within the proposal will impose any burden on inter-market competition as the changes are intended to protect investors by providing further transparency regarding the Exchange's Fees Schedule. Additionally, the Exchange does not believe the proposed fee code changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 17 other options exchanges and off-exchange venues. Additionally, the Exchange represents a small percentage of the overall market.

Based on publicly available information, no single options exchange has more than 16% of the market share.¹⁷ Therefore, no exchange possesses significant pricing power in the execution of option order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."¹⁸ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . ."¹⁹ Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

¹⁷ See Cboe Global Markets U.S. Options Monthly Market Volume Summary (August 29, 2024), available at https://markets.cboe.com/us/options/market_statistics/.

¹⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹⁹ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁰ and paragraph (f) of Rule 19b–4²¹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR–CBOE–2024–039 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CBOE–2024–039. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b–4(f).

Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CBOE-2024-039 and should be submitted on or before October 15, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-21763 Filed 9-23-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101085; File No. SR-FICC-2024-006]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Amend the Clearing Agency Risk Management Framework

September 18, 2024.

On March 11, 2024, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-FICC-2024-006 (“Proposed Rule Change”) pursuant to Section 19(b) of the Securities Exchange Act of 1934 (“Exchange Act”) ¹ and Rule 19b-4 ² thereunder to amend the Clearing Agency Risk Management Framework of FICC and its affiliates, The Depository Trust Company (“DTC”) and National Securities Clearing Corporation (“NSCC,” and together with FICC and DTC, the “Clearing Agencies”) to describe how the Clearing Agencies may solicit views of participants and other industry stakeholders and to provide for the annual assessment and subsequent review of FICC’s Government Securities Division access models by FICC’s Board of Directors.³ The Proposed Rule Change was published for public

comment in the **Federal Register** on March 26, 2024.⁴ The Commission has received comments regarding the substance of the changes proposed in the Proposed Rule Change.⁵

On May 8, 2024, pursuant to Section 19(b)(2) of the Act,⁶ the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.⁷ On June 21, 2024, pursuant to Section 19(b)(2)(B) of the Exchange Act,⁸ the Commission instituted proceedings to determine whether to approve or disapprove the Proposed Rule Change.⁹

Section 19(b)(2) of the Exchange Act ¹⁰ provides that proceedings to determine whether to approve or deny a proposed rule change must be concluded within 180 days of the date of a publication of the notice of filing of the proposed rule change. The Commission may extend the time for conclusion of such proceedings for up to 60 days if the Commission finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents.¹¹ The 180th day after publication of the Notice for the Proposed Rule Change is September 22, 2024.

The Commission is extending the period for Commission action on the Proposed Rule Change. The Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change so that the Commission has sufficient time to consider the issues raised by the Proposed Rule Change and to take action on the Proposed Rule Change. Accordingly, pursuant to Section 19(b)(2)(B)(ii)(II) of the Act,¹² the Commission designates November 21, 2024, as the date by which the Commission should either approve or disapprove the Proposed Rule Change SR-FICC-2024-006.

⁴ Securities Exchange Act Release No. 99805 (March 20, 2024), 89 FR 21068 (March 26, 2024) (File No. SR-FICC-2024-006) (“Notice of Filing”).

⁵ Comments on the Proposed Rule Change are available at <https://www.sec.gov/comments/sr-ficc-2024-006/srficc2024006.htm>.

⁶ 15 U.S.C. 78s(b)(2).

⁷ Securities Exchange Act Release No. 100075 (May 8, 2024), 89 FR 42006 (May 14, 2024).

⁸ 15 U.S.C. 78s(b)(2)(B).

⁹ Securities Exchange Act Release No. 100400 (June 21, 2024), 89 FR 53674 (June 27, 2024).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 15 U.S.C. 78s(b)(2)(B)(ii)(II).

¹² *Id.*

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-21757 Filed 9-23-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101081; File No. SR-FICC-2024-005]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Partial Amendment No. 1, To Modify the GSD Rules To Facilitate Access to Clearance and Settlement of All Eligible Secondary Market Transactions in U.S. Treasury Securities

September 18, 2024.

On March 11, 2024, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-FICC-2024-005 pursuant to Section 19(b) of the Securities Exchange Act of 1934 (“Exchange Act”) ¹ and Rule 19b-4 ² thereunder to modify FICC’s Government Securities Division (“GSD”) Rulebook (“GSD Rules”) to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities.³ On March 19, 2024, FICC filed Partial Amendment No. 1 to make clarifications and corrections ⁴ to the proposed rule change. The proposed rule change, as modified by Partial Amendment No. 1, is referred to herein as the “Proposed Rule Change.” The Proposed Rule Change was published for public comment in the **Federal Register** on

¹³ 17 CFR 200.30-3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Notice of Filing *infra* note 5, at 89 FR 21363.

⁴ Partial Amendment No. 1 made clarifications and corrections to the description of the proposed rule change and Exhibit 5. Specifically, as originally filed, the description of the proposed rule change made a reference to an incorrect section of the GSD Rules. Partial Amendment No. 1 corrects that reference. Additionally, as originally filed, the description of the proposed rule change and Exhibit 5 contained inconsistent references regarding whether FICC or its Board would be responsible for approving membership applications and related membership matters. Partial Amendment No. 1 clarifies and corrects those references.

²² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Notice of Filing *infra* note 4, at 89 FR 21068.

March 27, 2024.⁵ The Commission has received comments regarding the substance of the changes proposed in the Proposed Rule Change.⁶

On May 1, 2024, pursuant to Section 19(b)(2) of the Exchange Act,⁷ the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.⁸ On June 27, 2024, pursuant to Section 19(b)(2)(B) of the Exchange Act,⁹ the Commission instituted proceedings to determine whether to approve or disapprove the Proposed Rule Change.¹⁰

Section 19(b)(2) of the Exchange Act¹¹ provides that proceedings to determine whether to approve or disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of filing of the proposed rule change. The time for conclusion of the proceedings may be extended for up to 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination.¹² The 180th day after publication of the Notice in the **Federal Register** is September 23, 2024.

The Commission is extending the period for Commission action on the Proposed Rule Change. The Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change so that the Commission has sufficient time to consider the issues raised by the Proposed Rule Change and to take action on the Proposed Rule Change. Accordingly, pursuant to Section 19(b)(2)(B)(ii)(II) of the Exchange Act,¹³ the Commission designates November 22, 2024, as the date by which the Commission should either approve or disapprove the Proposed Rule Change SR-FICC-2024-005.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-21753 Filed 9-23-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101082; File No. SR-FICC-2024-007]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Modify the GSD Rules Regarding the Separate Calculation, Collection and Holding of Margin for Proprietary Transactions and That for Indirect Participant Transactions, and To Address the Conditions of Note H to Rule 15c3-3a

September 18, 2024.

On March 14, 2024, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-FICC-2024-007 pursuant to Section 19(b) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4² thereunder to modify FICC’s Government Securities Division (“GSD”) Rulebook (“GSD Rules”) to calculate, collect, and hold margin for proprietary transactions of a Netting Member separately from margin that the Netting Member submits to FICC on behalf of indirect participants and to address conditions of Note H to Rule 15c3-3a under the Act.³ The Proposed Rule Change was published for public comment in the **Federal Register** on March 28, 2024.⁴ The Commission has received comments regarding the

substance of the changes proposed in the Proposed Rule Change.⁵

On April 24, 2024, pursuant to Section 19(b)(2) of the Act,⁶ the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.⁷ On June 21, 2024, pursuant to Section 19(b)(2)(B) of the Exchange Act,⁸ the Commission instituted proceedings to determine whether to approve or disapprove the Proposed Rule Change.⁹

Section 19(b)(2) of the Act¹⁰ provides that proceedings to determine whether to approve or disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of filing of the proposed rule change. The time for conclusion of the proceedings may be extended for up to 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination.¹¹ The 180th day after publication of the Notice in the **Federal Register** is September 24, 2024.

The Commission is extending the period for Commission action on the Proposed Rule Change. The Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change so that the Commission has sufficient time to consider the issues raised by the Proposed Rule Change and to take action on the Proposed Rule Change. Accordingly, pursuant to Section 19(b)(2)(B)(ii)(II) of the Act,¹² the Commission designates November 23, 2024, as the date by which the Commission should either approve or disapprove the Proposed Rule Change SR-FICC-2024-007.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-21754 Filed 9-23-24; 8:45 am]

BILLING CODE 8011-01-P

⁵ Comments on the Proposed Rule Change are available at <https://www.sec.gov/comments/sr-ficc-2024-007/srficc2024007.htm>.

⁶ 15 U.S.C. 78s(b)(2).

⁷ Securities Exchange Act Release No. 100022 (Apr. 24, 2024), 89 FR 34289 (Apr. 30, 2024) (File No. SR-FICC-2024-007).

⁸ 15 U.S.C. 78s(b)(2)(B).

⁹ Securities Exchange Act Release No. 100401 (Jun. 21, 2024), 89 FR 53690 (Jun. 27, 2024) (File No. SR-FICC-2024-007).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 15 U.S.C. 78s(b)(2)(B)(ii)(III).

¹² *Id.*

¹³ 17 CFR 200.30-3(a)(57).

⁵ Securities Exchange Act Release No. 99817 (March 21, 2024), 89 FR 21362 (March 27, 2024) (File No. SR-FICC-2024-005) (“Notice of Filing”).

⁶ Comments on the Proposed Rule Change are available at <https://www.sec.gov/comments/sr-ficc-2024-005/srficc2024005.htm>.

⁷ 15 U.S.C. 78s(b)(2).

⁸ Securities Exchange Act Release No. 100031 (Apr. 25, 2024), 89 FR 35269 (May 1, 2024) (File No. SR-FICC-2024-005).

⁹ 15 U.S.C. 78s(b)(2)(B).

¹⁰ Securities Exchange Act Release No. 100399 (Jun. 21, 2024), 89 FR 53681 (Jun. 27, 2024) (File No. SR-FICC-2024-005).

¹¹ 15 U.S.C. 78s(b)(2).

¹² 15 U.S.C. 78s(b)(2)(B)(ii)(III).

¹³ *Id.*

¹⁴ 17 CFR 200.30-3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 99149 (Dec. 13, 2023), 89 FR 2714 (Jan. 16, 2024) (S7-23-22) (“Adopting Release,” and the rules adopted therein as “Treasury Clearing Rules”). See also 17 CFR 240.15c3-3a.

⁴ Securities Exchange Act Release No. 99844 (March 22, 2024), 89 FR 21586 (Mar. 28, 2024) (File No. SR-FICC-2024-007) (“Notice of Filing”). FICC also filed a related Advance Notice with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010 and Rule 19b-4(n)(1)(i) under the Exchange Act. 12 U.S.C. 5465(e)(1). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b-4, respectively. The Advance Notice was published in the **Federal Register** on March 28, 2024. Securities Exchange Act Release No. 99845 (Mar. 22, 2024), 89 FR 21603 (Mar. 28, 2024) (File No. SR-FICC-2024-802).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101091; File No. 4–820]

Options Price Reporting Authority; Notice of Designation of a Longer Period for Commission Action on a Proposed Amendment To Modify the OPRA Plan Relating to Dissemination of Exchange Proprietary Market Data Information

September 18, 2024.

On November 8, 2023, the Cboe Exchange, Inc., Cboe C2 Exchange, Inc., Cboe BZX Exchange, Inc., and Cboe EDGX Exchange, Inc. filed with the Securities and Exchange Commission (“Commission”) a proposal (“Proposed Amendment”) to amend the plan of the Options Price Reporting Authority (“OPRA”) for reporting of consolidated options last sale reports and quotation information (“OPRA Plan”).¹ The proposed amendment was published for comment in the **Federal Register** on January 22, 2024.²

On April 19, 2024, the Commission instituted proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS³ to determine whether to approve or disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate.⁴ On July 11, 2024, pursuant to Rule 608(b)(2)(i) of Regulation NMS,⁵ the Commission extended the period within which to conclude proceedings regarding the Proposed Amendment to 240 days from the date of publication of the Notice.⁶ The 240th day after publication of the Notice is September 18, 2024.

Rule 608(b)(2)(ii) of Regulation NMS⁷ provides that the time for conclusion of proceedings to determine whether a national market system plan or proposed amendment should be disapproved may be extended for an additional period up to 60 days (up to 300 days from the date of notice

publication) if the Commission determines that a longer period is appropriate and publishes the reasons for such determination or the plan participants consent to the longer period. The Commission is extending this 240 day period.

The Commission finds that it is appropriate to designate a longer period within which to conclude proceedings regarding the Proposed Amendment so that it has sufficient time to consider the important policy issues raised by the Proposed Amendment and the comments received. Accordingly, pursuant to Rule 608(b)(2)(ii) of Regulation NMS,⁸ the Commission designates November 15, 2024, as the date by which the Commission shall conclude the proceedings to determine whether to approve or disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate (File No. 4–820).

By the Commission.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024–21767 Filed 9–23–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101076; File No. SR–ISE–2024–45]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand Its Co-Location Services

September 18, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on September 5, 2024, Nasdaq ISE, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to expand its co-location services.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/ise/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to expand its co-location services by offering new cabinet, power, and power distribution unit options in the Exchange’s expanded data center.³

The Exchange’s current data center (“NY11”) in Carteret, NJ is undergoing an expansion (“NY11–4”) in response to demand for power and cabinets. NY11–4 is not a new or distinct co-location facility. Instead, NY11–4 is simply an expansion of the existing Nasdaq NY11 data center,⁴ and Nasdaq intends to operate it generally in the same manner as existing aspects of NY11.⁵ Client connections to the matching engine will be equal across the board, within and among NY11 and NY11–4. In 2010, the Exchange undertook a similar expansion to its data center, where connectivity to

¹ See https://cdn.opraplan.com/documents/OPRA_Plan.pdf.

² See Securities Exchange Act Release No. 99345 (Jan. 16, 2024), 89 FR 3963 (Jan. 22, 2024) (“Notice”). Comments received in response to the Notice are available on the Commission’s website at <https://www.sec.gov/comments/4-820/4-820.htm>.

³ 17 CFR 242.608(b)(2)(i).

⁴ See Securities Exchange Act Release No. 99994 (Apr. 19, 2024), 89 FR 31785 (Apr. 25, 2024) (“Order Instituting Proceedings”). Comments received in response to the Order Instituting Proceedings are available on the Commission’s website at <https://www.sec.gov/comments/4-820/4-820.htm>.

⁵ See 17 CFR 242.608(b)(2)(i).

⁶ See Securities Exchange Act Release No. 100495 (July 11, 2024), 89 FR 58212 (July 17, 2024).

⁷ See 17 CFR 242.608(b)(2)(ii).

⁸ *Id.*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ The Exchange previously submitted a similar proposal earlier this year, see Securities Exchange Act Release No. 34–100563 (July 19, 2024), 89 FR 60479 (July 25, 2024) (SR–ISE–2024–28) (the “Prior Proposal”), but withdrew it on August 29, 2024 to allow for the Exchange to address outstanding comments and concerns raised by the Commission Staff and commenters.

⁴ NY11–4 is not a standalone facility. Equinix considers the site as NY11 with three expansions: NY11 Phase 1, NY11 Phase 2 and NY11–4.

⁵ As discussed below in further detail, one aspect of the data center that will be different (temporarily) in NY11–4 as compared to NY11 is telecommunications access and inter-client connectivity. In NY11–4 at its launch, connections between colocated client cabinets and the carrier cage will be equalized as will be inter-client connectivity. Presently, such connectivity is not equalized in NY11, but the Exchange intends to retrofit NY11 to be equalized in the months ahead.

the Exchange remained equalized, as is the case with the NY11–4 expansion.

The Exchange submits this filing to propose offering new services in NY11–4, as described below, and to the extent the Exchange offers additional new services, whether in the existing NY11 data halls or in the new NY11–4 data hall, the Exchange will submit additional filings with the Commission.

New and Upgraded Services in NY11–4

NY11–4 Expanded Cabinet Optionality: Ultra High Density Cabinet

Currently, co-location customers have the option of obtaining cabinets of various sizes and power densities. Co-location customers may obtain a Half Cabinet,⁶ a Low Density Cabinet with power density less than or equal to 2.88 kilowatts (“kW”), a Medium Density Cabinet with power density greater than 2.88 kW and less than or equal to 5 kW, a Medium-High Density Cabinet with power density greater than 5 kW and less than or equal to 7 kW, a High Density Cabinet with power density greater than 7 kW and less than 10 kW, and a Super High Density Cabinet with power density greater than 10 kW and less than or equal to 17.3 kW.

The Exchange proposes to introduce a new cabinet choice in NY11–4, an “Ultra High Density Cabinet,” with power density greater than 10 kW and less than or equal to 15 kW. Based on demand, the Exchange wishes to introduce the Ultra High Density Cabinet as an option for customers between the High Density Cabinet and the Super High Density Cabinet. The Ultra High Density Cabinet option would only be offered in NY11–4 because of the power configuration necessary for such cabinets, which is not possible or available in other portions of the data center due to different power distribution. Because of the addition of the Ultra High Density Cabinet option in NY11–4, the Super High Density Cabinet in NY11–4 would have power density greater than 15 kW and less than or equal to 17.3 kW.

In addition to the Ultra High Density Cabinet, the Exchange would offer the other, existing cabinet options in NY11–4, with the exception of the Low Density Cabinet and Half Cabinet due to a lack of demand for such cabinets. The cabinets in NY11–4 will include certain features, including but not limited to: uniform, wider cabinets⁷ (32” W x 48”

D x 91” H), cable management, and a rear split door and combo lock.

NY–11 4 Cabinet Power and Power Distribution Units

The Exchange currently provides various cabinet power options, including: 2x20 amp 110 volt, 2x30 amp 110 volt, 2x20 amp 208 volt, 2x30 amp 208 volt, Phase 3 2x 20 amp 208 volt, Phase 3 2x 30 amp 208 volt, 2x60 amp 208 volt, Phase 3 2x 40 amp 208 volt, Phase 3 2x 50 amp 208 volt, Phase 3 2x 60 amp 208 volt, and 2x30 amp 48 volt DC. For NY11–4, the data center operator is bringing in higher voltage power options, which are more consistent with power options used in other data centers across the globe. The Exchange proposes to amend General 8, Section 1(c) to add the cabinet power options for NY11–4, which include: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, Phase 1 40 amp 240 volt, Phase 3 20 amp 415 volt, and Phase 3 32 amp 415 volt. The Exchange also proposes to specify in its Rules that these cabinet power options are specific to NY11–4 and that one of these options must be selected for cabinets in NY11–4. Although different cabinet power options will be offered in NY11 and NY11–4 due to differing power configurations, the new cabinet power options are not inherently preferable to the existing cabinet power options and the Exchange does not anticipate material differences in equipment performance based on the power distribution. Due to higher voltage options being offered in NY11–4, the data center operator is likely to experience increased power distribution efficiencies across the data center. As between the various cabinet power options, customers choose power based on their preference and capacity needs.

The Exchange also proposes to offer power distribution units (“PDUs”)⁸ in NY11–4 as a convenience to customers. Rather than sourcing PDUs on a customer-by-customer basis, as the Exchange does for customers in NY11, the Exchange wishes to simplify and standardize its PDU offering in NY11–4 by offering Phase 1 and Phase 3⁹

containment), all cabinets must be uniform and therefore, the Exchange will provide all cabinets. The existing data halls utilize cold aisle containment to manage temperatures. Hot aisle containment is a more effective way to manage heat in the data center.

⁸ PDUs are devices fitted with multiple outputs designed to distribute electric power. The standardized PDUs would only be offered for NY11–4.

⁹ Phase 1 PDUs would be compatible with the following power options: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, and Phase 1 40 amp 240 volt. Phase 3 PDUs would be compatible with the

power distribution units. This service is optional and customers may choose to provide their own PDUs appropriate for their power installation choices. The Exchange also proposes to offer a switch monitored PDU add on in NY11–4, which would allow customers to connect remotely to their PDU and control the power sockets. With the switch monitored PDU option, customers would be able to power cycle or shut off power remotely. This option is optional as well and customers may choose to provide their own switch monitored PDU, if desired.

Implementation

Although the timing is subject to change,¹⁰ the Exchange anticipates opening NY11–4 Exchange access on November 4, 2024. In concert with this filing, the Exchange will allow customers to place orders for NY11–4, which would not be fee liable until customers are provided access to the space.¹¹ The Exchange will submit a fee filing to establish fees for the services described herein. Allowing customers to place orders in advance of opening its doors will allow the Exchange to plan ahead for capacity and demand for services, as well as procure necessary equipment.

Equalization of Telecommunications Connectivity in NY11–4 and NY11

Although the Exchange has constructed NY11–4 to address capacity constraints associated with its existing data center footprint, as well as to enable the provision of upgraded power for customer equipment, an ancillary design feature of NY11–4 will be that it will include, at launch, equalized cabling between customer equipment and equipment owned and operated by third-party telecommunications providers (“telco connectivity”). This design feature is incident, but not strictly relevant to the Proposal at hand. Nevertheless, we discuss it below insofar as it garnered attention in the Prior Proposal, by one commenter, in particular.¹²

following power options: Phase 3 20 amp 415 volt and Phase 3 32 amp 415 volt. Phase 1 and Phase 3 are available in NY11 and NY11–4. Phase 3 PDUs provide greater power density than Phase 1 PDUs by delivering power over three wires as opposed to one wire.

¹⁰ The Exchange will announce modifications to the proposed timing via the Nasdaq Customer Portal, which is the web portal used for order and inventory management of colocation services, and email communication to all colocation customers.

¹¹ Charging customers once access is provided is consistent with current practice and allows customers to set up equipment and begin using power.

¹² See Ltr. From J. Considine, McKay Brothers LLC, to V. Countryman, SEC, dated July 24, 2024,

⁶ Half cabinets are not available to new subscribers. See General 8, Section 1(a).

⁷ In the existing data halls, clients may bring their own cabinets or use Exchange-provided cabinets. Because of the cooling system in NY11–4 (hot aisle

Presently, the Exchange does not have equalized telco connectivity in NY11, much like several of its peers, IEX, MEMX, and Cboe, all of which operate through their Secaucus data center without equalized telco connectivity.¹³ The present architecture of NY11 is a product of its history and that of technology; the Exchange designed NY11 at a time when latency differences were measured by customers in terms of miles of cable *between* customer facilities and exchange data centers, rather than in feet or inches *within* exchange data centers, as is the case today. As the technology paradigm shifted, and as variances in telco connectivity became more meaningful to some market participants, the Exchange reevaluated its design of its data center and determined that telco connectivity equalization would be in the best interests of the markets going forward. Thus, on its own initiative, the Exchange has embarked on an ambitious project to equalize telco connectivity across its entire data center campus, including both its existing NY11 facility and the NY11-4 expansion (the “Equalization Project”). The launch of NY11-4 will constitute phase 1 of the Equalization Project.

The Equalization Project will be complex, time consuming, and costly to complete, especially as to NY11, where the existing facility must be retrofitted with equalized cabling. In NY11, thousands of existing customer cables threaded throughout the facility will need to be removed and replaced with new infrastructure to support equidistant connectivity relative to all other customers’ locations in the data center. This painstaking project will cost millions of dollars in design, equipment, and labor costs. Due to its complexity, the Equalization Project cannot and will not be accomplished instantaneously.¹⁴ Instead, the

Exchange estimates that the Project will require 18–24 months to complete, commencing as of the launch of NY11–4. Moreover, it will occur in a methodical and phased manner to ensure proper design, testing, and workmanship, as well as to minimize the customer disruptions that, unfortunately, will be unavoidable during the process. The launch of NY11–4 with equalized telco connectivity will be the first phase of the Equalization Project, with the equalization of NY11 constituting the remaining phases of the Project. For the phased transition of NY11, the Exchange expects the migration to occur in tranches over the course of several weekends at the tail end of the 18–24 project period.

Concerns About the Sequencing of the Equalization Project Are Unfounded

In the Prior Proposal, the commenter objected to the Exchange’s plan to accomplish the Equalization Project by first launching equalized telco connectivity in NY11–4 before launching it in NY11.¹⁵ The commenter argued that this sequencing of the Equalization Project would be unfairly discriminatory in that it would exacerbate existing inequalities in the Exchange’s Data Center while also compelling customers to secure unneeded space in NY11–4 to ensure that they obtain or maintain the closest possible geographic proximity to their telecommunications providers’ equipment.¹⁶ These arguments are simply wrong.

The Exchange’s Plan for the Launch of NY11–4 To Constitute Phase One of the Equalization Project Is Fair and Reasonable and in the Best Interests of the Markets

The Exchange’s Plan To Proceed With NY11–4 as the First Phase of the Equalization Project Is in the Best Interests of the Markets

The fact of the matter is that the Exchange needs to launch NY11–4—and needs to do so in November 2024—to ensure that it remains capable of meeting the growing power and capacity demands of its customers. Regulation SCI requires the Exchange to reasonably anticipate its capacity needs. NY11–4, which has been three years in the making, is a product of the SCI planning process. Delaying the launch of NY11–

outside of its control. The Exchange notes, for example, that the fiber needed to re-cable NY11 is in short supply and orders are subject to substantial waiting periods.

¹⁵ See *id.*

¹⁶ See *id.* at 1–2, 5–6.

4 to accommodate the equalization of NY11 would jeopardize the sound and orderly operation of the Exchange’s markets. Such a danger readily outweighs any concerns that some may have about the fairness of the Exchange’s plan to sequence the Equalization Project, even if such concerns were well-founded, which they are not.

We note that our customers generally support this view. One customer sent the Exchange a letter stating the following about the Exchange’s plans:

As noted in your August 12, 2024, comment letter response to the SEC, the addition of NY11–4 is needed to meet the growing customer demands for space, power, and upgraded technological capabilities. OMC echoes these concerns as one of those customers, with an immediate and significant need to expand its colocation space to accommodate the growing demands of OMC’s business. OMC is a registered member of the Nasdaq Stock Market and eight other options and equities exchanges operated by Nasdaq (the “Exchanges”), with more than half of those memberships added within roughly the last year. As a registered Market Maker for hundreds of listed symbols, OMC actively provides liquidity across the Exchanges. Also, as a Designated Liquidity Provider, OMC plays a key role in supporting the active and efficient trading of many new and existing products listed on the Exchanges. To support this significant amount of trading activity on the Exchanges, OMC urgently needs the additional colocation space made available in NY11–4. Any halt or delay of the NY11–4 launch would prevent OMC’s planned expansion and would endanger OMC’s ability to grow and meet the liquidity provision demands of the Exchanges and their customers.¹⁷

The Exchange’s Sequencing Plan Is Also Pragmatic and Efficient

Expanding the existing data center by building a new wing (NY11–4) from scratch afforded the Exchange an opportunity to design the expansion efficiently with telco connectivity equalization incorporated therein from the outset. This approach avoids the need to later engage in a wasteful process of retrofitting NY11–4 for telco connectivity equalization—a process in which the Exchange must now engage with respect to NY11.

Launching NY11–4 Before Equalizing NY11 Will Not Worsen Inequality

The latency profile of a customer collocating in NY11–4 would be no better than that of the lowest latency customer and no worse than that of the highest latency customer collocating presently in NY11. In fact, the launch of a full-equalized NY11–4 before

¹⁷ Ltr. From F. Zucek, Old Mission, to B. Kitt, Nasdaq, dated Aug. 21, 2024.

available at <https://www.sec.gov/comments/sr-nasdaq-2024-026/srnasdaq2024026-496995-1434326.pdf> (the “McKay Letter”). Akuna Securities LLC also filed a comment letter that largely echoed the arguments in the McKay Letter. See Ltr. From D. DeSalle-Baron, Akuna Securities LLC to V. Countryman, SEC, dated July 24, 2024, available at <https://www.sec.gov/comments/sr-nasdaq-2024-026/srnasdaq2024026-497096-1434386.pdf>.

¹³ The structure of the Secaucus data center is a generally known fact within the industry and one of which the Exchange is itself aware due, among other things, to its own status as a tenant of the Secaucus data center.

¹⁴ The McKay Letter asserts incorrectly and without any evidentiary basis that the Exchange is capable of equalizing telco connectivity quickly and can do so before launching NY11–4 with only a minor ensuing delay to the launch. See *id.* at 4, n.15. As we explain herein, equalization of NY11 will take many months to accomplish, even at an aggressive pace, including because of factors

equalizing NY11 would actually diminish the overall average latency differential among collocated customers' telecom provider connections because NY11-4 introduces connections at a single latency value in between the slowest and fastest latencies. That is, the shortest current telco connection possible into NY11 is 160 ft while the longest current telco connection possible into NY11 is 680 feet; the equidistant telco connections into NY11-4 will be 590 feet, which falls between these two extremes.

Moreover, although the Exchange does not know the precise latency profiles of each of its collocation customers, it has provided those customers with the latency profile for NY11-4 and interhall connectivity through its distribution of a technical specification document via the Customer Portal. This technical specification document will allow customers to determine for themselves whether their current location in NY11 or alternative space in NY11-4 will optimize their latency profile. It will provide a means for customers to plan ahead and avoid undesirable outcomes associated with the launch of NY11-4. Contrary to assertions made by the commenter in connection with the Prior Proposal,¹⁸ the technical specification document alleviates uncertainty that might otherwise compel customers to waste money to secure unnecessary space in NY11-4 as a defensive means of assuring themselves the most advantageous position available in the Exchange's data center campus.

Any Advantage Attainable From the Launch of NY11-4 First Will Be Temporary

Even if a customer was to gain a latency advantage from the launch of NY11-4 before equalization of NY11, such an advantage would be temporary given the fact that equalization of NY11 will follow soon after the launch of NY11-4. The fleeting nature of any such advantage should also disincentivize collocation customers from engaging in a "land grab" for what they perceive to be the most geographically advantageous space in NY11-4. Indeed, the Exchange sees no evidence of such a land grab actually occurring with respect to customers' expressions of interest in

NY11-4, notwithstanding warnings to that effect from the same commenter. As of the date of submission of this filing, only roughly 10 percent of existing customers, representing a mix of business models and latency sensitive activities, have requested space in NY11-4. Moreover, interest in NY11-4 thus far involves a mix of customers wanting to expand upon their existing space in NY11 and others that want to move their existing space in NY11 entirely to NY11-4.

Equalizing NY11 First Will Not Avoid Creating Temporary Customer Disparities

Finally, the commenter's argument is incorrect that equalizing NY11 before launching NY11-4 would avoid creating disparities among customers with respect to their telco connections.¹⁹ Equalizing telecommunications connectivity in NY11 before launching NY11-4 would not avoid the reality that full telco connectivity equalization—however accomplished—will require the introduction of temporary disparities in the lengths of the cables running between telecommunications providers and customers in the data center complex. Even if the Exchange were to pursue equalization of NY11 first, doing so would necessarily entail certain customers in NY11 experiencing changes to their telco cable lengths before others during the phased transition period. Thus, re-sequencing the Equalization Project to start with NY11 will do nothing to affect these temporary customer disparities, but instead will needlessly place the markets at risk by delaying the availability of expanded data center capacity.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,²¹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Today, the Exchange offers various cabinet choices and power options in the data center for collocation customers. The proposal would expand the cabinet and power options available, by introducing an additional cabinet option, the Ultra High Density Cabinet, and new power

choices. The proposal would benefit the public interest by providing customers more cabinet and power options to choose from, thereby enhancing their ability to tailor their collocation operations to the requirements of their business operations. In general, the proposal is consistent with the Act because the Exchange's expansion of the data center and expansion of available power and cabinets will enable the Exchange to meet customer needs and address demand for both cabinets and power. In lieu of collocating directly with the Exchange, market participants may choose not to collocate at all or to collocate indirectly through a vendor.

The Exchange also believes that the proposal will not be unfairly discriminatory, consistent with the objectives of Section 6(b)(5) of the Act²² because the expanded cabinet and power options in the data center would be offered equally to all customers. Although certain optionality is only offered in NY11-4 because of different power configurations in NY11-4 as compared to NY11, NY11-4 is merely an expansion of the data center, and any customer may order cabinets and power in NY11-4 (and across the data center broadly) on the same terms as any other customer.

The Equalization Project Is Consistent With the Act

In addition to the above, and although not strictly relevant to the proposal at hand, the Exchange also believes that the Equalization Project, as outlined above and which will begin with the launch of NY11-4, is consistent with the Act.

Concerns About the Sequencing of the Equalization Project Are Unfounded

In the Prior Proposal, the commenter objected to the Exchange's plan to accomplish the Equalization Project by first launching equalized telco connectivity in NY11-4 before launching it in NY11.²³ The commenter argued that this sequencing of the Equalization Project would be unfairly discriminatory in that it would exacerbate existing inequalities in the Exchange's Data Center while also compelling customers to secure unneeded space in NY11-4 to ensure that they obtain or maintain the closest possible geographic proximity to their telecommunications providers' equipment.²⁴ These arguments are simply wrong.

¹⁸ See McKay Ltr., *supra*, at 3-4 (asserting that "introduction of NY11-4 before equalizing NY11 will compel many customers to establish a third point of presence—at a cost in incremental fees paid to Nasdaq alone of at least \$2.5 million on a three-year commitment—to eliminate the risk that the NY11-4 connection is a superior connection to one (or both) of their existing NY11 points of presence.").

¹⁹ See *id.* at 2.

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

²² *Id.*

²³ See McKay Ltr., *supra*.

²⁴ See *id.* at 1-2, 5-6.

The Exchange's Plan for the Launch of NY11-4 To Constitute Phase One of the Equalization Project Is Fair and Reasonable and in the Best Interests of the Markets

The Exchange's Plan To Proceed With NY11-4 as the First Phase of the Equalization Project Is in the Best Interests of the Markets

The fact of the matter is that the Exchange needs to launch NY11-4—and needs to do so in November 2024—to ensure that it remains capable of meeting the growing power and capacity demands of its customers. Regulation SCI requires the Exchange to reasonably anticipate its capacity needs. NY11-4, which has been three years in the making, is a product of the SCI planning process. Delaying the launch of NY11-4 to accommodate the equalization of NY11 would jeopardize the sound and orderly operation of the Exchange's markets. Such a danger readily outweighs any concerns that some may have about the fairness of the Exchange's plan to sequence the Equalization Project, even if such concerns were well-founded, which they are not.

We note that our customers generally support this view. One customer sent the Exchange a letter stating the following about the Exchange's plans:

As noted in your August 12, 2024, comment letter response to the SEC, the addition of NY11-4 is needed to meet the growing customer demands for space, power, and upgraded technological capabilities. OMC echoes these concerns as one of those customers, with an immediate and significant need to expand its colocation space to accommodate the growing demands of OMC's business. OMC is a registered member of the Nasdaq Stock Market and eight other options and equities exchanges operated by Nasdaq (the "Exchanges"), with more than half of those memberships added within roughly the last year. As a registered Market Maker for hundreds of listed symbols, OMC actively provides liquidity across the Exchanges. Also, as a Designated Liquidity Provider, OMC plays a key role in supporting the active and efficient trading of many new and existing products listed on the Exchanges. To support this significant amount of trading activity on the Exchanges, OMC urgently needs the additional colocation space made available in NY11-4. Any halt or delay of the NY11-4 launch would prevent OMC's planned expansion and would endanger OMC's ability to grow and meet the liquidity provision demands of the Exchanges and their customers.²⁵

²⁵ Ltr. From F. Zucek, Old Mission, to B. Kitt, Nasdaq, dated Aug. 21, 2024.

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Expanding the existing data center by building a new wing (NY11-4) from scratch afforded the Exchange an opportunity to design the expansion efficiently with telco connectivity equalization incorporated therein from the outset. This approach avoids the need to later engage in a wasteful process of retrofitting NY11-4 for telco connectivity equalization—a process in which the Exchange must now engage with respect to NY11.

Launching NY11-4 Before Equalizing NY11 Will Not Worsen Inequality

The latency profile of a customer collocating in NY11-4 would be no better than that of the lowest latency customer and no worse than that of the highest latency customer collocating presently in NY11. In fact, the launch of a full-equalized NY11-4 before equalizing NY11 would actually diminish the overall average latency differential among colocated customers' telecom provider connections because NY11-4 introduces connections at a single latency value in between the slowest and fastest latencies. That is, the shortest current telco connection possible into NY11 is 160 ft while the longest current telco connection possible into NY11 is 680 feet; the equidistant telco connections into NY11-4 will be 590 feet, which falls between these two extremes.

Moreover, although the Exchange does not know the precise latency profiles of each of its colocation customers, it has provided those customers with the latency profile for NY11-4 and interhall connectivity through its distribution of a technical specification document via the Customer Portal. This technical specification document will allow customers to determine for themselves whether their current location in NY11 or alternative space in NY11-4 will optimize their latency profile. It will provide a means for customers to plan ahead and avoid undesirable outcomes associated with the launch of NY11-4. Contrary to assertions made by the commenter in connection with the Prior Proposal,²⁶ the technical specification document alleviates uncertainty that might otherwise compel customers to

²⁶ See McKay Ltr., *supra*, at 3-4 (asserting that "introduction of NY11-4 before equalizing NY11 will compel many customers to establish a third point of presence—at a cost in incremental fees paid to Nasdaq alone of at least \$2.5 million on a three-year commitment—to eliminate the risk that the NY11-4 connection is a superior connection to one (or both) of their existing NY11 points of presence.").

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Even if a customer was to gain a latency advantage from the launch of NY11-4 before equalization of NY11, such an advantage would be temporary given the fact that equalization of NY11 will follow soon after the launch of NY11-4. The fleeting nature of any such advantage should also disincentivize colocation customers from engaging in a "land grab" for what they perceive to be the most geographically advantageous space in NY11-4. Indeed, the Exchange sees no evidence of such a land grab actually occurring with respect to customers' expressions of interest in NY11-4, notwithstanding warnings to that effect from the same commenter. As of the date of submission of this filing, only roughly 10 percent of existing customers, representing a mix of business models and latency sensitive activities, have requested space in NY11-4. Moreover, interest in NY11-4 thus far involves a mix of customers wanting to expand upon their existing space in NY11 and others that want to move their existing space in NY11 entirely to NY11-4.

Equalizing NY11 First Will Not Avoid Creating Temporary Customer Disparities

Finally, the commenter's argument is incorrect that equalizing NY11 before launching NY11-4 would avoid creating disparities among customers with respect to their telco connections.²⁷ Equalizing telecommunications connectivity in NY11 before launching NY11-4 would not avoid the reality that full telco connectivity equalization—however accomplished—will require the introduction of temporary disparities in the lengths of the cables running between telecommunications providers and customers in the data center complex.

Even if the Exchange were to pursue equalization of NY11 first, doing so would necessarily entail certain customers in NY11 experiencing changes to their telco cable lengths before others during the phased transition period. Thus, re-sequencing the Equalization Project to start with NY11 will do nothing to affect these temporary customer disparities, but instead will needlessly place the

²⁷ See *id.* at 2.

markets at risk by delaying the availability of expanded data center capacity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal imposes any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which exchanges and other vendors offer colocation services as a means to facilitate the trading and other market activities of those market participants who believe that colocation enhances the efficiency of their operations. As part of its colocation offering, the Exchange currently offers similar cabinets and power, as do other exchanges.

Nothing in the Proposal burdens intra-market competition because the Exchange's colocation services, including those proposed herein, are available to any customer and customers that wish to order cabinets and power can do so on a non-discriminatory basis. Use of any colocation service is completely voluntary, and each market participant is able to determine whether to use colocation services based on the requirements of its business operations.

Additionally, and although not strictly relevant to the Proposal, nothing about the Equalization Plan, as described above, would impose an undue burden on competition. The Exchange intends for the Equalization Plan to facilitate increased competition among its colocation customers by eliminating telco connectivity disparities that currently provide some customers with latency advantages relative to others. For the reasons discussed above, the Exchange believes that it is fair and necessary to sequence the Equalization Project by beginning with the launch of NY11-4 with an equalized design, rather than with NY11. Specifically, the timely launch of NY11-4 is necessary for the Exchange to meet its capacity needs and those of its customers, while retrofitting NY11 will be a complex process that will require many months to complete. Moreover, the current sequencing plan will not worsen existing inequalities, but instead will improve the overall average disparity in telco cable lengths in the data center. Even though the sequencing plan will cause some customers to be subject to telco connectivity equalization before others, this result is unavoidable even if the Exchange were

to equalize NY11 first. Any customer advantage or disadvantage that might arise from the Equalization Project would be temporary. Finally, the Exchange has been transparent about its plans and afforded opportunities to customers to make informed choices about how to mitigate any adverse consequences, competitive or otherwise.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange received a written letter of support from Old Mission Capital LLC, dated August 21, 2024.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act²⁸ and subparagraph (f)(6) of Rule 19b-4 thereunder.²⁹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or

²⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

- Send an email to rule-comments@sec.gov. Please include file number SR-ISE-2024-45 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-ISE-2024-45. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-ISE-2024-45 and should be submitted on or before October 15, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-21748 Filed 9-23-24; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

³⁰ 17 CFR 200.30-3(a)(12).

SUMMARY: The Small Business Administration (SBA) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act and OMB procedures, SBA is publishing this notice to allow all interested member of the public an additional 30 days to provide comments on the proposed collection of information.

DATES: Submit comments on or before October 24, 2024.

ADDRESSES: Written comments and recommendations for this information collection request should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection request by selecting “Small Business Administration”; “Currently Under Review,” then select the “Only Show ICR for Public Comment” checkbox. This information collection can be identified by title and/or OMB Control Number.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the information collection and supporting documents from the Agency Clearance Office at Curtis.Rich@sba.gov; (202) 205–7030, or from www.reginfo.gov/public/do/PRAMain.

SUPPLEMENTARY INFORMATION: Small Business Lending Companies (SBLCs), Community Advantage Small Business Lending Companies (CA SBLCs) and Non-federally regulated lenders (NFRs) are non-depository lending institutions authorized by SBA primarily to make loans under section 7(a) of the Small Business Act. As sole regulator of these institutions, SBA requires them to submit audited financial statements annually as well as interim, quarterly financial statements and other reports to facilitate the Agency’s oversight of these lenders.

Solicitation of Public Comments

Comments may be submitted on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

OMB Control Number 3245–0077.

Title: Reports to SBA Provisions of 13 CFR 120.464.

Description of Respondents: Small Business Lending Companies (SBLCs)

and non-federally regulated lenders (NFRs).

SBA Form Number: N/A.

Estimated Number of Respondents: 179.

Estimated Annual Responses: 895.

Estimated Annual Hour Burden: 1,420.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2024–21730 Filed 9–23–24; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 12551]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: “The Arts of Korea” Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with their foreign owner or custodian for temporary display in the exhibition “The Arts of Korea” at The Art Institute of Chicago, in Chicago, Illinois; and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: section2459@state.gov). The mailing address is U.S. Department of State, L/DP, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of

Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2024–21832 Filed 9–23–24; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12550]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: “Project a Black Planet: The Art and Culture of Panafrica” Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition “Project a Black Planet: The Art and Culture of Panafrica” at The Art Institute of Chicago, in Chicago, Illinois; and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: section2459@state.gov). The mailing address is U.S. Department of State, L/DP, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2024–21831 Filed 9–23–24; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments on Proposed Modifications: China's Acts, Policies and Practices Related to Technology Transfer, Intellectual Property and Innovation

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Request for comments.

SUMMARY: In a notice published on September 18, 2024, the U.S. Trade Representative announced certain modifications to the actions taken in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation, including imposing additional Section 301 duties or increasing the rate of existing Section 301 duties, on certain products of China in strategic sectors. Additionally, the U.S. Trade Representative proposed increasing Section 301 tariff rates on five subheadings of the Harmonized Tariff Schedule of the United States (HTSUS) covering certain tungsten products, wafers, and polysilicon. This notice announces that USTR will open an electronic portal on September 23, 2024 for interested parties to submit comments on the proposed tariff increases for the five subheadings.

DATES: September 23, 2024, at 12:01 a.m. EDT: The public docket on the web portal at <https://comments.ustr.gov> will open for interested persons to submit comments on the proposed additional modifications.

October 22, 2024, at 11:59 p.m. EST: To be assured of consideration, submit written comments on the public docket by this date.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Philip Butler and Megan Grimball, Chairs of the Section 301 Committee at 202.395.5725. For specific questions on customs classification, contact traderemedy@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see the prior notices including 82 FR 40213 (August 24, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (July 6, 2018), and 83 FR 40823 (August 23, 2018).

On September 8, 2022, USTR announced that in accordance with Section 307(c)(3) of the Trade Act (19 U.S.C. 2417(c)(3)), the U.S. Trade Representative would conduct a review of the two actions taken, as modified, in this investigation. See 87 FR 55073.

Based on information obtained during the review, USTR, in consultation with the Section 301 Committee, prepared a comprehensive report that included findings on the effectiveness of the actions taken in this investigation in achieving the objectives of the investigation, other actions that could be taken, and the effects of such actions on the United States economy, including consumers. The report, *Four-Year Review of Actions Taken in the Section 301 Investigation: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation* (Report), was published on May 14, 2024, and is available on the USTR website.

On May 14, 2024, taking into consideration the U.S. Trade Representative's findings in the Report and recommendations, the President issued a Memorandum (President's Memorandum) that directed the U.S. Trade Representative to: "maintain, as appropriate and consistent with this memorandum, the *ad valorem* rates of duty and lists of products subject to the [actions] taken under the Section 301 investigation" and "[t]o further encourage China to eliminate the acts, policies, and practices at issue, and to counteract the burden or restriction of these acts, policies, and practices, the Trade Representative shall modify the [actions taken in the investigation] to increase Section 301 *ad valorem* rates of duty" for certain specified products of China. See <https://www.whitehouse.gov/briefing-room/presidential-actions/2024/05/14/memorandum-on-actions-by-the-united-states-related-to-the-statutory-4-year-review-of-the-section-301-investigation-of-chinas-acts-policies-and-practices-related-to-technology-transfer-intellectual-property/>. In particular, the President's Memorandum specified 14 categories of products for proposed tariff increases, tariff rates for those products, and year for tariff increases.

The President also directed the U.S. Trade Representative to establish a process by which interested persons may request that particular machinery used in domestic manufacturing classified within a subheading under Chapters 84 and 85 of the HTSUS be temporarily excluded from Section 301 tariffs, and directed the U.S. Trade Representative to prioritize, in particular, exclusions for certain solar manufacturing equipment.

B. Proposed Modifications

Consistent with the President's direction, USTR issued a **Federal Register** notice with proposed modifications, including proposed

increases in Section 301 duties on 382 HTSUS subheadings and 5 statistical reporting numbers of the HTSUS, with an approximate annual trade value of \$18 billion (2023). See 89 FR 46252 (May 28, 2024) (May 28 notice).

In accordance with Section 307(a)(2) of the Trade Act (19 U.S.C. 2417(a)(2)), USTR invited comments from interested persons and opened a 30-day docket on May 29, 2024 (USTR-2024-0007). With respect to the proposed tariff increases, USTR requested commenters to address the effectiveness of the proposed modification, the effects of the proposed modification on the U.S. economy, including consumers, and whether the tariff subheadings or statistical reporting numbers identified for each product or sector adequately cover the products and sectors included in the President's direction to the U.S. Trade Representative.

On September 18, 2024, the U.S. Trade Representative announced modifications to the actions, including certain adjustments to the modifications proposed in the May 28 notice. See 89 FR 76581 (September 18 notice). Additionally, and based on comments requesting that certain HTSUS subheadings be added to the 382 HTSUS subheadings proposed for tariff increases, the U.S. Trade Representative proposed increasing Section 301 duties on 5 additional HTSUS subheadings. Specifically, the U.S. Trade Representative proposed increasing tariffs to 25 percent for 3 subheadings covering certain tungsten products and proposed increasing tariffs to 50 percent for 2 subheadings covering wafers and polysilicon. See 89 FR 76581. The September 18 notice also announced that USTR would publish a separate notice with procedures for interested parties to provide views on the five subheadings proposed for tariff increases.

The five subheadings proposed for tariff increases are:

- 8101.94.00 (Tungsten, unwrought (including bars and rods obtained simply by sintering)).
- 8101.99.10 (Tungsten bars and rods (other than those obtained simply by sintering), profiles, plates, sheets, strip and foil).
- 8101.99.80 (Tungsten, articles nesoi).
- 2804.61.00 (Silicon containing by weight not less than 99.99 percent of silicon).
- 3818.00.00 (Chemical elements doped for use in electronics, in the form of discs, wafers etc., chemical compounds doped for electronic use).

C. Request for Public Comments

In accordance with Section 307(a)(2) of the Trade Act (19 U.S.C. 2417(a)(2)), USTR invites comments from interested persons with respect to the proposed modifications. To be assured of consideration, you must submit written comments by October 22, 2024. With respect to USTR's proposed tariff increases on the five subheadings listed in Section B, interested persons are invited to comment on:

- The extent to which the proposed modification would enhance the effectiveness of the tariff actions in obtaining the elimination of or in counteracting China's acts, policies, and practices related to technology transfer, intellectual property and innovation.
- The likely effects of the proposed modification on the U.S. economy, including consumers.

D. Procedures for Written Submissions

You must submit written comments using the appropriate docket on the portal at <https://comments.ustr.gov/>. To submit written comments, use the docket on the portal entitled Request for Comments: Proposed Modifications to the Section 301 Actions, docket number USTR–2024–0016. You do not need to establish an account to submit comments. The first screen of the docket allows you to enter identification and contact information. Third party organizations such as law firms, trade associations, or customs brokers, should identify the full legal name of the organization they represent, and identify the primary point of contact for the submission. Information fields are optional; however, your comment may not be considered if insufficient information is provided.

Fields with a gray Business Confidential Information (BCI) notation are for BCI that will not be made publicly available. Fields with a green (Public) notation will be viewable by the public.

After entering the identification and contact information, you can complete the remainder of the comment, or any portion of it by clicking 'Next.' You may upload documents at the end of the form and indicate whether USTR should treat the documents as business confidential or public information.

Clearly mark any page containing BCI as 'BUSINESS CONFIDENTIAL' on the top of that page and clearly indicate, via brackets, highlighting, or other means, the specific information that is BCI. If you request business confidential treatment, you must certify in writing that the information would not customarily be released to the public.

Parties uploading attachments containing BCI also must submit a public version of their comments. If these procedures are not sufficient to protect BCI or otherwise protect business interests, please contact the USTR Section 301 support line at 202.395.5725 to discuss whether alternative arrangements are possible. USTR will post attachments uploaded to the docket for public inspection, except for properly designated BCI. You can view submissions on USTR's electronic portal at <https://comments.ustr.gov>.

Juan Millan,

Acting General Counsel, Office of the United States Trade Representative.

[FR Doc. 2024–21773 Filed 9–23–24; 8:45 am]

BILLING CODE 3390–F4–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice With Respect To List of Countries Denying Fair Market Opportunities for Government-Funded Airport Construction Projects

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The U.S. Trade Representative has determined not to list any countries as denying fair market opportunities for U.S. products, suppliers, or bidders in foreign government-funded airport construction projects.

FOR FURTHER INFORMATION CONTACT: Kate Psillos, Deputy Assistant U.S. Trade Representative for WTO and Multilateral Affairs, Kathryn.W.Psillos@ustr.eop.gov or 202.395.9581, or Edward Marcus, Assistant General Counsel, Edward.D.Marcus@ustr.eop.gov or 202.395.0448.

SUPPLEMENTARY INFORMATION: Section 533 of the Airport and Airway Improvement Act of 1982, as amended by section 115 of the Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law 100–223 (codified at 49 U.S.C. 50104), requires the U.S. Trade Representative to decide whether any foreign country has denied fair market opportunities to U.S. products, suppliers, or bidders in connection with airport construction projects of \$500,000 or more that are funded in whole or in part by the government of such country. The Office of the United States Trade Representative has not received any complaints or other information indicating that U.S. products, suppliers, or bidders are being denied fair market

opportunities in such airport construction projects. As a consequence, the U.S. Trade Representative has decided not to list any countries as denying fair market opportunities for U.S. products, suppliers, or bidders in foreign government-funded airport construction projects.

Jamila Thompson,

Chief of Staff, Office of the United States Trade Representative.

[FR Doc. 2024–21772 Filed 9–23–24; 8:45 am]

BILLING CODE 3390–F4–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Cancellation of Environmental Impact Statement for the West Virginia International Yeager Airport, Charleston, West Virginia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of cancellation of preparation of environmental impact statement.

SUMMARY: The Federal Aviation Administration (FAA) announces that it has discontinued preparation of an Environmental Impact Statement (EIS) for the proposed Airfield, Safety, and Terminal Improvement Project at West Virginia International Yeager Airport (CRW) in Charleston, West Virginia. The FAA's discontinued preparation of the EIS is based on the need for additional planning studies to support the proposed development following changes to operations at CRW. The FAA originally placed the EIS on pause on March 27, 2024 and is now cancelling the EIS due to the additional time needed to conduct the necessary studies.

DATES: The effective date for cancellation of the EIS at West Virginia International Yeager Airport is September 18, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Brooks, Environmental Program Manager, Eastern Regional Office, AEA–610, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, NY 11434. Telephone: 718–553–2511.

SUPPLEMENTARY INFORMATION: The FAA published a Notice of Intent (NOI) to prepare an EIS for CRW in the **Federal Register** on September 29, 2022 (Notice of Intent To Prepare an Environmental Impact Statement, Initiate Section 106 Consultation, and Request for Scoping Comments, 87 FR 59158–60, September 29, 2022). Two in-person public scoping meetings were held on November 2 and

3, 2022, at the Embassy Suites by Hilton Charleston Hotel in Charleston, West Virginia and a third public scoping meeting was held virtually on Zoom on November 7, 2022. A governmental agency scoping meeting was also held at the Embassy Suites by Hilton Charleston Hotel on November 3, 2022. In response to requests received during scoping, the FAA extended the end of the public comment period from November 17, 2022, to November 29, 2022, via a notice published in the **Federal Register** (Notice of Extension to Public Comment Period—Notice of Intent To Prepare an Environmental Impact Statement, Initiate Section 106 Consultation, and Request for Scoping Comments for the Proposed Airfield, Safety, and Terminal Improvement Project at West Virginia International Yeager Airport, Charleston, Kanawha County, West Virginia, 87 FR 68225–6, November 14, 2022).

In 2023, the Central West Virginia Regional Airport Authority (CWVRAA), the sponsor and operator of CRW, notified the FAA of forthcoming changes in air carrier service and associated operations. One carrier stopped service in March 2023 and a new carrier initiated service in May 2023. The change in carriers resulted in different aircraft operating at CRW. Additionally, the new carrier provided different destinations from CRW and the CWVRAA was actively working to attract additional new carriers and markets during 2023. These changes in operation resulted in the re-examination of the project planning through the end of 2023 and early 2024 and CWVRAA identified a need to revisit the planning for the airfield components of the proposed project. Concurrently, CWVRAA decided to focus on the Terminal Development components of the proposed project and submitted a revised Terminal Design Concept for FAA review and approval. Given the changes in operations at CRW, the need for additional planning studies, and the focus on a revised Terminal Development concept, the FAA determined that the revised Terminal Development would have independent utility from the runway project. The revised Terminal Development would address an immediate Airport need that was mutually exclusive from the runway project and occurring at a different time than the runway components. Accordingly, the FAA announced that the EIS would be paused on the Federal Permitting Dashboard (www.permits.performance.gov) on March 27, 2024.

The FAA conducted two public meetings on July 9, 2024 at the Embassy Suites by Hilton Charleston Hotel in Charleston, West Virginia to inform the public on the reason for the pause to the EIS, present the revised Terminal Design Concept, discuss CWVRAA's change in approach to focus on the terminal, and present the results of environmental studies conducted on the EIS prior to the pause. The FAA accepted comments from the public on both the EIS pause and the revised Terminal Design Concept. The FAA completed environmental review of the revised Terminal Design Concept and issued a Categorical Exclusion on August 13, 2024.

With the CWVRAA priority for the immediate future focused on the financing and construction of the airport terminal and marketing of new service, the necessary planning studies to support the originally proposed airfield development components of the EIS will take some time to complete. Accordingly, the FAA is terminating the EIS for the Airfield, Safety, and Terminal Improvement Project and withdrawing the NOI issued on September 29, 2022 as of the Effective Date of this Notice.

Issued in Beaver, West Virginia, September 18, 2024.

Matthew Digiulian,

*Manager, Beckley Airport Field Office,
Airports Division, Eastern Region.*

[FR Doc. 2024–21735 Filed 9–23–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway Projects in Texas

AGENCY: Texas Department of Transportation (TxDOT), Federal Highway Administration (FHWA), U.S. Department of Transportation.

ACTION: Notice of limitation on claims for judicial review of actions by TxDOT and Federal agencies.

SUMMARY: This notice announces actions taken by TxDOT and Federal agencies that are final. The environmental review, consultation, and other actions required by applicable Federal environmental laws for these projects are being, or have been, carried out by TxDOT pursuant to an assignment agreement executed by FHWA and TxDOT. The actions relate to various proposed highway projects in the State

of Texas. These actions grant licenses, permits, and approvals for the projects.

DATES: By this notice, TxDOT is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of TxDOT and Federal agency actions on the highway projects will be barred unless the claim is filed on or before the deadline. For the projects listed below, the deadline is February 21, 2025. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such a claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT:

Patrick Lee, Environmental Affairs Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701; telephone: (512) 416–2358; email: Patrick.Lee@txdot.gov. TxDOT's normal business hours are 8:00 a.m.–5:00 p.m. (central time), Monday through Friday.

SUPPLEMENTARY INFORMATION: The environmental review, consultation, and other actions required by applicable Federal environmental laws for these projects are being, or have been, carried out by TxDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 9, 2019, and executed by FHWA and TxDOT.

Notice is hereby given that TxDOT and Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the highway projects in the State of Texas that are listed below.

The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS) issued in connection with the projects and in other key project documents. The CE, EA, or EIS and other key documents for the listed projects are available by contacting the local TxDOT office at the address or telephone number provided for each project below.

This notice applies to all TxDOT and Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].
2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].
3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and

Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife: Endangered Species Act* [16 U.S.C. 1531–1544 and Section 1536], *Marine Mammal Protection Act* [16 U.S.C. 1361], *Fish and Wildlife Coordination Act* [16 U.S.C. 661–667(d)], *Migratory Bird Treaty Act* [16 U.S.C. 703–712].

5. *Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966*, as amended [54 U.S.C. 300101 *et seq.*]; *Archeological Resources Protection Act of 1977* [16 U.S.C. 470(aa)–11]; *Archeological and Historic Preservation Act* [54 U.S.C. 312501 *et seq.*]; *Native American Grave Protection and Repatriation Act* (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic: Civil Rights Act of 1964* [42 U.S.C. 2000(d)–2000(d)(1)]; *American Indian Religious Freedom Act* [42 U.S.C. 1996]; *Farmland Protection Policy Act* (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources: Clean Water Act* [33 U.S.C. 1251–1377] (Section 404, Section 401, Section 319); *Land and Water Conservation Fund* (LWCF) [16 U.S.C. 4601–4604]; *Safe Drinking Water Act* (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; *Rivers and Harbors Act of 1899* [33 U.S.C. 401–406]; *Wild and Scenic Rivers Act* [16 U.S.C. 1271–1287]; *Emergency Wetlands Resources Act* [16 U.S.C. 3921, 3931]; *TEA–21 Wetlands Mitigation* [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; *Flood Disaster Protection Act* [42 U.S.C. 4001–4128].

8. *Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction.)*

The projects subject to this notice are:

1. SH 36 from IH 69 South to FM 2218, Fort Bend County, Texas. The project will widen and reconstruct SH 36 from a two-lane (one in each direction) undivided roadway to a four-lane (two in each direction) divided roadway. Sidewalks will be added along both sides of SH 36 for pedestrians and cyclists would utilize a bike lane separated from the roadway with a buffer. The project is approximately 2.9

miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on June 7, 2024, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT Houston District Office at 7600 Washington Avenue, Houston, TX 77007; telephone: (713) 802–5000.

2. I–20 from US 83 to Buck Creek Road, Taylor and Callahan Counties, Texas. The project will improve the existing I–20 facility from east of US 83 to near Buck Creek Road, a length of approximately 10.34 miles. The project will widen I–20 to three 12-foot-wide mainlanes, 10-foot wide inside and outside shoulders, two to three 12-foot-wide frontage road lanes, and a 10-foot-wide shared-use path in each direction. The mainlanes will be separated by a concrete barrier. Storm sewer will be used to convey stormwater and will replace the ditches in some places. Curb and gutter will be added to frontage roads. The project will also include ramp reconfigurations, access changes, turnarounds lanes, and intersection improvements at various locations. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on June 14, 2024, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT Abilene District Office at 4250 N Clack, Abilene, TX 79601; telephone: (325) 676–6817.

3. US 54 expansion from FM 2677 to the Oklahoma State Line, Sherman County, Texas. The project will widen the existing roadway to a four-lane divided highway with two, 12-foot travel lanes in each direction, 10-foot shoulders, a separated median within the rural area and a center 14-foot turn lane within urban limits. Existing rest stops will be removed and consolidated to one new truck parking location. The project length is approximately 19.1 miles. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on July 1, 2024, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT Amarillo District Office at 5715 Canyon Drive, Amarillo, TX 79110; telephone: (806) 356–3256.

4. SH 174 Lane Addition from Wicker Hill Rd to North of Elk Dr, Johnson County, Texas. The project will extend for a total of approximately 1.95 miles along SH 174 in Burleson, from the intersection of SH 174 and Wicker Hill Road, to approximately 0.23 miles north of Elk Drive. The SH 174 roadway will be widened to include three northbound 11-foot-wide general purpose travel lanes and three southbound 11-foot-wide general purpose travel lanes, with 8-foot-wide shoulders. Inside and outside turn lanes will be added at various intersections along SH 174. Sidewalks are proposed throughout the project corridor. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on July 15, 2024, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT Fort Worth District Office at 2501 S W Loop 820 Fort Worth, TX 76133; telephone: (817) 370–6744.

5. Center Street Extension from Bardin Rd to SE Green Oaks Blvd., Tarrant County, Texas. The project will extend Center Street from East Bardin Road to Southeast Green Oaks Boulevard and will connect Center Street (Dr. Martin Luther King, Jr. Drive) from East Bardin Road to Engleside Drive, with pavement markings carrying through to Southeast Green Oaks Boulevard. The total project length is approximately 1.18 miles. The new roadway will be an extension of the existing Center Street, with two northbound lanes and two southbound lanes separated by a raised median. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on July 15, 2024, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT Fort Worth District Office at 2501 SW Loop 820 Fort Worth, TX 76133; telephone: (817) 370–6744.

6. FM 1053 from FM 11 to 10 miles south of FM 1450, Pecos County, Texas. The project will relocate the portion of FM 1053 that current exists from FM 11 in Imperial to approximately 10 miles south of FM 1450, a distance of approximately 17 miles. This portion of FM 1053 will be relocated to the existing Buena Vista Road, from FM 11, approximately 5 miles southeast of the current FM 1053 intersection with FM

11, to approximately 10 miles south of FM 1450, a distance of approximately 16 miles. The proposed FM 1053 roadway will consist of two undivided 12-foot-wide travel lanes with 10-foot-wide shoulders. Drainage will consist of open ditches and single pipe culverts at driveways. The project will include replacing/updating the existing bridge-class culvert. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on August 5, 2024, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT Odessa District Office at 3901 E Highway 80, Odessa, TX 79761; telephone: (432) 498-4697.

7. Loop 250 at Todd Road, Midland County, Texas. The project will construct main lanes between Fairgrounds Road and CR 1150 and an overpass at the intersection of Todd Drive. The main lanes and overpass will consist of two 12-foot lanes in each direction, with 10-foot outside shoulders and 4-foot inside shoulders. The project will also construct an at-grade intersection under the overpass at Todd Drive, along with turnaround lanes. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on August 28, 2024, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT Odessa District Office at 3901 E Highway 80, Odessa, TX 79761; telephone: (432) 498-4697.

8. South Zarzamora Street from US 90 to Jennings Avenue, Bexar County, Texas. The project will realign South Zarzamora Street from US 90 to Jennings Avenue and construct a grade separation over the Frio City Road/Kirk Place and Union Pacific Railroad (UPRR) intersections. The project is approximately 0.8 miles. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA), the Finding of No Significant Impact (FONSI) issued on June 21, 2024, and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting the TxDOT San Antonio District Office at 4615 NW Loop 410, San Antonio, TX 78229; telephone: (210) 615-5839.

9. FM 812 from US 183 to SH 21, Travis and Bastrop Counties, Texas. The project will include the realignment of a 1.46-mile section of FM 812 between US 183 and FM 973 and will upgrade FM 812 from a two-lane undivided roadway to a four-lane divided roadway. The project will also include improvements to a 0.75-mile portion of FM 973 from 0.1-mile north of McAngus Road to 0.2-mile south of FM 812. The project is approximately 9.49 miles long. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA), the Finding of No Significant Impact (FONSI) issued on June 27, 2024, and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting the TxDOT Austin District Office at 7901 North I-35, Austin, TX 78753; telephone: (512) 832-7000.

10. SH 249 from BW-8 N to I-45 N, Harris County, Texas. The project will reconstruct and widen SH 249 from BW 8 N to I-45 N from a six-lane roadway to an eight-lane divided roadway, for a total distance of 7.2 miles. Directions of travel will be separated by a raised median varying from 6 to 30 feet wide. Turn bays for left and right movements will be added at major intersections. Ten-foot-wide sidepaths will be constructed on both sides of the roadway near the right-of-way limits. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA), Finding of No Significant Impact (FONSI) issued on July 9, 2024 and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting the TxDOT Houston District Office at 7600 Washington Avenue, Houston, TX 77007; telephone: (713) 802-5000.

Authority: 23 U.S.C. 139(l)(1).

Michael T. Leary,

Director, Planning and Program Development, Federal Highway Administration.

[FR Doc. 2024-21771 Filed 9-23-24; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2024-0024]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 12 individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have “no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.” The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on September 16, 2024. The exemptions expire on September 16, 2026.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, (202) 366-4001, fmcamedical@dot.gov. Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to www.regulations.gov. Insert the docket number, (FMCSA-2024-0024) in the keyword box and click “Search.” Next, sort the results by “Posted (Older-Newer),” choose the first notice listed, and click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov. As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices>, the comments are searchable by the name of the submitter.

II. Background

On August 12, 2024, FMCSA published a notice announcing receipt of applications from 12 individuals requesting an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) and requested comments from the public (89 FR 65703). The public comment period ended on September 11, 2024, and one comment was received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria¹ to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

III. Discussion of Comments

FMCSA received one comment in this proceeding. However, the comment is outside the scope of this notice.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or

greater than, the level that would be achieved absent such exemption. The statutes allow the Agency to renew exemptions at the end of the 5-year period. However, FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on the 2007 recommendations of the Agency's Medical Expert Panel. The Agency conducted an individualized assessment of each applicant's medical information, including the root cause of the respective seizure(s) and medical information about the applicant's seizure history, the length of time that has elapsed since the individual's last seizure, the stability of each individual's treatment regimen and the duration of time on or off of anti-seizure medication. In addition, the Agency reviewed the treating clinician's medical opinion related to the ability of the driver to safely operate a CMV with a history of seizure and each applicant's driving record found in the Commercial Driver's License Information System for commercial driver's license (CDL) holders, and interstate and intrastate inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency. A summary of each applicant's seizure history was discussed in the August 12, 2024, **Federal Register** notice (89 FR 65703) and will not be repeated in this notice.

These 12 applicants have been seizure-free over a range of 37 years while taking anti-seizure medication and maintained a stable medication treatment regimen for the last 2 years. In each case, the applicant's treating physician verified his or her seizure history and supports the ability to drive commercially.

The Agency acknowledges the potential consequences of a driver experiencing a seizure while operating a CMV. However, the Agency believes the drivers granted this exemption have demonstrated that they are unlikely to have a seizure and their medical condition does not pose a risk to public safety.

Consequently, FMCSA finds further that in each case exempting these applicants from the epilepsy and seizure disorder prohibition in § 391.41(b)(8) would likely achieve a level of safety equal to that existing without the exemption, consistent with the applicable standard in 49 U.S.C. 31315(b)(1).

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and include the following: (1) each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5T; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 12 exemption applications, FMCSA exempts the following drivers from the epilepsy and seizure disorder prohibition in § 391.41(b)(8), subject to the requirements cited above:

Rosario Basone (NY)
Kimberly Breker (ND)
Ed Eskridge (IN)
David Garner (IA)
Carlos Kelly (NC)
Jaxon Krisko (OH)
Justin McGinnis (KS)
Dalton Nicodemus (WV)
Zachary Pfister (IN)
Daniel Richey (TX)
Jessica Schmit (PA)
Teri Smieja (WI)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals

¹ These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at <https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf>.

and objectives of 49 U.S.C. 31136, 49 U.S.C. chapter 313, or the FMCSRs.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024-21721 Filed 9-23-24; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2024-0126]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: Raven Heart (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before October 24, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2024-0126 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Search MARAD-2024-0126 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD-2024-0126, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-461, Washington, DC 20590. Telephone: (202) 366-0903. Email: patricia.hagerty@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel Raven Heart is:

Intended Commercial Use of Vessel: Requester intends to offer passenger charters.

Geographic Region Including Base of Operations: California, Oregon, Washington, Alaska. Base of Operations: Los Angeles, California.

Vessel Length and Type: 39.9' Sail.
The complete application is available for review identified in the DOT docket as MARAD 2024-0126 at <https://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary.

There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <https://www.regulations.gov>, keyword search MARAD-2024-0126 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to SmallVessels@dot.gov. Include in the email subject heading "Contains Confidential Commercial Information" or "Contains CCI" and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit <https://www.transportation.gov/privacy>.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024-21783 Filed 9-23-24; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION**Maritime Administration****[Docket No. MARAD–2024–0124]****Coastwise Endorsement Eligibility Determination for a Foreign-built Vessel: Atalanta (Sail); Invitation for Public Comments****AGENCY:** Maritime Administration, DOT.**ACTION:** Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before October 24, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0124 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Search MARAD–2024–0124 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0124, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, or to submit

comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: patricia.hagerty@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel Atalanta is:

Intended Commercial Use of Vessel: Requester intends to offer passenger sail charters.

Geographic Region Including Base of Operations: California, Oregon, Washington, Alaska, Hawaii. Base of Operations: Monterey, California.

Vessel Length and Type: 53.5' Sailboat.

The complete application is available for review identified in the DOT docket as MARAD 2024–0124 at <https://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <https://www.regulations.gov>, keyword search

MARAD–2024–0124 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to SmallVessels@dot.gov. Include in the email subject heading "Contains Confidential Commercial Information" or "Contains CCI" and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit <https://www.transportation.gov/privacy>.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–21782 Filed 9–23–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION**Maritime Administration****[Docket No. MARAD–2024–0125]****Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: Carpe Diem (Motor); Invitation for Public Comments****AGENCY:** Maritime Administration, DOT.**ACTION:** Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before October 24, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0125 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Search MARAD–2024–0125 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0125, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, or to submit

comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: patricia.hagerty@dot.gov.

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel Carpe Diem is:

Intended Commercial Use of Vessel: Requester intends to offer passenger charters.

Geographic Region Including Base of Operations: California. Base of Operations: Chula Vista, California.

Vessel Length and Type: 55.6' Motor. The complete application is available for review identified in the DOT docket as MARAD 2024–0125 at <https://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at <https://www.regulations.gov>, keyword search MARAD–2024–0125 or visit the Docket Management Facility (see **ADDRESSES** for

hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to SmallVessels@dot.gov. Include in the email subject heading "Contains Confidential Commercial Information" or "Contains CCI" and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit <https://www.transportation.gov/privacy>.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–21784 Filed 9–23–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION**Pipeline and Hazardous Materials Safety Administration****[Docket No. PHMSA–2024–0043]****Pipeline Safety: 2024 Risk Modeling Public Workshop**

AGENCY: Pipeline and Hazardous Materials Safety Administration

(PHMSA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice provides amendments to the time, website information, dates, and other details of a notice published July 25, 2024, announcing a public workshop on risk modeling methodologies and tools for the evaluation of gas, carbon dioxide (CO₂), and hazardous liquid pipelines.

DATES: The public workshop will be held on October 23 and 24, 2024, from 9 a.m. to 6 p.m. EST (8 a.m.—5 p.m. CST). Public comments for consideration at the workshop must be submitted to Docket No. PHMSA–2024–0043 by October 11, 2024. Anyone who would like to attend the public workshop must register by October 11, 2024. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, should notify Janice Morgan by phone at 202–815–4507 or by email to Janice.Morgan@dot.gov no later than October 1, 2024. For additional information, see the **ADDRESSES** section of this notice.

ADDRESSES: The 2024 Risk Modeling Public Workshop will be held in person in Houston, Texas at the Whitehall Houston Hotel, 1700 Smith Street, Houston, TX 77002. The instructions and final agenda will be posted to Docket No. PHMSA–2024–0043 once they are finalized. The link to the meeting registration is: <https://primis-meetings.phmsa.dot.gov/meetings/4c97d810-9c86-4299-9c01-73c27f08fc07>.

Presentations: Presentations will be available on the meeting website and on the E-gov website at www.regulations.gov, Docket No. PHMSA–2024–0043, no later than 30 days following the workshop.

Submitting comments: Members of the public may submit written comments either before or after the workshop. Comments should reference Docket No. PHMSA–2024–0043 and may be submitted by any of the following ways:

- **E-Gov Web:** www.regulations.gov. This site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the online instructions for submitting comments.

- **Mail:** Docket Management System, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

- **Hand Delivery:** DOT Docket Management System, West Building

Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. EST, Monday through Friday, except Federal holidays.

- **Fax:** 202–493–2251.

Instructions: Identify the docket number at the beginning of your comments. If you submit your comments by mail, please submit two copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at www.regulations.gov.

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments in response to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 Code of Federal Regulations (CFR) 190.343, you may ask PHMSA to provide confidential treatment to information you give to the agency by taking the following steps: (1) mark each page of the original document submission containing CBI as “Confidential;” (2) send PHMSA a copy of the original document with the CBI deleted along with the original, unaltered document; and (3) explain why the information you are submitting is CBI. Submissions containing CBI should be sent to Janice Morgan, DOT, PHMSA–PHP–4, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 or emailed to Janice.Morgan@dot.gov. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket.

Privacy Act: DOT may solicit comments from the public regarding certain general notices. Comments, including any personal information provided, are posted without changes or edits to <https://www.regulations.gov>. DOT posts these comments as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at www.dot.gov/privacy.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov. Follow the online instructions for accessing the dockets. Alternatively, you may review the documents in person at the DOT Docket Management street address listed above.

FOR FURTHER INFORMATION CONTACT: Lee Cooper, Engineering Operations Supervisor, Engineering and Research Division, by phone at 202–913–3171 or by email at Lee.Cooper@dot.gov.

SUPPLEMENTARY INFORMATION: This notice provides amendments to details of a notice published July 25, 2024 (89 FR 60489).

Background

Pipeline risk models are foundational to the assessment of operational pipeline risk. Federal pipeline safety integrity management (IM) regulations require pipeline operators to use risk assessments. PHMSA’s integrity management regulations (49 CFR part 192, subparts O and P; 49 CFR 195.452) require the continual evaluation of threats to pipelines, methods to minimize the likelihood of a release, and the consequences of potential releases. Risk models are a primary tool pipeline operators use as part of this evaluation process and are generally referred to as a “risk analysis” or “risk assessment.” A risk model is a set of algorithms or rules that use available information and data relationships to perform a risk assessment. The risk model is a simplified representation of a pipeline system and represents the relation of important risk factors.

To meet integrity management standards, a risk modeling approach must be able to adequately characterize all pipeline integrity threats and consequences concurrently, as well as be able to evaluate the impact of various measures on reducing risk.

In September 2015, PHMSA hosted a public workshop on risk modeling where various comments were presented and discussed with interested stakeholders. Information regarding the previous public workshop can be found at Docket No. PHMSA–2015–0139. Following the public workshop, PHMSA organized a risk modeling work group to gather information regarding state-of-the-art pipeline risk modeling methods and tools, the use of those methods and tools, and the resulting data in operator IM programs. In February 2020, PHMSA issued the resulting report, “Pipeline Risk Modeling, Overview of Methods and Tools for Improved Implementation,” which presented several conclusions:

- The overriding principle in employing any type of risk model/assessment is that it supports risk management decisions to reduce risks.
- While different risk model types have different capabilities for evaluating risk reduction actions, the quantitative system model or probabilistic models are more versatile and provide greater

capabilities to provide risk insights and support decision making. Such models are not necessarily more complex nor need more data compared to other types of risk models.

- Pipeline operators should take ongoing actions to improve and update data quality and completeness over time. However, the type of risk model to employ in pipeline risk analyses should not depend primarily on the perceived initial quality and completeness of input data because all models utilize the available data. Instead, operators should select the best model approach and then populate the model with the best information currently available on risk factors or threats for each pipeline segment and improve that data over time.

- It is important for risk models to include modeling of incorrect operations, which includes human interactions and human performance, that are significant to the likelihood of failure or have a significant effect on consequences of a failure (e.g., inappropriate controller restart of pumps, realistic emergency response time scenarios, design, and construction human errors, etc.).

- It is important for pipeline risk models to include the potential effects of how threats interact in ways that can increase risk. Therefore, when a risk analysis involves multiple threats, the effects of “interactive threats” or dependencies on likelihood of failure should be clearly evaluated.

- Varying levels of sophistication are possible in the analysis of the consequences of a failure. However, it is important to consider an applicable range of scenarios (even if they do not have a high probability of occurrence) to capture the full spectrum of possible consequences.

- The characteristics of pipeline facilities that affect risk may be significantly different than those of line pipe, but the same basic risk assessment principles and types of models may be applied.

In addition, section 119 of the Protecting Our Infrastructure of Pipelines and Enhancing Safety (PIPES) Act of 2020 directed PHMSA to commission a study to assess regulatory standards and criteria for deciding when automatic and remote-control shutoff valves should be installed on existing hazardous liquid and gas transmission pipelines in high consequence areas. The National Academies of Sciences, Engineering, and Medicine conducted the study of potential methodologies for the installation of automatic or remote-controlled shut-off valves and released its findings in February 2024. The study

included several recommendations, one of which suggested PHMSA “further the pipeline industry’s use of quantitative models for IM risk analysis as well as sound and consistent methods for establishing the benefits of safety measures.” The study included recommendations to:

- Require the use of quantitative risk modeling by all pipeline operators for their IM programs, except when an operator can make a compelling justification for the use of another risk assessment method.

- Provide the pipeline industry with practitioner-oriented technical guidance for conducting state-of-the-art pipeline risk analyses using quantitative models and for estimating the benefits of alternative risk reduction measures, including public safety benefits and interests.

- Encourage recognized standard-setting organizations, such as the American Society of Mechanical Engineers and American Petroleum Institute, to enhance their standards for hazardous liquid and gas transmission pipelines by including more technical guidance for using quantitative risk models and for obtaining the data needed to develop them.

The 2024 Risk Modeling Public Workshop will provide an opportunity to discuss advances in risk modeling approaches and methodologies for pipeline and non-pipeline systems, as well as practical ways that pipeline operators have adopted and/or adapted methodologies to enhance the risk analyses of their systems.

PHMSA believes that risk models need to evolve in such a way as to be more versatile, thus leading to improved implementation to further reduce the risk of pipeline integrity threats to the public, property, and the environment. PHMSA is particularly interested in improvements to pipeline risk models, and what operators have adopted and/or adapted to risk models as part of the risk analyses of their systems.

Public Workshop and Request for Comments

To this end, PHMSA will hold the 2024 Risk Modeling Public Workshop to discuss and receive public feedback on recent advancements and improvements in risk analyses and risk models. PHMSA invites the public to comment on engineering and technical modeling considerations related to advancements in pipeline risk models, as well as risk modeling methodologies used in non-pipeline applications, and practical ways that operators can adopt and/or adapt such methods to the risk analyses of their systems.

In response to the initial **Federal Register** Notice, authors submitted abstracts to Docket No. PHMSA–2024–0043. If selected, PHMSA will notify authors of their selection by September 30, 2024. Each author of a selected abstract will then provide a short presentation to be used during the workshop. Presentations must be submitted via email to Lee.Cooper@dot.gov no later than October 15, 2024.

Specific examples of risk applications are encouraged. PHMSA is interested in engineering and technical modeling considerations, including, but not limited to, the following:

- Quantitative system and probabilistic risk approaches;
- Treatment of human performance, including both likelihood and consequence aspects;
- Consideration of threats and their interactions in risk assessments;
- Modeling challenges associated with the transportation of hydrogen, hydrogen blends, or carbon dioxide;
- Identification, evaluation, and comparison of preventive measures and mitigative measures;
- Cost/benefit analysis for risk reduction options; and
- Continual evaluation of integrity and general risk management decision making.

PHMSA is not always able to publish a notice in the **Federal Register** quickly enough to provide timely notification of last-minute changes that impact scheduled workshops. Therefore, individuals should check the workshop website listed in the **ADDRESSES** section of this notice or contact Lee Cooper by phone at 202–913–3171, or by email at Lee.Cooper@dot.gov, regarding any possible changes. PHMSA invites public participation and comment on the topics addressed in this workshop. Please review the **ADDRESSES** section of this notice for information on how to submit written comments.

Issued in Washington, DC, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2024–21794 Filed 9–23–24; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY**Community Development Financial Institutions Fund****Agency Information Collection Activities: Capital Magnet Fund Application**

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury

ACTION: Notice and Request for Public Comment

SUMMARY: The U.S. Department of the Treasury, as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (PRA). Currently, the Community Development Financial Institutions Fund (CDFI Fund), U.S. Department of the Treasury, is soliciting comments concerning the Capital Magnet Fund (CMF) Application for the fiscal year funding rounds 2025–2027 (hereafter the Application). The CDFI Fund is required by law to make the Application publicly available for comment prior to submission for a new PRA number.

DATES: Written comments must be received on or before November 25, 2024 to be assured of consideration. Comments can be submitted electronically via the e-Rulemaking Portal: www.regulations.gov.

ADDRESSES: You may submit comments concerning the CMF Application via the Federal e-Rulemaking Portal at www.regulations.gov. Follow the instructions on the website for the submission of comments. In general, all comments will be available for inspection at www.regulations.gov. Comments, including attachments and other supporting materials, are part of the public record. Do not submit any information in your comments or supporting materials that you consider confidential or inappropriate for public disclosure. Information regarding the CDFI Fund and its programs may be obtained through the CDFI Fund's website at <http://www.cdfifund.gov>.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Andrew Schlack, CMF Program Manager, CDFI Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, or by email to cmf@cfdi.treas.gov.

SUPPLEMENTARY INFORMATION:

Title: Capital Magnet Fund Application.

OMB Number: 1559–NEW (previously covered under OMB Number 1559–0036).

Type of Review: Regular Review.

Abstract: The Capital Magnet Fund (CMF) was established through the Housing and Economic Recovery Act of 2008 (HERA) (Pub. L. 110–289), as a competitive Federal financial assistance program administered by the CDFI Fund. Through CMF, the CDFI Fund provides Federal financial assistance to Certified Community Development Financial Institutions (CDFIs) and qualified Nonprofit Organizations that have the development or management of Affordable Housing, as defined in 12 CFR 1807, as one of their principal purposes. Capitalized terms not defined in this Notice (other than titles) have the meaning set forth in the CMF Interim Rule (12 CFR 1807). CMF Awards must be used to attract private financing for and increase investment in: (i) the Development, Preservation, Rehabilitation, and Purchase of Affordable Housing for primarily Extremely Low-, Very Low-, and Low-Income Families; and (ii) Economic Development Activities which, in conjunction with Affordable Housing Activities, will implement a Concerted Strategy to stabilize or revitalize a Low-Income Area or an Underserved Rural Area.

CMF Award Recipients are selected through a competitive process involving a careful review of their Application for program funding. The Application requires the submission of quantitative data and narrative responses for three parts: (1) Business and Leveraging Strategy, (2) Community Impact, and (3) Organizational Capacity. The Award selection process is defined in the Notice of Funding Availability (NOFA) for each funding round.

Current Actions: Extension with significant changes from currently approved collection which was under OMB Number 1559–0036.

Estimated Number of Respondents: 130 Applications.

Estimated Annual Time per Respondent: 100 hours.

Estimated Annual Burden Hours: 13,000 hours.

Request for Comments: Comments submitted in response to this Notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record and may be published on the CDFI Fund website at <https://www.reginfo.gov>. The CDFI Fund is seeking input on the CMF Application. The Application may be

obtained on the CMF web page of the CDFI Fund's website at <http://www.cdfifund.gov/requests-for-comments>.

Revisions to the CMF Program Application are highlighted in yellow.

Comments concerning the Application 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 technology; (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services required to provide information; and (f) whether any additional questions or factors should be considered as part of the CMF Application and/or review process.

To date, the CDFI Fund has solicited public comment related to many changes incorporated in the proposed Application. On July 7, 2023, the CDFI Fund published a Request for Information (RFI) (88 FR 43414) requesting public input related to income definitions, the commitment process for CMF Award funds, and secondary market activity, among other issues. Over forty comments were received and considered as part of the update and revision of the CMF Interim Rule. Further, many modifications and changes in the proposed Application reflect the revised Interim Rule published on June 25, 2024 (89 FR 53004). Comments on the revised Interim Rule were solicited and submitted by August 26, 2024. Therefore, comments on changes, modifications, updates, and other revisions to the proposed Application reflective of the revised Interim Rule are welcome but are generally not specifically solicited as part of this Notice.

Authority: Public Law 110–289, 12 CFR 1807.

Pravina Raghavan,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2024–21809 Filed 9–23–24; 8:45 am]

BILLING CODE 4810–05–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0717]

Agency Information Collection Activity: Child Care Provider Information-For the Child Care Subsidy Program; Withdrawal

AGENCY: Human Resources and Administration/Operations, Security, and Preparedness, Department of Veterans Affairs.

ACTION: Notice; withdrawal.

SUMMARY: On Friday, September 13, 2024, the Human Resources and Administration/Operations, Security,

and Preparedness, Department of Veterans Affairs (VA), published a notice in the **Federal Register** announcing an opportunity for public comment on the proposed collection Human Resources and Administration/Operations, Security, and Preparedness (VA Form 0730b). This notice was published in error; therefore, this document corrects that error by withdrawing this FR notice.

DATES: As of September 19, 2024, the FR notice (document number 2024–20802) published at 89 FR 75059 on Friday, September 13, 2024, is withdrawn.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise

and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 202–461–8900, or email *maribel.aponte@va.gov*.

SUPPLEMENTARY INFORMATION: FR Doc. 2024–75059, published on September 13, 2024 (89 FR 75059), is withdrawn by this notice.

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. 2024–21834 Filed 9–23–24; 8:45 am]

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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 217

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Atlantic Shores South Project Offshore of New Jersey; Final Rule

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 217**

RIN 0648–BL73

[Docket No. 240827–0228]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Atlantic Shores South Project Offshore of New Jersey

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

ACTION: Final rule.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, the National Marine Fisheries Service (hereafter, “NMFS”) promulgates regulations to govern the incidental taking of marine mammals by Atlantic Shores Offshore Wind Project 1, LLC, the project company of the original applicant, Atlantic Shores Offshore Wind, LLC, a joint venture between EDF–RE Offshore Development LLC (a wholly owned subsidiary of EDF Renewables, Inc.) and Shell New Energies US LLC, during the construction of the Atlantic Shores South Project (hereafter, “Atlantic Shores South” or the “Project”), an offshore wind energy project located in Federal and State waters offshore of New Jersey, specifically within the Bureau of Ocean Energy Management (hereafter, “BOEM”) Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (hereafter, “OCS”) Lease Areas OCS–A–0499 and OCS–A–0570 (hereafter, “Lease Areas”) and along export cable routes to sea-to-shore transition points. The Project will be divided into 2 projects in 2 areas: Project 1 and Project 2 (the combined hereafter referred to as the “Project Area”), over the course of 5 years (January 1, 2025, through December 31, 2029). Of note, the proposed rule for this action named only OCS–A–0499 and the parent company, Atlantic Shores Offshore Wind LLC, with 2 subsidiaries who control each component of the Project (*i.e.*, Project 1 is controlled by Atlantic Shores Offshore Wind Project 1, LLC, and Project 2 is controlled by Atlantic Shores Offshore Wind Project 2, LLC). However, after publication of the proposed rule, Atlantic Shores Offshore

Wind LLC notified NMFS that this rulemaking should be issued for Atlantic Shores Offshore Wind Project 1, LLC (“Project Company 1”). Furthermore, Project Company 1 now maintains ownership of both Project 1 and Project 2, rather than 2 separate subsidiaries for each of Project 1 and Project 2. As a result of this, the applicant requested that the Letter of Authorization (hereafter, “LOA”), if issued, be issued to Project Company 1, which would oversee the construction of both Project 1 and Project 2 (where the latter Project would be operated by “Atlantic Shores Offshore Wind Project 2, LLC” (“Project Company 2”). These regulations, which allow for the issuance of a LOA for the incidental take of marine mammals during construction-related activities within the Project Area during the effective dates of the regulations, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat as well as requirements pertaining to the monitoring and reporting of such taking.

DATES: This rule is effective from January 1, 2025, through December 31, 2029.

FOR FURTHER INFORMATION CONTACT: Kelsey Potlock, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:**Availability**

A copy of Project Company 1’s Incidental Take Authorization (hereafter, “ITA”) application, supporting documents, received public comments, and the proposed rulemaking, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>. In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

Purpose and Need for Regulatory Action

This final rule, as promulgated, provides a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) for NMFS to allow the take of marine mammals incidental to construction of the Project within the Project Area. NMFS received a request from Project Company 1 to incidentally take 16 species of marine mammals, comprising 17 stocks (*i.e.*, 9 species by Level A harassment and Level B harassment and 7 species by Level B

harassment only), incidental to Project Company 1’s 5 years of construction activities. No mortality or serious injury is anticipated or allowed in this final rulemaking. Please see the *Legal Authority for the Final Action* section below for definitions of harassment, serious injury, and incidental take.

Legal Authority for the Final Action

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, regulations are promulgated (when applicable), and public notice and an opportunity for public comment are provided.

Allowing for and authorizing 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). If such findings are made, NMFS must: (1) prescribe the permissible methods of taking; (2) analyze “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 (hereafter referred to as “mitigation”); and (3) enact requirements pertaining to the monitoring and reporting of such takings.

As noted above, no serious injury or mortality is anticipated or allowed in this final rule. Relevant definitions of MMPA statutory and regulatory terms are included below:

- *U.S. Citizens*—individual U.S. citizens or any corporation or similar entity if it is organized under the laws of the United States or any governmental unit defined in 16 U.S.C. 1362(13) (50 CFR 216.103);
- *Take*—to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal (see 16 U.S.C. 1362(13); 50 CFR 216.3);
- *Incidental harassment, incidental taking, and incidental, but not intentional, taking*—an accidental taking. This does not mean that the taking is unexpected, but rather it

includes those takings that are infrequent, unavoidable, or accidental (see 50 CFR 216.103);

- **Serious Injury**—any injury that will likely result in mortality (see 50 CFR 216.3);

- **Level A harassment**—any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild (see 16 U.S.C. 1362(18); 50 CFR 216.3); and

- **Level B harassment**—any act of pursuit, torment, or annoyance which 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 (see 16 U.S.C. 1362(18); 50 CFR 216.3).

Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for proposing and, if appropriate, issuing regulations and an associated LOA. This final rule establishes permissible methods of taking and mitigation, monitoring, and reporting requirements for Project Company 1's construction activities.

Summary of Major Provisions Within the Final Rule

The major provisions of this final rule are:

- The allowed take of marine mammals by Level A harassment and/or Level B harassment;

- No allowed take of marine mammals by mortality or serious injury;

- The establishment of a seasonal moratorium on pile driving of foundation piles during the months of the highest presence of North Atlantic right whales (*Eubalaena glacialis*) in the Lease Areas (January 1st through April 30th, annually, and in December unless it is necessary to complete the Project and if it is approved by NMFS to minimize the number of North Atlantic right whale takes);

- A requirement for NOAA Fisheries-approved Protected Species Observers (hereafter, "PSOs") and Passive Acoustic Monitoring (hereafter, "PAM") operators (where required) to conduct both visual and passive acoustic monitoring before, during, and after select activities;

- A requirement for training for all Project Company 1 personnel to ensure marine mammal protocols and procedures are understood;

- The establishment and implementation of clearance and shutdown zones for all in-water construction activities to prevent or reduce the risk of Level A harassment

and to minimize the risk of Level B harassment;

- A requirement to use sound attenuation devices during all foundation pile driving installation activities to reduce noise levels to those modeled assuming 10 decibels (dB);

- A delay to the start of foundation installation if a North Atlantic right whale is observed at any distance by PSOs or acoustically detected within the PAM Clearance/Shutdown Zone (10 kilometer (km) (6.21 miles (mi)));

- A delay to the start of foundation installation if other marine mammals are observed entering or within their respective clearance zones;

- A requirement to shut down pile driving (if feasible, otherwise "powering down" (*i.e.*, reducing the impact hammer's energy) is required) if a North Atlantic right whale is observed at any distance or if any other marine mammals are observed entering their respective shutdown zones;

- A requirement to conduct sound field verification (SFV) during foundation pile driving to measure *in situ* noise levels for comparison against the modeled results;

- A requirement to implement soft-starts during all impact pile driving using the least amount of hammer energy necessary for installation;

- A requirement to implement ramp-up during the use of non-binary high-resolution geophysical (HRG) marine site characterization survey equipment;

- A requirement to monitor the relevant Right Whale Sightings Advisory System, the United States' Coast Guard's Channel 16, and NMFS' website at: <https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales>, as well as reporting any sightings to the sighting network;

- A requirement to implement various vessel strike avoidance measures;

- A requirement to implement measures during fisheries monitoring surveys, such as removing gear from the water if marine mammals are considered at-risk or are interacting with gear; and

- A requirement to submit frequent regularly scheduled and situational reports including, but not limited to, information regarding activities occurring, marine mammal observations and acoustic detections, and SFV monitoring results.

NMFS must withdraw or suspend any LOA issued under these regulations, after notice and opportunity for public comment, if it finds the methods of taking or the mitigation, monitoring, or

reporting measures are not being substantially complied with (16 U.S.C. 1371(a)(5)(B); 50 CFR 216.106(e)). Additionally, failure to comply with the requirements of the LOA may result in civil monetary penalties and knowing violations may result in criminal penalties (16 U.S.C. 1375; 50 CFR 216.106(g)).

Fixing America's Surface Transportation Act (FAST-41)

This Project is covered under Title 41 of the Fixing America's Surface Transportation Act or "FAST-41". FAST-41 includes a suite of provisions designed to expedite the environmental review for covered infrastructure Projects, including enhanced interagency coordination as well as milestone tracking on the public-facing Permitting Dashboard. FAST-41 also places a 2-year limitations period on any judicial claim that challenges the validity of a Federal agency decision to issue or deny an authorization for a FAST-41 covered project (42 U.S.C. 4370m-6(a)(1)(A)).

Atlantic Shores South is listed on the Permitting Dashboard, where milestones and schedules related to the environmental review and permitting for the Project can be found at: <https://www.permits.performance.gov/permitting-project/fast-41-covered-projects/atlantic-shores-south>.

Summary of Request

On February 8, 2022, NMFS received a request from Project Company 1 (previously, "Atlantic Shores") for the promulgation of regulations and the issuance of an associated LOA to take marine mammals incidental to construction activities associated with the Project located offshore of New Jersey in Lease Area OCS-A-0499 (then, a single lease) and associated export cable corridors. Project Company 1's request is for the incidental, but not intentional, take of a small number of 16 marine mammal species comprising 17 stocks (*i.e.*, 9 species by Level A harassment and Level B harassment and 7 species by Level B harassment only). Neither Project Company 1 nor NMFS expected serious injury and/or mortality to result from the specified activities. Because of this, Project Company 1 did not request, and NMFS has not allowed mortality or serious injury of any marine mammal species or stock.

In response to our questions and comments and following extensive information exchanges with NMFS, Project Company 1 submitted a final, revised application on August 12, 2022 that NMFS deemed adequate and complete on August 25, 2022. The final

version of the application is available on NMFS' website at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>.

On September 29, 2022, NMFS published a notice of receipt (NOR) of the adequate and complete application in the **Federal Register** (87 FR 59061), requesting public comments and information related to Project Company 1's request during a 30-day public comment period. Due to a request from a public group called Save Long Beach Island, Inc. (SaveLBI), NMFS extended the public comment period for an additional 15 days (87 FR 65193, October 28, 2022) for a total of a 45-day public comment period. During the 45-day NOR public comment period, NMFS received 5 comments and letters from the public, including a citizen, an environmental non-governmental organization (hereafter, "eNGO"), and a local citizen group. NMFS has reviewed all submitted material and has taken these into consideration during the drafting of this final rulemaking.

On September 22, 2023, NMFS published a proposed rule in the **Federal Register** for the Project (88 FR 65430). In the proposed rule, NMFS synthesized all of the information provided by Project Company 1, all best available scientific information and literature relevant to the proposed Project, outlined, in detail, proposed mitigation designed to effect the least practicable adverse impacts on marine mammal species and stocks as well as proposed monitoring and reporting measures, and made preliminary negligible impact and small numbers determinations. The public comment period on the proposed rule was open for 30 days at: <https://www.regulations.gov>, starting on September 22, 2023 and closing after October 23, 2023. The public comments can be viewed at: <https://www.regulations.gov/docket/NOAA-NMFS-2023-0068>. A summary of public comments received during this 30-day period and NMFS responses are described in the Comments and Responses section.

In June 2022, Duke University's Marine Spatial Ecology Laboratory released updated habitat-based marine mammal density models (Roberts *et al.*, 2016a; Roberts *et al.*, 2023). After consideration by NMFS, and because Project Company 1 applied previous marine mammal densities to their analysis in their initially submitted application, Project Company 1 reanalyzed its Project using the new Duke University data and submitted a final Updated Density and Take

Estimation Memorandum on March 28, 2023 that included marine mammal densities and take estimates based on these new models. This memorandum can be found on NMFS' website at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. This information was incorporated into the proposed rule (88 FR 65430, September 22, 2023).

During the development of the proposed rule during the months of January and February 2023, Project Company 1 informed NMFS that the proposed activity had been narrowed from what was presented in the adequate and complete MMPA application. Specifically, Project Company 1 committed to installing only monopile wind turbine generator (WTG) foundations for Project 1 (and any found in the associated Overlap Area), as opposed to either monopile or jacket foundations. All WTGs built for Project 2 (and any remaining Overlap Area) may still consist of either monopiles or jacket foundations as presented in the adequate and complete MMPA application. Additionally, all offshore substation (OSS) foundations that could be developed across both Projects 1 and 2 continue to maintain build-outs using only jacket foundations. Project Company 1 provided a memo and supplemental materials outlining these changes to NMFS on March 31, 2023. These supplemental materials can be found on NMFS' website at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>.

On August 1, 2022, NMFS announced proposed changes to the existing North Atlantic right whale vessel speed regulations (87 FR 46921, August 1, 2022) to further reduce the likelihood of mortalities and serious injuries to endangered right whales from vessel collisions, which are a leading cause of the species' decline and a primary factor in an ongoing Unusual Mortality Event (hereafter, "UME"). Should a final vessel speed rule or any other MMPA ITA be issued and become effective during the effective period of these regulations, Atlantic Shores will be required to comply with any and all applicable requirements contained within the final rule. Specifically, where measures in any final vessel speed rule are more protective or restrictive than those in this or any other MMPA ITA, Atlantic Shores will be required to comply with the requirements of the vessel speed rule. Alternatively, where measures in this or any other MMPA ITA are more restrictive or protective than those in any final vessel speed

rule, the measures in the MMPA ITA will remain in place. The responsibility to comply with the applicable requirements of any vessel speed rule will become effective immediately upon the effective date of any final vessel speed rule, and when notice is published on the effective date, NMFS will also notify Project Company 1 if the measures in the speed rule were to supersede any of the measures in the MMPA ITA such that they were no longer required.

On June 26, 2024, Atlantic Shores Offshore Wind LLC provided a written request to NMFS to change the LOA Holder from Atlantic Shores Offshore Wind LLC to Project Company 1, who would oversee and be responsible for the construction of both Project 1 and Project 2. Furthermore, on June 26, 2024, Atlantic Shores Offshore Wind LLC notified NMFS that it had requested that BOEM segregate a portion of Lease Area OCS-A-0499, which would then be assigned to another subsidiary of Atlantic Shores, Project Company 2, as Lease Area OCS-A-0570. As described above, Project Company 1 requested to NMFS that the incidental take regulation (ITR) governing take of marine mammals incidental to activities associated with both phases of the Project and the associated LOA (if issued by NMFS) be issued to Project Company 1, which would oversee Project 1 (constructed and operated by Project Company 1) and Project 2 (constructed and operated by Project Company 2) of the Atlantic Shores South Project. The lease segregation is expected to be completed by BOEM on September 30, 2024, and will not alter the geographic location or size of the area in which either Project 1 or Project 2 would be built, nor will it cause any changes to the construction schedule, planned activities, or take. In short, no changes to the overall Project were requested or are expected, with the exception of the name change. As a result, where appropriate, Project Company 1, the owner of the Project, has henceforth been incorporated as the "applicant" or "LOA Holder" throughout this final rule.

NMFS has previously issued 5 Incidental Harassment Authorizations (hereafter, "IHAs"), including 1 renewal IHA to Project Company 1 authorizing take incidental to high-resolution site characterization surveys offshore New Jersey in the now segregated OCS-A-0499 (to include OCS-A-0570) (see 85 FR 21198, April 16, 2020; 86 FR 21289, April 22, 2021 (renewal); 87 FR 24103, April 22, 2022; 88 FR 38821, June 14, 2023; and 89 FR 20434, March 22, 2024).

To date, Project Company 1 has complied with all the requirements (*e.g.*, mitigation, monitoring, and reporting) of the previous IHAs and information regarding Project Company 1's take estimates, and monitoring results may be found in the Estimated Take section. Final monitoring reports can be found on NMFS' website, along with previously issued IHAs at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>.

Description of the Specified Activities

Overview

Project Company 1 plans to construct and operate two offshore wind projects, Project 1 and Project 2, (collectively, Atlantic Shores South, or the Project) in the Lease Areas. These Lease Areas are located within the New Jersey Wind Energy Area (hereafter, "NJ WEA"). Collectively, Atlantic Shores South will consist of up to 200 WTGs, 10 OSSs, and 1 Met Tower divided into two projects: Project 1 and Project 2. These projects would assist the State of New Jersey to meet its renewable energy goals under the New Jersey Offshore Wind Economic Development Act (hereafter, "OWEDA"). Project Company 1 has been given an allowance by the New Jersey Board of Public Utilities through an Offshore Renewable Energy Certificate (hereafter, "OREC") to construct a facility capable of delivering 1,510 megawatts (MW) of renewable energy to the State of New Jersey through Project 1. Project 1 would be capable of powering approximately 700,000 homes (see <https://atlanticshoreswind.com/atlantic-shores-offshore-wind-receives-record-of-decision-for-atlantic-shores-project-1-and-2/>). Project Company 1 also intends to compete for a second OREC award through a competitive solicitation process to develop Project 2, which will be owned by another affiliate company of Project Company 1, Project Company 2, although Project Company 1 will oversee Project 2's development. Collectively, the entire Project is capable of powering over 1 million homes (see <https://atlanticshoreswind.com/atlantic-shores-offshore-wind-receives-record-of-decision-for-atlantic-shores-project-1-and-2/>).

decision-for-atlantic-shores-project-1-and-2/

The Project will consist of several different types of permanent offshore infrastructure, including: (1) up to 200 15-MW WTGs and up to 10 OSSs; (2) a single Met Tower; and (3) OSS array cables and interconnector cables. All permanent foundations (WTGs, OSSs, and the single Met Tower) will be installed using impact pile driving only. For the permanent foundations, Project Company 1 originally considered three construction scenarios for the completion of Projects 1 and 2. All three Schedules assume a start year of 2026 for WTG, Met Tower, and OSS foundation installation. Schedules 1 and 3 assume monopile foundations for all WTGs and the Met Tower across both Projects 1 and 2. Schedule 2 originally assumed a full jacket foundation buildout for both Projects 1 and 2. However, Project Company 1 has modified Schedule 2 to now assume that all WTGs and the Met Tower in Project 1 would be built using monopiles. The WTGs for Project 2 would still consist of either jacket or monopile foundations. In all Schedules, the OSS foundations would always be built out using jacket foundations. However, these may vary in size between the two Projects (*i.e.*, small, medium, or large OSSs). Under Schedules 1 and 2, foundations would be constructed in 2 years. Under Schedule 3, all permanent foundations would be installed within a single year.

Project Company 1 would also conduct the following specified activities: (1) temporarily installation and removal, by vibratory pile driving, of up to eight nearshore cofferdams to connect the offshore export cables to onshore facilities; (2) deployment of up to four temporary meteorological and oceanographic (hereafter, "metocean") buoys (three in Project 1 and one in Project 2); (3) conducting of several types of fishery and ecological monitoring surveys; (4) placement of scour protection, trenching, laying, and burial activities associated with the installation of the export cable route from OSSs to shore-based switching and substations and inter-array cables between turbines; (5) conducting of HRG vessel-based site characterization

and assessment surveys using active acoustic sources with frequencies of less than 180 kilohertz (hereafter, "kHz"); (6) transiting within the Project Area and between ports and the Lease Areas to transport crew, supplies, and materials to support pile installation via vessels; and (7) WTG operation. All offshore cables would be connected to onshore export cables at the sea-to-shore transition points located in Atlantic City, New Jersey (hereafter, "Atlantic City landfall site") and in Sea Girt, New Jersey (hereafter, "Monmouth landfall site"). From the sea-to-shore transition point, onshore underground export cables are then connected in series to switching stations/substations, overhead transmission lines, and ultimately to the grid connection. No detonations of unexploded ordnance or munitions and explosives of concern (hereafter, "UXOs/MECs") were planned to occur, nor are they included in this final rulemaking. Therefore, these are not discussed further and no take has been allowed for these activities.

Marine mammals exposed to elevated noise levels during vibratory and impact pile driving and site characterization surveys may be taken by Level A harassment and/or Level B harassment, depending on the specified activity and species.

A detailed description of the specified activities is provided in the proposed rule as published in the **Federal Register** (88 FR 65430, September 22, 2023). Since the proposed rule was published, Project Company 1 has not modified the specified activities. Please refer to the proposed rule for more information on the description of the specified activities.

Dates and Duration

Project Company 1 anticipates its specified activities to occur throughout all 5 years of the effective period of the regulations, beginning on January 1, 2025 and continuing through December 31, 2029. Project Company 1's anticipated construction schedule can be found in table 1. Project Company 1 has noted that these are the best and conservative estimates for activity durations but that the schedule may shift due to weather, mechanical, or other related delays.

TABLE 1—CONSTRUCTION SCHEDULE

Activity	Duration ^a (months)	Expected schedule ^b	Project 1 start date	Project 2 start date
Onshore Interconnection Cable Installation	9–12	2024–2025	Q1–2024	Q1–2024
Onshore Substation and/or Onshore Converter Station Construction	18–24	2024–2026	Q1–2025	Q1–2025
HRG Survey Activities	3–6	2025–2029	Q2–2025	Q3–2025
Export Cable Installation	6–9	2025	Q2–2025	Q3–2025

TABLE 1—CONSTRUCTION SCHEDULE—Continued

Activity	Duration ^a (months)	Expected schedule ^b	Project 1 start date	Project 2 start date
Temporary Cofferdam Installation and Removal ^c	18–24	2025–2026	Q2—2025	Q3—2025
OSS installation and Commissioning	5–7	2025–2026	Q2—2026	Q2—2026
WTG Foundation and Met Tower Installation ^d	^e 10	2026–2027	Q1—2026	Q1—2026
Inter-Array Cable Installation	14	2026–2027	Q2—2026	Q3—2026
WTG Installation and Commissioning ^f	17	2026–2027	Q2—2026	Q1—2027
Met Buoy Deployments	36	2025–2027	Q1—2025	Q1—2025
Scour Protection Pre-Installation	17	2025–2027	Q2—2025	Q3—2025
Scour Protection Post-Installation	17	2025–2027	Q2—2025	Q3—2025
Site Preparation	60	2025–2029	Q1—2025	Q4—2029
Fishery Monitoring Surveys	60	2025–2029	Q1—2025	Q4—2029

Note: Q1 = January through March; Q2 = April through June; Q3 = July through September; Q4 = October through December.

^a These durations are a total across all years the activity may occur.

^b The expected timeframe, based on a modified Schedule 2, is indicative of the most probable duration for each activity; the timeframe could shift and/or extend depending on supply chains, weather, mechanical, or other related delays.

^c Project Company 1 intends to install the temporary cofferdams for a limited duration annually between Labor Day and Memorial Day (*i.e.*, between early September and late May). However, given limited species presence, the limited amount of work planned for the entire cable landfall activity, and the expected impact is not anticipated to rise above a small subset of take by Level B harassment (*i.e.*, no take by Level A harassment is expected), this rulemaking does not specifically require time-of-year restrictions on this activity.

^d As described in the proposed rule (88 FR 65430, September 22, 2023), the expected timeframe is dependent on the completion of the preceding Project 1 activities (*i.e.*, Project 1 inter-array cable installation and WTG installation) and the Project 2 foundation installation schedule.

^e A seasonal pile driving moratorium is in place from January 1st through April 30th, annually, unless pile driving must occur in December to complete the Project and NMFS allows for December pile driving to also occur.

^f Project Company 1 anticipates that WTGs for each Project would be commissioned starting in 2026 and 2027 but turbines would not become operational until 2028 and 2029.

Specific Geographic Region

A detailed description of the Specific Geographic Region is provided in the proposed rule as published in the **Federal Register** (88 FR 65430, September 22, 2023). Since the proposed rule was published, no changes have been made to the

Specified Geographic Region. Generally, Project Company 1's planned activities (*i.e.*, impact pile driving of WTG, OSS, and Met Tower foundations; vibratory pile driving of temporary cofferdams (installation and removal); placement of scour protection; trenching, laying, and burial activities associated with the installation of the export cable and

inter-array cables; HRG site characterization surveys; and WTG operation) are concentrated in the Project Area (figure 1). A couple of Project Company 1's specified activities (*i.e.*, fishery and ecological monitoring surveys and transport vessels) will occur in the Mid-Atlantic Bight.

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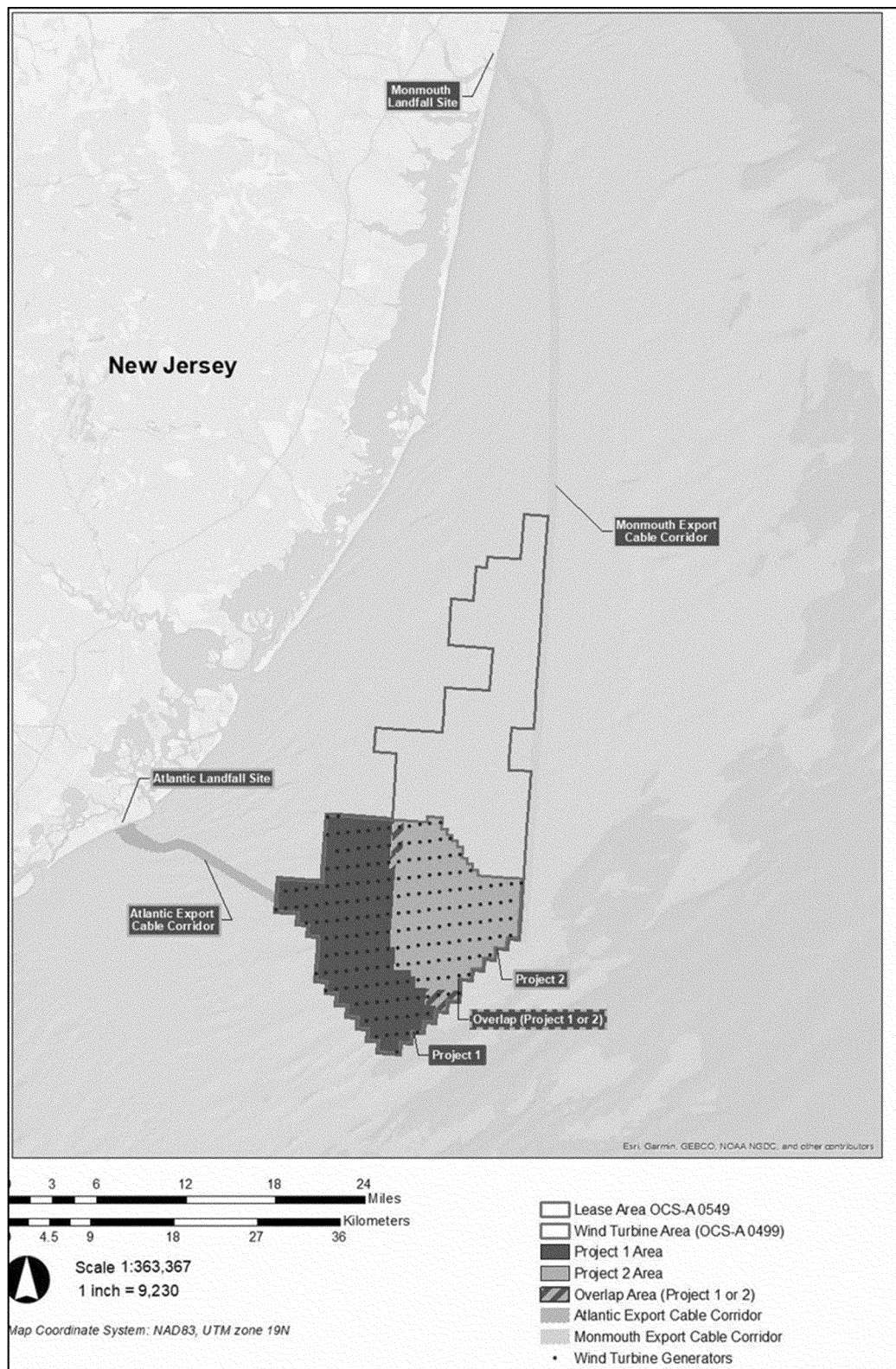


Figure 1 – Project Location

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Comments and Responses

A proposed rule was published in the **Federal Register** on September 22, 2023

(88 FR 65430). The proposed rule described, in detail, Project Company 1's specified activities, the specified geographic region of the specified

activities, the marine mammal species that may be affected by those activities, and the anticipated effects on marine mammals. In the proposed rule, we requested that interested persons submit relevant information, suggestions, and comments on Project Company 1's request and the promulgation of regulations and issuance of an associated LOA described therein, our estimated take analyses, the preliminary determinations, and the proposed regulations. The proposed rule was available for a 30-day public comment period.

In total, NMFS received 57 comment submissions, comprising 55 individual comments from private citizens, 1 comment letter from the Marine Mammal Commission (hereafter, "the Commission"), and 1 comment letter with supplemental attachments from the public group, SaveLBI. Some of the comments received were considered out-of-scope, including, but not limited to: comments related to constructing wind farms on land; comments on language found in the draft Environmental Impact Statement (EIS); comments related to offshore wind in Europe; comments specifically about activities found in HRG IHAS; visibility of WTGs from the coast; concerns for other species outside of NMFS' jurisdiction (*i.e.*, birds); the pros and cons of renewable energy and nuclear power; costs and finances regarding the construction of offshore wind farms; fishing activities from commercial industries; lifespan of WTGs located offshore; and tourism. These comments are not described herein or discussed further. Moreover, where comments recommended that the final rule include mitigation, monitoring, or reporting measures that were already included in the proposed rule and such measures are carried forward in this final rule, they are not included here, as those comments did not raise significant points for NMFS to consider. Furthermore, if a comment received was unclear, we do not include it here as we could not determine whether it raised a significant point for NMFS to consider.

The two letters and supplemental attachments from the Commission and SaveLBI, as well as the individual comments, received during the public comment period contained significant points that NMFS considered in its estimated take analysis, including: required mitigation, monitoring, and reporting measures; final determinations; and final regulations. These are described and responded to below. All substantive comments and letters are available on NMFS' website at: <https://www.fisheries.noaa.gov/>

permit/incidental-take-authorizations-under-marine-mammal-protection-act. Please review the corresponding public comment link for full details regarding the comments and letters.

Modeling and Take Estimates

Comment 1: A commenter recommended that NMFS revise its take estimates from impact pile driving using a 5 dB broadband noise source attenuation, rather than the 10 dB of sound attenuation, with no attenuation at low frequencies.

Response: In the proposed rule, NMFS described the best available science, which supports the assumption that at least 10 dB attenuation can be reliably achieved using the required noise attenuation systems, including a double bubble curtain. This included data from Bellmann *et al.* (2020) where double bubble curtains achieved between 8 to 18 dB of broadband noise attenuation depending on water depth and supplied air volume. Bubble curtain effectiveness depends significantly on the supplied air volume and the water depth, with performance increasing with air flow and decreasing with depth. Notably, the proposed rule requires an air flow rate of at least 0.5 m³/(minute*m) and the Project Area has depths ranging from 19 to 37 meters (m) (62.34 to 121.39 feet (ft)). In the set of measurements from Bellmann *et al.* (2020), broadband noise attenuation was only less than 10 dB for supplied air flow rates between 0.3 and 0.4 m³/(minute*m) and in depths of approximately 40 m (131.23 ft). Because the double bubble curtain used in this Project will be in shallower water and have more supplied air volume, it is reasonable to expect performance greater than 8 dB and closer to the measurements of curtains with higher airflow and in shallower water (12–18 dB). Finally, results from Vineyard Wind 1's SFV (Küsel *et al.*, 2024) indicate that the median near pile (750 m (2,460.63 ft)) sound pressure level while using double bubble curtains, along with a near pile resonator, was approximately 171 dB. The modeling for Vineyard Wind 1, which assumed 6 dB attenuation, implied levels near 180 dB at 750 m (JASCO Applied Sciences (USA) Inc. (JASCO and LGL., 2019)). This indicates that the combination of source modeling and an assumption of 10 dB would have been conservative in that case. Finally, Project Company 1 is required to conduct SFV during installation of every pile and provide bubble curtain performance reports to NMFS which will assist in determining if the double bubble curtain is working properly and is optimized and noise

levels are as expected. Thus, NMFS finds that the mitigation requirements in the proposed rule, which include the use of a double bubble curtain and adherence to best practice standards for operation of noise mitigation systems, are capable of providing an expected 10 dB of attenuation, as evidenced by the extensive data from Bellmann *et al.* (2020) and initial SFVs in US waters.

With regard to the fact that NMFS' assumed 10 dB attenuation rate is broadband in nature and assumes this level of noise reduction at all frequencies, NMFS agrees that attenuation levels vary by frequency band and that bubble curtains attenuate higher frequency sounds more effectively; however, NMFS disagrees that lower frequency bands, which are important to consider when evaluating impacts, are not attenuated at all. The data from Bellmann (2021), shows that for both single and double bubble curtains, more than 10 dB of attenuation was achieved for bands as low as 32 Hz. And while it is true that performance diminishes significantly at lower frequencies (< 32 Hz), those bands also contain significantly less pile driving sound and are +16 dB outside the most susceptible frequency range for low-frequency cetaceans.

Comment 2: A commenter stated that NMFS did not provide an explanation of the revised take numbers from JASCO's August 10, 2022 Exposure Modeling Report in the proposed rule. They further stated that NMFS did not disclose information on how the source levels, exposure ranges, and proposed takes were calculated.

Response: The proposed rule clearly describes that the take estimates were updated due to the release of the new Duke Habitat-Based Density Models (Roberts *et al.*, 2023) which are the best available science. Modeling methodology, including source, propagation, and exposure modeling methodology were summarized in the proposed rule and were thoroughly described in the JASCO Exposure Modeling Report and ITA application materials. Moreover, the proposed rule reflected the most recent information provided by the applicant, which is available on our website at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>.

Comment 3: A commenter stated that NMFS underestimated Level A harassment and Level B harassment take estimates because the proposed rule applied density models to the take calculations that, according to the commenter, do not account for North

Atlantic right whale migration and NMFS should not use the 160 dB_{rms} threshold to estimate behavioral harassment from pile driving. The commenter recommended that NMFS revise the take estimates based on the North Atlantic right whale density estimates contained within the application (Roberts *et al.*, 2016a, 2016b, 2017, 2018, 2021a, 2021b), not the updated Roberts *et al.* (2023) densities, and the Wood *et al.* (2012) step-function in lieu of the 160 dB_{rms} threshold. Additionally, the commenter suggested a new approach to calculate take of marine mammals, wherein NMFS should calculate the ranges to elevated noise levels perpendicular to the whale's path and assume that the number of whales heading toward that is proportional to that range divided by 60 mi (96.6 km). They state that this approach will better allow MMPA ITAs to assess the Project's potential impact. The commenter provided their independent take calculations using these alternative methods.

Response: NMFS disagrees with the commenter's recommendations. First, the Wood *et al.* (2012) probabilistic step-function recommended for use by the commenter was derived by a select group of experts to assess the impacts of seismic air gun surveys involving moving sources. The commenter did not provide information that demonstrates the 160 dB_{rms} threshold is less appropriate other than that the alternative method they proposed, which only results in slightly more take than both the proposed and final rules, which was also inclusive of a 3.8 mean group size of North Atlantic right whales from the Ocean Biodiversity Information System (OBIS) repository (OBIS, 2022) (*i.e.*, the commenters suggested 27 takes against the proposed rule's 21 takes against the final rule's 25 takes of North Atlantic right whales over a 5-year period).

While NMFS acknowledges the potential for behavioral disturbance at exposures to received levels below 160 dB_{rms}, it should also be acknowledged that not every animal exposed to received levels above 160 dB_{rms} will be behaviorally disturbed. The 160-dB threshold functions as a mid-point and serves as a practical generalized tool for informing the predicted likelihood, and quantification, of Level B harassment. Additionally, there are a variety of studies indicating that contextual variables (*e.g.*, range to source, received levels (RL) above background noise, novelty of the signal, and differences in behavioral state) play a very important role in responses to anthropogenic noise (Ellison *et al.*, 2012; Gong *et al.*, 2014),

and the severity of effects are not necessarily linear when compared to a received level. DeRuiter *et al.* (2012) also indicate that variability of responses to acoustic stimuli depends not only on the species receiving the sound and the sound source, but also on the social, behavioral, or environmental contexts of exposure. Use of the 160-dB threshold allows for a simplistic quantitative estimate of take while we can qualitatively address the variation in responses across different received levels in our discussion and analysis.

Overall, we reiterate the lack of scientific consensus regarding what criteria might be more appropriate. Defining sound levels that disrupt behavioral patterns is difficult because responses depend on the context in which the animal receives the sound, including an animal's behavioral mode when it hears sounds (*e.g.*, feeding, resting, or migrating), prior experience, and biological factors (*e.g.*, age and sex). Other contextual factors, such as signal characteristics, distance from the source, and signal to noise ratio, may also help determine response to a given received level of sound. Therefore, levels at which responses occur are not necessarily consistent and can be difficult to predict (Southall *et al.*, 2007; Ellison *et al.*, 2012; Southall *et al.*, 2021). For example, Gomez *et al.* (2016) reported that received level was not an appropriate indicator of behavioral response. Further, the seminal reviews presented by Southall *et al.* (2007), Gomez *et al.* (2016), and Southall *et al.* (2021) did not suggest any specific new criteria due to lack of convergence in the data.

Given there is currently no concurrence on these complex issues, NMFS followed its practice at the time of submission and review of this application in assessing the likelihood of disruption of behavioral patterns by using the 160 dB threshold. NMFS is currently evaluating available information towards development of updated guidance for assessing the effects of anthropogenic sound on marine mammal behavior. However, undertaking a process to derive defensible exposure-response relationships, as suggested by Tyack and Thomas (2019), is complex. The recent systematic review by Gomez *et al.* (2016) was unable to derive criteria expressing these types of exposure-response relationships based on currently available data.

NMFS is committed to continuing its work in developing updated guidance with regard to acoustic thresholds but pending additional consideration and process, is reliant upon an established

threshold that is reasonably reflective of best available science.

With respect to the commenters' claim that different densities should be used, the most recent Duke University habitat-based density models are considered the best available science. The models statistically correlate sightings with sightings from shipboard and aerial surveys with oceanographic conditions. In 2023, Duke University updated the North Atlantic right whale model to also include independently collected PAM data, expanding the data set used in the model since the previous model that was recommended for use by the commenter (see https://seamap.env.duke.edu/models/Duke/EC/EC_North_Atlantic_right_whale_history.html). Marine mammal behavior, such as foraging and migration, are not part of the metadata used in the Duke University density models; however, the survey data was collected along the entire coast which includes migratory habitat (including the mid-Atlantic where the Project would be constructed). Therefore, the commenters claim that North Atlantic right whale migration was not accounted for in the models is incorrect. NMFS applied the most recent Duke University models to the analysis contained within this rule as it represents the best available science (versions 12, 12.1, and 12.2 for North Atlantic right whales (https://seamap.env.duke.edu/models/Duke/EC/EC_North_Atlantic_right_whale_history.html)).

Project Company 1 conducted sophisticated modeling using simulated animals exposed to foundation pile driving noise levels above NMFS' thresholds to estimate exposures. The details of how this modeling is conducted was summarized in the proposed rule and is fully described in appendix B of Project Company 1's application at: https://media.fisheries.noaa.gov/2022-09/AtlanticShoresOWF_2022_Appendix%20B_OPR1.pdf. For North Atlantic right whales, the exposure estimates were adjusted upwards to account for group size. For example, the estimated modeled Level B harassment exposures from full build out assuming Construction Schedule 2 for North Atlantic right whales was 8.13 (see table 16 in appendix B of Project Company 1's ITA application); however, the applicant requested 12 takes by Level B harassment (see table 17). Therefore, NMFS' final rule considered 12 takes by Level B harassment. The simple take estimate approach recommended by the commenter which considers whales heading perpendicular to a certain distance and assuming that the number of whales heading toward

that is proportional to that range divided by 60 mi (96.6 km) is illogical. First, the commenter claims that the Duke University density data suggests that over the January through April time period, most North Atlantic right whale migration is occurring within 60 mi (96.6 km) of shore. However, this is irrelevant as no pile driving would be occurring January through April; therefore, using 60 mi (96.6 km) in any take calculation is not supported. Moreover, the commenter does not identify the method by which a number of whales perpendicular a distance should be derived. The commenter did not provide reasoning for why this approach would better allow MMPA ITAs to assess the Project's potential impact. For these reasons, NMFS has determined the number of takes that would be authorized for North Atlantic right whales is based on the best available science.

Comment 4: Regarding HRG surveys, commenters stated that take estimates were underestimated because the use of a SIG ELC 820 unit as a proxy for the Dura-Spark unit is unjustified and not consistent with other higher values found in the technical literature (*i.e.*, Crocker and Fratantonio (2016)). The comment stated that NMFS should instead be utilizing a source level of 211 dB in their analysis, rather than the 203 dB used in the proposed rule and ITA application materials, and that NMFS should apply a more conservative spreading loss coefficient when calculating distances to the Level B harassment threshold.

The commenter asserts that NMFS has underestimated exposure based on the use of the SIG ELC 820 unit, and noise source levels from vessels operating in the same area are comparable or higher than 211 dB. In addition, the commenter cited other recent HRG IHAs in the New York Bight and Mid-Atlantic Bight that have been previously authorized to use the Dura-Spark (400 tip), ranging at 5,500 to 2,000 joules (J), which result in a higher dB level than what is presented in the proposed rule for the Atlantic Shores South Project. The commenter also stated that the 203 dB value is inconsistent with the Endangered Species Act (ESA) programmatic consultation report that NMFS uses for ESA compliance and that NMFS should not issue any more ITAs for offshore wind work and should, consequently, cancel the Project.

Response: There is little data available regarding appropriate choice of spreading loss (or transmission loss coefficient) for sparker acoustic sources. The commonly used convention, which is applied here by NMFS, is to use

spherical spreading for HRG sources (Ruppel *et al.*, 2022). The field measurements by Rand (2023) imply spreading coefficients greater than 20, which shows that spherical spreading in that case is a good approximation. With regard to source level, the ITA application specifies that the Dura-Spark 240 is typically operated between 500–600 J and chose a source level based on the SIG ELC 820 of 203 dB (Crocker and Fratantonio, 2016). However, the developer has since informed NMFS that the survey team intends to use only the Geo Marine Geosource sparker and has clarified that it will be nominally operated with 400 tips and an energy of 400 J. Based on this, the most representative proxy equipment from Crocker and Fratantonio (2016) appears to be the Dura-Spark operating with 400 tips and 500 J, which was measured to have a source level of 203 dB. Notably, the SIG ELC 820 operating at 750 J and at a depth of 5 m (16.4 ft) also has a source level of 203 dB, according to Crocker and Fratantonio (2016). For these reasons, NMFS finds that the source level used in the analysis (203 dB) is appropriate for the planned activity and disagrees that any change to the analysis is necessary.

NMFS disagrees that the source level used in Project Company 1's sparker analysis is inconsistent with NMFS Greater Atlantic Regional Fisheries Office's (GARFO) 2021 ESA programmatic consultation for site assessment surveys. That analysis considered the loudest sources potentially used by all offshore wind developers conducting site assessment and site characterization surveys in the Atlantic Ocean due to its programmatic nature. Here, Project Company 1 has identified specific sources and operating modes and, therefore, our source level analysis is appropriate.

Comment 5: The commenter stated that NMFS' assumption on the spherical spreading and associated spreading loss factor was inaccurate as it calculates spreading beyond what could reasonably occur. They further stated that the 20 dB factor is presented without explanation or justification in equations in various reports, the transmission loss is not consistent with field measurements (Thomsen *et al.*, 2006), and the use of the 20 dB factor is not consistent with the NMFS approach used and described well as "common practice" in the NMFS' own ITAs from December 1, 2021 (86 FR 68223) and December 15, 2021 (86 FR 71162). They recommended that NMFS re-run the analysis, assuming a higher source level of the acoustic source (211

dB) and assuming a 15 dB transmission loss.

Response: In support of its position, the commenter cites several examples of use of practical spreading (a useful real-world approximation of conditions that may exist between the theoretical spreading modes of spherical and cylindrical; 15logR) in asserting that this approach is also appropriate here. However, these examples (U.S. Navy construction at Newport, Rhode Island, and NOAA construction in Ketchikan, Alaska) are not relevant to the activity at hand. First, these actions occur in even shallower water (*e.g.*, less than 10 m (32.81 ft) for Navy construction). NMFS notes that the transmission loss from field measurements referenced (Thomsen *et al.*, 2006) appear to be relative to impact pile driving. For a number of factors, transmission loss and therefore appropriate models depend on source characteristics. The commonly used convention, which is applied here by NMFS, is to use spherical spreading for HRG sources (Ruppel *et al.*, 2022). There is little data available regarding appropriate choice of spreading loss (or transmission loss coefficient) for HRG sources and sparkers in particular. However, the data that do exist for sparkers suggest that spherical spreading is a fair approximation; the field measurements by Rand (2023) imply spreading coefficients greater than 20 (22.5), field measurements from Halvorsen *et al.* (2018) are reasonably approximated by spherical spreading, and propagation modeling performed by Thomsen (2023) implies a transmission loss coefficient of 20.26. Thus, of the data that do exist, none suggest spherical spreading is a poor approximation. NMFS will continue to evaluate appropriate propagation models for this and other HRG sources as new data and literature become available.

Comment 6: The commenter criticized Project Company 1's use of the 2018 NMFS auditory weighting functions with the Wood *et al.* behavioral criteria as described in the JASCO modeling report, indicating the weighting functions are inappropriate. In addition, they claim that NMFS weighting functions for low-frequency cetaceans incorrectly assume that low-frequency cetaceans weighting functions eliminate most of the pile driving noise. They stated that the NMFS approach artificially underestimated take of low-frequency species as the underlying science was not intended to be used as such and that NMFS must re-estimate the exposure ranges and take using broader weighting functions (*i.e.*, Southall *et al.*, 2007). Lastly, they also

stated the NMFS' use of the 160 dB threshold for impulsive noise resulting from construction activities and vessel surveys is inconsistent by using the 160 dB threshold to assess vessel surveys and Woods *et al.* to assess construction activities. Overall, they say that this has resulted in NMFS underestimating the take associated with this Project and resulted in insufficient mitigation and monitoring zone sizes.

Response: These comments suggest there is confusion in understanding which thresholds were used for the analysis contained within the proposed and this final rule. For NMFS' analysis of behavioral harassment from pile driving and HRG surveys, we have appropriately relied on our 160 dB_{rms} sound pressure level (SPL) threshold, which is unweighted (*i.e.*, no sound is being eliminated), not the Wood *et al.* step function. Furthermore, we only rely on our 2018 weighting functions to assess the potential for auditory injury (*i.e.*, permanent threshold shift (PTS)). NMFS agrees with the commenter that the thresholds associated with Wood *et al.* are intended to rely on the broader M-weighting functions from Southall *et al.* (2007), not the weighting associated with our 2018 Technical Guidance.

Comment 7: Commenters have stated that NMFS underestimated take by Level A harassment (which the commenter asserts means "instances of serious harm or fatality") because the rule "does not estimate those" takes "that occur indirectly from Level B behavior disturbances." The commenters argue that HRG survey efforts in the Atlantic are causing recent whale strandings along the East Coast due to the overlap in time in which these events occur. The commenters claim that HRG surveys being performed for offshore wind development are the cause of recent U.S. East Coast strandings because literature and news reports document that seismic surveys using airguns, multibeam echosounders (MBES), and military sonar have been acknowledged previously as the cause of strandings worldwide. A commenter provided an Addendum to their letter wherein they describe that those sources used have similarities to the proposed HRG noise sources for the Project. All of the commenters thus claimed that HRG surveys conducted by Project Company 1 for the Project would result in whale strandings, including death.

Response: There is no evidence to support the assertion that serious injury or mortality is a reasonably anticipated outcome of Project Company 1's specified activities. Further, while NMFS acknowledges military active sonar and seismic airguns have been

associated with more severe effects, including strandings for military sonar in limited circumstances, these sources and operational parameters are very dissimilar to HRG surveys and their likely effects are not appropriately compared.

While NMFS acknowledges that HRG survey effort has increased in the Atlantic Ocean during the time period of increased whale strandings, there is no scientific evidence that HRG survey effort is a contributing factor to the strandings. NMFS does not agree that mortality is an anticipated outcome of these specified activities, and there is no evidence to suggest otherwise, as described below. Further, the proposed rule (88 FR 65430, September 22, 2023) clearly states that no serious injury and/or mortality is expected or was proposed to be allowed, and the same carries into the final rule for which no take by serious injury or mortality has been allowed (see also 50 CFR 217.302(c)). More specifically, we refer the commenters to the "Prohibitions" portion of the regulatory text (see 50 CFR 217.303). In the event that Project Company 1 takes any marine mammals in a manner that has not been authorized in the final rule (see 50 CFR 217.303), including mortality, these would be in violation of the MMPA and its implementing regulations and NMFS would undertake appropriate actions, as determined to be necessary (see 16 U.S.C. 1371(a)(5)(B)).

The best available science indicates that the anticipated impacts from site characterization and site assessment HRG surveys potentially include temporary avoidance of localized areas, cessation of foraging or communication, temporary threshold shift (TTS), stress, masking, *etc.* (as described in the Effects of the Specified Activities on Marine Mammals and their Habitat section in the proposed rule). NMFS emphasizes that there is no evidence that noise resulting from HRG surveys used for offshore wind development would cause marine mammal strandings, and there is no evidence linking recent large whale mortalities and currently ongoing offshore wind activities (*i.e.*, HRG surveys). The commenters offer no such evidence or other scientific information to substantiate their claim. This point has been well supported by other agencies, including the Marine Mammal Commission Newsletter, Spring 2023). Additionally, a recent paper by Thorne and Wiley (2024) reviewed spatiotemporal patterns of strandings, mortalities, and serious injuries of humpback whales along the U.S. East Coast from 2016–2022. Humpback whales were chosen as a case study for

this analysis as they are currently undergoing a UME and strand more often than other large whale species. Thorne and Wiley (2024) found vessel strikes to be a major driver in the increase of humpback whale strandings, mortalities, and serious injury along the East Coast. The potential for vessel strike increased during the study period due to increased vessel traffic in new foraging areas, the increased presence of juvenile humpback whales, and humpback whale foraging in shallow areas that overlap with vessel traffic. Based upon the spatiotemporal analysis, no evidence was found that offshore wind development played a role in the increased number of strandings over time. Future studies should focus on gaining a greater understanding of spatial and seasonal habitat use patterns of large whales, spatiotemporal changes in prey abundance and distribution, and how habitat use and foraging behavior affect the risk of vessel strike. While several species of delphinids and beaked whales have also stranded off New Jersey since 2011 (per data provided from the National Marine Stranding Network), there is no evidence that the acoustic sources used during HRG surveys contributed to these events. NMFS will continue to gather data to help us determine the cause of death for these stranded whales.

There is an ongoing UME for humpback whales along the Atlantic coast from Maine to Florida, which includes animals stranded since 2016, and we provide further information on the humpback whale and North Atlantic right whale UMEs in the Description of Marine Mammals in the Specific Geographic Region section of this final rule. For humpback whales, partial or full necropsy examinations were conducted on approximately half of the whales that were recently stranded along the U.S. East Coast. Necropsies were not conducted on other carcasses because they were too decomposed, not brought to land, or stranded on protected lands (*e.g.*, national and state parks) with limited or no access. Of the whales examined (roughly 90), about 40 percent had evidence of human interaction (*i.e.*, vessel strike or entanglement). Vessel strikes and entanglement in fishing gear are the greatest human threats to large whales. The remaining 50 necropsied whales either had an undetermined cause of death (due to a limited examination or decomposition of the carcass) or had other causes of death including parasite-caused organ damage and starvation. For North Atlantic right whales, starting

in 2017, evaluated mortalities were documented in both Canada and the United States, with the whales documented for this UME as being dead, injured, and/or sick to the extent that more than 20 percent of the population has been affected. The preliminary cause of mortality, serious injury, and morbidity (*i.e.*, sub-lethal injury and illness) in most of these whales is from entanglements or vessel strikes and human impacts continue to threaten the survival of this species. See NMFS' websites at: <https://www.fisheries.noaa.gov/national/marine-life-distress/2016-2024-humpback-whale-unusual-mortality-event-along-atlantic-coast> and <https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2024-north-atlantic-right-whale-unusual-mortality-event> for more information on the ongoing humpback whale and North Atlantic right whale UMEs. More information about interactions between offshore wind energy projects and whales can be found at: <https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-life-distress/frequent-questions-offshore-wind-and-whales>.

In their letters, the commenters referenced several papers documenting strandings associated with airguns and military sonars and cited several global events where animals stranded around the same time as these specific acoustic sources were used. They suggest that these sources are analogous to HRG sources used by Project Company 1. This is unsupported and inaccurate. High-powered seismic airguns and military sonars ensonify much larger areas than the lower-powered HRG survey equipment used in offshore wind activities, typically with distances to harassment thresholds on the order of several to 10s of kilometers, as opposed to the few hundreds of m to the 160-dB isopleth for the largest sources typically used in wind HRG surveys.

NMFS assessed the 10 monitoring reports submitted by authorization holders since 2021 for HRG activities (available on NMFS website) and found that overall and averaged across species, fewer than 9 percent of the individual marine mammals authorized for take were observed within the estimated Level B harassment zone (acknowledging that the true percentage is likely higher due to availability and perception bias), with no more than 21 percent of any species, and no North Atlantic right whales, observed within the Level B harassment zone of any survey. Furthermore, the most common behavioral response when the regulated sound sources were both active and

inactive was overwhelmingly "None". "Change Direction" (*i.e.*, which is broadly defined as "animal(s) alters orientation quickly, noticeably, or abruptly") was the second most frequent behavioral change observed, and also occurred during all source activity levels (per definitions commonly utilized in the *Mysticetus*TM software and based on other 90-day reports associated with oil and gas, geotechnical operations, and HRG operations (*e.g.*, Aerts *et al.*, 2008; Bles *et al.*, 2010; Lomac-MacNair *et al.*, 2014) and found within Appendix A of the final monitoring report associated with 84 FR 52464 (October 2, 2019)). The data demonstrates that individuals exhibited a change in pace more frequently when the acoustic source was active, as well as a change of pace and direction. Conversely, "Dive" (*i.e.*, broadly defined as "animal(s) abruptly moves completely below the surface") and "Look" (*i.e.*, broadly defined as "animal is watching the vessel, *e.g.*, spy hopping") were exhibited more frequently when the acoustic source was inactive.

Furthermore, a commenter references a 2008 stranding event of melon-headed whales in Madagascar, implying that a similar occurrence may be reasonably anticipated outcome of HRG survey work off of New Jersey. An investigation of the stranding event indicated that use of a 12-kHz MBES (a source unlike any planned for use by Project Company 1 or any other offshore wind companies on the East Coast) was the most plausible and likely initial behavioral trigger of the event (with the caveat that there was no unequivocal and easily identifiable single cause). The investigation panel also noted several site- and situation-specific secondary factors that may have contributed to the avoidance responses that led to the eventual entrapment and mortality of the whales (Southall *et al.*, 2013). Specifically, regarding survey patterns prior to the event and in relation to bathymetry, the vessel transited in a north-south direction on the shelf break parallel to the shore, ensonifying deep-water habitat prior to operating intermittently in a concentrated area offshore from the stranding site. This may have trapped the animals between the sound source and the shore, thus driving them towards the lagoon system. Shoreward-directed surface currents and elevated chlorophyll levels in the area preceding the event may also have played a role. The 12 kHz output frequency (generally in the middle of most marine mammal hearing ranges), significantly higher output power, and

complex nature of the system implicated in this event, in context of the other factors noted here, likely produced a fairly unusual set of circumstances that indicate that such events would likely remain rare and are not relevant to use of more commonly used lower-power, higher-frequency systems such as those evaluated for this analysis. Further, the MBES sources included in Project Company 1's activities are all 200 kHz or above (*i.e.*, beyond marine mammal hearing range) and significantly lower source levels than those used in the survey associated with the Madagascar event. Given this, marine mammals are not expected to hear the MBES sources used for the Project, which means that no behavioral response is anticipated, much less one that might be expected to contribute or lead to a stranding.

A commenter suggested a connection between the recent U.S. East Coast strandings and the site characterization surveys, citing different analyses and studies from other sound sources, and compared the source characteristics of sparkers to airgun arrays, arguing they are more similar than is captured by NMFS's respective analysis of these sources. NMFS acknowledges that both sparkers and airguns have wide ranges of configurations and potential source levels. However, low energy sparkers (analyzed as 500–600 J here) are significantly different from common airgun seismic surveys in many ways (*e.g.*, pulse duration, kurtosis, directionality, frequency content, source levels, and finally in how they are operated). In terms of sound levels, the maximum peak SPL measured for a similar sparker source in the field by Rand (2023) was 151.7 dB at a range of approximately 1 km (0.62 mi). The modeling methodology proposed here implies a peak SPL of 151 at 1 km (0.62 mi), using spherical spreading and a peak source level of 211 dB. In this case it is clear that both modeling and field data show that for similar sound sources the range to 150 dB is approximately 1 km (0.62 mi). By contrast, Martin *et al.* (2017) measured the distance to the 150 dB peak isopleth for a seismic survey to be 41.8 km (25.97 mi). Similarly, a seismic array analyzed for use in the Gulf of Mexico was modeled to have distances to the 160 dB_{rms} isopleth ranging between 7 to 24 km (4.35 to 14.91 mi) (Gulf of Mexico rule modeling found on NMFS' web page at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico>), whereas the sparker is estimated by the modeling

here to have a 160 dB_{rms} range of 141 m (462.6 ft) and the measurement (Rand, 2023) was significantly below 160 dB at 1 km (0.62 mi).

The commenter further states that the frequency range of HRG sparkers likely overlaps that of mid-frequency sonar. Sparkers have a transmission frequency between approximately 300–1400 Hz (Ruppel *et al.*, 2022), and while NMFS agrees that this does overlap with the lower end of what is considered for mid-frequency sonar (mid-frequency sonar is typically defined as 1 to 10 kHz), the frequency content of the 2 sources are different. Further, the commenter acknowledges that mid-frequency sonars have a source level of 235 dB, which is significantly higher than typical source levels for sparkers. For these reasons, NMFS finds that comparison with mid-frequency sonar is not particularly useful in comparison of likely impacts to marine mammals.

Lastly, NMFS acknowledges that a commenter, in their Addendum, describes a study performed in the Gulf of Mexico in 2012 where the researchers suggested that the use of airguns in seismic surveys in the Gulf of Mexico may contribute to higher rates of stranding of several species of whale and dolphin. However, NMFS notes that the paper cited on this point is a paper by Pirotta *et al.* (2015) “Predicting the effects of human developments on individual dolphins to understand potential long-term population consequences.” Contrary to the commenters’ description, this paper does not discuss strandings or seismic surveys. Because the cited paper does not correspond to the study described in the comment and no other citation for the study is provided, NMFS is unable to respond to the findings of this study in context to our proposed rulemaking and MMPA action.

Comment 8: Commenters erroneously asserted that Level A harassment equates to instances of serious harm or fatality (*i.e.*, mortality) and that members of the public are opposed to offshore wind construction, including the Project, on the basis that it kills marine mammals. Additionally, a commenter also conflates any take by Level A harassment with Potential Biological Removal (PBR).

Response: NMFS reiterates that serious injury and/or mortality is not expected to occur as a result of Project Company 1’s planned activities, was not requested by the applicant, and NMFS is not allowing any through this final rulemaking. Furthermore, there is no evidence that construction of the Project will lead to mortality of marine mammals, especially given the rigorous

mitigation and monitoring measures NMFS requires Project Company 1 undertake.

Turning to the commenter’s second point, the commenter misrepresents PBR with the suggestion that it is applicable in the context of Level A harassment. The PBR level is defined as the maximum number of animals, not including natural mortalities, that may be removed from a stock while allowing that stock to reach or maintain its optimum sustainable population (16 U.S.C. 1362(20)). Thus, PBR is only germane in the discussion of “removals” (*i.e.*, serious injury or mortality) of individual marine mammals from the population and, therefore, PBR is not applicable in this discussion since no serious injury or mortality of any individuals is anticipated or allowed, as mortality has not been authorized.

Comment 9: Commenters stated that NMFS must provide more information on the predictions for serious harm and mortality expected by Level A harassment and Level B harassment. Specifically, commenters claim that HRG surveys are causing strandings while a commenter was concerned that Level B disturbances can lead to: (1) avoiding the noise or “standing off” from it in an undesirable direction or location, and in a migratory setting, obstructing or blocking it; (2) if the mammal is between the shore and the vessel source, being driven towards the shore seeking relief; (3) surfacing (demonstrated experimentally by Nowacek *et al.* (2003)) to seek a lower noise level and becoming more vulnerable to vessel strike; (4) the separation of mothers and calves due to the “masking” of their normal communications, which would be fatal for the calf; and (5) the loss of its navigational ability, cessation of feeding or mating, loss of energy and the ability to detect predators or oncoming ships.

Response: NMFS refers to its response to *Comment 7* above regarding the potential for HRG surveys to result in marine mammal mortality. With respect to the concern that Level B harassment could lead to harm or mortality, NMFS refers the reader to the description in the proposed rule (88 FR 65430, September 22, 2023) on Population Consequences of Disturbance (PCoD) models. NMFS recognizes that intense, prolonged and repeated behavioral harassment that disrupts key life behaviors could lead to impacts on reproduction or survival. However, as described in the proposed rule and the Negligible Impact Determination section of this final rule, the best available science indicates that behavioral

impacts to marine mammals from exposure to HRG surveys, and in consideration of the required mitigation measures, are not anticipated to result in energetic consequences that could lead to Level A harassment, impacts on reproduction or mortality. HRG surveys may result in low-level temporary behavioral disturbance such as slight avoidance of the source.

In addressing the comment related to masking of communications between mothers and calves, NMFS agrees that noise pollution in marine waters is an issue with the potential to affect marine mammals, including their ability to communicate when noise reaches certain thresholds. This was addressed, in detail, in the proposed rule in the Effects section (88 FR 65430, September 22, 2023). While the commenter does not specifically address what would cause the mortality of a calf in the event of a separation, NMFS assumes the commenter is referring to missed foraging nursing opportunities. Specifically related to HRG surveys, NMFS disagrees that the noise produced by HRG acoustic sources would be extensive enough to cause effects to the extent that these effects would cascade from minor behavioral impacts into mortality to the calf and has stated in both the proposed and final rules that only take equating to Level B harassment is expected to occur. While the scientific literature supports evidence of reduced vocalizations between a North Atlantic right whale mother-calf pair when at the calving ground, which is located much further south and outside of the Project Area (Parks and Clark, 2007; Parks *et al.*, 2019; Trygonis *et al.*, 2013), vocalizations between the pair are known to increase as the whales undertake their annual travel/migration behaviors to the northern foraging ground (also located outside of the Project Area) and as the calf matures (Cusano *et al.*, 2018; Root-Gutteridge *et al.*, 2018). NMFS refers the commenters to a paper by Videsen *et al.* (2017), which reports lower-level communication calls between humpback mother-calf pairs and noting the increased risk of cow-calf separation with increases in background noise. We first note that only neonates were tagged and measured in this study (*i.e.*, circumstances could change with older calves). Further, while vocalizations between these pairs are comparatively lower level than between adults, the cow and neonate calf are in regular close proximity (as evidenced by the extent of measured sound generated by rubbing in this study), which means that

the received levels for cow-calf communication are higher than they would be if the animals were separated by the distance typical between adults—in other words, it is unclear whether these lower-level, but close proximity, communications are comparatively more susceptible to masking. Furthermore, by making this comment, the commenter has not considered the movement of both the whale pair and the HRG acoustic sources as they relate spatially, and more specifically off of the New Jersey region which no primary foraging ground currently exists for North Atlantic right whales. While it is possible that North Atlantic right whale mother-calf pairs would pass through the Project Area during HRG survey campaigns, we expect that any overlap in occurrence between the isopleth from the HRG acoustic sources and North Atlantic right whale pairs would be brief, with the whales able to undertake minimal avoidance behaviors (*i.e.*, avoidance) to further reduce any impacts from the acoustic sources. In considering only the overlap between HRG surveys and North Atlantic right whale presence, the commenter is not accounting for the conservative mitigation measures implemented before and during HRG surveys, whereas the estimated isopleth size from the Geo-Marine GeoSource, the sparker that Project Company 1 is planning to use, and the acoustic source with the largest distance to the Level B harassment threshold is 141 m (462.6 ft). The Clearance, Shutdown, and Vessel Separation Zones for North Atlantic right whales are all 500 m (1,640 ft), over 3.5 times the size of the isopleth, providing a more protected zone whereas North Atlantic right whale pairs would not be close enough to the edge of the isopleth before mitigative actions would be undertaken (*i.e.*, shutdown or delay of using the acoustic source). Furthermore, any exposure to HRG acoustic sources would be expected to be minimal and fleeting, and most likely very easy for the whales to avoid the stimulus while experiencing minimal to no real effects. In understanding this very low likelihood of encountering cow-calf pairs, when combined with the fact that any individuals (or cow-calf pairs) would not be expected to be exposed on more than a couple/few days in a year, we expect that they would resume any previously interrupted behaviors quickly and with no long-term detrimental impacts.

Similarly, NMFS GARFO's 2021 programmatic consultation determined that the actions considered therein were

not likely to adversely affect any ESA-listed species or critical habitat and that, or the activities considered therein, no take is anticipated or exempted, as defined under the ESA (see <https://media.fisheries.noaa.gov/2021-12/OSW-surveys-NLAA-programmatic-rev-1-2021-09-30-508-.pdf>). With respect to any behavioral reactions from Project Company 1's activities resulting in increased risk of vessel strike, the commenter did not provide any evidence to support this conclusion. Marine mammals are subject to intense shipping traffic throughout U.S. East Coast waters (as demonstrated by UME data given vessel strikes are the primary cause of recent whale deaths in the Atlantic Ocean) and a slight deflection of migration or other movement patterns by whales in response to Project Company 1's activities does not necessarily mean risk would be increased. We note that GARFO's final Biological Opinion for the Project provided an evaluation of indirect vessel strike risk on marine mammals and found that, while avoidance and localized displacement behaviors are expected, these effects are expected to be temporary. Furthermore, even for those activities expected to be louder (*i.e.*, foundation impact pile driving) than those activities specifically discussed by the commenter (*i.e.*, HRG surveys), the Biological Opinion concluded that there is no expected avoidance behavior by a North Atlantic right whale from pile driving noise (or activities that produce quieter sounds) that would result in whales moving to areas with a higher risk of vessel strike. This determination was based on the relatively small size of the area with noise that an individual whale is expected to avoid (no more than 11 km (6.84 mi) from the pile being installed), the short-term nature of any disturbance, the limited number of whales impacted, and the lack of any significant differences in vessel traffic in that 11 km (6.84 mi) area that would put an individual whale at greater risk of vessel strike.

Comment 10: A commenter stated that NMFS should provide a description and rationale for the whale behavior assumptions being employed in JASCO's JASMINE model, otherwise NMFS should dispense with utilizing animal avoidance modeling in the ITA.

Response: The animal behavior attributes considered by JASCO in their JASMINE model are described in section 2.7 of JASCO's Underwater Acoustic Impact Assessment Report (see appendix B; https://media.fisheries.noaa.gov/2022-09/AtlanticShoresOWF_2022_

[Appendix%20B_OPR1.pdf](#)) and include behaviors as diving, foraging, aversion, and surface times. As described in the report, a subset of animal avoidance (called "aversion" in the text) scenarios were run for comparison purposes only (see page 24 in appendix B to section 2.7 of JASCO's Underwater Acoustic Impact Assessment Report) and were not considered in the exposure estimates calculated by JASCO that were used in this MMPA analysis.

Monitoring, Reporting, and Adaptive Management

Comment 11: Commenters stated that the proposed rulemaking overly relies on the use of PSOs and PAM to mitigate "harm" to marine mammals, claiming PSOs have a limited visual range of 1,500 m (4,921.3 ft) from an elevated platform or 1,000 m (3,280.84 ft) from a vessel bridge and that PSOs cannot observe North Atlantic right whales more than 5–10 ft (1.52–3.05 m) below the water's surface. They further state that PSOs would be even more limited during any nighttime pile driving, as there is no evidence that this specialized equipment is capable of allowing PSOs to detect whales in the dark at distances of more than a few hundred meters, and useless for North Atlantic right whales swimming at depth. The commenter also expressed concern over PAM limitations, including that PAM is effective only for calling animals, and that the probability of detection decreases with distance from the source and within increased background noise levels. To address these limitations, the commenter recommended PAM systems be deployed from multiple support vessels removed from the pile being installed and/or mono-buoys be placed strategically to operate and monitor in near-real time.

Response: NMFS disagrees that monitoring efforts (*i.e.*, using a combination of PSOs and PAM) will not be effective at detecting North Atlantic right whales such that injury or harm can be avoided. Commenters provided no evidence to support the presumed visual observation ranges. Project Company 1 is required to ensure that PSOs can visually monitor an area no smaller than the minimum visibility zone (1,900 m (6,233.6 ft)), which is more than the 1,500 m (4,921.3 ft) distance specified by the commenter. Pile driving may not occur in any conditions (*e.g.*, fog, rain, darkness) if PSOs are not able to sight marine mammals out to this distance. During construction of Vineyard Wind 1 and South Fork Wind, PSOs observed baleen whales at ranges as distant as 23 km

(75,459 ft) (RPS, 2024; South Fork Wind, 2024). NMFS recognizes distances out to which marine mammals may be observed are both species and weather dependent; however, the commenter did not provide evidence to support claims the minimum visibility zone could not be effectively monitored. Regarding PAM, the commenter cited a study titled “PAMguard Quality Assurance Module for Marine Mammal Detection Using Passive Acoustic Monitoring” (CSA Ocean Science, Inc., 2020), stating that PAM systems have a limited capability detecting marine mammals, especially low-frequency baleen whales, when the animal is not vocalizing, and that this may cause North Atlantic right whales to remain undetected prior to entering the Level A harassment zone, particularly because right whales often go “days or weeks without uttering a sound.” The commenters further described the findings of this study, specifically noting that the probability of detection varies, stating that PAM systems may have a “significant miss rate,” within any individual hour even if marine mammals are vocalizing, in some cases due to limitations related to “the operator’s ability to stay attentive and interpret the sound data produced by the monitoring equipment,” and that PAM systems are too easily masked by background noise. The study cited focuses on evaluating the relative performances of automated detectors and human analysts when tasked with identifying the occurrence of species-specific marine mammal call types in PAM data collected using a towed hydrophone array, thus the “miss rate” noted does not necessarily refer to the likelihood that a vocalizing marine mammal would not be detected on a given PAM system, but instead reflects variations in the ability of the automated detector or human analyst to detect a call if it is present in the PAM dataset. Developers are currently using a variety of PAM systems, including bottom-mounted hydrophone arrays and moored acoustic buoys, and assisted classification of received acoustic signals using automated detectors which minimizes strain on the PAM operator, thus reducing fatigue. This approach combines the strengths of both detector “types” (*i.e.*, human and software), by using automated detection software to cue a PAM operator’s attention to potential acoustic detections of a given species during real-time monitoring, which the operator can then probe to determine the context of the detection and verify the detection and classification.

The commenter does not provide any support for the claim that right whales are silent for days or weeks. Studies of right whale calling behavior (Davis *et al.*, 2017; Davis *et al.*, 2023; van Parijs *et al.*, 2023) indicate that, where acoustic buoys are deployed in known right whale habitat, upcalls (*i.e.*, a call type commonly produced by all age groups) are not only detected regularly (*i.e.*, many calls per hour) when right whales are expected to occur, based on known seasonal distribution patterns understood through visual observation and PAM data, but are also detected consistently during periods when right whales were not expected to occur (*e.g.*, in southern New England in winter). Both Davis *et al.* (2017) and Davis *et al.* (2023) provide evidence that upcalls were detected, at minimum, weekly throughout much of the U.S. Eastern Seaboard and Canadian Maritimes during periods when right whales were present (confirmed by visual observations), and in many cases, much more frequently. These and similar studies report on upcall detection patterns, but right whales frequently produce other types of vocalizations, such as tonal moans and downsweeps, thus increasing the likelihood of detection using PAM.

There are a wide variety of PAM systems available on the market (van Parijs *et al.*, 2021), ranging from omnidirectional independent acoustic buoys to multi-channel hydrophone arrays that are capable of detecting marine mammals in real-time. Barkaszi *et al.* (2020), the paper cited by the commenter focuses on characterizing marine mammal detection performance for towed PAM systems, which are typically most effective for monitoring mid- and high-frequency cetaceans and, to date, have not been proposed by offshore wind developers to monitor for marine mammals during foundation pile driving. While the specific PAM systems that would be used by Atlantic Shores South are still unknown, Atlantic Shores South is required to submit a Passive Acoustic Monitoring Plan (PAM Plan) to NMFS that demonstrates the system will be able to detect North Atlantic right whales at ranges up to 10 km (32,808.4 ft). To date, offshore wind developers have used bottom-mounted PAM systems located at distance from piles being installed. The proposed rule, and this final rule, require the PAM system be placed no closer than 1 km (3,280.8 ft) from the pile being installed to minimize masking of North Atlantic right whale calls by construction noise. We anticipate Project Company 1 would

use similar bottom-mounted recorders in lieu of PAM systems operated from vessels, as recommended by the commenter, particularly given the prevalence of masking of low-frequency sounds like North Atlantic right whale vocalizations by flow noise using towed PAM arrays (Barkaszi *et al.*, 2020; Thode *et al.*, 2021; van Parijs *et al.*, 2021).

Comment 12: Commenters stated that NMFS should disclose noise source levels at the 1 m (3.3 ft) and 750 m (2,460.6 ft) points, and the best fit noise transmission spreading loss and attenuation factors as recommended in the recent BOEM pile driving document recommendations.

Response: NMFS agrees that inclusion of source levels is important and notes decade band spectra are provided at 1 m (3.3 ft) for impact pile driving. Further, the decade spectra can be used to estimate broadband source levels. NMFS has performed this and the spectra corresponded to sound exposure level (SEL) source levels of approximately 227 dB for both 12-m and 15-m monopiles at hammer energies of 4,400 kilojoules (kJ). With regard to propagation loss, NMFS does not require best fit coefficients be included when more sophisticated propagation modeling is performed. However, such coefficients can be estimated from the acoustic ranges provided in the ITA application appendices.

Effects Assessment

Comment 13: Commenters requested that all incidental take issued across multiple ITAs for offshore wind projects be considered cumulatively from previous, ongoing, or potential projects and their specified activities. One commenter specifically suggested that not considering the impacts of both the Atlantic Shores North Project and this Project, that would collectively result in the installation of 357 WTG, leads to an underestimate of exposure ranges and take estimates. A commenter also stated that NMFS did not address the cumulative effects of turbine operation from this Project or others in the New York Bight area.

Response: Section 101(a)(5)(A) of the MMPA requires 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. 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 (see 50 CFR 216.104(a)(1)). Thus, the “specified

activity” for which incidental take coverage is being sought under § 101(a)(5)(A) is generally defined and described by the applicant. Here, the activities are specific to Atlantic Shores South which is limited to the installation of up to 200 WTGs within the Lease Areas. Per the MMPA and per the ITA application received from the applicant, the findings and determinations in this proposed rule are limited to the Lease Areas for the Project (OCS-A-0499 and OCS-A-0570) and do not include Atlantic Shores North (which is lease area OCS-A-0549).

Neither the MMPA nor NMFS’ codified implementing regulations call for consideration of the take resulting from other activities in the negligible impact analysis. 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, UME status, and other relevant stressors). In this final rule, we also include a summary of the impacts from take authorized through other ITAs.

The 1989 final rule for the MMPA implementing regulations also addressed public comments regarding cumulative effects from future, unrelated activities. There, NMFS stated that in determining impact, NMFS must evaluate the total taking expected from the specified activity in a specific geographic area but that cumulative effects are not considered in making findings under § 101(a)(5) concerning negligible impact. In this case, this ITR, as well as other ITAs currently in effect or proposed within the specified geographic region, are appropriately considered unrelated to each other in the sense that they are discrete actions under § 101(a)(5)(A) issued to discrete applicants.

Through the response to public comments in the 1989 implementing regulations (54 FR 40338, September 29, 1989), NMFS also indicated: (1) that we would consider cumulative effects that are reasonably foreseeable when preparing a National Environmental Policy Act (NEPA) analysis; and (2) cumulative effects that are reasonably certain to occur would also be considered under section 7 of the ESA

for listed species, as appropriate. Accordingly, NMFS has adopted an EIS written by BOEM and reviewed by NMFS as part of its inter-agency coordination. This EIS addresses cumulative impacts on the human environment, including marine mammals, from past, ongoing, and future activities, including offshore wind and non-offshore wind activities that may affect marine mammals. Cumulative impacts regarding the promulgation of the regulations and issuance of a LOA for construction activities, such as those planned by Project Company 1, have been adequately addressed under NEPA in the adopted EIS that supports NMFS’ determination that this action has been appropriately analyzed under NEPA. Separately, the cumulative effects of Project Company 1 on ESA-listed species, including North Atlantic right whales, was analyzed under section 7 of the ESA when NMFS engaged in formal inter-agency consultation with the Protected Resources Division within NMFS GARFO. GARFO’s Biological Opinion for the Atlantic Shores South Project determined that NMFS’ promulgation of the rulemaking and issuance of a 5-year LOA for construction activities associated with leasing, individually and cumulatively, are likely to adversely affect, but not jeopardize, listed marine mammals.

Comment 14: A commenter stated that NMFS’ proposed rule (88 FR 65430, September 22, 2023) does not discuss the proposed turbine model or noise source level from a proposed turbine model. They also stated that NMFS underestimated operational turbine noises, as the proposed rule only presented impacts of low power and direct drive turbines.

Furthermore, the commenter stated that mothers and calves performing migration activities travel at slower speeds (i.e., approximately 25 percent of these could potentially experience SELs exceeding 199 dB), which would cause permanent hearing loss and that operational sound could lead to North Atlantic right whale cow-calf separation.

Response: Commenters specifically made claims based on a reanalysis from the operational noise source levels (181 dB (metric unknown)) for a Vesta-236 turbine model utilizing a monopile foundation (13.6 MW) that were estimated by extrapolating the broadband noise level trends versus turbine power using the Tougaard *et al.* (2020) and Stober and Thomsen (2021) papers. The commenters asserted that their estimate aligns with the value provided by a separate acoustics

company, XI-Engineering, who was commissioned by one of the commenters to determine the operational source level of a single Vesta-236 turbine (181 dB). A commenter stated that these papers show “the trend in noise source level versus increasing turbine power size for a frequency “spectral” component more indicative of the whale’s hearing range.” They further extrapolated the results from these 2 papers to yield an estimated operational source level of 192 dB for a single turbine. Based on their analysis, they have estimated a range of 61 mi (98.17 km) from shore for either 200 (the maximum number of WTGs planned for Atlantic Shores South) or 357 WTGs (this is inclusive of the maximum number of WTGs across both Atlantic Shores South and Atlantic Shores North, 2 separate Projects) where whales would experience noise levels above 130 dB_{rms}.

As described in the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section in this final rule, the commenter’s analysis is not reflective of the best available science. Holme *et al.* (2023) demonstrated that the model presented in Tougaard *et al.* (2020) tends to potentially overestimate levels (up to approximately 8 dB) measured to those in the field, especially with measurements closer to the turbine for larger turbines and the authors found no relationship between turbine activity (power production, which is proportional to the blade’s revolutions per minute) and noise level. Moreover, Bellmann *et al.* (2023) note that no relationship between nominal WTG power and operational noise was observed, in contrast with the linear models used by Tougaard *et al.* (2020) and Stöber and Thomsen (2021). It is theorized that this is related to gearless and more modern WTGs measured as well as increased size and weight reducing transmission of vibrations. With regard to the extent of operational noise levels, Bellmann *et al.* (2023) concluded that tonal components of the operational noise are clearly observable at a range of 100 m (328 ft), but typically are not resolvable within the prevailing ambient noise at a range of 5 km (3.11 mi). Based on the best available science, the commenters’ calculations are flawed. Moreover, the commenter provided no evidence that exposure to operational turbine noise would prevent migration. In contrast, the proposed rule cited literature (e.g., Malmé, 1983; 1984) supporting NMFS’ conclusions that the most likely response to noise from the Project would be temporary avoidance

or deflection responses from but not abandoning evolutionarily ingrained migratory behavior).

The swim speed analysis in the Hain *et al.* (2013) study that the commenters referenced only analyzed individuals within the North Atlantic right whale's traditional calving grounds in the Southeastern United States (SEUS) which is several hundred kilometers south of the Project Area. Mother-calf pairs have been documented as having extended stationary periods in the SEUS relative to other demographics as the pairs engage in critical development behaviors including nursing, "quiet contact", play, and rest (Hain *et al.*, 2013). However, mother-calf pairs have been shown to decrease their stationary behaviors as the calf ages and the pair migrate farther north (Cusano *et al.*, 2018). It is therefore likely that the pair's swim speeds may increase to some degree around the Lease Areas discussed here. Furthermore, out of 3 groups analyzed in this study (*i.e.*, mother-calf pairs, groups of 3 individuals or more, and single/pairs without a calf), mother-calf pairs did not have significantly different swim speeds from groups of 3 or more (average mother-calf swim speed = 1.20 km/hr. (0.75 miles per hour (mph)) $\pm$ 0.76 km/hr. (0.47 mph) vs. 1.26 km/hr. (0.78 mph) $\pm$ 0.50 km/hr. (0.31 mph) for groups of 3 or more). Only single/pairs of right whales without a calf had significantly higher swimming speeds (1.86 km/hr. (1.16 mph) on average, $\pm$ 1.27 km/hr. (0.79 mph)) (Hain *et al.*, 2013). These results indicate that mother-calf pairs do not swim significantly slower than some other right whale demographics, and therefore do not have a disproportionately higher risk for permanent hearing loss as a result of their swim speed compared to the rest of the population.

Given that mother-calf pairs are capable of swimming equally as fast as other demographics, and that they reduce their amount of stationary time as the calf continues to grow and the pair moves farther north, it is unlikely that mother-calf pairs would be disproportionately exposed to noise to the level that could cause permanent hearing loss. Furthermore, calves/younger whales may spend more time at the surface; making them more visible to observers (*e.g.*, Baumgartner and Mate, 2003; Gero *et al.*, 2013; Lomac-MacNair *et al.*, 2018; Cusano *et al.*, 2019; Dombroski *et al.*, 2021).

Most importantly, NMFS also requires that Project Company 1's undertake enhanced mitigation and monitoring measures (*i.e.*, bubble curtains, PAM, use of experienced PSOs, seasonal

restrictions when North Atlantic right whales are more likely to be in and around the Project Area) to further reduce risks to North Atlantic right whale demographics (inclusive of any mother-calf pairs that may be migrating through the area), and expect that any harassment experienced by this species would be in the form of Level B harassment, and not Level A harassment. Furthermore, the Project Area is not one where this species is known to reside for long periods of time (*i.e.*, no extended residency as there is no foraging ground or calving ground off of New Jersey) and most animals would be expected to be migrating through the migratory corridor. Because of this, we disagree with the commenter's assertion as described in their comment letter.

Comment 15: A commenter stated that the rule needs to consider the increased risk to marine mammals from commercial and military vessel traffic being channeled into a 20 to 31 mile-wide (32 to 50 km) corridor between Atlantic Shores South's Lease Areas and planned projects in the Hudson South area given higher noise levels within the Project Area due to all WTGs becoming operational as well as overlap between pile driving activities of WTGs while other WTGs intermittently become operational. The commenter further stated that marine mammals attempting to travel within this corridor will incur an increased risk of vessel strike.

Response: As part of the Construction and Operations Plan (COP) for this Project, and then incorporated into the analysis in BOEM's final EIS, Project Company 1 was required to evaluate and draft a Navigation Safety Risk Assessment (NSRA; appendix II-S of the COP (https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/2024-05-01_Appendix%20II-S%20Navigation%20Safety%20Risk%20Assessment.pdf)) to analyze the potential impacts of vessel traffic during construction, operation, and decommissioning of the Project and included considerations for commercial cargo vessels, military vessels, towing, fishing, and recreation vessels. Overall, the NSRA concluded that the construction of the Project as a whole will result in modifications to vessel traffic patterns, but that the risks associated with these changes would not be substantially different from consideration of Projects 1 or 2 or the whole of Atlantic Shores South. While some key commercial traffic waterways currently exist near the Wind Turbine Area (WTA) (*e.g.*, Ambrose-Barnegat Traffic Separation Scheme leading to and from New York), the NSRA

concluded that, given the distance away from the WTA to the south and far from this TSS, there are no expected impedances anticipated for commercial traffic in and out of this area. The NSRA further states that the Project is not anticipated to have an adverse impact to vessel traffic, even though some vessels (*e.g.*, commercial non-fishing vessels and military vessels) may choose to navigate around the Lease Areas rather than through it. However, although traveling through the Lease Areas would be generally restricted during the short construction period (*i.e.*, approximately 2–3 years) and may require non-Project vessels to transit through a narrower traffic route, vessels would be able to continue normal traffic patterns during the lengthy operations phase of the Project. Additionally, per the final EIS, the gridded pattern and appropriately marked lighting used for the WTGs, OSSs, and Met Tower is designed to improve vessel navigation, efficiency, and safety to allow for individuals to safely transverse through the Project Area.

Here, we discuss both pile driving activities and operations, as Project Company 1 has indicated that some WTGs may become operational during periods where others are continuing to be installed. As the commenter did not specify if the noise relates to all WTGs as operational or not, this review is more comprehensive. In looking at this information biologically, this is addressed, in part, in the final Biological Opinion (which also relied on and incorporated the data and conclusions of the NSRA) wherein NMFS GARFO stated that, while it is reasonable to expect pile driving activities to contribute to the avoidance and temporary localized displacement of ESA-listed whales (and, broadly, other non-ESA listed marine mammal species as well in and around the Project Area), NMFS concluded that we do not expect that any avoidance behaviors from pile driving would result in North Atlantic right whales being driven or moving to areas where there is a higher risk of vessel traffic. This determination was based on the relatively small size of the Project Area with noise that an individual whale is expected to avoid (no more than 11 km (6.84 mi) from the pile being installed), the short-term nature of any disturbance, the limited number of whales impacted, and the lack of any significant differences in vessel traffic in that 11 km (6.84 mi) area that would put an individual whale at greater risk of vessel strike. Regarding operations, NMFS has already included a detailed

description of operational noise from commissioned WTGs (see *Comment 14*). This discussion aligns with conclusions found within the Biological Opinion that state the area above ambient noise from operating WTGs is expected to be very small (*i.e.*, 50 m (164 ft) or less) and any effects to ESA-listed whales (and, broadly other marine mammal species) are likely to be insignificant. Regarding vessel density after construction activities have ended, information gleaned from the NSRA indicate that less vessels are needed during the operation and maintenance phase of the Project, and some vessels, such as fishing vessels, may choose to continue transiting through the WTA, especially given known reef effects when hardened structures are installed into softer sediment environments (see Langhamer, 2012; Stenberg *et al.*, 2015; Degraer *et al.*, 2020; and Gill *et al.*, 2020 for some examples) which would reduce any areas of higher vessel densities outside the WTA that would have existed during the construction period where avoidance of the WTA occurred (although the NSRA indicates this vessel density would not increase substantially even during the construction period, with a minor increase to the east of the WTA). This indicates that, given the already high level of vessel traffic experienced off of New Jersey, these changes would be minimal and temporary, with very little chance to lead to additional opportunities for vessel strikes of whales.

Lastly, as the commenter specifically points out projects planned in the Hudson South Call Area, those 6 projects (*i.e.*, Bluepoint Wind, LLC (OCS-A 0537); Attentive Energy LLC (OCS-A 0538); Community Offshore Wind, LLC (OCS-A 0539); Atlantic Shores Offshore Wind Bight, LLC (OCS-A 0541); Invenergy Wind Offshore LLC (OCS-A 0542); and Vineyard Mid-Atlantic LLC (OCS-A 0544)) are still in the early coordination phase with no construction activities currently planned in the next 5 years that would overlap with the effective period of Project Company 1's rulemaking. As these projects have not even finalized the process to become FAST-41 projects, NMFS does not expect that any construction activities for those lease areas are forthcoming within the effective period of Atlantic Shores South; therefore, no military or commercial vessels would be restricted into a narrow vessel traffic route nor would any whales experience an increased risk of vessel strike when navigating outside of the Project Area

for Atlantic Shores South, per the narrow channel referenced by the commenter.

NMFS acknowledges that whales may temporarily avoid the area where the specified construction activities or noise from operational WTGs occurs and this was broadly addressed in the proposed rulemaking. However, for the reasons described above, NMFS does not anticipate that whales will be displaced in a manner that would result in a higher risk of vessel strike, and the commenter does not provide evidence that either of these effects should be a reasonably anticipated outcome of the specified activity. Generally, vessel traffic in this region is concentrated closer to shore as vessels leave and return to the coastal ports. The density of vessel traffic dissipates as one moves offshore. The commenter has presented no information supporting the speculation that whales would be displaced from the Project Area into shipping lanes, areas of higher vessel traffic, or a specific corridor in a manner that would be expected to result in higher risks of vessel strike.

Other

Comment 16: Commenters expressed concern that operational turbines could harm or kill marine mammals if they migrated through the Atlantic Shore South and Hudson South wind areas and that operational noise would impair the echolocation and navigation ability of North Atlantic right whales, increasing risk of predation and vessel strike, and compromise a North Atlantic right whales ability to make it through the corridor. Other commenters expressed similar concern for dolphins and other species that can echolocate.

Response: Baleen whales (*e.g.*, humpback whales, minke whales) do not have the ability to echolocate, a process by which toothed whales (*e.g.*, sperm whales) and dolphins emit high-frequency sounds from their melon to obtain information about objects (typically prey) in the water. Because baleen whales do not echolocate like toothed whales and dolphins, there is no concern over impeding such ability. All large whales that have stranded along the U.S. East Coast since December 2011, with the exception of 3 sperm whales, have been baleen whales.

With respect to toothed whales and dolphins, the low frequency operational noise is not anticipated to impact echolocation. The frequency of echolocation clicks is dependent on their need; however, clicks would be outside the frequency range of operational noise (with some clicks being ultrasonic) typically around 30–

100 kHz (Southall *et al.*, 2019; Kuroda *et al.*, 2020) and can be very loud (up to 200 dB peak-to-peak) (Brinklöv *et al.*, 2022). In contrast, operational turbine noise is generally below 1 kHz (Tougaard *et al.*, 2020; Stöber and Thomsen, 2021). Therefore, turbine noise interference with echolocation is not a likely outcome of exposure.

Operational noise is also not anticipated to interfere with North Atlantic right whale navigation or migration. During the effective period of the rule, some or all of Atlantic Shores' proposed turbines will become operational. The proposed rule included an evaluation of operational noise impacts on marine mammals, including North Atlantic right whales and described anticipated noise levels from operation. For example, the proposed rule indicated that operational noise levels are likely lower than those ambient levels already present in active shipping lanes, such that operational noise would likely only be detected in very close proximity to the WTG (Thomsen *et al.*, 2006; Tougaard *et al.*, 2020). North Atlantic right whales are well known to transit through heavily used shipping lanes wherein commercial vessels (as well as recreational vessels) continuously elevate background noise levels. The commenter did not provide any scientific support to their statements that navigation and echolocation would be impaired due to operations so NMFS was unable to evaluate these statements further.

Comment 17: A member of the public has stated that the work planned for Atlantic Shores South would interfere with the North Atlantic right whale's "migration and reproduction territory" and that NMFS should not issue any ITAs to allow for any type of harassment to marine mammals, particularly those listed under the ESA.

Response: NMFS disagrees that the Atlantic Shores South Project would interfere with the "migration and reproduction territory" of the North Atlantic right whale, as suggested by the commenter. NMFS is aware of no evidence to support this claim, nor did the commenter provide any. The migratory Biological Important Area (BIA) is about 177.77 km (101.46 mi) across where the Atlantic Shores South Project (26.4 km (16.4 mi)) intersects and given that the Project Area overlaps approximately less than 15 percent of the width of the migratory corridor, the Project Area is not expected to meaningfully impede the movement of migrating North Atlantic right whales. This information is all publicly available and this analysis can be easily

replicated and visualized through data found in NOAA's Marine Cadastre National Viewer at: <https://marinecadastre.gov/viewers>). No take by injury, serious injury, or mortality is authorized for the species. NMFS emphasizes that the authorized incidental take of North Atlantic right whales is limited to Level B harassment (*i.e.*, behavioral disturbance). As described in the proposed rule and this final rule (see Negligible Impact Analysis and Determination section), NMFS has determined that the Level B harassment of North Atlantic right whales will not result in impacts to the population through effects on annual rates or recruitment or survival.

Furthermore, no calving habitat or reproductive areas are known off of New Jersey and the BIA for this area is located off the southeast U.S. coast, extending from the Cape Fear, North Carolina to below Cape Canaveral, Florida (calving critical habitat; <https://www.fisheries.noaa.gov/species/north-atlantic-right-whale>). These 2 areas are approximately 712 km (443 mi) apart (assuming a straight line that intersects land), from the most southern point of the Lease Areas to the most northern point of the calving area. Therefore, NMFS does not expect that reproductive activities located in the southeast would be affected by the activities occurring off of New Jersey for the Project.

Lastly, the commenter seems to have a misconception about how the MMPA and ESA work together. Under section 7(a)(2) of the ESA, Federal agencies are required to consult with NMFS or the U.S. Fish and Wildlife Service, as appropriate, to ensure that the actions they fund, permit, authorize, or otherwise carry out will not jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitats (16 U.S.C. 1536(a)(2)). For the Atlantic Shores South Project, our office (*i.e.*, the Office of Protected Resources) requested initiation of a section 7 consultation for ESA-listed species with the NMFS Greater Atlantic Regional Fisheries Office on July 19, 2023. A Biological Opinion was completed on December 18, 2023 (see <https://www.fisheries.noaa.gov/s3/2024-02/GARFO-2023-01804.pdf>), which concluded that the promulgation of the rule and issuance of a LOA thereunder is not likely to jeopardize the continued existence of threatened and endangered species under NMFS' jurisdiction and is not likely to result in the destruction or adverse modification of designated or proposed critical habitat. Because of this, NMFS' action of finalizing the rulemaking and issuing a LOA for the

Atlantic Shores South Project is consistent with the ESA.

Comment 18: The Commission stated concern regarding discrepancies between modeled and measured zones as factors to take into account for rule conditions and recommended that NMFS provide the interim SFV reports for the South Fork and Vineyard Wind 1 projects and allow for another 30-day public comment period for the Atlantic Shores South proposed rule before issuing any final rule.

Response: NMFS disagrees that results from the South Fork and Vineyard Wind 1 projects are necessary for the public to comment on the Atlantic Shores South proposed rule. The public had adequate opportunity to comment on the acoustic modeling methods and results in the proposed rule and supporting information, including a detailed acoustic modeling report. Moreover, *in situ* data on pile driving, in general, including from the Block Island Wind Farm and Coastal Virginia Offshore Wind (CVOW) Pilot Project are publicly available and were described in the proposed rule as well as modeling that has investigated how source levels may increase in relation to pile and hammer specifications. Since that time, NMFS made the Vineyard Wind 1 SFV report available on its website as this report was deemed final. South Fork Wind has not yet submitted a SFV report that NMFS has deemed final; therefore, it is not available. Waiting until the South Fork SFV report is available and opening another 30-day public comment on the Atlantic Shores South proposed rule could constitute an unnecessary delay to the environmental permitting process and would not be aligned with the FAST-41. NMFS has reviewed the final monitoring reports submitted for the South Fork and Vineyard Wind 1—Phase 1 Projects and the results do not conflict with modeled assumptions and estimated/allowed take included in the rule. Further, marine mammal monitoring results indicate that observed behaviors from pile driving activities are in line with NMFS' analysis and assumptions within the NID (*i.e.*, behaviors of mysticetes included surfacing, blowing, fluking, and feeding, which are expected but not strong reactions to a noise stimulus and indicative of low levels of Level B harassment). For all these reasons, NMFS is not re-publishing the Atlantic Shores South proposed rule for public comment.

NMFS acknowledges the Commission's concern regarding potential discrepancies between modeled and measured ensonification zones and has made certain changes

within 50 CFR 217.304, including the addition of paragraph (c)(14)(viii)(A), to ensure that a flexible, iterative process is available to the agency in addressing any such discrepancies.

Comment 19: The Commission recommended that NMFS ensure that the mitigation, monitoring, and reporting requirements for the construction of wind energy facilities are sufficient at the conclusion of the final rule phase and that by allowing additional sound attenuation technologies to be implemented, as needed, during Project construction could lead to delays and additional impacts to marine mammals if delays necessitate longer construction periods.

Response: NMFS understands the suggestion by the Commission but disagrees at this time. Within U.S. waters, offshore wind is relatively new and brings with it new science, technology, and data. To fully ensure conservation benefits to NOAA's trust species, we believe that all mitigation, monitoring, and report approaches are necessary to be both proactive and reactive through our Adaptive Management condition found within the final rulemaking framework and LOA. Ideally, the Commission is correct and all mitigation, monitoring, and reporting requirements should be consistent and appropriate throughout the entire process, especially at the proposed rule stage. However, this suggestion by the Commission disregards the updated and improved knowledge and data obtained from each project as it completes permitting and enters the construction and operations period. As our knowledge and experience with all offshore wind projects continues and further improves, NMFS welcomes the ability to update and improve mitigation and monitoring measures, given the influence of new and additional data.

While the Commission is correct that necessitating additional sound attenuation technologies, as needed, may cause delays, NMFS sees these adjustments as necessary to ensure that the Project is being constructed in an adaptive way that ensures sufficient protection of marine mammals. Specifically, we note the concern raised by the Commission wherein delays could lead to additional impacts to protected species "if delays necessitate longer construction periods" is without merit. As described within the proposed rule, and subsequently carried into the final rule, NMFS has considered situations where the construction schedule could experience delays due to weather or supply chain issues (also more broadly including changes to the implementation of the Project) and has

noted that, given the maximum construction Schedule analyzed for the Atlantic Shores South Project, we do not expect the maximum 5-year take to exceed that which is authorized in the LOA. Additionally, the seasonal restrictions designed to provide additional protections to North Atlantic right whales (*i.e.*, January through April) are implemented annually throughout the entire effective period of the final rulemaking and LOA. If foundation pile driving is delayed into this seasonal shoulder, activities would only be allowed to continue once the restriction period has ended (*i.e.*, after April 30th), when North Atlantic right whales are less likely to be in the Project Area. Because of this, we do not expect that any marine mammals would be impacted during times of year where the effects were not already analyzed.

Comment 20: The commenter suggests that NMFS is using an arbitrary percentage (*i.e.*, 33) to represent “small numbers” when a smaller percentage (*i.e.*, 12) would be more appropriate, per a Court decision. The commenter also seems to be arguing that given the number of takes by harassment predicted and authorized for North Atlantic right whales, a take by serious injury or mortality is therefore likely to occur, and that that would be inconsistent with the criteria of less than 1 serious injury or fatality for the North Atlantic right whale (*i.e.*, referencing specifically the PBR). The commenter further goes on to say that this is a clear violation of the small numbers determination and the negligible impact criteria.

Response: NMFS has provided a reasoned approach to small numbers, as described in full in the final rule, “Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico” (86 FR 5322 at 5438, January 19, 2021). Utilizing that approach, NMFS has made the necessary small numbers finding for all affected species and stocks in this case (see the Small Numbers section of this preamble for more detail). The commenter also cites *NRDC v. Evans*, 279 F.Supp. 2d 1129 (N.D. Cal. 2003), for the proposition that a standard less than 12 percent is required for the “small numbers” analysis. The commenter’s reading of that case is inaccurate. In *Evans*, the court ruled that the negligible impact determination and the small numbers analysis must be undertaken separately, but the court specifically “does not require defendants to set an absolute numerical limit” for small numbers (*Id.* at 1152). Following that case, NMFS undertook separate small numbers

findings from its negligible impact determinations, analyzing in each case whether the numbers were small relative to the stock or population size (the “proportional approach”). NMFS’s proportional approach has been recently upheld as a reasonable interpretation of the relevant statutory provision (see *Melone v. Coit*, 100 F.4th 21, 30–31 (1st Cir. Apr. 25, 2024)).

Regarding the assertions that serious injury or mortality will result from the activity given the number or authorized takes by harassment, the mathematical arguments presented by the commenter are unsupported and no evidence supporting the likelihood or serious injury or mortality is presented. NMFS has provided extensive explanations for why these activities are not expected to result in serious injury or mortality of North Atlantic right whales (see *Comments 7, 8, 9, and 17*) and also provided a robust rationale supporting the negligible impact determination for North Atlantic right whales and all marine mammal species in the Negligible Impact Analysis and Determination section of the final rule.

Comment 21: A commenter stated that NMFS omitted important impacts of this Project, including impacts from Project decommissioning. The commenter also stated that the proposed rule did not address why UXOs/MECs were not analyzed in this action, even though they were present in the action of a neighboring lease (*i.e.*, Ocean Wind 1, OCS-A-0498).

Response: Given that the average lifespan of offshore wind turbines is about 20–35 years, decommissioning would occur after this 5-year rule expires and therefore was not included as a specified activity in Atlantic Shore’s application. Because of this, decommissioning is not an activity subject to the MMPA analysis contained herein. Similarly, Project Company 1 does not plan to detonate UXO/MECs for this Project, did not include it as part of the specified activities in the application or request to take marine mammals incidental to the detonation of UXO/MECs, and NMFS did not propose detonation of UXO/MECs.

Comment 22: A commenter, in many of their comments, referenced an analysis for 357 WTGs, which is inclusive of 2 separate projects: Atlantic Shores North and Atlantic Shores South.

Response: NMFS notes that the commenter erroneously describes the total possible Project Design Envelope for 2 separate projects: Atlantic Shores South ($n=200$ WTGs) and Atlantic Shores North ($n=157$ WTGs). NMFS’ action for which the proposed rule was

published is over the Atlantic Shores South and did not include the Atlantic Shores North project. NMFS is required to consider applications upon request, and the MMPA does not provide NMFS with authority to dictate an applicant’s definition of its specified activity (*e.g.*, separation/combination of construction activities across multiple lease areas or projects with the developer, *etc.*). An individual company owning multiple lease areas may apply for a single ITA to perform construction or conduct site characterization surveys across a combination of those lease areas, if they so wish, such as some HRG survey activities conducted by Orsted, or may request a single ITA for a single project area or lease area, both cases which may be found on NMFS’ website at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>. For Atlantic Shores South, NMFS did not receive a joint application for both South and North, only for South and the Lease Areas (*i.e.*, OCS-A-0499 and OCS-A-0570). While an individual company owning multiple lease areas may apply for a single ITA to conduct their activities across a combination of those lease areas, this is not applicable in this case. In the future, if applicants wish to undertake this approach, NMFS is open to the receipt of joint applications and additional discussions on joint actions. However, for NMFS’ action as described here, the applicant, Project Company 1, requested an ITA for Atlantic Shores South, and that is what NMFS’ analysis herein describes.

Comment 23: Commenters stated that NMFS has failed to fulfill its obligations under the NEPA and the ESA. Regarding NEPA, the commenters stated that because the Project constitutes a major Federal action, it must be supported by an EIS and NMFS must either prepare its own or work with BOEM as a cooperating agency to the preparation of an EIS. They further expand that, to be consistent with NEPA, the MMPA ITA review must be coordinated with the EIS review to the “maximum extent possible”, which the commenter interprets as the proposed rule being released for public comment alongside the draft EIS so the public has the ability to evaluate both documents and the final MMPA rulemaking being released at the same time as the final EIS. The commenter also stated that the proposed MMPA ITA publication should be accelerated or the draft EIS should be delayed until both documents are ready (and the commenters stated May 2023 as that date).

Additionally, the commenter stated that, per BOEM's new NEPA policy, only projects that have been already approved by the State should be analyzed and carried forward. Given the State of New Jersey has not approved Project 2 (at the time of drafting this final rulemaking), the scope of the MMPA ITA application should be limited to Project 1 only. The commenter then states that they believe BOEM's new NEPA policy to be inherently flawed and too limiting in scope.

Regarding the ESA, the commenters have stated that the Notice of Availability of the EIS makes no mention of compliance with the ESA and that the section 7 consultation should have been coordinated with the NEPA EIS and the MMPA ITA process. They also state that the Biological Assessment should be made publicly available at the same time as the draft EIS and the proposed rulemaking (in alignment with their suggestions for the MMPA/NEPA schedule) so the public can review all documents in the appropriate context.

Given the explanation above, the commenters recommend that if these suggestions are not followed, NMFS deny the Project an ITA and engage in further discussions with BOEM and the applicant to terminate the Project. Alternatively, they suggest that if the Project isn't terminated, it should be reduced in scope to allow for unimpeded use of the migratory corridor for North Atlantic right whales.

Response: NMFS has met its obligations under both NEPA and the ESA for the issuance of the MMPA final rule, in that all required procedural steps have been followed, and the necessary findings have been made to support the issuance of the final rule. NMFS agrees that the planned Project, as described, constitutes a major Federal Action and therefore requires an evaluation under NEPA. In compliance with NEPA, BOEM published a Notice of Intent (NOI) to prepare an EIS for the Atlantic Shores Offshore Wind Projects (*i.e.*, Atlantic Shores South) (86 FR 54231; September 30, 2021), which is found on BOEM's web page at: <https://www.boem.gov/renewable-energy/state-activities/atlantic-shores-south>. In alignment with this NOI, BOEM published both a Notice of Availability of the draft EIS (88 FR 32242, May 19, 2023) and the draft EIS itself on their web page and opened a public comment period soliciting public input on the Project and draft EIS for a 60-day public comment period (noting that the commenter provided comments on the draft EIS, per appendix N of the final

EIS) (see <https://www.boem.gov/renewable-energy/state-activities/atlantic-shores-offshore-wind-south-fatal-environmental-impact>).

We disagree with the commenter's statement that NMFS has failed in its obligations under NEPA. NMFS has been a cooperating agency working with BOEM on the EIS since October 18, 2021, when BOEM transmitted a request to join the Project as a cooperating agency. NMFS participated and provided several reviews of the draft and final EIS' as they relate to our trust species and resources, and coordinated with BOEM, as the lead agency, as needed. NMFS disagrees with the commenters' comment that the draft EIS should be released concurrently and during the same time period as the proposed MMPA ITA, the final EIS should be released at the same time as the final MMPA ITA, and that the timeline for the MMPA ITA should be sped up, in this case, to align with the timeline for the final EIS. The current FAST-41 schedule allowed sufficient time for both the draft EIS and the proposed MMPA ITA to be evaluated, before either were finalized, and provided a publicly available timeline for this regulatory action. Nothing in the MMPA, ESA, or NEPA requires or suggests the timing adjustments described by the commenter. Lastly, the commenter fails to provide a basis for suggesting the May 2023 date and, as stated above, NMFS disagrees with timeline adjustments as presented by the commenter. The relevant regulatory processes have followed typical timelines for such actions and properly incorporated public comment.

As to the commenter's second point regarding NEPA and BOEM's approval of one or both of the projects described for Atlantic Shores South, NMFS does not have authority over BOEM processes or guidance, nor do we have authority to allow for Project activities to go forward or to be rejected, as that is outside the scope of our MMPA authority. Within the scope of our MMPA authority is to analyze, and if specific findings are met, allow for a limited amount of take to occur to marine mammals from specified activities in the ITA application. Any questions specific to BOEM's policies should be directed at the appropriate agency.

Commenters also identified concerns regarding a lack of text in the NOA of the draft EIS and that the section 7 consultation under the ESA should have been coordinated with the NEPA EIS and MMPA ITA processes. Regarding the MMPA ITA, NMFS met its requirements under the ESA through the

initiation of the section 7 consultation of the ESA on July 19, 2023, as described in the proposed rulemaking. As required under NEPA and the ESA, BOEM provided a Biological Assessment to NMFS GARFO. Any other comments or discussions regarding timing and alignment between NEPA and the ESA are out-of-scope for the NMFS MMPA action and should be taken to the appropriate agencies (*i.e.*, BOEM) and offices (*i.e.*, NMFS GARFO). Additionally, the commenters' statement that the Biological Assessment should be made publicly available at the same time as the draft EIS, is unfounded and out of scope of NMFS' MMPA action. Our response to the commenter's suggestion on schedule alignment is set forth above.

Finally, the commenters propose termination of the Project if these alignment concerns are not addressed, or in the alternative, a reduction in the scope and size of the Project to allow for the unimpeded use of the migratory corridor by North Atlantic right whales. Again, termination of the Project is outside the scope of NMFS's authority, and outside the scope of this MMPA action. The commenters provide no substantive reasoning why NMFS should refuse to promulgate a final rulemaking. As previously described, the MMPA is an applicant-lead process and NMFS analyzes the scope of a project, as proposed by an applicant.

Comment 24: Commenters requested that NMFS provide information that can be used to identify the wind turbine installation vessel.

Response: NMFS agrees with the commenter that identification information for the vessels used in the Project (and more broadly for all offshore wind projects) is important. As described in the proposed rule (88 FR 65430, September 22, 2023), and carried over into the final rule, NMFS requires that all vessels working on the Atlantic Shores South Project utilize an Automatic Identification System (AIS) and Project Company 1 is required to provide the Marine Mobile Service Identity (MMSI) numbers to NMFS, per the requirements described under this final rule in *Vessel Strike Avoidance Measures* section, located in the Mitigation section, as well as within the final regulations conditions under 50 CFR 217.304(a)(11) and § 217.305(g)(14)(v). These vessels will be available to be publicly viewed on a number of free AIS tracking websites, including but not limited to: <https://www.marinetraffic.com> and <https://www.vesselfinder.com>.

Changes From the Proposed to Final Rule

Since the publication of the proposed rule in the **Federal Register** (88 FR 65430, September 22, 2023), NMFS has made changes, where appropriate, that are reflected in the preamble and regulatory text of this final rule. These changes are briefly identified below, with more information included in the indicated sections of the preamble to this final rule.

Changes to Information Provided in the Preamble

The information found in the preamble of the proposed rule was based on the best available information at the time of publication. New information is constantly becoming available and is intentionally solicited during the public comment period. NMFS works to ensure the best available science is included in every stage of the regulatory process. Since publication of the proposed rule, new information related to the effects of the activity on marine mammals has become available and has been summarized and considered in this final rule. As discussed below, while new information has added detail to our understanding of the impacts of the activity on marine mammals and their habitat, and in some cases minor changes or clarifications have been made to the narrative supporting the analysis or the mitigation and monitoring measures as a result, the inclusion of this new information has not resulted in substantive changes from any of NMFS' determinations in the proposed rule.

Throughout the rule, and in the Summary of Request section, given the request from the applicant to change ownership of Atlantic Shores South and the lease segregation, we have updated the name of the applicant and lease numbers, where appropriate.

The following changes are reflected in the *Description of Marine Mammals in the Specified Geographic Region* section of the preamble to this final rule:

Given the release of NMFS' draft 2023 Stock Assessment Reports (SARs) (<https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports>), we have updated the stock abundance estimates for several species and stocks, including: North Atlantic right whales (which also includes the Linden (2023) estimate, as incorporated into the draft 2023 SARs), sperm whales, Atlantic spotted dolphins, bottlenose dolphins (Western North Atlantic—offshore stock), common

dolphins, short-finned pilot whales, Risso's dolphins, harbor porpoises, and gray seals. These revised abundance estimates have been incorporated into the tables (where applicable), and into the Negligible Impact Analysis and Determination section and Small Numbers section in this final rule.

In alignment with the new draft 2023 SARs, we have updated the total North Atlantic right whale total mortality/serious injury (M/SI) amount from 8.1, as shown in the proposed rule, to 27.2. This accounts for 27.2 total mortality, 17.6 of which are attributed to fishery-induced mortality, per the footnote in the draft SAR. This increase is due to the inclusion of undetected annual M/SI in the total annual serious injury/mortality estimate. As described above, no M/SI of North Atlantic right whales is anticipated or has been authorized for the Project.

Given the availability of new information, we have made updates to the UME summaries for the described species (*i.e.*, North Atlantic right whales, humpback whales, minke whales, and phocid seals).

Within the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section, we have made the following additions:

We have added additional information regarding operational noise from WTGs, given the release of new scientific literature.

We have added information relating to the broken blade at the Vineyard Wind 1 lease area (OCS-A-0501), the rarity of this event occurring, and that no take was requested, proposed, or authorized incidental to blade failure so this isn't discussed further in this document.

The following changes are reflected in the *WTG, OSS, and Met Tower Foundation Installation* subsection of the Estimated Take section of the preamble to this final rule:

Due to a public comment received during the 30-day comment period associated with the proposed rule, NMFS agrees that the broadband source level is important information to include. Using the decidecade spectra included in the application, we have calculated and included the SEL source levels for 12-m and 15-m monopiles using hammer energies of 4,400 kJ and found that they are approximately 227 dB.

After additional review of the application materials, NMFS noted a transcription error in table 15 of the proposed rule where the incorrect distances were presented for the acoustic ranges ($R_{95\%}$) for sites L01 and L02. The correct ranges are shorter than

those in the proposed rule. This has been corrected in the final rule in table 13; however, recognition of this error does not change our measures or findings.

The proposed rule contained the correct take numbers from foundation pile driving for Project 1 and Project 2, individually (tables 17 and 18 in the proposed rule and tables 15 and 16 of this final rule). However, in developing this final rule, NMFS recognized that the takes from Project 2 were not appropriately added to the takes from Project 1 in Year 2 (when a limited number of WTG foundations from Project 2 may occur in the same year as Project 1, as shown in Tables 17 and 18 of the proposed rule). The final rule corrects the sum of the total take each year and over the 5-year period. This action changes some of the take estimates found in table 17 of this final rule (table 19 of the proposed rule) and tables 22, 23, and 24 of this final rule (tables 24, 25, and 26 in the proposed rule), but did not affect or change NMFS' overall final determinations for this rulemaking described in the proposed rule. Furthermore, this update does not change the number of WTGs fully analyzed in the take analysis ($n=200$ WTGs). Where applicable, in the final rule, these updates have also been addressed in the Negligible Impact Analysis and Determination section and for the small numbers finding in the Small Numbers section.

The following change is reflected in the *Cable Landfall Activities* subsection of the Estimated Take section of the preamble to this final rule:

To provide additional context to the proximity to shore for the temporary cofferdam activities, NMFS has added additional information regarding known haul-out locations of pinnipeds in New Jersey and a brief discussion on why we do not expect any harassment from in-air noises.

The following changes are reflected in the *HRG Surveys* subsection of the Estimated Take section of the preamble to this final rule:

Given new information on the sparker acoustic source planned for use during HRG surveys, as provided by the applicant, and a re-review of the information found within Crocker and Fratantonio (2016), NMFS believes a transcription error occurred in the initial ITA application where the wrong operational parameters for the Applied Acoustics Dura-Spark 240 and the GeoMarine Geo-Source sparker units were incorrectly and inadvertently included. NMFS has added additional information and corrected existing information clarifying the use of the

GeoMarine Geo-Source sparker, the anticipated nominal operational characteristics of this source (*i.e.*, energy level and number of tips), the expected acoustic output (*i.e.*, dB_{rms}) based on these characteristics, and the Applied Acoustics Dura-Spark sparker unit. We have updated table 20 with this information and added footnotes to address these changes. Importantly, this update did not affect or change NMFS' overall final determinations for this rulemaking described in the proposed rule.

To provide additional clarity on the total allowed take from HRG surveys over the entire 5-year effective period of this final rulemaking, we added a column to table 21 labeled "Total 5-year Allowed Take By Level B Harassment".

Within the *Total Take Across All Activities* subsection of the Estimated Take section, NMFS updated the stock abundances for tables 22, 23, and 24 in this final rule based on the 2023 draft SAR estimates.

After review, NMFS noted that in table 25 of the proposed rule, the total take by Level B harassment, total take by Level A harassment, and total collective 5-year take for Atlantic spotted dolphins and Atlantic white-sided dolphins were inadvertently switched. Tables 24 and 26 of the proposed rule were unaffected. In this final rule, NMFS has addressed this to clearly display that total take by Level B harassment, total take by Level A harassment, and total 5-year take are correctly displayed for each species (see table 23 in this final rule). Where applicable, in the final rule, these updates have also been addressed in the Negligible Impact Analysis and Determination section and for the small numbers finding in the Small Numbers section.

The following changes are reflected in the Mitigation section of the preamble to this final rule:

We have updated our vessel separation distances in the *Vessel Strike Avoidance* section to align with the final Biological Opinion. A 500-m (1,640-ft) minimum separation distance is now required for all ESA-listed large whale species (*i.e.*, sperm whales, fin whales, sei whales) and any unidentified large whale species, and a 100-m (328-ft) minimum distance is required for all non-ESA-listed large whales (*i.e.*, humpback whales, minke whales). The North Atlantic right whale minimum separation distance (500 m (1,640 ft)) and the distance for all delphinid cetaceans and pinnipeds (50 m (164 ft)) did not change. We have also updated table 27 in the Mitigation section and the relevant language in the regulatory

text (see 50 CFR 217.304(b)(11) and (12)).

We have updated parts of the Mitigation section to include NMFS' website at: <https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales>, alongside the requirements to monitor Channel 16 and the Right Whale Sightings Advisory System. These updates have also been made in the relevant parts of the regulatory text (see 50 CFR 217.204(a)(3) and 217.204(b)(4)).

We have provided more information on what Project Company 1 would need to provide to NMFS Office of Protected Resources to fully allow for consideration of pile driving activities occurring in December. This includes details on a written request being provided by October 15th, as well as some information that must be included in this request, including but not limited to: (1) the installation schedule and types of piles to be installed; (2) the maximum number of piles that would be anticipated to be installed in December; (3) the planned hammer energies; and (4) any planned or additional mitigative measures that could be implemented to further reduce activities to North Atlantic right whales and other marine mammal species. These requirements have also been added to the Regulatory text at the end of the preamble, in 50 CFR 217.304(c)(1).

We have clarified the formatting and language within table 25 to allow for easier interpretation. However, none of the information that was originally in the proposed rule has changed in this table in the final.

In table 25, we have adjusted the language for the clearance and shutdown zones for North Atlantic right whales to be "any distance within the PAM Clearance/Shutdown zone", which is 10 km (6.21 mi).

Also in table 25, we have specified that the PAM system used by Project Company 1 must: (1) be able to detect all marine mammals; (2) maximize baleen whale detections; and (3) be capable of detecting North Atlantic right whales at 10 km (6.21 mi), with that understanding that other marine mammals (*e.g.*, harbor porpoise) may not be detected at 10 km (6.21 mi).

We have also provided additional clarification on when deliverables (*i.e.*, reports and plans) are provided to NMFS using "calendar" days versus actionable items (*i.e.*, December pile driving requests, PSO/PAM operator resume reviews) are provided to NMFS using "business" days. These were also

reflected, where appropriate, in the Monitoring and Reporting section, as well as the corresponding sections in the regulations at the end of this preamble.

In addition to the thorough SFV requirements in the proposed rule, and given abbreviated SFV requirements were inadvertently excluded from the proposed rule, we have added to this final rule the requirement that Project Company 1 must conduct abbreviated SFV monitoring (consisting of a single acoustic recorder placed at an appropriate distance from the pile) on all foundation installations for which the thorough SFV monitoring, as required in the proposed rule, is not carried out consistent with the Biological Opinion. NMFS requires that these SFV results must be included in the weekly reports. Any indications that distances to the identified Level A harassment and Level B harassment thresholds for whales must be addressed by Project Company 1, including an explanation of factors that contributed to the exceedance and corrective actions that were taken to avoid exceedance on subsequent piles.

We have also updated and added requirements in the *Sound Field Verification (SFV)* subsection of the Monitoring and Reporting section to fully describe both thorough SFV and abbreviated SFV, in alignment with the final NMFS Greater Atlantic Regional Fisheries Office (GARFO) Biological Opinion.

We have added a requirement in the *Reporting* section for Project Company 1 to report operational sound levels from all installed piles, in alignment with a requirement found in the completed Biological Opinion.

We have removed specific dates, days of the week, and months from the *Reporting* section to provide additional flexibility for Project Company 1 and will include the relevant dates, days of the week, and months in the LOA.

Changes in the Regulatory Text

Within the regulatory text more broadly, we have made minor modifications and updates to some of the language to improve clarity and understanding.

Within 50 CFR 217.304 *Mitigation requirements*, several changes were made to paragraphs (c)(14)(vii), (viii), and (x) to both align with the completed Biological Opinion and to ensure flexibility and compliance in situations where SFV measurements indicate operational or NAS changes may be called for, or modified monitoring may be needed. These changes were informed by the comment letter

received from the Commission which primarily addressed concerns regarding SFV and noted that NMFS needed to better account for discrepancies between modeled and measured zones based on results from the interim SFV reports.

Under 50 CFR 217.304(c)(14)(viii), we have added a sub-condition specifying the action that Project Company 1 must undertake in the event all practicable measures that could reduce noise levels have been successfully implemented and exhausted but the results from the thorough SFV measurements continue to indicate that the distances to the marine mammal harassment thresholds are greater than those modeled assuming 10 dB attenuation. This includes a requirement to meet with NMFS within 3 business days to discuss the results of SFV monitoring, the severity of exceedance of distances to identified isopleths of concern, the species affected, modeling assumptions, and whether the SFV results demonstrate the magnitude and degree of impacts from the Project are greater than those considered in this final rule. This change was informed, in part, by the Commission's comment letter discussing concern with potential discrepancies between modeled and measured zones.

Within 50 CFR 217.304(c), several changes were made to paragraph (c)(14)(x) that provide updated information on thorough SFV, abbreviated SFV, and on what Project Company 1's Sound Field Verification Plan (SFV Plan) must include, to align these measures more closely with NMFS GARFO's final Biological Opinion.

Under 50 CFR 217.304(f), NMFS has better aligned and updated some of the mitigation measures for fishery monitoring surveys to better require training in marine mammal identification (50 CFR 217.304(f)(1)); better described actions if gear is being removed from the water when a marine mammal is sighted (50 CFR 217.304(f)(5)); described actions that must be undertaken during trawl surveys (50 CFR 217.304(f)(10)); provided a human safety caveat to the gear removal requirement (50 CFR 217.304(f)(15)); and, added reporting information to NMFS GARFO in the event gear is lost (50 CFR 217.304(f)(16)).

Within 50 CFR 217.305 *Monitoring and reporting requirements*, the regulatory text clarifies PSO and PAM operator qualification requirements. The number of PSOs required to monitor during offshore wind farm construction is extensive. To address concerns regarding the lack of very specific

experience contained within the proposed rule and increase the pool of qualified candidates, § 217.305(a)(7) has been updated to remove the requirement for specific experience working in the Northwest Atlantic Ocean. Instead, potential PSOs must demonstrate experience visually monitoring marine mammals, including baleen whales. This experience can be undertaken anywhere in the world. Upon closer consideration of this issue, NMFS finds that prior experience visually monitoring for marine mammals requires the same skill sets and is relevant and transferable to the monitoring required in the specified geographic region here.

Within 50 CFR 217.305(c), the requirement to employ 1 PAM operator per buoy stream has been removed, recognizing the PAM and data transfer systems vary widely and given NMFS' finding that fewer PAM operators may be sufficient to carry out PAM during pile driving. Instead, the final number of PAM operators will be identified in a NMFS-approved PAM Plan, in the context of what is sufficient given the specific system and circumstances.

Within 50 CFR 217.305(a), the PSO and PAM operator regulatory text has also been reorganized and removes the classification of PAM operators as conditional or unconditional, instead relying on the PAM operator experience described in the proposed rule to determine sufficiency of qualifications.

Within 50 CFR 217.305(c), the requirement to conduct and review PAM data for 24 hours prior to pile driving has been retained; however, the regulatory text in this final rule removes the term "immediately prior to foundation impact pile driving" when discussing reviewing 24-hours of PAM data before pile driving commenced, recognizing the logistical constraints this poses.

Within 50 CFR 217.305(g), the marine mammal visual and acoustic reporting requirements have also been updated to reflect regional and science center reporting mechanisms and standards.

Description of Marine Mammals in the Specific Geographic Region

As noted in the Changes From the Proposed to Final Rule section, updates have been made to the UME summaries of multiple species. These changes are described in detail in the sections below. We have also included new data on North Atlantic right whale abundance information and updated the annual M/SI value presented in table 2, based upon updates found in the draft 2023 SARs (see [\[marine-mammal-protection/marine-mammal-stock-assessment-reports\]\(https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports\)\). Otherwise, this section has not changed since the publication of the proposed rule in the **Federal Register** \(88 FR 65430, September 22, 2023\).](https://www.fisheries.noaa.gov/national/</p>
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Approximately 38 marine mammal species under NMFS' jurisdiction have geographic ranges within the western North Atlantic OCS (Hayes *et al.*, 2022), with several marine mammal species occurring within the specific geographic region for the Project (*i.e.*, Mid-Atlantic Bight). NMFS fully considered all of this information, and we refer the reader to these descriptions in the application instead of reprinting the information here. Sections 3 and 4 of Project Company 1's ITA application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species (Atlantic Shores, 2023). Additional information regarding population trends and threats may be found in NMFS' SARs at: <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' website at: <https://www.fisheries.noaa.gov/find-species>.

Of the 38 marine mammal species and/or stocks with geographic ranges that include the Project Area (*i.e.*, found in the coastal and offshore waters of New Jersey), 22 are not expected to be present or are considered rare or unexpected in the Project Area based on sighting and distribution data (see table 11 in Project Company 1's ITA application). Therefore, they are not discussed further beyond the explanation provided here.

Furthermore, Project Company 1 did not request incidental take for these species, so they are not considered further in this ITA. Specifically, the following cetacean species are known to occur off of New Jersey but are not expected to occur in the Project Area due to the location of preferred habitat outside the Lease Areas and export cable route, based on the best available information: Blue whale (*Balaenoptera musculus*), Cuvier's beaked whale (*Ziphius cavirostris*), four species of Mesoplodont beaked whales (*Mesoplodon densirostris*, *Mesoplodon europaeus*, *Mesoplodon mirus*, and *Mesoplodon bidens*), clymene dolphin (*Stenella clymene*), false killer whale, Fraser's dolphin (*Lagenodelphis hosei*), killer whale (*Orcinus orca*), melon-headed whale, pantropical spotted dolphin (*Stenella attenuata*), pygmy killer whale

(*Feresa attenuata*), rough-toothed dolphin (*Steno bredanensis*), spinner dolphin (*Stenella longirostris*), striped dolphin (*Stenella coeruleoalba*), white-beaked dolphin (*Lagenorhynchus albirostris*), Northern bottlenose whale (*Hyperoodon ampullatus*), dwarf sperm whale (*Kogia sima*), and the pygmy sperm whale (*Kogia breviceps*). Two species of phocid pinnipeds are also uncommon in the Project Area, including: harp seals (*Pagophilus groenlandica*) and hooded seals (*Cystophora cristata*). In addition, the Florida manatees (*Trichechus manatus*; a sub-species of the West Indian manatee) has been previously documented as an occasional visitor to the Mid-Atlantic region during summer months (Morgan *et al.*, 2002; Cummings *et al.*, 2014). However, as manatees are managed solely under the jurisdiction of the U.S. Fish and Wildlife Service and

are considered rare or unexpected in the Project Area, they are not considered or discussed further in this document.

Table 2 lists all species or stocks for which take is anticipated and allowed under this final rule and summarizes information related to the species or stock, including regulatory status under the MMPA and ESA, and PBR, where known. PBR is defined 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 (16 U.S.C. 1362(20))). While no mortality is anticipated or allowed 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' 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 and Gulf of Mexico SARs. Values presented in table 2 are the most recent available data at the time of publication which can be found in NMFS' 2023 draft SARs, available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports>.

TABLE 2—MARINE MAMMAL SPECIES^a LIKELY TO OCCUR NEAR THE PROJECT AREA THAT MAY BE TAKEN BY PROJECT COMPANY 1'S ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) ^b	Stock abundance (CV, N _{min} , most recent abundance survey) ^c	PBR	Annual M/SI ^d
Order Artiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
<i>Family Balaenidae:</i> North Atlantic right whale ^e	<i>Eubalaena glacialis</i>	Western Atlantic	E, D, Y	340 (0, 337, 2021)	0.7	127.2
<i>Family Balaenopteridae</i> (rorquals):						
Fin whale	<i>Balaenoptera physalus</i>	Western North Atlantic	E, D, Y	6,802 (0.24, 5,573, 2021)	11	2.05
Humpback whale	<i>Megaptera novaeangliae</i>	Gulf of Maine	-, -, N	1,396 (0, 1,380, 2016)	22	12.15
Minke whale	<i>Balaenoptera acutorostrata</i>	Canadian Eastern Coastal	-, -, N	21,968 (0.31, 17,002, 2021).	170	9.4
Sei whale	<i>Balaenoptera borealis</i>	Nova Scotia	E, D, Y	6,292 (1.02, 3,098, 2021)	6.2	0.6
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
<i>Family Physeteridae:</i> Sperm whale	<i>Physeter macrocephalus</i>	North Atlantic	E, D, Y	5,895 (0.29, 4,639, 2021)	9.28	0.2
<i>Family Delphinidae:</i> Atlantic spotted dolphin	<i>Stenella frontalis</i>	Western North Atlantic	-, -, N	31,506 (0.28, 25,042, 2021).	250	0
Atlantic white-sided dolphin	<i>Lagenorhynchus acutus</i>	Western North Atlantic	-, -, N	93,233 (0.71, 54,443, 2021).	544	28
Bottlenose dolphin	<i>Tursiops truncatus</i>	Western North Atlantic—Off-shore ^g .	-, -, N	64,587 (0.24, 52,801, 2021).	507	28
Common dolphin	<i>Delphinus delphis</i>	Northern Migratory Coastal	-, -, Y	6,639 (0.41, 4,759, 2016)	48	12.2–21.5
Long-finned pilot whale ^h	<i>Globicephala melas</i>	Western North Atlantic	-, -, N	93,100 (0.56, 59,897, 2021).	1,452	414
Short-finned pilot whale ⁱ	<i>Globicephala macrorhynchus</i> ...	Western North Atlantic	-, -, Y	39,215 (0.30, 30,627, 2021).	306	5.7
Risso's dolphin	<i>Grampus griseus</i>	Western North Atlantic	-, -, N	18,726 (0.33, 14,292, 2021).	143	218
<i>Family Phocoenidae (porpoises):</i> Harbor porpoise	<i>Phocoena phocoena</i>	Western North Atlantic	-, -, N	44,067 (0.19, 30,662, 2021).	307	18
		Gulf of Maine/Bay of Fundy	-, -, N	85,765 (0.53, 56,420, 2021).	649	145
Order Carnivora—Superfamily Pinnipedia						
<i>Family Phocidae (earless seals):</i> Gray seal ^j	<i>Halichoerus grypus</i>	Western North Atlantic	-, -, N	27,911 (0.20, 23,624, 2021).	1,512	4,570
Harbor seal	<i>Phoca vitulina</i>	Western North Atlantic	-, -, N	61,336 (0.08, 57,637, 2018).	1,729	339

^a Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy at: <https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/> (Committee on Taxonomy (2023)).

^bEndangered 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.

^cNMFS' marine mammal stock assessment reports can be found online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>. CV is the coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

^dThese 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. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

^eThe current SAR includes an estimated population ($N_{best} = 340$) based on sighting history through December 2021 (see <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports>). In October 2023, NMFS released a technical report identifying that the North Atlantic right whale population size based on sighting history through 2022 was 356 whales, with a 95 percent credible interval ranging from 346 to 363 (Linden, 2023).

^fIn the proposed rule (88 FR 65430, September 22, 2023), the best available science included a North Atlantic right whale M/SI value of 8.1 which accounted for detected mortality/serious injury. In the final 2022 SAR, released in June 2023, the total annual average observed North Atlantic right whale mortality was updated from 8.1 to 31.2. In the draft 2023 SAR, released on January 29, 2024 (89 FR 5495), the total annual average observed North Atlantic right whale mortality was updated from 31.2 to 27.2. Numbers presented in this table (27.2 total mortality (17.6 of which are attributed to fishery-induced mortality) are 2016–2020 estimated annual means, accounting for both detected and undetected mortality and serious injury (see <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports>).

^gEstimates may include sightings of the coastal form.

^hKey uncertainties exist in the population size estimate for this species, including uncertain separation between short-finned and long-finned pilot whales, small negative bias due to lack of abundance estimate in the region between US and the Newfoundland/Labrador survey area, and uncertainty due to unknown precision and accuracy of the availability bias correction factor that was applied.

ⁱA key uncertainty exists in the population size estimate for this species based upon the assumption that the logistic regression model accurately represents the relative distribution of short-finned vs. long-finned pilot whales.

^jNMFS' stock abundance estimate (and associated PBR value) applies to the U.S. population only. Total stock abundance (including animals in Canada) is approximately 394,311. The annual M/SI value given is for the total stock.

North Atlantic Right Whale

In June 2023, NMFS released its final 2022 SARs, which updated the annual M/SI value for North Atlantic right whale from 8.1 to 31.2 due to the addition of estimated undetected mortality and serious injury, as described above, which had not been previously included in the SAR. The population estimate is slightly lower than the North Atlantic Right Whale Consortium's 2022 Report Card, which identifies the population estimate as 340 individuals (Pettis *et al.*, 2023). Elevated North Atlantic right whale mortalities have occurred since June 7, 2017 along the U.S. and Canadian coast, with the leading category for the cause of death for this UME determined to be "human interaction," specifically from entanglements or vessel strikes. Since publication of the proposed rule, the number of animals considered part of the UME has increased. As of August 26, 2024, there have been 40 confirmed mortalities (*i.e.*, dead, stranded, or floaters), 1 pending mortality, and 36 seriously injured free-swimming whales for a total of 77 whales considered to be part of the UME due to serious injury or mortality. As of October 14, 2022, the UME also considers animals ($n=65$) with sub-lethal injury or illness (*i.e.*, "morbidity"), bringing the total number of whales in the UME to 142. More information about the North Atlantic right whale UME is available online at: <https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2023-north-atlantic-right-whale-unusual-mortality-event>.

Humpback Whale

Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine to Florida. This event was declared a UME in April 2017. Partial or

full necropsy examinations have been conducted on approximately half of the 227 known cases (as of August 26, 2024), with 31 found within New Jersey's jurisdiction. Of the whales examined (approximately 90), about 40 percent had evidence of human interaction, either vessel strike or entanglement (refer to <https://www.fisheries.noaa.gov/national/marine-life-distress/2016-2023-humpback-whale-unusual-mortality-event-along-atlantic-coast>). While a portion of the whales have shown evidence of pre-mortem vessel strike, this finding is not consistent across all whales examined and more research is needed. NOAA is consulting with researchers that are conducting studies on the humpback whale populations, and these efforts may provide information on changes in whale distribution and habitat use that could provide additional insight into how these vessel interactions occurred. More information is available at: <https://www.fisheries.noaa.gov/national/marine-life-distress/2016-2023-humpback-whale-unusual-mortality-event-along-atlantic-coast>.

Since December 1, 2022, the number of humpback strandings along the mid-Atlantic coast, including New Jersey, has been elevated. In some cases, the cause of death is not yet known. In others, vessel strike has been deemed the cause of death. As the humpback whale population has grown, they are seen more often in the Mid-Atlantic. These whales may be following their prey (*i.e.*, small fish) which are reportedly close to shore in the winter. These prey also attract fish that are of interest to recreational and commercial fishermen. This increases the number of boats and fishing gear in these areas. More whales in the vicinity of areas traveled by boats of all sizes increases

the risk of vessel strikes. Vessel strikes and entanglement in fishing gear are the greatest human threats to large whales.

Minke Whale

Since January 2017, a UME has been declared based on elevated minke whale mortalities detected along the Atlantic coast from Maine through South Carolina. As of August 26, 2024, a total of 174 minke whales have stranded during this UME, with 14 of those located within New Jersey jurisdiction. Full or partial necropsy examinations were conducted on more than 60 percent of the whales. Preliminary findings have shown evidence of human interactions or infectious disease in several of the whales, but these findings are not consistent across all of the whales examined, so more research is needed. This UME has been declared non-active and is pending closure. More information is available at: <https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2023-minke-whale-unusual-mortality-event-along-atlantic-coast>.

Phocid Seals

Since June 2022, elevated numbers of harbor seal and gray seal mortalities have occurred across the southern and central coast of Maine. This event was declared a UME in July 2022. Preliminary testing of samples has found some harbor and gray seals are positive for highly pathogenic avian influenza. While the UME is not occurring in the Project Area, the populations affected by the UME are the same as those potentially affected by the Project. However, due to the 2 states being approximately 352 km (219 mi) apart, by water (from the most northern point of New Jersey to the most southern point of Maine), NMFS does not expect that this UME would be further conflated by the activities

related to the Project. After a period of inactivity, this UME was closed on January 16, 2024 (see <https://www.fisheries.noaa.gov/feature-story/closure-2022-maine-pinniped-unusual-mortality-event#:~:text=NOAA%20Fisheries%20has%20declared%20the,Marine%20Mammal%20Unusual%20Mortality%20Events>). More information on this UME is available online at: <https://www.fisheries.noaa.gov/2022-2023-pinniped-unusual-mortality-event-along-maine-coast>. The above event was preceded by a different UME, occurring from 2018–2020 (closure of the 2018–2020 UME is pending). Beginning in July 2018, elevated numbers of harbor seal and gray seal mortalities occurred across Maine, New Hampshire, and Massachusetts. To date, stranded seals showing clinical signs have been found in Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Delaware, Maryland, and Virginia, although not in elevated numbers, therefore the UME investigation encompassed all seal strandings from Maine to Virginia. A total of 3,152 reported strandings (of both harbor seal and gray seal species) occurred from July 1, 2018, through March 13, 2020, with 101 occurring within the jurisdiction of New Jersey. Full or partial necropsy examinations have been conducted on some of the seals and samples have been collected for testing. Based on tests conducted thus far, the main pathogen found in the seals is phocine distemper virus. NMFS is performing additional testing to identify any other factors that may be involved in this UME. Information on this UME is available online at: <https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-life-distress/2018-2020-pinniped-unusual-mortality-event-along>.

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; Au and Hastings, 2008; Southall *et al.*, 2019a). 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. Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 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 and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in table 3.

TABLE 3—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, <i>Cephalorhynchus</i> , <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>).	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; Southall *et al.*, 2019a). For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

NMFS notes that in 2019a, Southall *et al.* recommended modified names for hearing groups that are widely recognized. However, this new hearing group classification does not change the

weighting functions or acoustic thresholds (i.e., the weighting functions and thresholds in Southall *et al.* (2019a) are identical to NMFS 2018 Revised Technical Guidance). When NMFS updates our Technical Guidance, we will be adopting the updated Southall *et al.* (2019a) hearing group classification.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from the Project's specified activities have the potential to result in the harassment of marine mammals in the specified geographic region. The proposed rule (88 FR 65430, September 22, 2023) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from Project Company 1's activities on marine mammals and their habitat. That information and analysis is not repeated here and readers should refer to the proposed rule.

However, since publication of the proposed rule, new scientific information has become available that provides additional insight into the sound fields produced by turbine operation. Although the proposed rulemaking (88 FR 65430, September 22, 2023) primarily covered the noise produced from construction activities relevant to the Project, operational noise was a consideration in NMFS' analysis of the Project, as all 200 turbines would become operational within the effective dates of the rule, beginning no sooner than 2026 and 2027 (it is expected that all turbines would be operational by 2028 and 2029). Once operational, offshore wind turbines are known to produce continuous, non-impulsive underwater noise, primarily below 1 kHz (Tougaard *et al.*, 2020; Stöber and Thomsen, 2021).

Project Company 1 has acknowledged that the WTG models may utilize either geared turbine designs or direct-drive turbine models, as both are currently available on the market. During the drafting of this final rulemaking, the applicant had not yet made a decision regarding the entire Atlantic Shores South Project, although they indicated that the Vestas turbine model planned for installation in Project 1 would use gearboxes. As there remains uncertainty regarding the model for Project 2, NMFS has included the following discussion on both gearboxes and direct-drive models to provide the public with all of the appropriate information NMFS considered in its analysis and during the drafting of this final rule.

Recently, direct-drive systems have been gaining popularity over older generation, geared (i.e., gearbox) turbine

designs. This growth has been largely attributed to their efficiency. Gearbox designs require the rotational speed of the turbine to be modulated by gears before reaching the generator, while direct-drive designs bypass this step and connect the rotor directly to the generator (van de Kaa *et al.*, 2020). The direct connection eliminates the need for a gearbox, one of the heaviest and most maintenance-intensive components of a turbine, and reduces gearbox failure and energetic losses as a result. Direct drive technology results in less wear in dynamic wind conditions, typically leads to slower rotational speeds, and has been shown to produce more energy on average (Bellmann *et al.*, 2023). Direct-drive technology also produces lower-frequency noise and is generally quieter than gearbox counterparts. It is possible that the slower rotational speeds and reduced mechanical components in direct-drive turbines impact the noise they produce (Tougaard *et al.*, 2020).

Tougaard *et al.* (2020) further stated that the operational noise produced by WTGs is static in nature and lower than noise produced by passing ships. This is a noise source in this region to which marine mammals are likely already habituated. Furthermore, operational noise levels are likely lower than those ambient levels already present in active shipping lanes, such that operational noise would likely only be detected in very close proximity to the WTG (Thomsen *et al.*, 2006; Tougaard *et al.*, 2020). Similarly, recent measurements from a wind farm (3 MW turbines) in China found at above 300 Hz, turbines produced sound that was similar to background levels (Zhang *et al.*, 2021). Other studies by Jansen and de Jong (2016) and Tougaard *et al.* (2009) determined that, while marine mammals would be able to detect operational noise from offshore wind farms (again, based on older 2 MW models) for several kilometers, they expected no significant impacts on individual survival, population viability, marine mammal distribution, or the behavior of the animals considered in their study (*i.e.*, harbor porpoises and harbor seals).

Recent scientific studies indicate that operational noise from turbines is on the order of 110 to 125 dB referenced to 1 micropascal (re 1 μ Pa) SPL_{rms} at an approximate distance of 50 m (164 ft) (Tougaard *et al.*, 2020; primarily from gearbox turbines). Recent measurements of operational sound generated from wind turbines (direct-drive, 6 MW, jacket foundations) at Block Island Wind Farm (BIWF) indicate average broadband levels of 119 dB at 50 m (164

ft) from the turbine, with levels varying with wind speed (HDR, 2019). Interestingly, measurements from BIWF turbines showed operational sound had less tonal components compared to European measurements of turbines with gearboxes.

More recently, Stöber and Thomsen (2021) used monitoring data and modeling to estimate noise generated by more recently developed, larger (10 MW) direct-drive WTGs. Their findings, similar to Tougaard *et al.* (2020), demonstrated that there is a trend that operational noise increases with turbine size. Their study predicts broadband source levels could exceed 170 dB SPL_{rms} for a 10 MW WTG; however, those noise levels were generated based on geared turbines; newer turbines typically operate with direct-drive technology. The shift from using gearboxes to direct-drive technology is expected to reduce the levels by 10 dB. The findings in the Stöber and Thomsen (2021) study have not been experimentally validated, though the modeling (using largely geared turbines) performed by Tougaard *et al.* (2020) yielded similar results for a hypothetical 10 MW WTG.

Furthermore, Holme *et al.* (2023) cautioned that Tougaard *et al.* (2020) and Stöber and Thomsen (2021) extrapolated levels for larger turbines should be interpreted with caution since both studies relied on data from smaller turbines (0.45 to 6.15 MW) collected over a variety of environmental conditions. They demonstrated that the model presented in Tougaard *et al.* (2020) tends to potentially overestimate levels (up to approximately 8 dB) measured to those in the field, especially with measurements closer to the turbine for larger turbines. Holme *et al.* (2023) measured operational noise from larger turbines (6.3 and 8.3 MW) associated with 3 wind farms in Europe and found no relationship between turbine activity (power production, which is proportional to the blade's revolutions per minute) and noise level, though it was noted that this missing relationship may have been masked by the area's relatively high ambient noise sound levels. Sound levels (RMS) of a 6.3 MW direct-drive turbine were measured to be 117.3 dB at a distance of 70 m (230 ft). However, measurements from 8.3 MW turbines were inconclusive as turbine noise was deemed to have been largely masked by ambient noise.

Bellmann *et al.* (2023) collected 27 operational noise measurements across 24 offshore wind farms consisting of 16 different WTG types of power ranging from 2.3 to 8 MW (approximately 70

percent of measurements from gearbox). It should be noted that the results from Holme *et al.* (2023) are based on a subset of these data. Similar to Holme *et al.* (2023), Bellmann *et al.* (2023) notes that no relationship between nominal WTG power and operational noise was observed, in contrast with the linear models used by Tougaard *et al.* (2020) and Stöber and Thomsen (2021). It is theorized that this is related to gearless and more modern WTGs measured as well as increased size and weight reducing transmission of vibrations. With regard to the extent of operational noise levels, Bellmann *et al.* (2023) concluded that tonal components of the operational noise are clearly observable at a range of 100 m (328 ft), but typically are not resolvable within the prevailing ambient noise at a range of 5 km (3.1 mi). However, Bellmann *et al.* (2023) also comment that these measurements were taken within the first year of operation, and that previous experience indicates noise levels will change significantly over time, likely due to wear and tear in gearbox WTGs, but that it is not clear at this time if these changes will also be present in direct-drive systems.

Finally, operational turbine measurements are available from the Coastal Virginia Offshore Wind (CVOW) pilot pile project, where two 7.8-m (25.6-ft) monopile WTGs were installed (BOEM, 2023). Compared to BIWF, levels at CVOW were higher (10–30 dB) below 120 Hz, believed to be caused by the vibrations associated with the monopile structure, while above 120 Hz levels were consistent among the 2 wind farms.

Globally, there are more than 341,000 operating WTGs (Global Wind Energy Council). Turbine failures are known to occur but are considered rare events (Katsaprakakis *et al.*, 2021, DOE, 2024a). For example, fewer than 40 incidents were identified in the modern fleet of more than 40,000 onshore turbines installed in the United States as of 2014 (DOE, 2024b). In 2022, the total global capacity of offshore wind reached 59,009 MW from 292 operating projects and over 11,900 operating wind turbines in 2022 (DOE, 2023), and a review of the relevant literature and media reports indicate blade failure among this cohort of turbines continues to be rare, consistent with industry performance in onshore wind turbines. On July 13, 2024, however, a blade on one of the WTGs at Vineyard Wind 1, a project located off of Martha's Vineyard and Nantucket, was damaged during the "warm up" phase of operations, causing a portion of the blade, primarily composed of fiberglass, to fall into the

water. In cooperation with Vineyard Wind 1, GE Vernova, the blade manufacturer, initiated debris recovery efforts and an investigation. Following this blade failure incident, the Bureau of Safety and Environmental Enforcement (BSEE), Department of Interior, issued a Suspension Order on July 17, 2024 (<https://www.bsee.gov/newsroom/latest-news/statements-and-releases/press-releases/bsee-statement-on-vineyard-wind>) and an additional Order for clarification on July 26, 2024 (<https://www.bsee.gov/newsroom/latest-news/statements-and-releases/press-releases/bsee-issues-new-order-to-vineyard-wind>), which suspends power production and any further wind turbine generator construction until the suspension is lifted.

As noted above, wind turbine failure is considered rare, and NMFS still considers the likelihood that blade failure would occur pursuant to Project Company 1's specified activity during the effective period of the ITA so low as to be discountable. Project Company 1 did not request, NMFS does not anticipate, and NMFS has not authorized, take of marine mammals incidental to a turbine blade failure and, therefore the topic is not discussed further.

Estimated Take

This section provides an estimate of the number of incidental takes allowed through this rulemaking, which will inform both NMFS' consideration of "small numbers" and the negligible impact determination.

Allowed takes would be primarily by Level B harassment, as use of the acoustic sources (*i.e.*, impact and vibratory pile driving and site characterization surveys) have the potential to result in disruption of marine mammal behavioral patterns due to exposure to elevated noise levels. Impacts such as masking and TTS can contribute to behavioral disturbances. There is also some potential for auditory injury (Level A harassment) to occur in select marine mammal species incidental to the specified activities (*i.e.*, WTG, OSS, and Met Tower foundation impact pile driving). For this action, this potential for PTS is limited to mysticetes, high-frequency cetaceans, and phocids due to their hearing sensitivities and the nature of the activities. The required mitigation and monitoring measures are expected to minimize the severity and magnitude of the taking to the extent practicable. As described previously, no serious injury

or mortality is anticipated or allowed for this Project. Below we describe how the take numbers were 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 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) 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 allowed take estimates.

Marine Mammal 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). A summary of all NMFS' thresholds can be found at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>.

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 or exposure context (*e.g.*, frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.*, other noises in the area, ambient noise), and the receiving animals (*e.g.*, hearing, motivation, experience, demography, behavior at time of exposure, life stage, depth) and can be difficult to predict (see, *e.g.*, Southall *et al.*, 2007, 2021; Ellison *et al.*, 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of

behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above the received root-mean-square sound pressure levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μ Pa)) for continuous (*e.g.*, vibratory pile-driving, drilling) and above the received RMS SPL 160 dB re: 1 μ Pa for non-explosive impulsive (*e.g.*, seismic airguns) or intermittent (*e.g.*, scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

Project Company 1's construction activities include the use of continuous (*i.e.*, vibratory pile driving) and intermittent (*i.e.*, impact pile driving, HRG acoustic sources) sources, and therefore, the 120 and 160 dB re 1 μ Pa (rms) thresholds are applicable.

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). 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). Project Company 1's planned activities include the use of impulsive and non-impulsive sources.

These thresholds are provided in table 4 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>.

TABLE 4—ONSET OF PERMANENT THRESHOLD SHIFT (PTS) (NMFS, 2018)

Hearing group	PTS onset thresholds* (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	Cell 1: $L_{p,0-pk,flat}$: 219 dB; $L_{E,p, LF,24h}$: 183 dB	Cell 2: $L_{E,p, LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	Cell 3: $L_{p,0-pk,flat}$: 230 dB; $L_{E,p, MF,24h}$: 185 dB	Cell 4: $L_{E,p, MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	Cell 5: $L_{p,0-pk,flat}$: 202 dB; $L_{E,p,HF,24h}$: 155 dB	Cell 4: $L_{E,p, HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	Cell 7: $L_{p,0-pk,flat}$: 218 dB; $L_{E,p,PW,24h}$: 185 dB	Cell 8: $L_{E,p,PW,24h}$: 201 dB.

* Dual metric 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 are recommended for consideration.

Note: Peak sound pressure level ($L_{p,0-pk}$) has a reference value of 1 μ Pa, and weighted cumulative sound exposure level ($L_{E,p}$) has a reference value of 1 μ Pa²s. In this table, thresholds are abbreviated to be more reflective of International Organization for Standardization (ISO) standards (ISO, 2017). The subscript “flat” is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals (*i.e.*, 7 Hz to 160 kHz). The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW pinnipeds) and that the recommended accumulation period is 24 hours. The weighted 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 thresholds will be exceeded.

Project Company 1 would not conduct detonations of UXOs/MECs as part of the Project. As Project Company 1 has not requested, and NMFS has not allowed any take related to the detonation of UXOs/MECs, the acoustic (*i.e.*, PTS onset and TTS onset for underwater explosives) and the pressure thresholds (*i.e.*, lung and gastrointestinal tract injuries) are not discussed or included in this action.

Below we describe the assumptions and methodologies used to estimate take, in consideration of acoustic thresholds and appropriate marine mammals density and occurrence information, for WTG, OSS, and Met Tower foundation installation, temporary cofferdam installation, and HRG surveys. Resulting distances to thresholds, densities used, activity-specific exposure estimates (as relevant to the analysis), and activity-specific take estimates can be found in each activity subsection below. At the end of this section, we present the maximum amount of annual, 5-year total, and annual take that is reasonably expected to occur, and which NMFS has allowed.

Acoustic and Exposure Modeling

The predominant underwater noise associated with the construction of the Project results from impact and vibratory pile driving. Project Company 1 employed JASCO Applied Sciences (USA) Inc. (JASCO) to conduct acoustic modeling to better understand sound fields produced during these activities (Weirathmueller *et al.*, 2022). The basic modeling approach is to characterize the sounds produced by the source and determine how the sounds propagate within the surrounding water column. For impact pile driving, JASCO conducted sophisticated source and propagation modeling (as described

below). For vibratory pile driving activities, JASCO applied *in situ* data to estimate source levels and applied more simple propagation modeling. To assess the potential for take from impact pile driving, JASCO also conducted animal movement modeling to estimate exposures. JASCO estimated species-specific exposure probability by considering the range- and depth-dependent sound fields in relation to animal movement in simulated representative construction scenarios. To assess the potential for take from vibratory pile driving, exposure modeling was not conducted. Instead, a density-based estimation approach was used. More details on these acoustic source modeling, propagation modeling, and exposure modeling methods are described below.

JASCO’s Pile Driving Source Model (PDSM), a physical model of pile vibration and near-field sound radiation (MacGillivray, 2014), was used in conjunction with the GRL, Inc. Wave Equation Analysis of Pile Driving (GRLWEAP) 2010 wave equation model (Pile Dynamics, 2010) to predict representative source levels associated with impact pile driving activities (WTG, OSS, and Met Tower foundation installation). The PDSM physical model computes the underwater vibration and sound radiation of a pile by solving the theoretical equations of motion for axial and radial vibrations of a cylindrical shell. This model is used to estimate the energy distribution per frequency (source spectrum) at a close distance from the source (10 m (32.81 ft)). Piles are modeled as a vertical installation using a finite-difference structural model of pile vibration based on thin-shell theory. To model the sound emissions from the piles, the force of the pile driving hammers also had to be

modeled. The force at the top of each monopile and jacket foundation pile was computed using the GRLWEAP 2010 wave equation model, which includes a large database of simulated hammers. The forcing functions from GRLWEAP were used as inputs to the finite difference model to compute the resulting pile vibrations (see figures 8–10 in appendix B of Project Company 1’s ITA application for the computed forcing functions). The sound radiating from the pile itself was simulated using a vertical array of discrete point sources. These models account for several parameters that describe the operation (*i.e.*, pile type, material, size, and length) the pile driving equipment, and approximate pile penetration depth. The model assumed direct contact between the representative hammers, helmets, and piles (*i.e.*, no cushioning material). For both jacket and monopile foundation models, the piles are assumed to be vertical and driven to a penetration depth of 70 m (230 ft) and 60 m (197 ft), respectively.

Project Company 1 is required to employ noise abatement systems (NAS), also known as noise attenuation systems, during all foundation installation associated with permanent structures (*i.e.*, impact pile driving) to reduce the sound pressure levels that are transmitted through the water in an effort to reduce ranges to acoustic thresholds and minimize any acoustic impacts resulting from the activities. Project Company 1 is required to use at least a fully functional double big bubble curtain which may be combined with another NAS (*e.g.*, hydro-sound damper, or an AdBm Helmholtz resonator), as well as the adjustment of operational protocols to minimize noise levels. Other systems that could be implemented include an evacuated

sleeve system (e.g., IHC-Noise Mitigation System (NMS)), or encapsulated bubble systems (e.g., HydroSound Dampers (HSD)) to reduce sound levels. Hence, hypothetical broadband attenuation levels of 0 dB, 6 dB, 10 dB, and 15 dB were incorporated into the foundation source models to gauge effects on the ranges to thresholds given these levels of attenuation (appendix B of Project Company 1's ITA application and associated supplemental documents). Although these 4 attenuation levels were evaluated, Project Company 1 and NMFS anticipate that the noise attenuation system ultimately chosen will be capable of reliably reducing source levels by 10 dB; therefore, this assumption was carried forward in this analysis for monopile and jacket foundation pile driving installation. See

the Mitigation section for more information regarding the justification for the 10-dB assumption.

In addition to considering noise abatement, the amount of sound generated during pile driving varies with the energy required to drive piles to a desired depth and depends on the sediment resistance encountered. Sediment types with greater resistance require hammers that deliver higher energy strikes and/or an increased number of strikes relative to installations in softer sediment. Maximum sound levels usually occur during the last stage of impact pile driving where the greatest resistance is encountered (Betke, 2008). Key modeling assumptions for the monopiles and pin piles are listed in table 5, with additional modeling details and input parameters can be found in

table B-1 in appendix B of Project Company 1's ITA application. Hammer energy schedules for monopiles (both 12-m (39.37-ft) and 15-m (49.21-ft) diameters in size) and pin piles (5-m (16.4-ft) diameter) are provided in table 6, respectively. Decade spectral source levels for each pile type, hammer energy, and modeled location for summer sound speed profiles can be found in appendix B of Project Company 1's ITA application (see figures 11 to 13 in the application). Due to a public comment received during the 30-day public comment period of the proposed rule, NMFS estimated the broadband SEL source levels from the decade spectra provided in the ITA application. The resulting SEL source levels for both the 12-m and 15-m monopiles at hammer energies of 4,400 kJ are approximately 227 dB.

TABLE 5—KEY PILING ASSUMPTIONS USED IN THE SOURCE MODELING

Foundation type	Maximum impact hammer energy (kJ)	Wall thickness (mm)	Pile length (m)	Seabed penetration depth (m)	Number per day
12-m Monopile Foundation	4,400	130	101	60	2
15-m Monopile Foundation	4,400	162	105	60	2
5-m Pin Pile for Jacket Foundation	2,500	72	76	70	4

TABLE 6—HAMMER ENERGY SCHEDULES FOR MONOPILES AND PIN PILES USED IN SOURCE MODELING

Modeled installation scenario	Hammer model	Energy level (kJ)	Strike count	Pile penetration range (m)	Strike rate (strikes/min)
12-m Monopile Foundation	Menck MHU 4400S	1,400 1,800 2,000 3,000 4,400	750 1,250 4,650 4,200 1,500	5 5 15 15 5	30
Total .....	.....	.....	12,350	45	.....
15-m Monopile Foundation	Menck MHU 4400S	480 800 1,600 2,500 3,000 4,000 4,400	1,438 1,217 1,472 2,200 4,200 2,880 1,980	8 3 4 5 10 9 6	30
Total .....	.....	.....	.....	.....	.....
5-m Pin Piles for Jacket Foundation	IHC S-2500	1,200 1,400 1,800 2,500	700 2,200 2,100 1,750	10 20 15 10	30
Total .....	.....	.....	6,750	55	.....

Within these assumptions, jacket foundations were assumed to be pre- and post-piled. Pre-piled means that the jacket structure is set on pre-installed piles while post-piling means that that jacket structure is placed on the seafloor

and the piles are subsequently driven through guides located at the base of each jacket leg. Due to these installation approaches, the jacket structure itself radiates sound, which needs to be accounted for in the modeling. Because

of this, JASCO estimated a larger broadband sound level for the piles (+2 dB) for the post-piling scenario.

After calculating source levels, Project Company 1 and JASCO used propagation models to estimate

distances to NMFS' harassment thresholds. The propagation of sound through the environment can be modeled by predicting the acoustic propagation loss—a measure, in decibels, of the decrease in sound level between a source and a receiver some distance away. Geometric spreading of acoustic waves is the predominant way by which propagation loss occurs. Propagation loss also happens when the sound is absorbed and scattered by the seawater, and absorbed, scattered, and reflected at the water surface and within the seabed. Propagation loss depends on the acoustic properties of the ocean and seabed and its value changes with frequency. Acoustic propagation modeling for impact pile driving applied JASCO's Marine Operations Noise Model (MONM) and Full Wave Range Dependent Acoustic Model (FWRAM) that combine the outputs of the source model with the spatial and temporal environmental context (*e.g.*, location, oceanographic conditions, and seabed type) to estimate sound fields. The lower frequency bands were modeled using JASCO's Marine Operations Noise Model Range-dependent Acoustic Model (MONM–RAM), which is based on the parabolic equation method of acoustic propagation modeling. For higher frequencies, additional losses resulting from absorption were added to the transmission loss model. See appendices B and D in Project Company 1's application and supplemental memoranda for more detailed descriptions of JASCO's propagation models.

Sounds produced by installation of the monopiles and pin piles were modeled at 2 sites determined to be representative for the entire Project (L01 and L02) for the 12-m (39.37-ft) and 15-m (49.21-ft) diameter monopile foundations. For the 5-m (16.4-ft) pin piles for jacket foundations, L01 in the southern section of the Lease Areas in 36.1 m (118.4 ft) of water depth was chosen and L02 in the northeastern section of the Lease Areas located in 28.1 m (92.2 ft) of water depth was chosen. Modeling locations are shown in figure 2 of appendix B in the ITA application. For temporary cofferdams, simpler propagation modeling using *in-situ* data was performed using information from Illingworth and Rodkin (2017), which measured the sound exposure level at 10 m (32.8 ft) distance from the pile for sheet piles using a vibratory hammer. JASCO used the source spectrum produced from this study (see figure 2 in appendix D, the revised cofferdam memo) to define the

expected source characteristics during Project Company 1's cofferdam installation and removal activities. JASCO's model, MONM, was again used to predict the SEL and SPL fields at representative locations near the proposed cofferdam locations, considering the influences of bathymetry, seabed properties, water sound speed, and water attenuation. Sheet piles were represented as a point source at a depth of 2 m (6.56 ft).

Due to seasonal changes in the water column, sound propagation is likely to differ at different times of the year. The speed of sound in seawater depends on the temperature (“T”, measured in degree Celsius), salinity (“S”, measured in parts per thousand (ppt)), and depth (“D”, measured in m) and can be described using sound speed profiles. Oftentimes, a homogeneous or mixed layer of constant velocity is present in the first few meters. It corresponds to the mixing of surface water through surface agitation. There can also be other features, such as a surface channel, which corresponds to sound velocity increasing from the surface down. This channel is often due to a shallow isothermal layer appearing in winter conditions but can also be caused by water that is very cold at the surface. In a negative sound gradient, the sound speed decreases with depth, which results in sound refracting downwards which may result in increased bottom losses with distance from the source. In a positive sound gradient, as is predominantly present in the winter season, sound speed increases with depth and the sound is, therefore, refracted upwards, which can aid in long distance sound propagation. Within the Project Area from July through September, the average temperature of the upper 10 m to 15 m (32.81 ft to 49.21 ft) of the water column is higher, which resulted in an increased surface layer sound speed.

Acoustic propagation modeling for impact pile driving foundations was conducted using an average sound speed profile for a summer period (*i.e.*, May through November) given this would be when Project Company 1 would conduct the majority, if not all of its foundation installation work, and given that foundation pile driving occurring in December would be allowed at Federal Agency discretion and if it is necessary to complete the Project. Vibratory pile driving for cofferdams used a mean summer (*i.e.*, June through August) and mean winter (*i.e.*, December through February) for the acoustic propagation modeling, given the specifics described in the construction schedule. FWRAM

computes pressure waveforms via Fourier synthesis of the modeled acoustic transfer function in closely spaced frequency bands. Examples of decade spectral levels for each foundation pile type, hammer energy, and modeled location, using average summer sound speed profile are provided in Weirathmueller *et al.* (2022). Resulting distances to NMFS' harassment thresholds for impact driving of foundations and vibratory driving of cofferdams can be found in the *WTG, OSS, and Met Tower Foundation Installation and Cable Landfall Activities* subsections, respectively, below.

To estimate the probability of exposure of animals to sound above NMFS' harassment thresholds during impact pile driving for foundation installation, JASCO's Animal Simulation Model Including Noise Exposure (hereafter, “JASMINE”) was used to integrate the sound fields generated from the source and propagation models described above with species-typical behavioral parameters (*e.g.*, dive patterns). Sound exposure models such as JASMINE use simulated animals (*i.e.*, animats) to sample the predicted three-dimensional (“3-D”) sound fields with movement rules derived from animal observations. Animats that exceed NMFS' acoustic thresholds were identified and the range for the exceedances was determined. The output of the simulation yields the exposure history for each animat within the simulation. An individual animat's sound exposure levels were summed over a specific duration (*i.e.*, 24 hours), to determine its total received acoustic energy SEL and maximum received PK and SPL. These received levels are then compared to the threshold criteria within each analysis period.

JASCO ran JASMINE simulations for 7 days, assuming piling every day. Separate simulations were run for each scenario (*e.g.*, pile diameter/number of piles per day/season combination). The combined history of all animats gives a probability density function of exposure during the Project. The number of animals expected to exceed the regulatory thresholds per day is determined by scaling the number of predicted animat exposures by the species-specific density of animals in the area. The average number of exposures per day for the scenario in question was then multiplied by the number of days of pile driving planned for that scenario. In general, the number of days of pile driving is more influential in determining total exposures for Level B harassment than Level A harassment. However, the use

of other conservative parameters (*e.g.*, assuming most pile driving occurs in highest density months) in the calculation ensure that, regardless, the estimated take numbers appropriately represent the greatest number of instances that marine mammals are reasonably likely to be harassed by the activities.

By programming animats to behave like marine species that may be present near the Project Area, based on information obtained through scientific literature, the sound fields are sampled in a manner similar to that expected for real animals. The parameters used for forecasting realistic behaviors (*e.g.*, diving, foraging, and surface times) were determined and interpreted from marine species studies (*e.g.*, tagging studies) where available, or reasonably extrapolated from related species (Weirathmueller *et al.*, 2022).

For modeled animats that have received enough acoustic energy to exceed a given harassment threshold, the exposure range for each animal is defined as the closest point of approach (hereafter, “CPA”) to the source made by that animal while it moved throughout the modeled sound field, accumulating received acoustic energy. The CPA for each of the species-specific animats during a simulation is recorded and then the CPA distance that accounts for 95 percent of the animats that exceed an acoustic impact threshold is determined. The $ER_{95\%}$ (95 percent exposure radial distance) is the horizontal distance that includes 95 percent of the CPAs of animats exceeding a given impact threshold. The $ER_{95\%}$ ranges are species-specific rather than categorized only by any functional hearing group, which allows for the incorporation of more species-specific biological parameters (*e.g.*, dive durations, swim speeds, *etc.*) for assessing the potential for PTS from impact pile driving.

Project Company 1 and JASCO also calculated acoustic ranges which represent the distance to harassment thresholds based on sound propagation through the environment independent of any receiver. As described above, applying animal movement and behavior within the modeled noise fields allows for a more realistic indication of the distances at which PTS acoustic thresholds are reached that considers the accumulation of sound over different durations. The use of acoustic ranges ($R_{95\%}$) to the Level A harassment SEL_{cum} metric thresholds to assess the potential for PTS is considered overly conservative as it does not account for animal movement and behavior and, therefore, assumes

that animals are essentially stationary at that distance for the entire duration of the pile installation, a scenario that does not reflect realistic animal behavior. The acoustic ranges to the SEL_{cum} Level A harassment thresholds for impact pile driving can be found in Project Company 1’s ITA application but will not be discussed further in this analysis. However, because NMFS’ Level A harassment (PTS dB_{peak}) and Level B harassment (SPL) thresholds refer to instantaneous exposures, acoustic ranges are more relevant to the analysis. Also, because animat modeling was not conducted for vibratory pile driving, acoustic range is used to assess Level A harassment (dB_{SEL}). Acoustic ranges to the Level A harassment (dB_{peak}) and Level B harassment threshold for each activity are provided in the WTG, OSS, and Met Tower Foundation Installation subsection below. The differences between exposure ranges and acoustic ranges for Level B harassment are minimal given it is an instantaneous method.

Density and Occurrence

In this section we provide the information about marine mammal density, presence, and group dynamics that informed the take calculations for all activities. For foundation installation and temporary cofferdam installation and removal, JASCO performed the analysis, while Environmental Design & Research, Landscape Architecture, Engineering & Environmental Services, D.P.C. (EDR) assessed HRG surveys, on behalf of Project Company 1. In either case, the Duke University Marine Geospatial Ecology Laboratory Habitat-based Marine Mammal Density Models for the U.S. Atlantic (*i.e.*, the Duke University density models; Roberts *et al.*, 2016a; Roberts *et al.*, 2023) were applied to estimate take from foundation installation, temporary cofferdam installation and removal, and HRG surveys (please see each activity subsection below for the resulting densities). The models estimate absolute density (individuals/100 km²) by statistically correlating sightings reported on shipboard and aerial surveys with oceanographic conditions. For most marine mammal species, densities are provided on a monthly basis. Where monthly densities are not available (*e.g.*, pilot whales), annual densities are provided. Moreover, some species are represented as guilds (*e.g.*, seals (representing *phocidae spp.* comprising harbor and gray seals) and pilot whale *spp.* (representing short-finned and long-finned pilot whales)).

The Duke University density models delineate species’ density into 5 x 5 km

(3.1 x 3.1 mi) grid cells. Project Company 1 calculated mean monthly densities for each species using grid cells within the Lease Areas and a predetermined buffer around the Lease Areas that represented the expected ensonified area to NMFS’ harassment thresholds for each sound-producing activity. All 5 x 5 km (3.1 x 3.1 mi) grid cells in the models that fell partially or fully within the analysis polygon were considered in the calculations. Cells that fell entirely on land were not included, but cells that overlapped only partially with land were included.

For impact pile driving associated with foundation installation, the buffer from the edge of the Lease Areas was chosen as it was based on the largest 10 dB -attenuated (from the bubble curtain/NAS) exposure range calculated based on installation of a 15-m (49.21-ft) monopile using a 4,400 kJ hammer (3.9 km (2.4 mi); table 7). For vibratory pile driving associated with temporary cofferdam installation and removal, Project Company 1 applied the applicable buffer sizes at each of the landfall locations (7.546 km (4.7 mi) at the Atlantic City site and 11.286 km (7 mi) at the Monmouth site) based on the $R_{95\%}$ value for the largest acoustic range to threshold (table 8). For HRG surveys, Project Company 1 mapped the density data within the boundary of each survey area using geographic information systems (GIS). No buffer was applied given the small distance to Level B harassment (<200 m (<656.2 ft)) during surveys compared to the grid cell size in the Duke University density models (5 x 5 km (3.11 x 3.11 mi); table 9).

Here, NMFS notes that although the initial application submitted by Project Company 1 for their proposed rulemaking utilized Duke University’s 2022 habitat-based marine mammal density models, as described further above and in the proposed rulemaking (88 FR 65430, September 22, 2023), in June 2022, during NMFS’ review of the application materials, the new density models were released by Duke University (*i.e.*, Roberts *et al.*, 2016a; Roberts *et al.*, 2023), including for the North Atlantic right whale (Roberts *et al.*, 2024). After several months of review and evaluation, NMFS determined that the updated models represented the best available science and those were incorporated into the adequate and complete application materials and proposed rulemaking (88 FR 65430, September 22, 2023). Within this final rulemaking, as no new information has presented itself, NMFS maintains the use of these revised density models and has incorporated the necessary information herein.

TABLE 7—MEAN MONTHLY AND ANNUAL MARINE MAMMAL DENSITY ESTIMATES (ANIMALS/100 km²) FOR IMPACT PILE DRIVING CONSIDERING A 3.9-KM BUFFER AROUND THE LEASE AREAS ^a

Marine mammal species	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec	Annual Mean	May–Dec mean
North Atlantic right whale *	0.069	0.074	0.062	0.046	0.010	0.003	0.001	0.001	0.002	0.004	0.010	0.042	0.027	0.009
Fin whale *	0.178	0.123	0.098	0.099	0.088	0.075	0.047	0.028	0.029	0.031	0.038	0.141	0.081	0.060
Humpback whale	0.093	0.065	0.084	0.101	0.091	0.058	0.011	0.006	0.020	0.065	0.086	0.121	0.067	0.057
Minke whale	0.051	0.049	0.049	0.737	0.810	0.202	0.054	0.026	0.015	0.066	0.016	0.042	0.176	0.154
Sei whale *	0.026	0.016	0.034	0.074	0.027	0.006	0.001	0.001	0.002	0.008	0.026	0.042	0.022	0.014
Sperm whale *	0.004	0.002	0.001	0.007	0.010	0.005	0.003	0.000	0.000	0.000	0.003	0.004	0.003	0.003
Atlantic spotted dolphin	0.001	0.000	0.001	0.003	0.006	0.012	0.028	0.133	0.109	0.147	0.113	0.008	0.047	0.070
Atlantic white-sided dolphin	0.355	0.225	0.221	0.673	0.755	0.605	0.018	0.004	0.059	0.556	0.591	0.601	0.389	0.399
Bottlenose dolphin, off-shore ^d	1.409	0.489	0.732	2.460	6.311	8.449	9.350	9.485	8.613	8.335	9.468	5.944	5.920	8.244
Bottlenose dolphin, coastal ^d	2.917	1.024	2.053	8.290	20.869	27.429	29.272	31.415	32.096	29.744	30.414	16.667	19.349	27.238
Common dolphin	2.754	1.139	1.347	2.751	3.431	1.695	0.939	0.507	0.085	1.006	5.315	5.876	2.237	2.357
Long-finned pilot whale ^b													0.016	
Short-finned pilot whale ^b													0.012	
Risso's dolphin	0.015	0.002	0.003	0.031	0.029	0.008	0.006	0.006	0.006	0.013	0.074	0.115	0.026	0.032
Harbor porpoise	3.968	3.756	3.091	4.161	1.025	0.033	0.023	0.016	0.003	0.007	0.029	2.891	1.584	0.503
Gray seal ^c	4.881	3.521	2.352	2.866	4.508	0.492	0.080	0.054	0.120	0.639	1.731	4.588	2.153	1.527
Harbor seal ^c	10.967	7.911	5.285	6.439	10.127	1.106	0.180	0.122	0.271	1.437	3.889	10.308	4.837	3.430

Note: * denotes species listed under the Endangered Species Act.

^a Density estimates are calculated from the more recently released Duke Habitat-Based Marine Mammal Density Models (Roberts *et al.*, 2016a; Roberts *et al.*, 2023), including for the North Atlantic right whale (Roberts *et al.*, 2024).

^b Long- and short-finned pilot whale densities are the annual pilot whale guild density scaled by their relative abundances.

^c Gray and harbor seal densities are the seals guild density scaled by their relative abundances.

^d Bottlenose dolphin stocks were split based on the 3.9 km (2.42 mi) buffer at the 20-m (65.62-ft) isobath where the coastal stock was allocated to areas <20 m (<65.62 ft) and the offshore stock for areas >20 m (>65.62 ft).

TABLE 8—MAXIMUM MONTHLY DENSITIES ^a (ANIMALS/100 km²) FOR SEPTEMBER THROUGH MAY USED TO ANALYZE COFFERDAM ACTIVITIES ^b

Marine mammal species	Monmouth landfall site	Atlantic City landfall site
North Atlantic right whale *	0.035	0.092
Fin whale *	0.117	0.052
Humpback whale	0.132	0.114
Minke whale	0.526	0.136
Sei whale *	0.046	0.018
Sperm whale *	0.008	0.002
Atlantic spotted dolphin	0.033	0.014
Atlantic white-sided dolphin	0.206	0.051
Common dolphin	2.058	0.524
Bottlenose dolphin (offshore stock) ^c	22.53	0
Bottlenose dolphin (coastal stock) ^c	27.795	146.614
Long-finned pilot whale	0	0
Short-finned pilot whale	0	0
Risso's dolphin	0.02	0.002
Harbor porpoise	2.768	0.821
Gray seal	4.477	9.029
Harbor seal	10.059	20.287

Note: * denotes species listed under the Endangered Species Act.

^a Density estimates are calculated from the Duke Habitat-Based Marine Mammal Density Models (Roberts *et al.*, 2016a; Roberts *et al.*, 2023).

^b Density estimates are based on habitat-based density modeling of the entire Atlantic Exclusive Economic zone (EEZ).

^c For both bottlenose dolphin stocks, the impact area was split at the 20-m (65.62-ft) isobath where the coastal stock was assumed to be in <20 m (<65.62 ft) in depth and the offshore stock were allocated to waters >20 m (>65.62 ft) in depth.

TABLE 9—MAXIMUM SEASONAL DENSITIES USED TO ANALYZE THE ANNUAL HRG SURVEYS FOR THE PROJECT AREA ^a

Marine mammal species	Stock	Maximum seasonal density (animals/100 km ²) ^b
North Atlantic right whale *	Western Atlantic	0.056
Fin whale *	Western North Atlantic	0.114
Humpback whale	Gulf of Maine	0.090
Minke whale	Canadian Eastern Coastal	0.401
Sei whale *	Nova Scotia	0.031
Sperm whale *	Western North Atlantic	0.005
Atlantic spotted dolphin	Western North Atlantic	0.033
Atlantic white-sided dolphin	Western North Atlantic	0.278
Bottlenose dolphin ^c	Northern Migratory Coastal	36.269
	Western North Atlantic—Offshore	

TABLE 9—MAXIMUM SEASONAL DENSITIES USED TO ANALYZE THE ANNUAL HRG SURVEYS FOR THE PROJECT AREA ^a—Continued

Marine mammal species	Stock	Maximum seasonal density (animals/100 km ²) ^b
Common dolphin	Western North Atlantic	1.473
Long-finned pilot whale ^d	Western North Atlantic	0.004
Short-finned pilot whale ^d	Western North Atlantic	0.003
Risso's dolphin	Western North Atlantic	0.017
Harbor porpoise	Gulf of Maine/Bay of Fundy	2.506
Gray seal ^e	Western North Atlantic	4.319
Harbor seal ^e	Western North Atlantic	9.704

Note: * denotes species listed under the Endangered Species Act.

^a The survey area accounts for waters within and around the Lease Areas and the export cable routes.

^b Density estimates are calculated from the Duke Habitat-Based Marine Mammal Density Models (Roberts *et al.*, 2016a; Roberts *et al.*, 2023), including for the North Atlantic right whale (Roberts *et al.*, 2024).

^c The bottlenose dolphin density is for the species collectively and was not delineated by stock.

^d Pilot whales are reported as a single “pilot whale” guild within the Duke University dataset (Roberts *et al.*, 2016a; Roberts *et al.*, 2023) and are not species-specific. To partition take between each of the long-finned and short-finned pilot whale species, the total density was scaled based on the abundance estimates provided in the NOAA Fisheries SARs.

^e Pinnipeds are reported as a single “seals” guild within the Duke University dataset (Roberts *et al.*, 2016a; Roberts *et al.*, 2023) and are not species-specific. To partition take between each of the harbor and gray seal species, the total density was scaled based on the abundance estimates provided in the NOAA Fisheries SARs.

Densities were computed based on when the planned activities were expected. For foundation installation, densities were accrued monthly, annually, and specifically for the May–December period that coincided with the planned pile driving activities. For temporary cofferdams, maximum monthly densities were calculated based on the planned September to May construction period. For HRG surveys, the maximum average seasonal density value for each marine mammal species was calculated.

Here we note some exceptions, based on the availability of data. For the pilot whale guild (*i.e.*, long-finned and short-finned), monthly densities are unavailable so annual mean densities were used instead. Additionally, the models provide density for pilot whales as a guild that includes both species. To obtain density estimates for long-finned and short-finned pilot whales, the guild density was scaled by the relative stock sizes based on the best available abundance estimate from NOAA Fisheries SARs (NOAA Fisheries, 2021b). Similarly, gray and harbor seal densities were scaled by each of their relative abundances, as found in the NOAA Fisheries SARs (NOAA Fisheries, 2021b). These scaled and surrogate densities were carried forward to the exposure and take estimates. Please see the activity-specific subsections below for resulting densities.

The equation below, using pilot whale *spp.* as an example, shows how abundance scaling is applied to compute densities for the pilot whale and seal guilds.

$$D_{\text{short-finned}} = D_{\text{both}} \times (N_{\text{short-finned}} / (N_{\text{short-finned}} + N_{\text{long-finned}}))$$

Where *D* represents density and *N* represents abundance.

For some species and activities, Atlantic Marine Assessment Program for Protected Species (AMAPPS) data from 2010–2019 shipboard distance sampling surveys (Palka *et al.*, 2021) and observational data collected during previous site assessment surveys in the Project Area indicate that the density-based exposure estimates may be insufficient to account for the number of individuals of a species that may be encountered during the planned activities. This is particularly true for uncommon or rare species with very low densities in the models. Hence, consideration of other data is required to ensure the potential for take is adequately assessed.

Here we note the existence of two different stocks of bottlenose dolphins, the coastal and offshore stocks, near the Project Area. However, the best available science consists of only a combined, single bottlenose dolphin density model found in Roberts *et al.* (2023). To appropriately account for which stock may be taken during foundation installation, the 3.9 km (2.42 mi) buffer was split at the 20-m (65.62-ft) isobath. Any bottlenose dolphins found within the 20-m (65.62-ft) isobath to shore were allocated to the coastal stock. Any that were outside of the 20-m (65.62-ft) isobath more seaward were allocated to the offshore stock. Animat simulations were run for each stock separately with the same behavioral characteristics. Because of this, the

exposure ranges are very similar between the two stocks as the only difference would be due to the different random seeding that was incorporated into the analysis. During cofferdam installation and removal, it was assumed that all dolphins near the Atlantic City landfall site would consist of the coastal stock, which allowed for a density value of zero for the offshore stock. However, given the Atlantic City landfall site did not exceed the 20-m (65.62-ft) isobath but the Monmouth site did, the area used to calculate the densities for bottlenose dolphins was split at the 20-m (65.62-ft) isobath. Because of this, any area <20 m (<65.62 ft) deep and >20 m (>65.62 ft) deep were used to calculate the exposures and takes for the coastal and offshore stocks, respectively. For HRG surveys, given that the northern migratory stock has more often been found in waters shallower than 20 m (65.62 ft), the survey area was divided along the 20-m (65.62-ft) isobath break. Project Company 1 estimated that 33 percent of the survey area fell from the 20-m (65.62-ft) isobath landward; therefore, 33 percent of the estimated take calculated for bottlenose dolphins was allocated to the coastal stock and the remaining was applied to the offshore stock.

Mean group sizes were used in the take estimation and were derived from NMFS' data upload to the Ocean Biodiversity Information System (OBIS) repository (OBIS, 2022), which is informed by information from the AMAPPS 2010–2019 aerial and shipboard surveys, North Atlantic right whale aerial surveys, and other surveys.

The dataset was downloaded from OBIS and then filtered to include only observations from the Northwestern Atlantic region (extending from the Gulf of Maine to Cape Hatteras and the relevant shelf edge) with the institution owner code of “NMFS”. From there, the average group sizes were calculated as the mean value of the “individualCount” column for all sighting records for a species. Additional information was also incorporated based on Project Company 1’s experience with site characterization surveys in this region through issued IHAs (87 FR 24103, April 22, 2022; 88 FR 38821, June 14, 2023). This yielded unique group sizes for long-finned pilot whales, Atlantic spotted dolphins, and Risso’s dolphins that were used rather than the OBIS dataset.

Additional detail regarding the density and occurrence as well as the assumptions and methodology used to estimate take for specific activities is included in the activity-specific subsections below and in the February 2023 update memo. Average group sizes used in take estimates, where applicable, for all activities are provided in table 10.

TABLE 10—AVERAGE MARINE MAMMAL GROUP SIZES USED IN TAKE ESTIMATE CALCULATIONS

Marine mammal species	Mean group size
North Atlantic right whale * ...	c 3.8
Fin whale *	c 1.3
Humpback whale	c 1.8
Minke whale	c 1.1
Sei whale *	c 2.1
Sperm whale *	c 1.8
Atlantic spotted dolphin	a 100
Atlantic white-sided dolphin ..	c 21.4
Common dolphin	b 1.55
Bottlenose dolphin, coastal ..	c 13.1
Bottlenose dolphin, offshore	30
Long-finned pilot whale	a 20
Short-finned pilot whale	c 6.0
Risso’s dolphin	a 20

TABLE 10—AVERAGE MARINE MAMMAL GROUP SIZES USED IN TAKE ESTIMATE CALCULATIONS—Continued

Marine mammal species	Mean group size
Harbor porpoise	c 1.3
Gray seal	c 1.2
Harbor seal	c 1.2

Note: * denotes species listed under the Endangered Species Act.

^a These mean group sizes were used in the 2022 (87 FR 24103, April 22, 2022) and 2023 (88 FR 38821, June 14, 2023) IHAs for site characterization surveys and are informed by previous HRG surveys in the area.

^b The mean group size for common dolphins was based on the daily sighting rate of that species during HRG surveys.

^c These group sizes are from the OBIS data repository (OBIS, 2022).

WTG, OSS, and Met Tower Foundation Installation

Here we describe the results from the acoustic, exposure, and take estimate methodologies outlined above for WTG, OSS, and Met Tower foundation installation activity that have the potential to result in harassment of marine mammals (*i.e.*, impact pile driving). We present exposure ranges to Level A harassment (SEL) thresholds from impact driving, acoustic ranges to Level A harassment (peak) and Level B harassment thresholds, densities, exposure estimates, and the amount of take requested and allowed incidental to foundation installation following the aforementioned assumptions (*e.g.*, construction and hammer schedules).

As described above, this final rule analyzes a modified Schedule 2 which accommodates a full monopile WTG build-out of Project 1 and Met Tower and a full jacket buildout for the WTGs in Project 2. Schedule 2 assumes foundation installation activities would occur over a 2-year period (May through December, annually).

As previously described, JASCO integrated the results from acoustic

source and propagation modeling into an animal movement model to calculate exposure ranges for 16 marine mammal species (17 stocks) considered common in the Project Area. The resulting ranges represent the distances at which marine mammals may incur Level A harassment (*i.e.*, PTS).

As described in the *Detailed*

Description of Specified Activities section, Project Company 1’s preference is to install 15-m (49.21-ft) monopiles but Project Company 1 may alternatively install 12-m (39.37-ft) monopiles. Hence, we have provided the modeled exposure and ranges for 12-m (39.37-ft) and 15-m (49.21-ft) monopiles below. We note that because the 15-m monopiles produce larger sound fields, in general, in order to ensure a conservative analysis, this final rule assumes all take is consistent with that expected for the 15-m (49.21-ft) monopiles.

Similarly, as described in the *Detailed Description of Specified Activities* section, Project Company 1 may install pre- or post-piled pin piles to construct the jacket foundations. We note that because post-piled pin piles produce larger sound fields than pre-piled piles, this final rule carries forward take specific to the post-piled pin piles. To more appropriately account for the larger radiated area produced around the jacket foundations as pin piles are driven, the broadband sound level estimated for the jacket piles was increased by 2 dB in all post-piling scenarios. In either case, NMFS notes that soft-start of impact-driven piles was not quantitatively considered in the exposures and take estimates, as presented here.

Table 11 provides the exposure ranges for impact pile driving of a 12-m (39.37-ft) monopile, 15-m (49.21-ft) monopile, and 5-m (16.4-ft) pin pile and (pre- and post-piled) jacket foundations, assuming 10 dB of sound attenuation to the PTS (SEL) thresholds.

TABLE 11—EXPOSURE RANGES (ER_{95%}) IN KILOMETERS TO MARINE MAMMAL PTS (SEL; LEVEL A HARASSMENT) THRESHOLDS DURING IMPACT PILE DRIVING 12-m AND 15-m MONOPILES, AND 5-m PIN PILES (PRE- AND POST-PILED) FOR JACKETS, ASSUMING 10 dB ATTENUATION

Marine mammal species	12-m monopiles, 4,400 kJ hammer		15-m monopiles, 4,400 kJ hammer		5-m pin piles, 2,500 kJ hammer	
	One pile/day	Two piles/day	One pile/day	Two piles/day	Four pin piles/day (pre-piled)	Four pin piles/day (post-piled)
North Atlantic right whale (migrating) *	0.56	0.67	0.72	0.72	0.73	1.06
Fin whale (sei whale proxy) * ^a	1.09	1.30	1.81	1.83	1.80	1.90
Humpback whale	1.08	1.01	1.25	1.29	1.07	1.56
Minke whale	0.33	0.38	0.35	0.41	0.40	0.69
Sperm whale *	0	0	0	0	0	0
Atlantic spotted dolphin	0	0	0	0	0	0
Atlantic white-sided dolphin	0	0	0	0	0	0.01

TABLE 11—EXPOSURE RANGES ($ER_{95\%}$) IN KILOMETERS TO MARINE MAMMAL PTS (SEL; LEVEL A HARASSMENT) THRESHOLDS DURING IMPACT PILE DRIVING 12-m AND 15-m MONOPILES, AND 5-m PIN PILES (PRE- AND POST-PILED) FOR JACKETS, ASSUMING 10 dB ATTENUATION—Continued

Marine mammal species	12-m monopiles, 4,400 kJ hammer		15-m monopiles, 4,400 kJ hammer		5-m pin piles, 2,500 kJ hammer	
	One pile/day	Two piles/day	One pile/day	Two piles/day	Four pin piles/day (pre-piled)	Four pin piles/day (post-piled)
Bottlenose dolphin (offshore)	0	0	0	0	0	0
Bottlenose dolphin (coastal)	0	0	0	0	0	0
Common dolphin	0	0	0	0	0	0
Long-finned pilot whale	0	0	0	0	0	0
Short-finned pilot whale	0	0	0	0	0	0
Risso's dolphin	0	0	0	0	<0.01	<0.01
Harbor porpoise	0.39	0.32	0.26	0.28	1.11	1.48
Gray seal	0.01	0	0.02	0	0.15	0.24
Harbor seal	<0.01	<0.01	<0.01	<0.01	0.16	0.32

Note: * denotes species listed under the Endangered Species Act.

^a Fin whales were used as a surrogate for sei whale behaviors.

We note here that between the two differently-sized monopiles, all of the distances to the Level A harassment threshold are smaller for the 12-m, with exception for the harbor porpoise distances, which show minute differences between the 15-m (0.26 and 0.28 km) and the 12-m (0.39 and 0.32 km) for each of one or two piles installed per day, respectively (table 11). This is because as the pile diameter increases from 12 to 15 m (39.37 to 49.21 ft), the frequency spectrum shifts and more of the energy increase occurs at the lower frequencies, which are largely filtered out by the high-frequency weighting function.

As described above, JASCO also calculated acoustic ranges which

represent distances to NMFS' harassment isopleths independent of movement of a receiver. Presented below are the distances to the PTS (dB peak) threshold for impact pile driving and the Level B harassment (SPL) thresholds for all impact pile driving during WTG, OSS, and Met Tower foundation installation (tables 12 and 13).

NMFS acknowledges an error in the proposed rule, in which the acoustic ranges to the Level B harassment thresholds were incorrectly identified due to a labeling mistake by JASCO in appendix B. Here, in table 13, we correct that by showing the values from the proposed rule, as well as the corrected values used in this final rule.

The values found in the JASCO documents did not assume 10 dB of sound attenuation, which is why we have instead provided the flat acoustic range (flat $R_{95\%}$) values at 170 dB from the ITA Application materials (*i.e.*, 10 dB of attenuation from the 160-dB behavioral harassment threshold). All of these values can be found in appendix B of Project Company 1's application materials, located on NMFS' website at: https://media.fisheries.noaa.gov/2022-09/AtlanticShoresOWF_2022_Appendix%20B_OPR1.pdf. The previous values, now updated, did not impact our analysis and determinations regarding take, as those values were merely a data copying error of acoustic ranges.

TABLE 12—ACOUSTIC RANGES ($R_{95\%}$), IN KILOMETERS, TO PTS (L_{pk}) THRESHOLDS DURING IMPACT PILE DRIVING, ASSUMING 10 dB ATTENUATION

Pile type	Installation method	Modeled source location	Hammer energy (kJ)	Activity duration (minutes)	Low-frequency cetacean	Mid-frequency cetacean	High-frequency cetaceans	Phocids
					219 L _p , pk	230 L _p , pk	202 L _p , pk	
12-m Monopile	Impact hammer	L01	4,400	540	0.08	0.01	0.72	0.09
		L02	4,400		0.06	0.01	0.74	0.07
15-m Monopile	Impact hammer	L01	4,400	540	0.08	0.01	0.78	0.09
		L02	4,400		0.07	0.01	0.78	0.08
5-m Pin Pile	Impact hammer	L01	2,500	180	0.02	0.00	0.28	0.03
		L02	2,500		0.02	0.00	0.28	0.03
5-m Pin Pile (2 dB shift for post-piled)	Impact hammer	L01	2,500	180	0.01	0.00	0.23	0.03
		L02	2,500		0.01	0.01	0.14	0.04

Note: $L_{p,pk}$ = peak sound pressure (dB re 1 μ Pa).

TABLE 13—FLAT ACOUSTIC RANGES (FLAT $R_{95\%}$), IN KILOMETERS, TO LEVEL B HARASSMENT (SPL, 170 L_p) THRESHOLD DURING IMPACT PILE DRIVING, NOT ASSUMING 10 dB ATTENUATION

Pile type	Installation method	Hammer energy (kJ)	Indicated in proposed rulemaking (R_{max})		Indicated in final rulemaking (flat $R_{95\%}$)	
			L01	L02	L01	L02
12-m Monopile	Impact Hammer ...	4,400	8.20	7.31	^a 4.26	^b 3.91
15-m Monopile	Impact Hammer ...	4,400	8.30	7.44	^c 4.31	^d 4.00
5-m Pin Pile (pre-piled)	Impact Hammer ...	2,500	4.76	1.98	^e 2.47	^f 0.63
5-m Pin Pile (post-piled)	Impact Hammer ...	2,500	5.50	2.28	^g 2.81	^h 0.81

Note: L_p = root-mean square sound pressure (dB re 1 μ Pa).

^a Table F–45 in appendix B in Project Company 1's application.

^b Table F–65 in appendix B in Project Company 1's application.

^c Table F–52 in appendix B in Project Company 1's application.

^d Table F–72 in appendix B in Project Company 1's application.

^e Table F–59 in appendix B in Project Company 1's application.

^f Table F–79 in appendix B in Project Company 1's application.

^g Table F–60 in appendix B in Project Company 1's application.

^h Table F–80 in appendix B in Project Company 1's application.

Next, the specific densities for each marine mammal species were incorporated. Initially, Project Company 1 provided the densities used in the analysis in their ITA application. However, due to the June 2022 release of the updated Duke University density models, Project Company 1 submitted a memo with the revised densities and the derived exposure and take estimates. These were the values NMFS carried forward into this final rule (refer back to table 7).

To estimate take from foundation installation activities, Project Company 1 assumed the buildout described for the modified Schedule 2 (see the Project Design Envelope (PDE) Refinement Memorandum), which entails that all WTGs and the Met Tower found within

Project 1 would be built using 15-m (49.21-ft) monopiles and all WTGs in Project 2 would be built on jacket foundations using 5-m (16.4-ft) piles. All OSSs would be built on jacket foundations using 5-m (16.4-ft) pin piles. The full buildout of Atlantic Shores South ($n=200$ WTGs) assuming Schedule 2 is provided on table 6. This represents the take that is reasonably expected to occur incidentally to Atlantic Shores South as no more than 200 WTGs, 1 Met Tower, and 10 OSSs will be installed within the Lease Areas. Given uncertainty at the final stage about the specific buildout of Projects 1 and 2, there is a need to also estimate the total amount of annually allowed take from both Projects 1 and 2 which, collectively, is conservatively greater

given it is currently unknown exactly how many WTG and OSSs will be constructed in each. For this analysis, it was assumed that Project 1 may have a maximum of 105 WTGs (plus 6 WTG foundations installed as part of the Overlap Area for Project 1; $n=111$), 1 Met Tower, and 2 OSSs and Project 2 may have a maximum of 89 WTGs (plus 6 WTG foundations installed as part of the Overlap Area for Project 2; $n=95$) and 2 OSS. As described above, the number of days of pile driving per month is part of the exposure estimate calculation. Project Company 1 assumes that 1 monopile could be installed per day and 4 pin piles could be installed per day.

TABLE 14—PROJECT 1 AND PROJECT 2's BUILDOUT SCHEDULE PRESENTED ANNUALLY AND OVER TWO-YEARS

Construction month	Year 1 (2026)								Year 2 (2027) ^a	
	Project 1		Project 2		Total				Project 2	
	Number of days (number of piles installed)		Number of days (number of piles installed)		Number of days (number of piles installed)				Number of days (number of piles installed)	
	WTG and Met Tower monopile 15-m (1 pile/day)	OSS jacket 5-m pin piles (4 piles/day)	WTG jacket 5-m pin piles (4 piles/day)	OSS jacket 5-m pin piles (4 piles/day)	WTG and Met Tower monopile 15-m (1 pile/day)	WTG jacket 5-m pin piles (4 piles/day)	OSS jacket 5-m pin piles (4 piles/day)	WTG jacket 5-m pin piles (4 piles/day)	WTG jacket 5-m pin piles (4 piles/day)	OSS jacket 5-m pin piles (4 piles/day)
May	8 (8)	0 (0)	0 (0)	0 (0)	8 (8)	0 (0)	0 (0)	0 (0)	5 (20)	0 (0)
June	20 (20)	6 (24)	0 (0)	0 (0)	20 (20)	0 (0)	6 (24)	15 (60)	6 (24)	0 (0)
July	25 (25)	0 (0)	0 (0)	0 (0)	25 (25)	0 (0)	0 (0)	20 (80)	0 (0)	0 (0)
August	19 (19)	6 (24)	0 (0)	0 (0)	19 (19)	0 (0)	6 (24)	18 (72)	6 (24)	0 (0)
September	18 (18)	0 (0)	0 (0)	0 (0)	18 (18)	0 (0)	0 (0)	14 (56)	0 (0)	0 (0)
October	16 (16)	0 (0)	0 (0)	0 (0)	16 (16)	0 (0)	0 (0)	13 (52)	0 (0)	0 (0)
November	5 (5)	0 (0)	5 (20)	0 (0)	5 (5)	5 (20)	0 (0)	4 (16)	0 (0)	0 (0)
December	1 (1)	0 (0)	1 (4)	0 (0)	1 (1)	1 (4)	0 (0)	0 (0)	0 (0)	0 (0)
Totals										
Total Piling Days	112	12	6	6	112	18	18	101		
Total Piles	112	48	24	24	112	72	72	404		
Total Foundations ^b	112	2	6	6	112	8	8	91		

^a As 2027 only has foundation installation activities occurring from Project 2, there is no total column for this year.
^b The total WTG and Met Tower foundations (n=207) included in this table sum up to more than the planned number of WTG and Met Tower foundations (n=201) due to the possibility of 6 WTGs being installed either under Project 1 or Project 2 in the Overlap Area; these are therefore counted twice within this table but only counted once within the take analysis.

Project Company 1 assumes that construction would start in 2026 for foundation installation (refer back to table 1). Modeling assumed that up to 106 monopile foundations (105 WTGs plus the Met Tower) would be installed during May through October in the area for Project 1 (2026) and up to 89 monopiles (WTGs) for Project 2 for May through December (in part of 2026 and in 2027). Additionally, up to 6 monopile foundations (WTGs) could be installed during November through December for either Project 1 or Project 2 (total of 112 WTG and Met Tower foundations for Project 1 or a total of 94 WTG foundations for Project 2). This analysis also assumes the buildout of two large-sized OSSs for each Project 1 and Project 2 would be installed on multi-legged jacket foundations during June and August. Project Company 1 expects that all foundation installation activities for Project 1 would occur during the first year of construction activities

(2026) with parts of Project 2 starting in 2026 and completing in 2027.

Between these schedules, we note that Project Company 1 has analyzed and NMFS has carried over for the construction of 205 permanent foundation structures, including up to 200 WTGs, one Met Tower, and 4 large-sized OSSs. The Project 1 take calculations include the 6 WTGs in the Overlap Area during Year 1 to ensure sufficient take for Project 1 (if those positions are allocated to Project 1 during construction). If, however, those positions are allocated to Project 2, they are also included during Year 1 of foundation installation for Project 2 (to ensure sufficient take allocation to Project 2 during that year). However, the full buildout scenario, which describes the take for the Projects combined, only includes the 6 WTGs in the entire Project once (to avoid double counting of the 6 WTGs).

As described previously, to estimate the amount of take that may occur

incidental to the foundation installation, Project Company 1 conducted exposure modeling to estimate the number of exposures that may occur from impact pile driving in a 24-hour period. Exposure estimates were then scaled to reflect the appropriate density estimates as described above. These scaled 24-hour exposure estimates were then multiplied by the number of days to produce the estimated take numbers for each year. Exposure estimates can be found within the LOA Updates Memo on NMFS' website.

As described above, exposure estimates were subsequently adjusted based on appropriate group sizes and PSO data (refer back to table 10) to yield the requested take in Project Company 1's LOA Updates Memo. The amount of take Project Company 1 requested similarly equates to the amount of take NMFS has allowed in this final rule (tables 15 and 16).

TABLE 15—ANNUAL TOTAL EXPOSURE ESTIMATES AND ALLOWABLE TAKES BY LEVEL A HARASSMENT AND LEVEL B HARASSMENT FOR FOUNDATION INSTALLATION ACTIVITIES FOR PROJECT 1, ASSUMING SCHEDULE 2^a

Marine mammal species	Year 1 (2026)			Year 2 (2027) ^b		
	Estimated exposures		Allowed takes		Estimated exposures	
	Level A harassment	Level B harassment	Level A harassment	Level B harassment	Level A harassment	Level B harassment
North Atlantic right whale *	0.14	1.24	0	4	0	0
Fin whale *	2.80	8.23	3	9	0	0
Humpback whale	2.20	8.33	3	9	0	0
Minke whale	10.07	135.38	11	136	0	0
Sei whale *	0.35	1.04	1	3	0	0
Sperm whale *	0	0	0	2	0	0
Atlantic spotted dolphin	0	0	0	100	0	0
Atlantic white-sided dolphin	0.01	159.94	1	160	0	0
Bottlenose dolphin—offshore	0	3,100.73	0	3,101	0	0
Bottlenose dolphin—coastal	0	50.32	0	51	0	0
Common dolphin	0	0	0	193	0	0
Long-finned pilot whale	0	0	0	20	0	0
Short-finned pilot whale	0	0	0	6	0	0
Risso's dolphin	<0.01	5.58	1	30	0	0
Harbor porpoise	1.38	49.85	2	50	0	0
Gray seal	0.52	98.42	1	99	0	0
Harbor seal	1.29	235.51	2	236	0	0

Note: * denotes species listed under the Endangered Species Act.

^a While the foundation installation counted the 6 WTGs in the Overlap Area for both Project 1 and Project 2, the exposure estimates and take requested is based on those 6 WTGs only being installed once under the full buildout scenario; no double counting of take occurred.

^b All of Project 1's activities would be completed within a single year (2026), which means that no take would occur during the second construction year (2027).

TABLE 16—ANNUAL TOTAL EXPOSURE ESTIMATES AND ALLOWABLE TAKES BY LEVEL A HARASSMENT AND LEVEL B HARASSMENT FOR FOUNDATION INSTALLATION ACTIVITIES FOR PROJECT 2, ASSUMING SCHEDULE 2

Marine mammal species	ITA Request Year (2026)				ITA Request Year (2027)			
	Estimated exposures		Allowed takes		Estimated exposures		Allowed takes	
	Level A harassment	Level B harassment	Level A harassment	Level B harassment	Level A harassment	Level B harassment	Level A harassment	Level B harassment
North Atlantic right whale *	0.08	0.43	0	4	0.24	1.31	0	4
Fin whale *	0.24	0.65	1	2	3.46	9.20	4	10
Humpback whale	0.46	1.53	1	2	3.02	9.82	4	10
Minke whale	0.16	1.55	1	2	16.27	141.72	17	142
Sei whale *	0.13	0.34	1	3	0.41	1.09	1	3
Sperm whale *	0	0	0	2	0	0	0	2
Atlantic spotted dolphin	0	0	0	100	0	0	0	100
Atlantic white-sided dolphin	0	21.98	0	22	0.01	171.37	1	172
Bottlenose dolphin—offshore	0	201.39	0	202	0	3,416.59	0	3,417
Bottlenose dolphin—coastal	0	0	0	14	0	0	0	14
Common dolphin	0	0	0	10	0	0	0	157
Long-finned pilot whale	0	0	0	20	0	0	0	20
Short-finned pilot whale	0	0	0	6	0	0	0	6
Risso's dolphin	<0.01	2.61	1	30	<0.01	6.03	1	30
Harbor porpoise	5.40	17.14	6	18	12.52	39.23	13	40
Gray seal	0.45	23.56	1	24	2.00	94.34	2	95
Harbor seal	1.66	53.29	2	54	7.03	213.40	8	214

Note: * denotes species listed under the Endangered Species Act.

Based on tables 15 and 16 above, NMFS allows the following numbers for the harassment of marine mammals incidental to foundation installation activities of WTGs, OSSs, and the Met Tower by Level A harassment and Level B harassment in table 17. We note that some of the values presented here will be different than those found in the proposed rule (88 FR 65430, September 22, 2023) as NMFS has since	acknowledged that takes from Project 2 were not appropriately added to the takes from Project 1 in Year 2 (when a limited number of WTG foundations from Project 2 may occur in the same year as Project 1). The numbers as presented in this final rulemaking correct these values and are a more appropriate metric to assess the entire buildout of both Projects associated with the full scope of Atlantic Shores	South. We further acknowledge that Project Company 1 did not request, nor is NMFS authorizing, take by the serious injury and/or mortality of marine mammals. Furthermore, no Level A harassment of North Atlantic right whales has been allowed due to enhanced mitigation measures that Project Company 1 is required to implement for this species.

TABLE 17—SUMMED^a ANNUAL EXPOSURE ESTIMATES AND ALLOWABLE TAKES BY LEVEL A HARASSMENT AND LEVEL B HARASSMENT FOR ALL FOUNDATION INSTALLATION ACTIVITIES IN BOTH PROJECT 1 AND PROJECT 2 (FULL BUILDOUT), ASSUMING SCHEDULE 2^b

Marine mammal species	ITA request year (2026)				ITA request year (2027)			
	Estimated exposures		Allowed takes		Estimated exposures		Allowed takes	
	Level A harassment	Level B harassment	Level A harassment	Level B harassment	Level A harassment	Level B harassment	Level A harassment	Level B harassment
North Atlantic right whale *	0.22	1.67	0	8	0.24	1.41	0	4
Fin whale *	3.04	8.88	4	11	3.46	9.2	4	10
Humpback whale	2.66	9.86	4	11	3.02	9.82	4	10
Minke whale	10.23	136.93	12	138	16.27	141.72	17	142
Sei whale *	0.48	1.38	2	6	0.41	1.09	1	3
Sperm whale *	0	0	0	4	0	0	0	2
Atlantic spotted dolphin	0	0	0	200	0	0	0	100
Atlantic white-sided dolphin	0.01	181.92	1	182	0.01	171.37	1	172
Bottlenose dolphin—offshore	0	3,302.12	0	3,303	0	3,416.59	0	3,417
Bottlenose dolphin—coastal	0	50.32	0	65	0	0	0	14
Common dolphin	0	0	0	203	0	0	0	157
Long-finned pilot whale	0	0	0	40	0	0	0	20
Short-finned pilot whale	0	0	0	12	0	0	0	6
Risso's dolphin	<0.02	8.19	2	60	<0.01	6.03	1	30
Harbor porpoise	6.78	66.99	8	68	12.52	39.34	13	40
Gray seal	0.97	121.98	2	123	2	94.34	2	95
Harbor seal	2.95	288.8	4	290	7.03	213.4	8	214

Note: * denotes species listed under the Endangered Species Act.

^aThe values NMFS in this final rule are different from those originally proposed for most species, as NMFS recognized the table in the proposed rule inadvertently omitted the Project 2 takes in 2026 (as identified in table 18 of the proposed rule).

^bWhile the foundation installation counted the 6 WTGs in the Overlap Area for both Project 1 and Project 2, the exposure estimates and take requested is based on those 6 WTGs only being installed once under the full buildout scenario; no double counting of take occurred. In total, this table accounts for estimated exposure and allowable take estimates for the total build-out of 200 WTGs, 1 Met Tower, and 4 OSSs (large size).

^cFor Risso's dolphins, the individual exposure estimates for Level A harassment for the first year of foundation installation (2026) were each less than 0.01 for each Project 1 and Project 2. In summing these two Projects together to yield the total exposure estimates for foundation pile driving, the total is 0.02, although this is likely a conservative overestimate, given the initial values were less than 0.01 apiece.

Cable Landfall Activities

We previously described the acoustic modeling and static methodologies to estimate the take of marine mammals and have already identified that Project Company 1 estimated take using propagation modeling and a static density-based approach. This information will not be reiterated here. Here, we present the results of acoustic modeling and take estimation processes, as previously described. More

information can also be found in the ITA application and subsequent supplementary memos provided by the applicant.

Project Company 1 plans to install and remove up to four temporary cofferdams per Atlantic and Monmouth cable landfall location (eight cofferdams total) using a vibratory hammer. To calculate the acoustic ranges to PTS thresholds, it was assumed that up to 8 hours of vibratory pile driving would

occur within any 24-hour period. The furthest ranges were noted where the sound propagated offshore from the New Jersey coastline into the continental shelf (see figure 3 in the supplemental memo for appendix D). Variation in acoustic ranges between the two sites is due to differing propagation loss properties. See table 18 below for the ranges to the thresholds for both Level A harassment and Level B harassment.

TABLE 18—ACOUSTIC RANGES ($R_{95\%}$) IN METERS TO THE LEVEL A HARASSMENT (PTS) AND LEVEL B HARASSMENT THRESHOLDS FROM VIBRATORY PILE DRIVING DURING TEMPORARY COFFERDAM INSTALLATION AND REMOVAL

Marine mammal hearing group	Atlantic City landfill site				Monmouth landfill site			
	Level A harassment SEL _{cum} thresholds (dB re 1 μ Pa ² -s)		Level B harassment SPL _{rms} threshold (120 dB re 1 μ Pa)		Level A harassment SEL _{cum} thresholds (dB re 1 μ Pa ² -s)		Level B harassment SPL _{rms} threshold (120 dB re 1 μ Pa)	
	Summer	Winter	Summer	Winter	Summer	Winter	Summer	Winter
Low-frequency cetaceans	65	65	5,076	7,546	45	60	5,412	11,268
Mid-frequency cetaceans	0	0			0	0		
High-frequency cetaceans	490	540			425	450		
Phocid Pinnipeds	30	30			20	20		

Given the very small distances to the Level A harassment thresholds (0 to 540 m (0 to 1,771.65 ft)), which accounts for 8 hours of vibratory pile driving, installation and removal of temporary cofferdams is not expected to result in any Level A harassment of marine mammals. Project Company 1 did not request, nor has NMFS allowed any Level A harassment incidental to vibratory pile driving activities for nearshore cable landfall activities.

Using the acoustic ranges to the Level B harassment threshold, the ensonified area around each cable landfall construction site was determined for each of the two seasons (*i.e.*, summer and winter) using the following formula: $Ensonified\ Area = \pi \times r^2$,

where r is the linear acoustic range distance from the source to the isopleth to the Level B harassment thresholds. Given the acoustic source is stationary, this formula assumes the distance to threshold would be the radius with the source in the center.

For vibratory pile driving associated with the sheet pile installation and removal necessary for cofferdams, it was assumed that the daily ensonified area was 104.33 km² (25,780.12 acres) at the Atlantic City landfall site and 221.77 km² (54,799.57 acres) at the Monmouth landfall site. To estimate marine mammal densities around the nearshore landfall sites, the largest 95th percentile acoustic range to threshold ($R_{95\%}$; 7.546 km (24,757 ft) at the Atlantic City site and 11.268 km (36,968 ft) at the

Monmouth site) were used as density buffers. The maximum annual densities were calculated for each landfall location based on the average of the Duke University density model grid cells for each species and the period of time for when cofferdam activities may occur (*i.e.*, September through May). Any grids that overlapped partially or completely were included. Grid cells that fell entirely on land were not included in the analysis, but due to the nearshore proximity of the cofferdams, grid cells that overlapped partially with land and water were included in the analysis. For two species guilds (*i.e.*, pinnipeds and pilot whale *spp.*), minor adjustments were necessary as the Roberts *et al.* (2023) data did not separate these by species. In these two cases, the densities were scaled by the relative abundance of each species, as described in the final 2022 SARs (Hayes *et al.*, 2023).

Annual maximum marine mammal exposures were calculated assuming that cofferdam activities would only occur during the activity window of September through May. The density value for each species represented the highest density month for each specific species within this window, so as to not underestimate any potential take when the activity would occur. The exposures were calculated using the following static formula:

$$Exposures = area\ ensonified \times (days) \times density,$$

where the *area ensonified* is equal to $\pi \times r^2$, wherein r is equal to the Level B harassment isopleth distance, *days* constituted the total number of days needed for cofferdam activities ($n=28$), and *density* were incorporated as species-specific during the activity window.

The exposure estimates were calculated assuming 6 days of installation and 6 days of removal at the Atlantic City landfall location ($n=12$), and 8 days of installation and 8 days of removal at the Monmouth landfall location ($n=28$), equating to 28 days in total. In their adequate and complete ITA application, Project Company 1 initially proposed 16 days total for the Atlantic City landfall location (8 days of installation and 8 days of removal). However, given the shallower waters at this location, they believe that it would be possible to install and remove the temporary cofferdams more quickly than initially modeled, thus reducing the total number of days at this location ($n=12$). Where applicable, calculated exposure estimates were then adjusted up for average group sizes, per table 10, to yield the allowed take numbers. The estimated take, representing the maximum amount of take that is reasonably expected to occur during temporary cofferdam installation and removal during the Project, is provided in table 19. As already stated, no take by Level A harassment is expected, nor has it been requested by Project Company 1 or allowed by NMFS.

TABLE 19—THE MAXIMUM PREDICTED LEVEL B HARASSMENT EXPOSURES, AND TAKES THAT ARE REASONABLY EXPECTED TO OCCUR BY LEVEL B HARASSMENT ALLOWED FOR COFFERDAM ACTIVITIES, INCLUDING A GROUP SIZE ADJUSTMENT^{a b}

Marine mammal species	Atlantic City landfall site—2025		Monmouth landfall site—2026	
	Calculated exposures	Takes by Level B harassment	Calculated exposures	Takes by Level B harassment
North Atlantic right whale *	1.15	4	1.23	4
Fin whale *	0.65	2	4.14	5
Humpback whale	1.43	2	4.70	5
Minke whale	1.70	2	18.66	19
Sei whale	0.23	3	1.62	3
Sperm whale	0.03	2	0.28	2
Atlantic spotted dolphin	0.18	100	1.16	100
Atlantic white-sided dolphin	0.64	22	7.31	22
Bottlenose dolphin (offshore stock)	0	0	307.29	308
Bottlenose dolphin (coastal stock)	1,835.55	1,836	607.29	608
Common dolphin	6.56	7	73.01	74
Long-finned pilot whale ^c	0	6	0.01	6
Short-finned pilot whale ^c	0	2	0.01	2
Risso's dolphin	0.03	20	0.70	20
Harbor porpoise	10.28	11	98.23	99
Gray seal	113.04	114	158.86	159
Harbor seal	253.99	254	356.92	357

Note: * denotes species listed under the Endangered Species Act.

^a Group size for adjustments can be found in table 10.

^b The Atlantic City landfall site installation and removal is in Year 1; Monmouth landfall site installation and removal is in Year 2.

^c Project Company 1 has requested a single group size for these species.

Known haul-outs for seals occur near the coastal cofferdam locations (*i.e.*, Great Bay, Sandy Hook, and Barnegat Inlet), per Conserve Wildlife Foundation of New Jersey (2015). However, there is no evidence that these haul-out locations also coincide with important foraging sites. Given the distance for which we expect Project Company 1's activities to occur, away from the more inland regions of New Jersey, NMFS does not expect that in-air sounds produced would cause the take of hauled-out pinnipeds. Therefore, NMFS does not expect any harassment to occur and has not allowed any take from in-air impacts on hauled-out seals.

HRG Surveys

Project Company 1's planned HRG survey activities include the use of impulsive (*i.e.*, sparkers) and non-impulsive sources (*i.e.*, Compressed High Intensity Radiated Pulses (CHIRPs)) that have the potential to harass marine mammals. Other equipment is also planned, but is not expected to cause harassment of marine mammals. The list of all equipment

planned to be used is in table 2 of the proposed rule (88 FR 65430, September 22, 2023), with more information found in Project Company 1's ITA application on NMFS' website at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. This list includes sparkers, CHIRPs, INNOMAR sub-bottom profilers, gradiometers, side-scan sonar, and multibeam echosounders.

Allowed takes are only by Level B harassment, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to noise from certain HRG acoustic sources. Specific to HRG surveys, in order to better consider the narrower and directional beams of the sources, NMFS has developed a calculation tool, available at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>, for determining the distances at which sound pressure level (SPL_{rms}) generated from HRG surveys reach the 160 dB threshold. The equations in the tool

consider water depth, frequency-dependent absorption and some directionality to refine estimated ensonified zones. Project Company 1 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. For sources operating with different beamwidths, the beamwidth associated with operational characteristics reported in Crocker and Fratantonio (2016) was used.

The isopleth distances corresponding to the Level B harassment threshold for each type of HRG equipment with the potential to result in harassment of marine mammals were calculated per NOAA Fisheries' Interim Recommendation for Sound Source Level and Propagation Analysis for High Resolution Geophysical Sources. The distances to the Level B harassment isopleth are presented in table 20. Please refer to appendix C for a full description of the methodology and formulas used to calculate distances to the Level B harassment threshold.

TABLE 20—DISTANCES CORRESPONDING TO THE LEVEL B HARASSMENT THRESHOLD FOR HRG EQUIPMENT OPERATING BELOW 180 kHz

HRG survey equipment type	Representative equipment type	Horizontal distance (m) to the Level B harassment threshold	Ensonified area (km ²)
Sparkers	Applied Acoustics Dura-Spark 240 ^a	^b 282	15.57
	GeoMarine Geo-Source ^a	^c 141	
Compressed High Intensity Radiated Pulses (CHIRPs)	Edgetech 2000–DSS	56	
	Edgetech 216	9	
	Edgetech 424	10	
	Edgetech 512i	9	
	Pangeosubsea Sub-Bottom Imager™	32	

^a After additional information was provided from Project Company 1, NMFS believes that the operational parameters of the acoustic sources planned for use during HRG surveys were inadvertently switched for the Applied Acoustics Dura-Spark 240 and the GeoMarine Geo-Source.

^b Based on a source level of 209 dB for the 240 tip configuration of the Applied Acoustics Dura-Spark operating at 500 J, as taken from Crocker and Fratantonio (2016). This configuration was included in the ITA application and proposed rule but was incorrectly attributed a source level of 203 dB. Notably, this source is not planned for use during the survey according to additional information provided from Project Company 1, but the corrected distance to Level B Harassment threshold is nevertheless included for completeness.

^c Given the inadvertent error NMFS has noted in the ITA application, and after review of the data found within Crocker and Fratantonio (2016), we believe that the horizontal distance for the Geo-Marine Geo-Source is actually 141 m (463 ft), rather than 56 m (184 ft), as originally described in the proposed rule. We have made the relevant adjustment here to better reflect the data available.

The survey activities that have the potential to result in Level B harassment (160 dB SPL) include the noise produced by sparkers and CHIRPs. Per the table 22 of the proposed rule, which is also reflected in the ITA application, this indicates that the Applied Acoustics Dura-Spark 240 results in the greatest calculated distance to the Level B harassment criteria at 141 m (463 ft). However, as of July 2024, Project Company 1 has further clarified to NMFS that they intend to primarily

utilize the Geo Marine Geo-source sparker, rather than the Applied Acoustics Dura-Spark 240 as previously described in their ITA application and in the proposed rule (88 FR 65430, September 22, 2023). Project Company 1 anticipates this acoustic source to nominally operate using 400 tips at 400 J of energy. Based on this information, the most representative proxy equipment from Crocker and Fratantonio (2016) appears to be the Dura-Spark operating with 400 tips and

500 J, which was measured to have a source level of 203 dB (Crocker and Fratantonio, 2016), which corresponds to a horizontal distance to the Level B harassment threshold of 141 m (463 ft). Based on this, and after evaluating the provided operational characteristics of the Dura-Spark 240 and the GeoMarine Geo-Source from Crocker and Fratantonio (2016), NMFS found that the wrong operational parameters were incorrectly assigned to the representative sparker equipment in the

ITA application, subsequent supporting documents, and, therefore, in the proposed rulemaking. We have re-evaluated these two sources and their operational characteristics and found that the 141 m (463 ft) distance carried forward from the initial analysis remains the most appropriate distance to the Level B harassment threshold for sparker activities and does not necessitate any changes to this rulemaking or the analysis herein.

The total area ensonified was estimated by considering the distance of the daily vessel track line (determined using the estimated average speed of the vessel and the 24-hour operational period within each of the corresponding survey segments) and the longest horizontal distance to the relevant acoustic threshold from an HRG sound source (full formula in section 6 of the ITA application and in the Revised HRG Memo on NMFS' website). Using the larger distance of 141 m (462.6 ft) to the 160 dB_{RMS90%} re 1 µPa Level B harassment isopleth (table 20), the estimated daily vessel track of approximately 55 km (34.2 mi) per vessel for 24-hour operations, inclusive of an additional circular area to account for radial distance at the start and end of a 24-hour cycle, estimates of the total area ensonified to the Level B harassment threshold per day of HRG surveys were calculated (table 20).

Exposure calculations assumed that there would be 60 days of HRG surveying per year over each of the 5 years. As described in the ITA application, density data were mapped within the boundary of the Project Area using geographic information systems. These data were updated based on the revised data from the Duke University

density models (Roberts *et al.* 2016a; Roberts *et al.*, 2023)). Because the exact dates of HRG surveys are unknown, the maximum average seasonal density values for each marine mammal species was used and carried forward in the take calculations (table 9).

The calculated exposure estimates based on the exposure modeling methodology described above were compared with the best available information on marine mammal group sizes. Group sizes used for HRG take estimates were the same as those used for impact pile driving take estimation (see table 10). Project Company 1 also used data collected by PSOs on survey vessels operating during HRG surveys in their 2020 season in the relevant Project Area. It was determined that the calculated number of potential takes by Level B harassment based on the exposure modeling methodology above may be underestimates for some species and therefore warranted adjustment using group size estimates and PSO data to ensure conservatism in the take numbers allowed. Despite the relatively small modeled Level B harassment zone (141 m (462.6 ft)) for HRG survey activities, it was determined that adjustments to the requested numbers of take by Level B harassment for some dolphin species was warranted (see table 21 below).

For certain species for which the density-based methodology described above may result in potential underestimates of take and Project Company 1's PSO sightings data were relatively low, adjustments to the exposure estimates were made based on the best available information on marine mammal group sizes to ensure conservatism. For species with densities

too low in the region to provide meaningful modeled exposure estimates, the take request is based on the average group size (table 10). Other adjustments were made based on information previously presented in IHAs issued to Atlantic Shores (the precursor to Project Company 1 for OCS-A-0499 and OCS-A-0570). These include an estimate of 1.55 individuals of common dolphins per day multiplied by the number of survey days annually (*i.e.*, 60 days), which is in alignment with what was done in the IHA issued to Atlantic Shores/Project Company 1 on April 22, 2022 (87 FR 24103) based on previous daily observations of common dolphins. Additionally, requested take estimates for long-finned pilot whales, Atlantic spotted dolphins, and Risso's dolphins were also adjusted based on typical group sizes (*i.e.*, 20, 100, and 30 annual takes, respectively), based on take numbers from 2020, 2021, and 2022 IHAs issued to Atlantic Shores (see <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable#expired-authorizations>). Lastly, adjustments were made for short-finned pilot whales based on group size data reported by the OBIS data repository (OBIS, 2022). The average group size used consisted of six individuals.

The maximum seasonal density used for the HRG survey analysis are shown in table 9 in the *Density and Occurrence* section. The calculated exposures, annual allowed take, and the total 5-year allowed take (all by Level B harassment only) is found in table 21 below.

TABLE 21—CALCULATED EXPOSURES, AND ALLOWED TAKE, AND 5-YEAR ALLOWED TAKE BY LEVEL B HARASSMENT ONLY DURING ANNUAL HRG SURVEYS FOR THE ATLANTIC SHORES SOUTH SURVEY AREA ^a

Marine mammal species	Stock	Calculated exposures	Annual allowed take by Level B harassment	Total 5-year allowed take by Level B harassment ^e
North Atlantic right whale *	Western Atlantic	1	1	5
Fin whale *	Western North Atlantic	2	2	10
Humpback whale	Gulf of Maine	1	1	5
Minke whale	Canadian Eastern Coastal	4	4	20
Sei whale *	Nova Scotia	1	^b 2	10
Sperm whale *	Western North Atlantic	1	1	5
Atlantic spotted dolphin	Western North Atlantic	1	100	500
Atlantic white-sided dolphin	Western North Atlantic	3	3	15
Bottlenose dolphin	Northern Migratory Coastal	113	113	565
	Western North Atlantic—Offshore	225	225	1,125
Common dolphin	Western North Atlantic	14	^d 93	465
Long-finned pilot whale	Western North Atlantic	1	^c 20	100
Short-finned pilot whale	Western North Atlantic	1	^c 6	30
Risso's dolphin	Western North Atlantic	1	^c 30	150
Harbor porpoise	Gulf of Maine/Bay of Fundy	24	24	120
Gray seal	Western North Atlantic	41	41	205

TABLE 21—CALCULATED EXPOSURES, AND ALLOWED TAKE, AND 5-YEAR ALLOWED TAKE BY LEVEL B HARASSMENT ONLY DURING ANNUAL HRG SURVEYS FOR THE ATLANTIC SHORES SOUTH SURVEY AREA ^a—Continued

Marine mammal species	Stock	Calculated exposures	Annual allowed take by Level B harassment	Total 5-year allowed take by Level B harassment ^e
Harbor seal	Western North Atlantic	91	91	455

Note: * denotes species listed under the Endangered Species Act.

^a The survey area accounts for waters within and around the Lease Areas and the export cable routes.

^b Project Company 1 is requesting 1 additional take of sei whales, for a total of two, based on the average group size found in NOAA (2022) and due to an encounter during their 2020 surveys where a single sei whale was observed.

^c This adjustment was made in alignment with take that was previously authorized to Project Company 1 in an issued IHA (88 FR 38821, June 14, 2023). As the survey area for this final rulemaking overlaps the survey area for that IHA the same group size assumptions were used in this analysis.

^d This adjustment was made in alignment with the take that was previously authorized to Project Company 1 in an issued IHA (88 FR 38821, June 14, 2023) where an average take of 1.5 individuals per day was multiplied by the total number of survey days (*i.e.*, 60 days).

^e NMFS added this column to provide more clarity regarding the total number of allowed takes over the entire 5-year effective period from HRG surveys.

Total Take Across All Activities

The number of takes by Level A harassment and Level B harassment allowed during permanent WTG, OSS, and Met Tower foundation installation, cable landfall construction (*i.e.*, temporary cofferdams), and HRG surveys are presented in table 22. The mitigation and monitoring measures provided in the Mitigation and Monitoring and Reporting sections are activity-specific and are designed to minimize, to the extent practicable, acoustic exposures to marine mammal species.

The amount of take that Project Company 1 requested, and NMFS is authorizing, is substantially conservative. For the species for which modeling was conducted, the take estimates are conservative for a number of key reasons:

- The amount of allowed take assumes the largest and longest buildout scenario, with respect to Project design and Schedules. To estimate the maximum amount of take that is reasonably expected to occur, we carried forward the Schedules (Scenario 1 and modified Scenario 2) that assumed two years of pile driving as this could be reasonably likely to constitute more takes over more days given the longer duration of foundation pile driving activities. We then carried forward the schedule that would require the most impact driven piles to be installed (modified Scenario 2), as Project 1's WTG buildout would use monopiles, but Project 2's could potentially require jackets with pin piles or monopiles, but jacket foundations would require the installation of more piles to maintain the stability of the structure. Closer to construction, if Project Company 1 opts to build the Project 2 WTGs out as monopiles rather

than jackets, fewer total piles would be installed;

- As described in the *Detailed Description of Specified Activities* section and Project Company 1's PDE Refinement memo, Project Company 1 may use suction-buckets or gravity-based structures to install the foundations for the Met Tower and may use suction-buckets for each of the OSSs rather than monopiles or jacket foundations (depending on the size OSS used). Should Project Company 1 decide to use these different foundations, take of marine mammals would not occur as noise levels would not be elevated to the degree there is a potential for take (*i.e.*, no pile driving is involved with installing suction buckets);

- The amount of Level A harassment allowed considered the maximum of up to two monopiles or four pin piles being installed per day, when Project Company 1 may choose to, on some days, install fewer pin piles than this;

- Regarding the OSS buildout, while we analyzed a construction scenario assuming the largest OSSs would be built (*i.e.*, four large) instead of medium or small OSSs, we conservatively accounted for a longer number of piling days per each OSS with the maximum number of piles that may be used, depending on the buildout chosen for OSSs in Project 1 and Project 2. If Project Company 1 further refines their Project buildout during construction to small or medium OSSs, rather than all large, although more total structures and pin piles would be collectively installed, these would likely be installed over a longer period of time and over a larger area (*i.e.*, the pin piles would be less concentrated in any given area), given the footprint of 10 OSSs versus 4 OSSs. This in turn would reduce the overall duration of this construction activity;

- For foundation pile driving, which is responsible for the majority of the take for all species, all calculated take incorporated the maximum average densities for any given species in any given season that coincided with the planned pile driving activities while maximum monthly densities and maximum average seasonal densities were used for temporary cofferdams and HRG surveys, respectively. These values are likely lower for some species, but the value used in the analysis for each activity would be driven by periods of higher densities; and

- The amount of allowed Level A harassment does not fully account for the likelihood that marine mammals would avoid a stimulus when possible before the individual accumulates enough acoustic energy to potentially cause auditory injury, or, importantly, the effectiveness of the required monitoring and mitigation measures in reducing exposures (with the exception of North Atlantic right whales given the enhanced mitigation measures required for this species). Therefore, actual anticipated exposures should be less than those analyzed here.

Additionally, as described in the proposed rule (88 FR 65430, September 22, 2023), NMFS used the best available science and robust models to consider the interaction of marine mammal movement, the environment, and the Project's activities, in the context of NMFS' acoustic thresholds, to project the maximum number of takes by Level A harassment and Level B harassment that are reasonably expected to occur. However, NMFS has also acknowledged the uncertainty inherent in certain input values (*e.g.*, source levels and spectra) and environmental variability present in real-life physical and biological systems. Accordingly, while activity-specific take estimates are appropriately used to

build as accurate of a total take estimate as possible, allowable takes are presented in the LOA as total maximum annual takes and 5-year takes by both Level A harassment and Level B harassment, and not specifically by activity type (<i>i.e.</i>, the regulations simply indicate the species or stocks that may	be taken). In other words, the LOA specifies maximum annual and 5-year takes that may not be exceeded, by Level A and Level B harassment, but does not specify the number of allowable takes by activity type, thus allowing for flexibility should the number of takes from a specific activity	type exceed the number modeled for the specific activity type, provided the manner and impacts of those takes remain within those considered within the analysis and the total takes remain below the annual maximum and 5-year totals.

TABLE 22—ESTIMATED ANNUAL TAKES, BY LEVEL A HARASSMENT AND LEVEL B HARASSMENT, FOR THE PROJECT OVER 5 YEARS

Marine mammal species	Stock	NMFS stock abundance ^a	Year 1 (2025)		Year 2 (2026)		Year 3 (2027)		Year 4 (2028)		Year 5 (2029)	
			Level A harassment	Level B harassment	Level A harassment	Level B harassment	Level A harassment	Level B harassment	Level A harassment	Level B harassment	Level A harassment	Level B harassment
North Atlantic right whale ^{a,b,c}	Western Atlantic	340	0	5	0	13	0	5	0	1	0	1
Fin whale ^{a,d}	Western North Atlantic ..	6,802	0	4	4	18	4	12	0	2	0	2
Humpback whale	Gulf of Maine	1,396	0	3	4	17	4	4	0	1	0	1
Minke whale	Canadian Eastern Coastal.	21,968	0	6	12	161	17	146	0	4	0	4
Sei whale ^{a,b,d}	Nova Scotia	6,292	0	5	2	11	1	5	0	2	0	2
Sperm whale ^{a,b,d}	Western North Atlantic ..	5,895	0	3	0	7	0	3	0	1	0	1
Atlantic spotted dolphin ^{b,c,d}	Western North Atlantic ..	31,506	0	200	0	400	0	200	0	100	0	100
Atlantic white-sided dolphin ^d	Western North Atlantic ..	93,233	0	25	1	207	1	175	0	3	0	3
Bottlenose dolphin	Western North Atlantic—Offshore.	64,587	0	225	0	3,836	0	3,642	0	225	0	225
	Northern Migratory Coastal ^b .	6,639	0	1,949	0	786	0	126	0	113	0	113
Common dolphin ^e	Western North Atlantic ..	93,100	0	100	0	370	0	250	0	93	0	93
Long-finned pilot whale ^{b,c,d}	Western North Atlantic ..	39,215	0	26	0	66	0	40	0	20	0	20
Short-finned pilot whale ^{b,c,d}	Western North Atlantic ..	18,726	0	8	0	20	0	12	0	6	0	6
Risso's dolphin ^{b,c,d}	Western North Atlantic ..	44,067	0	50	2	110	1	60	0	30	0	30
Harbor porpoise	Gulf of Maine/Bay of Fundy.	85,765	0	35	8	191	13	64	0	24	0	24
Gray seal	Western North Atlantic ..	27,911	0	155	2	323	2	136	0	41	0	41
Harbor seal	Western North Atlantic ..	61,336	0	345	4	738	8	305	0	91	0	91

Note: * denotes species listed under the Endangered Species Act.

^a In the proposed rule (88 FR 65430, September 22, 2023), NMFS utilized the 2022 final SARs (Hayes *et al.*, 2023); however, in this final rule, NMFS utilized the 2023 draft SARs (<https://www.fisheries.noaa.gov/hatteras/marine-mammal-protection/marine-mammal-stock-assessment/reports>) were used for the stock abundances.

^b The take estimate by Level B harassment for foundation installation via impact pile driving was rounded up to 1 average group size; impact pile driving is scheduled to occur during Year 2 and Year 3 of the proposed rulemaking. While the foundation installation schedule (table 14) counted the total number of WTGs plus 6 WTGs in the Overlap Area for both Project 1 and Project 2, the take by Level A harassment or Level B harassment requested (table 17) is based on those 6 WTGs occurring under Project 2; no double counting of take occurred.

^c The take estimate by Level B harassment for HRG surveys was rounded up to 1 group size; HRG surveys are planned to occur during the entire 5-year effective period of the rulemaking.

^d The take estimate by Level B harassment for temporary cofferdams via vibratory pile driving was rounded up to 1 group size; temporary cofferdam installation and removal is expected to occur during Year 1 and 2 of the rulemaking.

^e The take estimate by Level B harassment for common dolphins is derived by the daily sighting rate for previous HRG surveys multiplied by the number of HRG survey or pile driving days that would occur for each specific activity.

TABLE 23—TOTAL TAKES ALLOWED FOR THE PROJECT ACROSS THE 5-YEAR EFFECTIVE PERIOD OF THE RULE
[By Level A harassment and Level B harassment]

Marine mammal species	Stock	NMFS stock abundance ^a	Allowed Level A harassment ^b	Allowed Level B harassment ^b	5-Year total allowed take ^b
North Atlantic right whale *	Western Atlantic	340	0	25	25
Fin whale *	Western North Atlantic	6,802	8	38	46
Humpback whale	Gulf of Maine	1,396	8	33	41
Minke whale	Canadian Eastern Coastal	21,968	29	321	360
Sei whale *	Nova Scotia	6,292	3	25	28
Sperm whale *	Western North Atlantic	5,895	0	15	15
Atlantic spotted dolphin ^c	Western North Atlantic	31,506	0	1,000	1,000
Atlantic white-sided dolphin ^c	Western North Atlantic	93,233	2	413	415
Bottlenose dolphin	Western North Atlantic—Offshore	64,587	0	8,153	8,153
	Northern Migratory Coastal	6,639	0	3,087	3,087
Common dolphin	Western North Atlantic	93,100	0	906	906
Long-finned pilot whale	Western North Atlantic	39,215	0	172	172
Short-finned pilot whale	Western North Atlantic	18,726	0	52	52
Risso's dolphin	Western North Atlantic	44,067	3	280	283
Harbor porpoise	Gulf of Maine/Bay of Fundy	85,765	21	338	359
Gray seal	Western North Atlantic	27,911	4	696	700
Harbor seal	Western North Atlantic	61,336	12	1,570	1,582

Note: * denotes species listed under the Endangered Species Act.

^aIn the proposed rule (88 FR 65430, September 22, 2023), NMFS utilized the 2022 final SARs (Hayes *et al.*, 2023); however, in this final rule, NMFS utilized the 2023 draft SARs (<https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports>) were used for the stock abundances.

^bWithin the proposed rule (88 FR 65430, September 22, 2023), NMFS had initially used the maximum take that is reasonably expected to occur for each of Project 1 and Project 2's buildout; however, given both Projects would be constructed, this has been corrected to sum the values.

^cDuring the drafting of the proposed rule (88 FR 65430, September 22, 2023), the total take by Level A harassment and Level B harassment was inadvertently flipped between these 2 species. NMFS has fixed that error for this final rule.

To inform both the negligible impact analysis and the small numbers determination, NMFS assesses the maximum number of marine mammal takes that are allowable within any given year (noting that the negligible impact determination is also informed by the 5-year take total). For this maximum annual take calculation, the maximum allowable number of Level A harassment takes in any one year is summed with the maximum allowable number of Level B harassment takes in any one year for each species to yield the highest number of estimated take that could occur in any year (table 24). Table 24 also depicts the number of takes relative to the abundance of each stock. The takes enumerated here represent instances of take (each occurring within one day), not necessarily individual marine mammals taken. One take represents a day (24-hour period) in which an animal was exposed to noise above the associated

harassment threshold at least once. Some takes represent a brief exposure above a threshold, while in some cases takes could represent a longer, or repeated, exposure of one individual animal above a threshold within a 24-hour period. Whether or not every take assigned to a species represents a different individual depends on the daily and seasonal movement patterns of the species in the area. For example, activity areas with continuous activities (all or nearly every day) overlapping known feeding areas (where animals are known to remain for days or weeks on end) or areas where species with small home ranges live (*e.g.*, some pinnipeds) are more likely to result in repeated takes to some individuals. Alternatively, activities far out in the deep ocean or takes to nomadic species where individuals move over the population's range without spatial or temporal consistency represent circumstances where repeat takes of the same

individuals are less likely. In other words, for example, 100 takes could represent 100 individuals each taken on 1 day within the year, or it could represent 5 individuals each taken on 20 days each within the year, or some other combination depending on the activity, whether there are biologically important areas in the Project Area, and the daily and seasonal movement patterns of the species of marine mammals exposed. Wherever there is information to better contextualize the enumerated takes for a given species is available, it is discussed in the Negligible Impact Analysis and Determination and/or Small Numbers sections, as appropriate. We recognize that certain activities could shift within the 5-year effective period of the rule; however, the rule allows for that flexibility and the takes are not expected to exceed those shown in table 24 in any one year.

TABLE 24—MAXIMUM NUMBER OF TAKES ALLOWED FOR THE PROJECT IN ANY ONE YEAR UNDER THE RULE
[By Level A harassment and Level B harassment]

Marine mammal species	Stock	NMFS stock abundance ^a	Maximum annual Level A harassment	Maximum annual Level B harassment	Maximum annual take in any one year (maximum Level A harassment + maximum Level B harassment)	Total percent stock taken in any one year based on maximum annual take ^b
North Atlantic right whale *	Western Atlantic	340	0	13	13	3.82
Fin whale*	Western North Atlantic	6,802	4	18	22	0.32
Humpback whale	Gulf of Maine	1,396	4	17	21	1.50
Minke whale	Canadian Eastern Coastal	21,968	17	161	178	0.81
Sei whale *	Nova Scotia	6,292	2	11	13	0.21
Sperm whale*	Western North Atlantic	5,895	0	7	7	0.12
Atlantic spotted dolphin	Western North Atlantic	31,506	0	400	400	1.27
Atlantic white-sided dolphin	Western North Atlantic	93,233	1	207	208	0.22
Bottlenose dolphin	Western North Atlantic—Off-shore.	64,587	0	3,836	3,836	5.94
	Northern Migratory Coastal	6,639	0	1,949	1,949	29.36
Common dolphin	Western North Atlantic	93,100	0	370	370	0.40
Long-finned pilot whale	Western North Atlantic	39,215	0	66	66	0.17
Short-finned pilot whale	Western North Atlantic	18,726	0	20	20	0.11
Risso's dolphin	Western North Atlantic	44,067	2	110	112	0.25
Harbor porpoise	Gulf of Maine/Bay of Fundy ...	85,765	13	191	204	0.24
Gray seal	Western North Atlantic	27,911	2	323	325	1.16
Harbor seal	Western North Atlantic	61,336	8	738	746	1.22

Note: * denotes species listed under the Endangered Species Act.

^a In the proposed rule (88 FR 65430, September 22, 2023), NMFS utilized the 2022 final SARs (Hayes *et al.*, 2023); however, in this final rule, NMFS utilized the 2023 draft SARs (<https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports>) were used for the stock abundances.

^b The percentages presented here are simplistic, assuming that each take is of a different individual; however, that is a conservative assessment.

Mitigation

As described in the Changes From the Proposed to Final Rule section, we have made changes to some mitigation measures from the proposed rule. These changes are described in detail in the sections below. Otherwise, the mitigation requirements have not changed from the proposed rule.

In order to promulgate a rulemaking under section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable adverse 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 (the latter is not applicable for this action). NMFS' regulations require applicants for ITAs 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)).

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 (e.g., likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (*i.e.*, probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (*i.e.*, probability implemented as planned); and

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

The mitigation strategies described below are consistent with those required

and successfully implemented under previous ITAs issued in association with in-water construction activities (e.g., soft-start, establishing shutdown zones). Additional measures have also been incorporated to account for the fact that the construction activities would occur offshore. Modeling was performed to estimate harassment zones, which were used to inform mitigation measures for the Project's activities to minimize Level A harassment and Level B harassment to the extent practicable, while providing estimates of the areas within which harassment might occur.

Generally speaking, the mitigation measures considered and required here fall into three categories: (1) spatio-temporal (*i.e.*, seasonal and daily) work restrictions; (2) real-time measures (*i.e.*, shutdown, clearance, and vessel strike avoidance); and (3) noise attenuation/reduction measures. Spatio-temporal restrictions, such as seasonal work restrictions, are designed to avoid or minimize operations when marine mammals are concentrated or engaged in behaviors that make them more susceptible or make impacts more likely. Such restrictions reduce both the number and severity of potential takes and are effective in reducing both

chronic (*i.e.*, longer-term) and acute effects. Real-time measures, such as implementation of shutdown and clearance zones, as well as vessel strike avoidance measures, are intended to reduce the probability or severity of harassment by taking steps in real time once a higher-risk scenario is identified (*e.g.*, once animals are detected within an impact zone). Noise attenuation measures, such as bubble curtains, are intended to reduce the noise at the source, which reduces both acute impacts, as well as the contribution to aggregate and cumulative noise that may result in chronic impacts.

Below, we briefly describe the required training, coordination, and vessel strike avoidance measures that apply to all specified activities and then we describe the measures that apply to specific specified activities (*i.e.*, foundation installation, nearshore installation and removal activities for cable laying, and HRG surveys). Specific requirements can be found in Section 217.304 (Mitigation requirements) as found in Part 217—Regulations Governing The Taking And Importing Of Marine Mammals at the end of this rulemaking.

Training and Coordination

NMFS requires all of Project Company 1's employees and contractors conducting activities on the water, including, but not limited to, all vessel captains and crew to be trained in marine mammal detection and identification, communication protocols, and all required measures to minimize impacts on marine mammals and support Project Company 1's compliance with the LOA, if issued. Additionally, all relevant personnel and the marine mammal species monitoring team(s) are required to participate in joint, onboard briefings prior to the beginning of Project activities. The briefing must be repeated whenever new relevant personnel (*e.g.*, new PSOs, construction contractors, relevant crew) join the Project before work commences. During this training, Project Company 1 is required to instruct all Project personnel regarding the authority of the marine mammal monitoring team(s). For example, the HRG acoustic equipment operator, pile driving personnel, *etc.*, is required to immediately comply with any call for a delay or shut down by the Lead PSO. Any disagreement between the Lead PSO and the Project personnel must only be discussed after delay or shutdown has occurred. In particular, all captains and vessel crew must be trained in marine mammal detection and vessel strike avoidance measures to

ensure marine mammals are not struck by any Project or Project-related vessel.

Prior to the start of in-water construction activities, vessel operators and crews would receive training about marine mammals and other protected species known or with the potential to occur in the Project Area, making observations in all weather conditions, and vessel strike avoidance measures. In addition, training would include information and resources available regarding applicable Federal laws and regulations for protected species. Project Company 1 will provide documentation of training to NMFS.

North Atlantic Right Whale Awareness Monitoring

Project Company 1 would be required to use available sources of information on North Atlantic right whale presence, including daily monitoring of the Right Whale Sightings Advisory System, NMFS' website at: <https://www.fisheries.noaa.gov/national/ endangered-species-conservation/ reducing-vessel-strikes-north-atlantic-right-whales>, and monitoring the U.S. Coast Guard's very high frequency (VHF) Channel 16 throughout each day to receive notifications of any sightings, and information associated with any regulatory management actions (*e.g.*, establishment of a zone identifying the need to reduce vessel speeds). Maintaining daily awareness and coordination affords increased protection of North Atlantic right whales by understanding North Atlantic right whale presence in the area through ongoing visual and PAM efforts and opportunities (outside of Project Company 1's efforts), and allows for planning of construction activities, when practicable, to minimize potential impacts on North Atlantic right whales.

Vessel Strike Avoidance Measures

This final rule contains numerous vessel strike avoidance measures that reduce the risk that a vessel and marine mammal could collide. While the likelihood of a vessel strike is generally low, they are one of the most common ways that marine mammals are seriously injured or killed by human activities. Therefore, enhanced mitigation and monitoring measures are required to avoid vessel strikes to the extent practicable. While many of these measures are proactive intending to avoid the heavy use of vessels during times when marine mammals of particular concern may be in the area, several are reactive and occur when a Project personnel sights a marine mammal. The mitigation requirements are described generally here and in

detail in the regulation text at the end of this final rule (see 50 CFR 217.304(b)). Project Company 1 will be 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 unable to maneuver and, because of the inability to maneuver, the vessel cannot comply.

While underway, Project Company 1 is required to monitor for, and maintain a minimum separation distance from, marine mammals and operate vessels in a manner that reduces the potential for vessel strike. Regardless of the vessel's size, all vessel operators, crews, and dedicated visual observers (*i.e.*, PSO or trained crew member) 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. The dedicated visual observer, equipped with suitable monitoring technology (*e.g.*, binoculars, night vision devices), must be located at an appropriate vantage point for ensuring vessels are maintaining required vessel separation distances from marine mammals (*e.g.*, 500 m (1,640 ft) from North Atlantic right whales).

All Project vessels, regardless of size, must maintain the following minimum separation zones: (1) 500 m (1,640 ft) from North Atlantic right whales; (2) 500 m (1,640 ft) from ESA-listed large whales (*i.e.*, sperm whales, fin whales, sei whales) and any unidentifiable large whales; (3) 100 m (328 ft) from non-ESA listed large whales (*i.e.*, humpback whale, minke whale); and (4) 50 m (164 ft) from all delphinid cetaceans and pinnipeds (an exception is made for those species that approach the vessel (*i.e.*, bow-riding dolphins)). If any of these species are sighted within their respective minimum separation zone, the underway vessel must shift its engine to neutral and the engines must not be engaged until the animal(s) has been observed to be outside of the vessel's path and beyond the respective minimum separation zone. If a North Atlantic right whale is observed at any distance by any Project personnel or acoustically detected, Project vessels must reduce speeds to 10 kn (11.5 mph). Additionally, in the event that any Project-related vessel, regardless of size, observes any large whale (other than a North Atlantic right whale) within 500 m (1,640 ft) of an underway vessel, the vessel is required to shift engines into neutral. The vessel shall remain in neutral until the whale has moved beyond 500 m (1,640 ft) and the 10 kn (11.5 mph) speed restriction will remain

in effect as outlined in 50 CFR 217.304(b).

All of the Project-related vessels are required to comply with existing NMFS vessel speed restrictions for North Atlantic right whales and the measures within this rulemaking for operating vessels around North Atlantic right whales and other marine mammals. When NMFS vessel speed restrictions are not in effect and a vessel is traveling at greater than 10 kn (11.5 mph), in addition to the required dedicated visual observer, Project Company 1 is required to monitor the crew transfer vessel transit corridor (the path crew transfer vessels take from port to any work area) in real-time with PAM prior to and during transits. To maintain awareness of North Atlantic right whale presence, vessel operators, crew members, and the marine mammal monitoring team will monitor U.S. Coast Guard VHF Channel 16, NMFS' website at: <https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales>, WhaleAlert, the Right Whale Sighting Advisory System (RWSAS), and the PAM system. Any marine mammal observed by Project personnel must be immediately communicated to any on-duty PSOs, PAM operator(s), and all vessel captains. Any North Atlantic right whale or large whale observation or acoustic detection by PSOs or PAM operators must be conveyed to all vessel captains.

All vessels will be equipped with an AIS and Project Company 1 must report all MMSI numbers to NMFS Office of Protected Resources prior to initiating in-water activities. Project Company 1 will submit a North Atlantic Right Whale Vessel Strike Avoidance Plan for NMFS review and approval at least 180 calendar days prior to commencement of vessel use. Project Company 1's compliance with these measures will reduce the likelihood of vessel strike to the extent practicable. These measures increase awareness of marine mammals in the vicinity of Project vessels and require Project vessels to reduce speed when marine mammals are detected (by PSOs, PAM, and/or through another source (e.g., RWSAS)) and maintain separation distances when marine mammals are encountered. While visual monitoring is useful, reducing vessel speed is one of the most effective, feasible options available to reduce the likelihood of and effects from a vessel strike. Numerous studies have indicated that slowing the speed of vessels reduces the risk of lethal vessel collisions, particularly in areas where right whales are abundant and vessel

traffic is common and otherwise traveling at high speeds (Vanderlaan and Taggart, 2007; Conn and Silber, 2013; Van der Hoop *et al.*, 2014; Martin *et al.*, 2015; Crum *et al.*, 2019).

Seasonal and Daily Restrictions

Spatio-temporal work restrictions in places where marine mammals are concentrated, engaged in biologically important behaviors, and/or present in sensitive life stages are effective measures for reducing the magnitude and severity of human impacts. Seasonal work restrictions provide additional benefits for marine mammals during periods where there could be higher occurrence or presence in the Project Area and specified geographic area. North Atlantic right whales may be present in and around the Project Area throughout the year (e.g., Davis *et al.*, 2017; Roberts *et al.*, 2023; Salisbury *et al.*, 2015). However, it would not be practicable to restrict foundation pile driving year-round. Based upon the best scientific information available (Roberts *et al.*, 2023), the highest densities of North Atlantic right whales in the specified geographic region are expected during the months of January through April, with densities starting to increase in November and taper off in May. Because of this, Project Company 1 planned for, and NMFS is requiring, seasonal work restrictions to minimize the risk of noise exposure to North Atlantic right whales incidental to certain specified activities (i.e., foundation impact pile driving) to the extent practicable. These seasonal work restrictions are expected to greatly reduce the number of takes of North Atlantic right whales. These seasonal restrictions also afford protection to other marine mammals that are known to use the Project Area with greater frequency (e.g., other baleen whales). The seasonal work restrictions would be effective from January 1st through April 30th, with December being allowed to complete Project 1 and/or Project 2 within any given year if NMFS approves. However, to allow Project Company 1 the ability to install the foundations as quickly as possible to shorten the overall construction timeframe and thus shorten the time marine mammals may be subject to construction-related stressors, pile driving in December may occur if necessary to complete Project 1 or Project 2 in any given year upon approval by NMFS. For NMFS to fully consider this request, Project Company 1 must submit a written request to NMFS Office of Protected Resources by October 15th, describing why pile driving in December is necessary to

complete Project 1 or Project 2 within the calendar year including, but not limited to, the following information: (1) installation schedule; (2) pile type(s) (i.e., monopile and/or pin piles) and the maximum number of piles that are predicted/necessary to be installed in December; (3) planned hammer energies planned for use; and (4) any planned or additional protective measures that would or could be implemented to further reduce impacts to protected species during December foundation installation activities. NMFS would consider this and all December pile driving requests for the Project, on a case-by-case basis, alongside submitted PSO and SFV reports that have been previously provided by Project Company 1 leading up to the December pile driving event(s).

Project Company 1 has planned to start to construct the cofferdams around Q2 (April through June) of 2025, for Project 1, and around Q3 (July through September) of 2025, for Project 2, with work expected to continue into 2026 for removal during the effective period of the regulations and LOA (see table 1). However, NMFS is not requiring any seasonal restrictions due to the relatively short duration of work and low associated impacts to marine mammals. Although North Atlantic right whales do migrate in coastal waters, they do not typically migrate very close to shore off of New Jersey and/or within New Jersey bays where nearshore cable landfall work would be occurring. Given the distance to the Level B harassment isopleth is conservatively modeled at approximately 11 km (36,089.2 ft), we expect that any exposure to vibratory pile driving during cofferdams installation and/or removal would be unlikely, and that if exposures occur, they will occur at levels closer to the 120-dB Level B harassment threshold and not at louder source levels. NMFS is not adding any seasonal restrictions to HRG surveys given the limited impacts expected from HRG surveys on marine mammals. However, Project Company 1 would be restricted to only perform a specific amount of 24-hour survey days using up to three survey vessels (assuming each day an individual vessel is operating constitutes a day of vessel effort) within any single year, consistent with the estimated annual effort assumed in the modeling and take calculations ($n=60$ days, annually). This total effort would not exceed the total number of survey days planned during the effective period of these regulations and any LOA, if issued ($n=300$ total days).

Furthermore, NMFS is also requiring some time-of-day temporal restrictions for some of the specified activities. Within any 24-hour period, NMFS proposed that Project Company 1 be limited to installing a maximum of two monopile foundations or four pin piles for jacket foundations; however, on some days Project Company 1 could install less pin piles. NMFS notes that Project Company 1 did request to initiate foundation pile driving during nighttime hours (*i.e.*, 1 hour before civil sunrise and earlier than 1.5 hours before civil sunset) when detection of marine mammals is visually challenging. To date, Project Company 1 has not submitted a plan containing the information necessary, including evidence, that their proposed monitoring systems are capable of detecting marine mammals, particularly large whales, at distances necessary to ensure mitigation measures are effective at night. In general, the scientific literature on these technologies demonstrates there is a high degree of uncertainty in reliably detecting marine mammals at distances necessary for this Project; however, in the proposed rule (88 FR 65430, September 22, 2023), we did request public comments on conditioning the LOA such that nighttime pile driving would only be allowed if Project Company 1 submits an Alternative Monitoring Plan (AMP) to NMFS for approval, prior to foundation pile driving starting, that proves the efficacy of their night vision devices (NVDs) (*e.g.*, mounted thermal/infrared (IR) camera systems and spotlights, hand-held or wearable night vision devices, *etc.*) in detecting protected marine mammals (refer to the Seasonal and Daily Restriction section of the proposed rule (88 FR 65430, September 22, 2023)). If the AMP does not include a full description of the proposed technology, monitoring methodology, and data supporting that marine mammals can reliably and effectively be detected within the clearance and shutdown zones for monopiles and pin piles before and during impact pile driving, nighttime pile driving (unless a pile was initiated 1.5 hours prior to civil sunset and will be allowed to continue) will not be allowed. This AMP should identify the efficacy of the technology at detecting marine mammals in the clearance and shutdown zones under all the various conditions anticipated during construction, including varying weather conditions, sea states, and in consideration of the use of artificial lighting.

Because of this, until this AMP is submitted for NMFS review and approval, under any LOA, if issued, Project Company 1 would be restricted to starting impact pile driving of permanent foundations during daylight hours, defined as, at the latest, 1.5 hours before civil sunset or 1 hour after civil sunrise. If Project Company 1 chooses to provide an AMP, and NMFS reviews and approves it, any subsequent LOA may be further conditioned to allow for nighttime pile driving to occur. Upon submittal by Project Company 1 and approval by NMFS, any final AMP will be made public on NMFS' website (<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>). Any and all subsequent monitoring reports submitted by Project Company 1 will allow NMFS to continue to evaluate the efficacy of the equipment and the technology. As stated in the proposed rule, we continue to encourage Project Company 1 to further investigate and test advanced technology detection systems and to continue discussions with NMFS on this topic.

Regarding Project Company 1's other construction activities, any and all vibratory pile driving associated with cofferdam installation and removal would only be able to occur during daylight hours.

Lastly, given the very small Level B harassment zone associated with HRG survey activities and no anticipated or allowed Level A harassment, NMFS is not requiring any daily restrictions for HRG surveys.

More information on activity-specific seasonal and daily restrictions can be found in the regulatory text at the end of this rulemaking.

Noise Abatement Systems

Project Company 1 is required to employ NAS, also known as noise attenuation systems, during all foundation installation to reduce the sound pressure levels that are transmitted through the water in an effort to reduce ranges to acoustic thresholds and to minimize, to the extent practicable, any acoustic impacts resulting from these activities. NAS, such as bubble curtains, are 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 for lower frequencies. There are a variety of bubble curtain systems, confined or unconfined bubbles, and some with encapsulated bubbles or

panels. Attenuation levels also vary by type of system, frequency band, and location. Small bubble curtains have been measured to reduce sound levels but effective attenuation is highly dependent on depth of water, current, and configuration and operation of the curtain (Austin *et al.*, 2016; Koschinski and Lüdemann, 2013). Bubble curtains vary in terms of the sizes of the bubbles and those with larger bubbles tend to perform better and more reliably, particularly when deployed with two separate rings (Bellmann, 2014; Koschinski and Lüdemann, 2013; Nehls *et al.*, 2016). Encapsulated bubble systems (*i.e.*, 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 in properly installing and operating in-water attenuation devices.

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 in properly installing and operating in-water attenuation devices. Dähne *et al.* (2017) found that single bubble curtains that reduce sound levels by 7 to 10 dB reduced the overall sound level by approximately 12 dB when combined as a double bubble curtain for 6-m (19.7-ft) steel monopiles in the North Sea. During installation of monopiles (consisting of approximately 8-m (26.3-ft) in diameter) for more than 150 WTGs in comparable water depths (>25 m (>82 ft)) and conditions in Europe indicate that attenuation of 10 dB is readily achieved (Bellmann, 2019; Bellmann *et al.*, 2020) using single big bubble curtains for noise attenuation. As a double bubble curtain is required to be used here (a single bubble curtain is not allowed under the framework of this final rule), Project Company 1 is required to maintain numerous operational performance standards. These standards are defined in the regulatory text at the end of this rulemaking, and include, but are not limited to: (1) a requirement that construction contractors must train personnel in the proper balancing of airflow to the bubble ring; and (2) Project Company 1 must submit a performance test and maintenance report to NMFS within 72 hours following the performance test.

Corrections to the attenuation device to meet regulatory requirements must occur prior to use during foundation installation activities. In addition, a full maintenance check (e.g., manually clearing holes) must occur prior to each pile being installed. If Project Company 1 uses a noise mitigation device in addition to a double bubble curtain, similar quality control measures are required.

Project Company 1 is required to use at least a double bubble curtain. Should the research and development phase of newer systems demonstrate effectiveness, as part of adaptive management, Project Company 1 may submit data on the effectiveness of these systems and request approval from NMFS to use them during foundation installation activities in lieu of the double bubble curtain requirement.

Project Company 1 is required to submit an SFV Plan to NMFS for review and approval at least 180 calendar days prior to installing foundations. Project Company 1 is also required to submit interim and final SFV data results to NMFS and make corrections to the noise attenuation systems in the case that any SFV measurements demonstrate noise levels are above those modeled, assuming 10 dB. These frequent and immediate reports allow NMFS to better understand the sound fields to which marine mammals are being exposed and require immediate corrective action should they be misaligned with anticipated noise levels within our analysis.

Noise abatement devices are not required during HRG surveys and cofferdam (sheet pile) installation and removal. Regarding cofferdam sheet pile installation and removal, NAS is not practicable to implement due to the physical nature of linear sheet piles and is a low risk for impacts to marine mammals due to the short work duration and lower noise levels produced during the activities. Regarding HRG surveys, NAS cannot practicably be employed around a moving survey ship, but Project Company 1 is required to make efforts to minimize source levels by using the lowest energy settings on equipment that has the potential to result in harassment of marine mammals (i.e., sparkers, CHIRPs) and turn off equipment when not actively surveying. Overall, minimizing the amount and duration of noise in the ocean from any of the Project's activities through use of all means required (e.g., noise abatement, turning off power) will effect the least practicable adverse impact on marine mammals.

Clearance and Shutdown Zone

NMFS requires the establishment of both clearance and, where technically feasible, shutdown zones during Project activities that have the potential to result in harassment of marine mammals. The purpose of "clearance" of a particular zone is to minimize potential instances of auditory injury and more severe behavioral disturbances by delaying the commencement of an activity if marine mammals are near the activity. The purpose of a shutdown is to prevent a specific acute impact, such as auditory injury or severe behavioral disturbance of sensitive species, by halting the activity.

All relevant clearance and shutdown zones during Project activities would be monitored by NMFS-approved PSOs and/or PAM operators (as applicable and as described in the regulatory text at the end of this rulemaking). At least one PAM operator must review data from at least 24 hours prior to any foundation installation and must actively monitor hydrophones for 60 minutes prior to commencement of these activities. Any sighting or acoustic detection of a North Atlantic right whale triggers a delay to commencing pile driving and shutdown.

Prior to the start of certain specified activities (i.e., foundation installation, temporary cofferdam installation and removal, and HRG surveys), Project Company 1 must ensure designated areas (i.e., clearance zones; see, tables 25, 26, and 27) are clear of marine mammals prior to commencing activities to minimize the potential for and degree of harassment. For all WTG, OSS, and Met Tower foundation installation, PSOs must visually monitor clearance zones for marine mammals for a minimum of 60 minutes, where the zone must be confirmed free of marine mammals at least 30 minutes directly prior to commencing these activities.

Clearance and shutdown zones have been developed in consideration of modeled distances to relevant PTS thresholds with respect to minimizing the potential for take by Level A harassment. All required clearance and shutdown zones for large whales are larger than the largest modeled acoustic range ($R_{95\%}$) distances to thresholds corresponding to Level A harassment (SEL and peak). More specifically, clearance zones represent the largest Level A harassment zone for each species group, plus 20 percent for a minimum of 100 m (328 ft) (whichever is greater). Shutdown zones around the permanent foundations correspond to the modeled results of the greatest

distance to the Level A harassment threshold for each species group, assuming 10 dB of sound attenuation. For any species where the modeling yielded a zero or near-zero range (i.e., delphinids and pilot whale *spp.*), NMFS is conservatively requiring a 100 m (328 ft) zone to ensure adequate protections are in place. For foundation installation, we are also requiring a minimum visibility zone that would extend 1,900 m (6,233.6 ft) from the pile. This value corresponds to the modeled maximum $ER_{95\%}$ distances to the Level A harassment threshold for low-frequency cetaceans, assuming 10 dB of attenuation. We reference the reader to table 25 for the minimum visibility, clearance, and shutdown zone distances for permanent foundation installation.

For cofferdam vibratory pile driving (table 26) and HRG (table 27) surveys, monitoring must be conducted for 30 minutes prior to initiating activities and the clearance zones must be free of marine mammals during that time. HRG surveys also include required vessel separation zones, in alignment with the Vessel Strike Avoidance requirements (refer back to *Vessel Strike Avoidance Measures* section above, as well as table 27 below).

For any other in-water construction heavy machinery activities (e.g., trenching, cable laying, etc.), if a marine mammal is on a path towards or comes within 10 m (32.8 ft) of equipment, Project Company 1 is required to cease operations until the marine mammal has moved more than 10 m on a path away from the activity to avoid direct interaction with equipment.

Once an activity begins, any marine mammal entering their respective shutdown zone would trigger the activity to cease. In the case of pile driving, the shutdown requirement may be waived if it 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, or if the lead engineer determines there is pile refusal or pile instability. In situations when shutdown is called for during foundation pile driving but Project Company 1 determines shutdown is not practicable due to aforementioned emergency reasons, reduced hammer energy must be implemented when the lead engineer determines it is practicable. Specifically, pile refusal or pile instability could result in not being able to shut down pile driving immediately. Pile refusal occurs when the pile driving sensors indicate the pile is approaching refusal, and a shut-down would lead to a stuck pile which then poses an imminent risk of injury or loss

of life to an individual, or risk of damage to a vessel that creates risk for individuals. Pile instability occurs when the pile is unstable and unable to stay standing if the piling vessel were to “let go.” During these periods of instability, the lead engineer may determine a shutdown is not feasible because the shutdown combined with impending weather conditions may require the piling vessel to “let go” which then poses an imminent risk of injury or loss of life to an individual, or risk of damage to a vessel that creates risk for individuals. Project Company 1 must

document and report to NMFS all cases where the emergency exemption is taken.

After shutdown, foundation 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 pile stability, at which time the lowest hammer energy must be used to maintain stability. If pile driving has been shut down due to the presence of a North Atlantic right whale, pile driving must not restart until the North Atlantic right whale has neither been

visually nor acoustically detected for 30 minutes. Upon re-starting pile driving, soft-start protocols must be followed if pile driving has ceased for 30 minutes or longer.

The clearance and shutdown zone sizes vary by species and are shown in tables 25, 26, and 27 for each planned activity. Project Company 1 is allowed to request modification to these zone sizes pending results of SFV (see regulatory text at the end of this rulemaking). Any changes to zone size would be part of adaptive management and would require NMFS’ approval.

TABLE 25—CLEARANCE, SHUTDOWN, AND MINIMUM VISIBILITY ZONES, IN METERS (m), INCLUSIVE OF 10 dB OF SOUND ATTENUATION

Marine mammal species group-specific zone sizes (m)			
Pile size and type	12-m monopiles	15-m monopiles	5-m pin piles
Installation method	Impact pile driving		
North Atlantic right whale—visual clearance/shutdown zone	Sighting at any distance from PSOs on pile-driving or dedicated PSO vessels.		
North Atlantic right whale—PAM clearance/shutdown zone ^a	10,000.		
Other large whales ^{a,b}	Clearance: 2,300; ^c Shutdown: 1,900. ^d		
Delphinids ^a	Clearance: 100; ^c Shutdown: 100. ^d		
Harbor porpoises ^a	Clearance: 1,800; ^c Shutdown: 1,500. ^d		
Seals ^a	Clearance: 400; ^c Shutdown: 350. ^d		
Minimum visibility zone ^e	1,900.		
Distance to Level B harassment threshold (Acoustic ranges (R _{95%}))	Monopiles: 8,300; Pin Piles: 5,500.		

^a The PAM system used during clearance and shutdown must be designed to detect marine mammal vocalizations, maximize baleen whale detections, and must be capable of detecting North Atlantic right whales at 10 km (6.2 mi) for pin piles and monopile installations, respectively. NMFS recognizes that detectability of each species’ vocalizations will vary based on vocalization characteristics (e.g., frequency content, source level), acoustic propagation conditions, and competing noise sources), such that other marine mammal species (e.g., harbor porpoise) may not be detected at 10 km (6.2 mi).

^b This category is inclusive of all non-North Atlantic right whale ESA-listed species (i.e., sperm whales, fin whales, and sei whales) as well as non-ESA listed large whales (i.e., humpback whale and minke whales).

^c The clearance zone is equal to the maximum Level A harassment distance for each species group, assuming 10 dB of attenuation (refer back to table 11), plus 20 percent or a minimum of 100 m (328 ft) or anywhere within the double bubble curtain system, whichever is greater, and rounded up for PSO clarity. Any animal(s) detected visually or acoustically within the clearance zone triggers a delay to commencement of pile driving.

^d The shutdown zone is equal to the maximum Level A harassment distance for each species group, assuming 10 dB of attenuation (refer back to table 11) or a minimum of 100 m (328 ft) or anywhere within the double bubble curtain system, whichever is greater, and rounded up for PSO clarity. Any animal(s) detected visually or acoustically within the shutdown zone triggers a shutdown of pile driving.

^e PSOs must be able to visually monitor the entire minimum visibility zone. The minimum visibility zone is equal to the largest modeled ER_{95%} distances to the Level A harassment threshold for low-frequency cetaceans (i.e., fin whale (sei whale proxy) at 1.90 km), assuming 10 dB of attenuation (refer back to table 11) and rounded up for PSO clarity.

TABLE 26—DISTANCES TO MITIGATION ZONES DURING NEARSHORE CABLE LANDFALL ACTIVITIES
[Temporary cofferdams]

Marine mammal species	Specific zone sizes (m)	
	Clearance zone	Shutdown zone
North Atlantic right whale—visual detection	100	100
All other large marine mammals	100	100
Delphinids and pilot whale	50	50
Harbor porpoise	^a 540	^a 540
Seals	60	60

^a Harbor porpoises are unlikely to be present in the nearshore environment.

TABLE 27—DISTANCES TO MITIGATION ZONES DURING HRG SURVEYS

Marine mammal species	Specific zone sizes (m)		
	Clearance zone ^a	Shutdown zone	Vessel separation zone
North Atlantic right whale and unidentifiable large whales	500	500	500
Other ESA-listed large whale species ^b	500	100	500
Other Non-ESA-listed large whale species ^c	500	100	100
Other marine mammals ^d	100	100	50

^a For HRG surveys, Project Company 1 did not propose clearance zones, although they are referenced in the ITA application and in their Protected Species Management and Equipment Specifications Plan (PSMESP). Because of this, NMFS instead proposes Clearance Zones of 500 m (1,640 ft; for North Atlantic right whales), 500 m (1,640 ft; for all other ESA-listed species); and 100 m (328 ft; for all other marine mammals, with exceptions noted for specific bow-riding dolphins). These zones are considered for protection for protected species, given the extensive vessel presence in and around the Project Area.

^b This consists of fin, sei, and sperm whales and was updated to align with the final Biological Opinion.

^c This consists of minke and humpback whales and was updated to align with the final Biological Opinion.

^d This is applicable to all delphinid cetaceans, harbor porpoises, and pinnipeds, with the exception of delphinid(s) from the genera *Delphinus*, *Lagenorhynchus*, *Stenella* or *Tursiops*, as described below.

Soft-Start and Ramp-Up

The use of a soft-start or ramp-up 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 or HRG equipment 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. Project Company 1 must utilize a soft-start protocol for pile driving of foundation piles (monopiles and pin piles). Typically, NMFS requires a soft-start procedure of the applicant performing 4 to 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 and installation conditions; therefore, soft-start would generally use the lowest percentage of the maximum hammer energy necessary to avoid damage to the hammer and maintain pile stability. Project Company 1 will reduce energy based on consideration of site-specific soil properties and other relevant operational considerations. The final methodology will be developed by Project Company 1 considering final design details, including site-specific soil properties and other considerations, and will be incorporated into the LOA, if issued. Project Company 1, with approval from NMFS, may also modify the soft-start procedures through adaptive management.

HRG survey operators are required to ramp-up sources when the acoustic sources are used unless the equipment operates on a binary on/off switch. The ramp-up would involve starting from the smallest setting to the operating level over a period of approximately 30

minutes. No soft-start or ramp-up is required for nearshore cable landfall activities given the type of activity (*i.e.*, vibratory pile driving for cofferdams).

Where required, soft-start and ramp-up will be required at the beginning of each day's activity and at any time following a cessation of activity of 30 minutes or longer. Prior to soft-start or ramp-up beginning, the operator must receive confirmation from the PSO that the clearance zone is clear of any marine mammals.

Fishery Monitoring Surveys

While the likelihood of Project Company 1's fishery monitoring surveys impacting marine mammals is minimal, NMFS requires Project Company 1 to adhere to gear and vessel mitigation measures to reduce potential impacts to the extent practicable. In addition, all crew undertaking the fishery monitoring survey activities are required to receive protected species identification training prior to activities occurring and attend the aforementioned onboarding training. The specific requirements that NMFS has set for the fishery monitoring surveys can be found in the regulatory text at the end of this rulemaking.

Based on our evaluation of the mitigation measures, as well as other measures considered, NMFS has determined that these measures will provide the means of affecting 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.

Monitoring and Reporting

As noted in the Changes From the Proposed to Final Rule section, we have added, modified, or clarified a number of monitoring and reporting measures since the proposed rule. These changes are described in detail in the sections

below and, otherwise, the marine mammal monitoring and reporting requirements have not changed since the proposed rule.

In order to promulgate a rulemaking for an activity, section 101(a)(5)(A) 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 ITAs 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 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); and/or
- Mitigation and monitoring effectiveness.

Separately, monitoring is also regularly used to support mitigation implementation, which is referred to as mitigation monitoring, and monitoring plans typically include measures that both support mitigation implementation and increase our understanding of the impacts of the activity on marine mammals.

During the planned activities, visual monitoring by NMFS-approved PSOs would be conducted before, during, and after all impact pile driving, vibratory pile driving, and HRG surveys. PAM would also be conducted during foundation pile driving. Visual observations and acoustic detections would be used to support the activity-specific mitigation measures (e.g., clearance zones). To increase understanding of the impacts of the activity on marine mammals, PSOs must record all incidents of marine mammal occurrence at any distance from the foundation piling locations and near the HRG acoustic sources. PSOs would document all behaviors and behavioral changes, in concert with distance from an acoustic source. The required monitoring is described below, beginning with PSO measures that are applicable to all the aforementioned activities, followed by activity-specific monitoring requirements.

Protected Species Observer (PSO) and Passive Acoustic Monitoring (PAM) Operator Requirements

Project Company 1 is required to employ NMFS-approved PSOs and PAM operators. PSOs are trained professionals who are tasked with visual monitoring for marine mammals during pile driving and HRG surveys. The primary purpose of a PSO is to carry out the monitoring, collect data, and, when appropriate, call for the implementation of mitigation measures. In addition to visual observations, NMFS requires Project Company 1 to conduct PAM by PAM operators during foundation pile driving and vessel transit. The inclusion of PAM, which would be conducted by NMFS-approved PAM operators, following a standardized measurement,

processing methods, reporting metrics, and metadata standards for offshore wind, alongside visual data collection is valuable to provide the most accurate record of species presence as possible and, together, these two monitoring methods are well understood to provide best results when combined (e.g., Barlow and Taylor, 2005; Clark *et al.*, 2010; Gerrodette *et al.*, 2011; Van Parijs *et al.*, 2021). Acoustic monitoring (in addition to visual monitoring) increases the likelihood of detecting marine mammals within the shutdown and clearance zones of Project activities, which when applied in combination with required shutdowns helps to further reduce the risk of marine mammals being exposed to sound levels that could otherwise result in acoustic injury or more intense behavioral harassment.

The exact configuration and number of PAM systems depends on the size of the zone(s) being monitored, the amount of noise expected in the area, and the characteristics of the signals being monitored. More closely spaced hydrophones would allow for more directionality, and perhaps, range to the vocalizing marine mammals; however, this approach would add additional costs and greater levels of complexity to the Project. Larger baleen cetacean species (i.e., mysticetes), which produce loud and lower-frequency vocalizations, may be able to be heard with fewer hydrophones spaced at greater distances. However, smaller cetaceans (e.g., mid-frequency delphinids (odontocetes)) may necessitate more hydrophones and to be spaced closer together given the shorter range of the shorter, mid-frequency acoustic signals (e.g., whistles and echolocation clicks). As there are no “perfect fit” single-optimal-array configurations, these set-ups would need to be considered on a case-by-case basis.

NMFS does not formally administer any PSO or PAM operator training program or endorse specific providers, but will approve PSOs and PAM operators that have successfully completed courses that meet the curriculum and trainer requirements referenced below and further specified in the regulatory text at the end of this rulemaking.

NMFS will provide PSO and PAM operator approvals in the context of the need to ensure that PSOs and PAM operators have the necessary training and/or experience to carry out their duties competently. In order for PSOs and PAM operators to be approved, NMFS must review and approve PSO and PAM operator resumes indicating successful completion of an acceptable

training course. PSOs and PAM operators must have previous experience observing marine mammals and must have the ability to work with all required and relevant software and equipment. NMFS may approve PSOs and PAM operators as conditional or unconditional. A conditional approval may be given to one who is trained but has not yet attained the requisite experience. An unconditional approval is given to one who is trained and has attained the necessary experience. The specific requirements for conditional and unconditional approval can be found in the regulatory text at the end of this rulemaking.

Conditionally-approved PSOs and PAM operators would be paired with an unconditionally-approved PSO (or PAM operator, as appropriate) to ensure that the quality of marine mammal observations and data recording is kept consistent. Additionally, activities requiring PSO and/or PAM operator monitoring must have a lead on duty. The visual PSO field team, in conjunction with the PAM team (i.e., marine mammal monitoring team), would have a lead member (designated as the “Lead PSO”) who would be required to meet the unconditional approval standard.

Although PSOs and PAM operators must be approved by NMFS, third-party observer providers and/or companies seeking PSO and PAM operator staffing should expect that those having satisfactorily completed acceptable training and with the requisite experience (if required) will be quickly approved. Project Company 1 is required to request PSO and PAM operator approvals 60 business days prior to those personnel commencing work. An initial list of previously approved PSO and PAM operators must be submitted by Project Company 1 at least 30 business days prior to the start of the Project. Should Project Company 1 require additional PSOs or PAM operators throughout the Project, Project Company 1 must submit a subsequent list of pre-approved PSOs and PAM operators to NMFS at least 15 business days prior to planned use of that PSO or PAM operator. A PSO may be trained and/or experienced as both a PSO and PAM operator and may perform either duty, pursuant to scheduling requirements (and vice versa).

A minimum number of PSOs would be required to actively observe for the presence of marine mammals during certain Project activities with more PSOs required as the mitigation zone sizes increase. A minimum number of PAM operators would be required to actively monitor for the presence of

marine mammals during foundation installation. The types of equipment required (e.g., big eyes on the pile driving vessel) are also designed to increase marine mammal detection capabilities. Specifics on these types of requirements can be found in the regulations at the end of this rulemaking. In summary, at least three PSOs and one PAM operator per acoustic data stream (equivalent to the number of acoustic buoys) must be on-duty and actively monitoring per platform during foundation installation; at least two PSOs must be on duty during cable landfall construction vibratory pile installation and removal (temporary cofferdams); at least one PSO must be on-duty during HRG surveys conducted during daylight hours; and at least two PSOs must be on-duty during HRG surveys conducted during nighttime.

In addition to monitoring duties, PSOs and PAM operators are responsible for data collection. The data collected by PSO and PAM operators and subsequent analysis provide the necessary information to inform an estimate of the amount of take that occurred during the Project, better understand the impacts of the Project on marine mammals, address the effectiveness of monitoring and mitigation measures, and to adaptively manage activities and mitigation in the future. Data reported includes information on marine mammal sightings, activity occurring at time of sighting, monitoring conditions, and if mitigative actions were taken. Specific data collection requirements are contained within the regulations at the end of this rulemaking.

Project Company 1 is required to submit a Pile Driving Marine Mammal Monitoring Plan and a PAM Plan to NMFS for review and approval at least 180 calendar days in advance of foundation installation activities. The Plan must include details regarding PSO and PAM protocols and equipment proposed for use. More specifically, the PAM Plan must include a description of all proposed PAM equipment, address how the proposed PAM must follow standardized measurements, processing methods, reporting metrics, and metadata standards for offshore wind as described in NOAA and BOEM *Minimum Recommendations for Use of Passive Acoustic Listening Systems in Offshore Wind Energy Development Monitoring and Mitigation Programs* (Van Parijs *et al.*, 2021). NMFS must approve the Plan prior to foundation installation activities commencing. Specific details on NMFS' PSO or PAM operator qualifications and

requirements can be found in Part 217—Regulations Governing The Taking And Importing Of Marine Mammals at the end of this rulemaking.

Additional information can be found in Project Company 1's Protected Species Management and Equipment Specifications Plan (PSMESP; appendix E) found on NMFS' website at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>.

Sound Field Verification (SFV)

Project Company 1 must conduct thorough SFV measurements for all foundation pile-driving activities associated with the installation of, at minimum, the first three monopile foundations, and for the first three full three jacket foundations used for OSS (inclusive of all pin piles for each OSS foundation). If monopiles are instead installed for OSSs, the first three monopiles for OSSs must have SFV conducted. SFV measurements must continue until at least three monopiles for WTGs and three entire jacket foundations (inclusive of all pin piles for a given OSS foundation), or three monopiles for OSS foundations (if these are used instead) demonstrate distances to thresholds are at or below those modeled, assuming 10 dB of attenuation. Subsequent SFV measurements are also required should pile specifications be different from what was analyzed here (e.g., 12-m (39.37-ft) versus 15-m (49.21-ft) diameter monopiles, different sized jacket pin piles (5-m (16.4-ft)), *etc.*), or if additional piles are driven that are anticipated to produce longer distances to harassment isopleths than those previously measured (e.g., higher hammer energy, greater number of strikes, *etc.*). These recordings must be continuous through the duration of all pile driving of each foundation.

Additionally, in alignment with the final Biological Opinion, Project Company 1 is required to undertake abbreviated SFV monitoring, which consists of a single acoustic recorder and a bottom and midwater hydrophone which are placed at an appropriate distance from the pile. This must be undertaken for all pile driven foundation installation (monopile and jacket foundations) for which thorough SFV is not carried out. The abbreviated SFV is intended to provide a means of monitoring attenuated sound produced during pile driving and to provide an indication of whether sound is louder than anticipated, which can allow for adjustments to be made to noise attenuation measures or pile driving

operations. If results of the abbreviated SFV monitoring indicate that distances to the identified Level A harassment and Level B harassment thresholds for marine mammals may have been exceeded during the pile driving event, Project Company 1 is required to notify NMFS Office of Protected Resources and NMFS GARFO as soon as possible after receiving such results. Results of abbreviated SFV monitoring must be included in the weekly pile driving reports. If exceedance occurs, the weekly report must include an explanation of suspected or identified factors that contributed to the potential exceedance and a description of corrective actions that were taken, or planned to be taken, to avoid potential exceedance on subsequent piles, or an explanation if no such actions are available. NMFS may require additional actions be undertaken, including but not limited to: adjustments or additions to the noise attenuation system or pile driving operations, and/or additional thorough SFV monitoring.

The measurements and reporting associated with SFV (thorough/complete and abbreviated) can be found in the regulatory text at the end of this rulemaking. The requirements are extensive to ensure monitoring is conducted appropriately and the reporting frequency is such that Project Company 1 is required to make adjustments quickly (e.g., ensure bubble curtain hose maintenance, check bubble curtain air pressure supply, add additional sound attenuation, *etc.*) to ensure marine mammals are not experiencing noise levels above those considered in this analysis. For recommended SFV protocols for impact pile driving, please consult the ISO 18406 *Underwater acoustics—Measurement of radiated underwater sound from percussive pile driving* (International Organization for Standardization, 2017).

Reporting

Prior to any construction activities occurring, Project Company 1 would provide a report to NMFS Office of Protected Resources that demonstrates that all Project Company 1 personnel, including the vessel crews, vessel captains, PSOs, and PAM operators have completed all required trainings.

NMFS would require standardized and frequent reporting from Project Company 1 during the life of the regulations and LOA. All data collected relating to the Project would be recorded using industry-standard software (e.g., *Mysticetus* or a similar software) installed on field laptops and/or tablets. Project Company 1 is required

to submit weekly, monthly, annual, and situational reports. The specifics of what we require to be reported can be found in the regulatory text at the end of this final rule.

Weekly Report—During foundation installation activities, Project Company 1 would be required to compile and submit weekly marine mammal monitoring reports for foundation installation pile driving to NMFS Office of Protected Resources that document the daily start and stop of all pile-driving activities, the start and stop of associated observation periods by PSOs, details on the deployment of PSOs, a record of all detections of marine mammals (acoustic and visual), any mitigation actions (or if mitigation actions could not be taken, provide reasons why), and details on the NAS(s) (e.g., system type, distance deployed from the pile, bubble rate, etc.). The weekly reports are also required to identify which turbines become operational and when (a map must be provided). Once all foundation pile installation is complete, weekly reports would no longer be required.

Monthly Report—Project Company 1 is required to compile and submit monthly reports to NMFS Office of Protected Resources that include a summary of all information in the weekly reports, including Project activities carried out in the previous month, vessel transits (number, type of vessel, and route), number of piles installed, all detections of marine mammals, and any mitigative actions taken. The monthly report would also identify which turbines become operational and when (a map must be provided). Once all foundation pile installation is complete, monthly reports would no longer be required.

Annual Reporting—Project Company 1 is required to submit an annual marine mammal monitoring (both PSO and PAM) report to NMFS Office of Protected Resources, describing, in detail, all of the information required in the monitoring section above.

Final 5-Year Reporting—Project Company 1 must submit its draft 5-year report(s) to NMFS Office of Protected Resources on all visual and acoustic monitoring conducted under the LOA within 90 calendar days of the completion of activities occurring under the LOA. A final 5-year report must be prepared and submitted within 60 calendar days following receipt of any NMFS comments on the draft report. Information contained within this report is described at the beginning of this section.

Situational Reporting—Specific situations encountered during the

development of the Project require immediate reporting. For instance, if a North Atlantic right whale is observed at any time by PSOs or Project personnel, the sighting must be immediately (if not feasible, as soon as possible and no longer than 24 hours after the sighting) reported to NMFS Office of Protected Resources. If a North Atlantic right whale is acoustically detected at any time via a Project-related PAM system, the detection must be reported as soon as possible and no longer than 24 hours after the detection to NMFS via the 24-hour North Atlantic right whale Detection Template (see <https://www.fisheries.noaa.gov/resource/document/passive-acoustic-reporting-system-templates>). Calling the hotline is not necessary when reporting PAM detections via the template.

If a sighting of a stranded, entangled, injured, or dead marine mammal occurs, the sighting would be reported to NMFS Office of Protected Resources, the NMFS Greater Atlantic Stranding Coordinator for the New England/Mid-Atlantic area (866-755-6622), and the U.S. Coast Guard within 24 hours. If the injury or death was caused by a Project activity, Project Company 1 must immediately cease all activities until NMFS Office of Protected Resources 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 LOA. NMFS Office of Protected Resources may impose additional measures to minimize the likelihood of further prohibited take and ensure MMPA compliance. Project Company 1 may not resume their activities until notified by NMFS Office of Protected Resources.

In the event of a vessel strike of a marine mammal by any vessel associated with the Project, Project Company 1 must immediately report the strike incident. If the strike occurs in the Greater Atlantic Region (Maine to Virginia), Project Company 1 must call the NMFS Greater Atlantic Stranding Hotline. Separately, Project Company 1 must also and immediately report the incident to NMFS Office of Protected Resources and NMFS GARFO. Project Company 1 must immediately cease all on-water activities until NMFS Office of Protected Resources 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 LOA. NMFS Office of Protected Resources may impose additional measures to minimize the likelihood of further prohibited take and ensure MMPA compliance. Project Company 1 may not

resume their activities until notified by NMFS.

In the event of any lost gear associated with the fishery surveys, Project Company 1 must report to NMFS GARFO as soon as possible or within 24 hours of the documented time of missing or lost gear. This report must include information on any markings on the gear and any efforts undertaken or planned to recover the gear.

The specifics of what NMFS Office of Protected Resources requires to be reported is listed at the end of this rulemaking in the regulatory text.

Sound Field Verification—Project Company 1 is required to submit interim SFV reports after each foundation installation as soon as possible but within 48 hours. A final SFV report for all foundation installations would be required within 90 calendar days following completion of acoustic monitoring.

Adaptive Management

The regulations governing the take of marine mammals incidental to Project Company 1's construction activities contain an adaptive management component. Our understanding of the effects of offshore wind construction activities (e.g., acoustic stressors) on marine mammals continues to evolve (quickly, given the pace of offshore wind development), which makes the inclusion of an adaptive management component both valuable and necessary within the context of 5-year regulations.

The monitoring and reporting requirements in this final rule provide NMFS with information that helps us to better understand the impacts of the Project's activities on marine mammals and informs our consideration of whether any changes to mitigation and monitoring are appropriate.

The use of adaptive management allows NMFS to consider new information and modify mitigation, monitoring, or reporting requirements, as appropriate, with input from Project Company 1 regarding practicability, if such modifications will have a reasonable likelihood of more effectively accomplishing the goal of the measures. The following are some of the possible sources of new information to be considered through the adaptive management process: (1) results from monitoring reports, including the weekly, monthly, situational, and annual reports required; (2) results from marine mammal and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or number not allowed authorized by these regulations or subsequent LOA,

respectively. During the course of the rule, Project Company 1 (and other LOA Holders conducting offshore wind development activities) are required to participate in one or more adaptive management meetings convened by NMFS and/or BOEM, in which the above information will be summarized and discussed in the context of potential changes to the mitigation or monitoring measures.

As described previously, the analysis herein has used the best available science to assess the impacts of the Project's activities and to identify appropriate mitigation and monitoring measures, while acknowledging the uncertainty inherent in certain input values (*e.g.*, source levels and spectra) and the environmental variability present in real-life physical and biological systems. As other companies using similar methods to install wind turbines on the U.S. East Coast continue to report their monitoring results, we continue to learn more about the nature of the environmental variability likely to be encountered in offshore wind construction, as well as the ways in which it may be necessary to vary equipment or operational parameters to address real-life conditions encountered during construction. Accordingly, the adaptive management provisions also include the ability to modify the LOA at the request of the company and with public notice and comment, where appropriate, provided certain findings are made, and we emphasize the importance of discussing and requesting any such modifications as early as possible and prior to the modification being needed.

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" by mortality, serious injury, Level A harassment and Level B harassment, we consider other factors, such as the likely nature of any behavioral responses (*e.g.*, intensity, duration), the context of any such responses (*e.g.*, critical

reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of 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' 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).

In the Estimated Take section, we discuss the estimated maximum number of takes by Level A harassment and Level B harassment that are reasonably expected to occur incidental to Project Company 1's specified activities based on the methods described. The impact that any given take would have is dependent on many case-specific factors that need to be considered in the negligible impact analysis (*e.g.*, the context of behavioral exposures such as duration or intensity of a disturbance, the health of impacted animals, the status of a species that incurs fitness-level impacts to individuals, *etc.*). In this final rule, we evaluate the likely impacts of the enumerated harassment takes that are allowed in the context of the specific circumstances surrounding these predicted takes. We also collectively evaluate this information, as well as other more taxa-specific information and mitigation measure effectiveness, in group-specific discussions that support our negligible impact conclusions for each stock. As described above, no serious injury or mortality is expected or allowed for any species or stock.

The Description of the Specified Activities section of this preamble describes Project Company 1's specified activities that may result in take of marine mammals and an estimated schedule for conducting those activities. Project Company 1 has provided a realistic construction schedule (*e.g.*, Project Company 1's schedule reflects the maximum number of piles they anticipate to be able to drive each month in which pile driving is able to occur), although we recognize schedules may shift for a variety of reasons (*e.g.*, weather or supply delays). However, the total number of takes would not exceed the 5-year totals and maximum annual allowable totals indicated in tables 23 and 24, respectively.

We base our analysis and negligible impact determination on the maximum

number of takes that are allowed annually and across the effective period of these regulations and extensive qualitative consideration of other contextual factors that influence the degree of impact of the takes on the affected individuals and the number and context of the individuals affected. As stated before, the number of takes, both annual and 5-year total take, that are reasonably expected to occur, are only a part of the analysis.

To avoid repetition, we provide some general analysis in this Negligible Impact Analysis and Determination section that applies to all the species listed in table 2, given that some of the anticipated effects of Project Company 1's construction activities on marine mammals are expected to be relatively similar in nature. Then, we subdivide into more detailed discussions for mysticetes, odontocetes, and pinnipeds, which have broad life-history traits that support an overarching discussion of some factors considered within the analysis for those groups (*e.g.*, habitat-use patterns, high-level differences in feeding strategies).

Last, we provide a negligible impact determination for each species or stock, providing species or stock-specific information or analysis, where appropriate (*e.g.*, North Atlantic right whales given their population status). Organizing our analysis by grouping species or stocks that share common traits or that would respond similarly to effects of Project Company 1's activities, and then providing species- or stock-specific information, allows us to avoid duplication while ensuring that we have analyzed the effects of the specified activities on each affected species or stock. It is important to note that in the group or species sections, we base our negligible impact analysis on the maximum allowable annual take and the 5-year total allowable take; however, the majority of the impacts are associated with WTG, OSS, and Met Tower foundation installation, which is scheduled to occur largely within the first 3 years (2025, 2026, and 2027; see table 1) of the effective period of these regulations. The estimated take in the other years is expected to be notably less, which is reflected in the total take that would be allowable under the rule (see tables 22, 23, and 24).

As described previously, no serious injury or mortality is anticipated or allowed in this rule. Any Level A harassment allowed would be in the form of auditory injury (*i.e.*, PTS). The number of takes by harassment Project Company 1 has requested, and NMFS may authorize, in a LOA is based on exposure models that consider the

outputs of acoustic source and propagation models. Several conservative parameters and assumptions are ingrained into the models, such as assuming forcing functions that consider direct contact with piles (*i.e.*, no cushion allowances), and no consideration to the benefits of mitigation measures (other than 10 dB sound attenuation and seasonal restrictions) or an avoidance response. The number of takes requested and may be authorized in a LOA also reflects careful consideration of other data (*e.g.*, group size data, PSO data). For all species, the number of takes allowed represents the maximum amount of Level A harassment and Level B harassment that is reasonably expected to occur.

Behavioral Disturbance

In general, NMFS anticipates that impacts on an individual that has been harassed are likely to be more intense when exposed to higher received levels and for a longer duration (though this is in no way a strictly linear relationship for behavioral effects across species, individuals, or circumstances) and less severe impacts result when exposed to lower received levels and for a brief duration. However, there is also growing evidence of the importance of contextual factors such as distance from a source in predicting marine mammal behavioral response to sound—*i.e.*, sounds of a similar level emanating from a more distant source have been shown to be less likely to evoke a response of equal magnitude (DeRuiter and Doukara, 2012; Falcone *et al.*, 2017). As described in the Potential Effects to Marine Mammals and their Habitat section of the proposed rule (88 FR 65430, September 22, 2023), the intensity and duration of any impact resulting from exposure to Project Company 1's activities is dependent upon a number of contextual factors including, but not limited to, sound source frequencies, whether the sound source is moving towards the animal, hearing ranges of marine mammals, behavioral state at time of exposure, status of individual exposed (*e.g.*, reproductive status, age class, health) and an individual's experience with similar sound sources. Southall *et al.* (2021), Ellison *et al.* (2012), and Moore and Barlow (2013), among others, emphasize the importance of context (*e.g.*, behavioral state of the animals, distance from the sound source) in evaluating behavioral responses of marine mammals to acoustic sources. Harassment of marine mammals may result in behavioral modifications (*e.g.*, avoidance, temporary cessation of

foraging or communicating, changes in respiration or group dynamics, masking) or may result in auditory impacts such as hearing loss. In addition, some of the lower level physiological stress responses (*e.g.*, change in respiration, change in heart rate) discussed previously would likely co-occur with the behavioral modifications, although these physiological responses are more difficult to detect and fewer data exist relating these responses to specific received levels of sound. Takes by Level B harassment, then, may have a stress-related physiological component as well; however, we would not expect Project Company 1's activities to produce conditions of long-term and continuous exposure to noise leading to long-term physiological stress responses in marine mammals that could affect reproduction or survival.

In the range of behavioral effects that might be expected to be part of a response that qualifies as an instance of Level B harassment by behavioral disturbance (which by nature of the way it is modeled/counted, occurs within 1 day), the less severe end might include exposure to comparatively lower levels of a sound, at a greater distance from the animal, for a few or several minutes. A less severe exposure of this nature could result in a behavioral response such as avoiding an area that an animal would otherwise have chosen to move through or feed in for some amount of time or breaking off one or a few feeding bouts. More severe effects could occur if an animal gets close enough to the source to receive a comparatively higher level, is exposed continuously to one source for a longer time or is exposed intermittently to different sources throughout a day. Such exposure might result in an animal having a more severe flight response and leaving a larger area for a day or more or potentially losing feeding opportunities for a day. Such severe behavioral effects are expected to occur infrequently due to extensive mitigation and monitoring measures included in this rule.

Many species perform vital functions, such as feeding, resting, traveling, and socializing on a diel cycle (*i.e.*, 24-hour cycle). Behavioral reactions to noise exposure, when taking place in a biologically important context, such as disruption of critical life functions, displacement, or avoidance of important habitat, are more likely to be significant if they last more than 1 day or recur on subsequent days (Southall *et al.*, 2007) due to diel and lunar patterns in diving and foraging behaviors observed in many cetaceans (Baird *et al.*, 2008; Barlow *et al.*, 2020; Henderson *et al.*, 2016; Schorr *et al.*, 2014). It is important

to note the water depths in the Project Area are relatively shallow (*i.e.*, ranging between 19 to 37 m (62 to 121 ft) in the Lease Areas, 0 to 22 m (0 to 72 ft) in the Atlantic City export cable route, and 0 to 30 m (0 to 98 ft) in the Monmouth export cable route) and deep diving species, such as sperm whales, are not expected to be engaging in deep foraging dives when exposed to noise above NMFS harassment thresholds during the specified activities. Therefore, we do not anticipate impacts to deep foraging behavior to be impacted by the specified activities.

It is also important to note that the estimated number of takes does not necessarily equate to the number of individual animals Project Company 1 expects to harass (which is lower) but rather to the instances of take (*i.e.*, exposures above the Level B harassment thresholds) that may occur. These instances may represent either brief exposures (*e.g.*, HRG surveys), or, in some cases, longer durations of exposure within a day (*e.g.*, pile driving). Some members of a species or stock may experience one exposure as they move through an area while other individuals of a species may experience recurring instances of take over multiple concurrent or non-concurrent days throughout the year, in which case the number of individuals taken is smaller than the total estimated takes. For species that are more likely to be migrating through the area (*e.g.*, North Atlantic right whales) and/or for which only a comparatively smaller number of takes are predicted (*e.g.*, some of the mysticetes), it is more likely that each take represents a different individual whereas for non-migrating species (*e.g.*, delphinids) with larger amounts of predicted take, we expect that the total anticipated takes represent exposures of a smaller number of individuals of which some would be taken across multiple days.

For Project Company 1, impact pile driving of foundation piles is most likely to result in a higher magnitude and severity of behavioral disturbance than other activities (*i.e.*, vibratory pile driving, HRG surveys). Impact pile driving has higher source levels and longer durations (on an annual basis) than vibratory pile driving and HRG surveys. HRG survey equipment also produces much higher frequencies than pile driving, resulting in minimal sound propagation and associated exposure. While impact pile driving for foundation installation is anticipated to be most impactful for these reasons, impacts are minimized, to the extent practicable, through implementation of mitigation measures, including use of a

sound attenuation system, soft-starts, the implementation of clearance zones that would facilitate a delay to pile-driving commencement, and implementation of shutdown zones. For example, given sufficient notice through the use of soft-start, marine mammals are expected to move away from a sound source that is disturbing prior to becoming exposed to very loud noise levels. Moreover, impact pile driving would not be occurring all day or every day during the pile driving season. Furthermore, comprehensive monitoring efforts, completed through both visual observations and PAM using trained and qualified observers and monitors, would provide sufficient awareness of any animals within the relevant pile driving zones. The requirement to couple visual monitoring and PAM before and during all foundation installation will increase the overall capability to detect marine mammals compared to one method alone (e.g., Van Parijs *et al.*, 2021).

Occasional, milder behavioral reactions are unlikely to cause long-term consequences for individual animals or populations, and even if some smaller subset of the takes are in the form of a longer (several hours or a day) and more severe response, if they are not expected to be repeated over numerous or sequential days, impacts to individual fitness are not anticipated. Also, the effect of disturbance is strongly influenced by whether it overlaps with biologically important habitats when individuals are present—avoiding biologically important habitats will provide opportunities to compensate for reduced or lost foraging (Keen *et al.*, 2021). Nearly all studies and experts agree that infrequent exposures of a single day or less are unlikely to impact an individual's overall energy budget (Farmer *et al.*, 2018; Harris *et al.*, 2017; King *et al.*, 2015; National Academy of Science, 2017; New *et al.*, 2014; Southall *et al.*, 2007; Villegas-Amtmann *et al.*, 2015).

Temporary Threshold Shift (TTS)

TTS is one form of Level B harassment that marine mammals may incur through exposure to Project Company 1's activities and, as described earlier, the allowed takes by Level B harassment may represent takes in the form of behavioral disturbance, TTS, or both. As discussed in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section of the proposed rule (88 FR 65430, September 22, 2023), in general, TTS can last from a few minutes to days, be of varying degree, and occur across different frequency bandwidths, all of

which determine the severity of the impacts on the affected individual, which can range from minor to more severe. Impact and vibratory pile driving generate sounds in the lower frequency ranges (with most of the energy below 1–2 kHz but with a small amount of energy ranging up to 20 kHz); therefore, in general and all else being equal, we anticipate the potential for TTS is higher in low-frequency cetaceans (*i.e.*, mysticetes) than other marine mammal hearing groups and is more likely to occur in frequency bands in which they communicate. For the Project, vibratory pile driving is only expected to occur related to the nearshore cable landfall activities at both the Atlantic City and Monmouth cable landfall sites. Given the proximity to shore and the shallower waters, it is unlikely that many large whales consisting of low-frequency specialists would spend a significant portion of time in this nearshore environment. Furthermore, although the potential for TTS may be higher for low frequency cetaceans (mysticetes) than other marine mammal hearing groups, table 18 demonstrates that the maximum distance to the Level A harassment threshold from nearshore cable landfall activities is 65 m (213.3 ft), which is comprehensively covered by the distances required for both clearance and shutdown of this activity (100 m (328 ft)), per table 26. Additionally, though the frequency range of TTS that marine mammals might sustain would overlap with some of the frequency ranges of their vocalizations, the frequency range of TTS from Project Company 1's pile driving activities would not typically span the entire frequency range of one vocalization type, much less span all types of vocalizations or other critical auditory cues for any given species. The required mitigation measures further reduce the potential for TTS for all species.

Generally, both the degree of TTS and the duration of TTS would be greater if the marine mammal is exposed to a higher level of energy (which would occur when the peak dB level is higher or the duration is longer). However, in general, an animal would have to approach closer to the source or remain in the vicinity of the sound source appreciably longer to increase the received SEL, which would be unlikely considering the required mitigation and the nominal speed of the receiving animal relative to the stationary sources such as impact pile driving. The recovery time of TTS is also of importance when considering the potential impacts from TTS. In TTS

laboratory studies (as discussed in the Potential Effects of the Specified Activities on Marine Mammals and their Habitat section of the proposed rule (88 FR 65430, September 22, 2023)), some using exposures of almost an hour in duration or up to 217 SEL, almost all individuals recovered within 1 day (or less, often in minutes) and while the pile-driving activities may last for hours a day, it is unlikely that most marine mammals would stay in the close vicinity of the source long enough to incur more severe TTS. The use of soft-start further reduces the potential for TTS by allowing the animal time to move away from the source prior to engaging in higher or full power levels. Overall, given the small number of times that any individual might incur TTS, the low degree of TTS and the short anticipated duration, and the unlikely scenario that any TTS overlapped the entirety of a critical hearing range, it is unlikely that TTS of the nature expected to result from the Project's activities would result in behavioral changes or other impacts that would impact any individual's (of any hearing sensitivity) reproduction or survival.

Permanent Threshold Shift (PTS)

NMFS is authorizing a very limited number (*i.e.*, single digits annually) of takes by PTS to some marine mammal individuals. The numbers of allowed annual takes by Level A harassment are relatively low for all marine mammal stocks and species (see table 23). The only activity incidental to which we anticipate PTS may occur is impact pile driving, which produces sounds that are both impulsive and primarily concentrated in the lower frequency ranges (*i.e.*, below 1 kHz) (David, 2006; Krumpel *et al.*, 2021).

There are no PTS data on cetaceans and only one instance of PTS being induced in older harbor seals (Reichmuth *et al.*, 2019). However, available TTS data (of mid-frequency hearing specialists exposed to mid- or high-frequency sounds (Southall *et al.*, 2007; NMFS, 2018; Southall *et al.*, 2019)) suggest that most threshold shifts occur in the frequency range of the source up to one octave higher than the source. We anticipate a similar result for PTS. Further, no more than a small degree of PTS is expected to be associated with any of the incurred Level A harassment, given it is unlikely that animals would stay in the close vicinity of a source for a duration long enough to produce more than a small degree of PTS.

Any PTS incurred from these activities would consist of minor

degradation of hearing capabilities occurring predominantly at frequencies one-half to one octave above the frequency of the energy produced by pile driving (*i.e.*, the low-frequency region below 2 kHz) (Cody and Johnstone, 1981; McFadden, 1986; Finneran, 2015), which is not severe hearing impairment. If hearing impairment occurs from impact pile driving, 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. Given sufficient notice through use of soft-start prior to implementation of full hammer energy during impact pile driving, marine mammals are expected to move away from a sound source that is disturbing prior to it resulting in severe PTS. For these reasons, any PTS incurred as a result of exposure to these activities is not expected to impact the reproduction or survival of any individuals.

Auditory Masking or Communication Implications

The ultimate potential impacts of masking on an individual are similar to those discussed for TTS (*e.g.*, decreased ability to communicate, forage effectively, or detect predators), but an important difference is that masking only occurs during the time of the signal, versus TTS, which continues beyond the duration of the signal. Also, masking can result from the sum of exposure to multiple signals, none of which might individually cause TTS. Fundamentally, masking is referred to as a chronic effect because one of the key potential harmful components of masking is its duration—the fact that an animal would have reduced ability to hear or interpret critical cues becomes much more likely to cause a problem the longer it is occurring. Inherent in the concept of masking is the fact that the potential for the effect is only present during the times that the animal and the source are in close enough proximity for the effect to occur and further, this time period would need to coincide with a time that the animal was utilizing sounds at the masked frequency.

As our analysis for this Project has indicated, we expect that impact pile driving foundations have the greatest potential to mask marine mammal signals, and this pile driving may occur for several hours per day, for multiple days from May 1st to December 31st most likely in Years 2 and 3. Masking is fundamentally more of a concern at lower frequencies (which are pile-driving dominant frequencies), because low frequency signals propagate

significantly further than higher frequencies and because they are more likely to overlap both the narrower low frequency calls of mysticetes, as well as many non-communication cues related to fish and invertebrate prey, and geologic sounds that inform navigation. However, as described in the Potential Effects of the Specified Activities on Marine Mammals and their Habitat section of the proposed rule, the area in which masking would occur for all marine mammal species and stocks (*e.g.*, predominantly in the vicinity of the foundation pile being driven) is small relative to the extent of habitat used by each species and stock. In summary, the nature of Project Company 1's activities, paired with habitat use patterns by marine mammals, does not support a finding of high likelihood that the level of masking that could occur would have the potential to affect reproductive success or survival.

Impacts on Habitat and Prey

Construction activities may result in fish and invertebrate mortality or injury very close to the source, and all of Project Company 1's activities may cause some fish to leave the area of disturbance. It is anticipated that any mortality or injury would be limited to a very small subset of available prey and the implementation of mitigation measures such as the use of a dual noise attenuation system (*i.e.*, a double bubble curtain) during impact pile driving would further limit the degree of impact. Behavioral changes in prey in response to construction activities could temporarily impact marine mammals' foraging opportunities in a limited portion of the foraging range; however, due to the relatively small area of the habitat that may be affected at any given time (*e.g.*, around a pile being driven), the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

Cable presence is not anticipated to impact marine mammal habitat as these would be buried, and any electromagnetic fields emanating from the cables are not anticipated to result in consequences that would impact marine mammals prey to the extent they would be unavailable for consumption.

The physical presence of permanent foundations (*i.e.*, WTG, OSS, and Met Tower) and associated scour protection within the Lease Areas would remain within marine mammal habitat for approximately 35 years. The Project would consist of up to 211 permanent foundations (up to 200 WTGs, 10 small OSSs, and 1 Met Tower) in the Lease Areas (although up to 205 permanent foundations (up to 200 WTGs, 4 large

OSSs, and 1 Met Tower) were analyzed in this final rulemaking for take, given the maximum amount of pile driving that could occur), which will gradually become operational as foundations and turbines are installed. The submerged parts of these structures act as artificial reefs, providing new habitats and restructuring local ecology, likely affecting some prey resources that could benefit many species, including some marine mammals. It is likely some or all of Project 1 will be operational before construction of Project 2 begins. Wind turbine presence and/or operations is, in general, likely to result in oceanographic effects in the marine environment, and may alter aggregations and distribution of marine mammal zooplankton prey and other species through changing the strength of tidal currents and associated fronts, changes in stratification, primary production, the degree of mixing, and stratification in the water column (Schultze *et al.*, 2020; Chen *et al.*, 2021; Johnson *et al.*, 2021; Christiansen *et al.*, 2022; Dorrell *et al.*, 2022). There is significant uncertainty regarding the extent to and rate at which changes may occur, how potential changes might impact various marine mammal prey species (*e.g.*, fish, copepods), and how or if impacts to prey species might result in impacts to marine mammal foraging that may result in fitness consequences. Importantly, the Project Area is not a primary or unique foraging ground for any marine mammal species.

The oceanographic and atmospheric effects from the presence and operation of wind turbines are possible at a range of temporal and spatial scales, based on regional and local oceanographic and atmospheric conditions as well as the size and locations of wind farms. In general, the disturbance of wind speed and wind wakes from operational wind farms can cause oceanic responses such as upwelling, downwelling, and desertification (van Berkel *et al.*, 2020; Dorrell *et al.*, 2022; Floeter *et al.*, 2022). Other physical impacts include thermal stratification and increases in turbulence, eddies, sediment erosion, and turbidity. These changes may be beneficial (*e.g.*, upwelling may increase primary production) or adverse. The Atlantic Shores South Biological Opinion provided an evaluation of the impacts to ESA-listed marine mammals and their habitat, which include species that consume both fish and plankton, from the presence and approximately 35-year operation of the Project. While this final rule considers the potential impacts on marine mammal habitat for the 5-year effective period of this rule,

the Biological Opinion provides a comprehensive evaluation of the types and degree of impacts that may occur to marine mammal habitat and its conclusion therein regarding impacts to ESA-listed species and their habitat can be generally applied to all marine mammals considered in this final rule. For reasons described in the Biological Opinion, effects to ESA-listed marine mammal species habitat from the construction and 35-year operation of the Project would be so small that they cannot be meaningfully measured, evaluated, or detected.

As described in the proposed rule and this final rule, the Project Area is not a primary or unique foraging ground for any marine mammal species. While marine mammals do engage in critical behavior such as foraging, mating, and calving in the Project Area (for some species), given the availability of similar habitat nearby, the physical and biological impacts of construction and operation of the Project on marine mammal habitat is not anticipated to be meaningful. NMFS concludes that impacts to marine mammal habitat from presence and operation of Atlantic Shores South during the 5-year effective period of this rule would, similar to the conclusions reached in the Biological Opinion, not have impacts on marine mammal habitat that would result in effects to populations through annual rates of recruitment or survival.

Mitigation To Reduce Impacts on All Species

As previously described in greater detail, this rulemaking includes a variety of mitigation measures designed to minimize to the extent practicable impacts on all marine mammals, with additional mitigation focused on North Atlantic right whales (the latter is described in more detail below). For impact pile driving of WTG, OSS, and Met Tower foundation piles, ten overarching measures are required, which are intended to reduce both the number and intensity of marine mammal takes: (1) seasonal work restrictions; (2) use of multiple PSOs to visually observe for marine mammals (with any detection within specifically designated zones that would trigger a delay or shutdown); (3) use of PAM to acoustically detect marine mammals, with a focus on detecting baleen whales (with any detection within designated zones triggering delay or shutdown); (4) implementation of clearance zones; (5) implementation of shutdown zones; (6) use of soft-start and ramp ups; (7) use of noise attenuation technology (*i.e.*, double bubble curtain); (8) maintaining situational awareness of marine

mammal presence through the requirement that any marine mammal sighting(s) by Project Company 1 personnel must be reported to PSOs; (9) SFV monitoring; and (10) Vessel Strike Avoidance measures to reduce the risk of a collision with a marine mammal and vessel. For temporary cofferdam installation and removal, we are requiring five overarching measures: (1) seasonal/time of day work restrictions; (2) use of multiple PSOs to visually observe for marine mammals (with any detection with specifically designated zones that would trigger a delay or shutdown); (3) implementation of clearance zones; (4) implementation of shutdown zones; and (5) maintaining situational awareness of marine mammal presence through the requirement that any marine mammal sighting(s) by Project Company 1 personnel must be reported to PSOs. Lastly, for HRG surveys, we are requiring six measures: (1) measures specifically for Vessel Strike Avoidance; (2) specific requirements during daytime and nighttime HRG surveys; (3) implementation of clearance zones; (4) implementation of shutdown zones; (5) use of ramp-up of acoustic sources; and (6) maintaining situational awareness of marine mammal presence through the requirement that any marine mammal sighting(s) by Project Company 1 personnel must be reported to PSOs.

The Mitigation section discusses the manner in which the required mitigation measures reduce the magnitude and/or severity of takes of marine mammals. Seasonal restrictions on select activities avoid impacts from the activities during the indicated time periods, which are targeted towards times with higher densities or important behaviors. Use of a soft-start during impact pile driving will allow animals to move away from (*i.e.*, avoid) the sound source prior to applying higher hammer energy levels needed to install the pile (Project Company 1 will not use a hammer energy greater than necessary to install piles). Similarly, ramp-up during HRG surveys would allow animals to move away and avoid the acoustic sources before they reach their maximum energy level. For all activities, clearance zone and shutdown zone implementation, which are required when marine mammals are within given distances associated with certain impact thresholds for all activities, will reduce the magnitude and severity of marine mammal take. Additionally, the use of multiple PSOs (WTG, OSS, and Met Tower foundation installation; temporary cofferdam installation and removal; HRG surveys),

PAM operators (for permanent foundation installation), and maintaining awareness of marine mammal sightings reported in the region (WTG, OSS, and Met Tower foundation installation; temporary cofferdam installation and removal; HRG surveys) will aid in detecting marine mammals that would trigger the implementation of the mitigation measures. The reporting requirements including SFV reporting (for foundation installation and foundation operation), will assist NMFS in identifying if impacts beyond those analyzed in this final rule are occurring, potentially leading to the need to enact adaptive management measures in addition to or in place of the mitigation measures.

Mysticetes

Five mysticete species (comprising five stocks) of cetaceans (*i.e.*, North Atlantic right whale, fin whale, humpback whale, minke whale, and sei whale) may be taken by harassment, with three of these listed by the ESA (*i.e.*, North Atlantic right whale, fin whale, sei whale). These species, to varying extents, utilize the specified geographic region, including the Project Area, for the purposes of migration, foraging, and socializing. Mysticetes are in the low-frequency hearing group.

Behavioral data on mysticete reactions to pile-driving noise are scant. Kraus *et al.* (2019) predicted that the three main impacts of offshore wind farms on marine mammals would consist of displacement, behavioral disruptions, and stress. Broadly, we can look to studies that have focused on other noise sources such as seismic surveys and military training exercises, which suggest that exposure to loud signals can result in avoidance of the sound source (or displacement if the activity continues for a longer duration in a place where individuals would otherwise have been staying, which is less likely for mysticetes in this area), disruption of foraging activities (if they are occurring in the area), local masking around the source, associated stress responses, and impacts to prey, as well as TTS or PTS, in some cases.

NMFS reviewed recent PSO observational data from offshore wind projects in southern New England (*i.e.*, South Fork at OCS-A-0517 and Vineyard Wind 1 at OCS-A-0501) where pile driving construction activities occurred. During pile-driving construction activities for Vineyard Wind 1, in 2023 from early June through December (RPS, 2023), there were 36 whale observations consisting of 4 unidentified non-North Atlantic right whales, 17 detections of humpback

whales, eight detections of fin whales, six detections of minke whales, and one unidentified baleen whale (RPS, 2023). Three of these observations of mysticetes (one humpback whale sighting, one fin whale sighting, and one group of three fin whales) occurred while the hammer was engaged (which was operating at full power). Behaviors noted included surfacing, blowing, fluking, and feeding. At South Fork, a total of 39 hours 32 minutes of active impact pile driving was conducted across installation of the 13 monopiles on 15 different days. The most PSO visual watch effort occurred aboard the Boklift 2 (908 hours), and PSO effort from the four dedicated monitoring vessels ranged from 426 to 757 hours. In total (with and without pile driving) foundation installation PSOs observed 348 mysticete groups comprising 552 individuals; 29 of these detections, totaling 51 individuals, occurred during pile driving (table 14 in South Fork Wind (2023)). None of the observed behaviors of mysticetes noted by either the Vineyard Wind 1 or South Fork PSOs were indicative of distress, alarm, or other adverse reactions (RPS, 2023; South Fork Wind, 2023).

Mysticetes encountered in the Project Area are expected to primarily be migrating and may be engaged in opportunistic foraging behaviors. The extent to which an animal engages in these behaviors in the area is species-specific and varies seasonally. Many mysticetes are expected to predominantly be migrating through the Project Area towards or from feeding ground located further north (e.g., southern New England region, Gulf of Maine, Canada). While we acknowledged above that mortality, hearing impairment, or displacement of mysticete prey species may result locally from impact pile driving, the very short duration of and broad availability of prey species in the area and the availability of alternative suitable foraging habitat for the mysticete species most likely to be affected, any impacts on mysticete foraging are expected to be minor. Whales that choose to opportunistically forage and are temporarily displaced from the Project Area are expected to have sufficient remaining similar feeding habitat available to them in the area and, further, would not be prevented from feeding in other areas within the biologically important feeding habitats found further north. In addition, any displacement of whales or interruption of opportunistic foraging bouts would be expected to be relatively temporary in nature.

The potential for repeated exposures is dependent upon the residency time of whales, with migratory animals unlikely to be exposed on repeated occasions and animals remaining in the area to be more likely exposed repeatedly. For mysticetes, where relatively low numbers of species-specific take by Level B harassment are predicted (compared to the abundance of each mysticete species or stock, such as is indicated in table 24) and movement patterns suggest that individuals would not necessarily linger in a particular area for multiple days, each predicted take likely represents an exposure of a different individual with perhaps, for a few species, a subset of takes potentially representing a small number of repeated takes of a limited number of individuals across multiple days. In other words, the behavioral disturbance to any individual mysticete would, therefore, likely occur within a single day within a year, or potentially across a few days.

In general, for this Project, the duration of exposures would not be continuous throughout any given day, and pile driving would not occur on all consecutive days within a given year due to weather delays or any number of logistical constraints Project Company 1 has identified. Species-specific analysis regarding potential for repeated exposures and impacts is provided below.

Fin, humpback, minke, and sei whales are the mysticete species for which PTS is anticipated and allowed (see table 23). As described previously, PTS for mysticetes from impact pile driving may overlap frequencies used for communication, navigation, or detecting prey. However, given the nature and duration of the activity, the mitigation measures, and likely avoidance behavior, any PTS is expected to be of a small degree, would be limited to frequencies where pile-driving noise is concentrated (*i.e.*, only a small subset of their expected hearing range) and would not be expected to impact reproductive success or survival.

North Atlantic Right Whale

North Atlantic right whales are listed as endangered under the ESA, and the western Atlantic stock is considered depleted and strategic under the MMPA. As described in the Potential Effects to Marine Mammals and Their Habitat section of the proposed rule (88 FR 65430, September 22, 2023), North Atlantic right whales are threatened by a low population abundance, higher than average mortality rates, and lower than average reproductive rates. Recent studies have reported individuals showing high stress levels (*e.g.*,

Corkeron *et al.*, 2017) and poor health, which has further implications on reproductive success and calf survival (Christiansen *et al.*, 2020; Stewart *et al.*, 2021; Stewart *et al.*, 2022). As described below, a UME has been designated for North Atlantic right whales. Given this, the status of the North Atlantic right whale population is of heightened concern and, therefore, merits additional analysis and consideration. No injury or mortality is anticipated or allowed for this species.

For North Atlantic right whales, this final rulemaking allows up to 25 takes, by Level B harassment only, over the 5-year period, with a maximum annual allowable take of 13 (equating to approximately 3.82 percent of the stock abundance, if each take were considered to be of a different individual), with lower numbers than that expected in the years without foundation installation (*e.g.*, years when only cofferdam installation and/or HRG surveys would be occurring). No disruptions to primary foraging or calving is expected from the activities associated with the Project as North Atlantic right whales utilize areas outside of the Project Area for their main feeding, breeding, and calving activities. While opportunistic foraging may occur in the Project Area (see Whitt *et al.* (2013)'s skim feeding observations off the coast of Barnegat Bay, New Jersey), the habitat does not support prime foraging habitat.

The waters off the coast of New Jersey, including those surrounding the Project Area in the NJ WEA, is an important migratory route for the species to the northern feeding areas near the Gulf of Maine and Georges Banks and to their southern breeding and calving grounds off the southeastern U.S. (CETAP, 1982; Knowlton and Kraus, 2001; Knowlton *et al.*, 2022; Biedron *et al.*, 2009; DoC, 2016b). Migrating North Atlantic right whales have been acoustically detected north of the Project Area in the New York Bight from February to May and August through December (Biedron *et al.*, 2009). Similarly, given the species' migratory behavior in the Project Area, we anticipate individual whales would be typically migrating through the area during months when foundation installation would not occur (given the seasonal restrictions on foundation installation, rather than lingering for extended periods of time). While North Atlantic right whale presence in the Project Area is known as being year-round (see Davis *et al.*, 2017), the abundance during summer months is much lower compared to the winter months with spring and fall serving as "shoulder seasons" wherein abundance

waxes (fall) or wanes (spring). The greatest densities occur from December through April (Roberts *et al.*, 2016a; Roberts *et al.*, 2023; Roberts *et al.*, 2024), outside of the months of Project Company 1's planned foundation installation activities and when the seasonal pile driving moratorium would be active (with a limited exception for December, if NMFS approves December foundation pile driving). Therefore, we anticipate that any individual whales would typically be migrating through the Project Area and would not be lingering for extended periods of time and, further, fewer would be present in the months when foundation installation would be occurring. Other activities by Project Company 1 that involve either much smaller harassment zones (e.g., HRG surveys) or are limited in amount (e.g., cable landfall construction) may also occur during periods when North Atlantic right whales are using the habitat for migration. It is important to note the activities that could be occurring from January (and possibly December) through April that may impact North Atlantic right whales would be primarily nearshore cable landfall activities (*i.e.*, cofferdam installation and removal) and HRG surveys. Cofferdam work is restricted to nearshore waters, where the water is shallower and where it is less likely for North Atlantic right whales to be present. HRG surveys would not result in very high received levels or prolonged exposure. As any North Atlantic right whales within the Project Area would likely be engaged in migratory behavior (LaBrecque *et al.*, 2015), it is likely that the allowed instances of take would occur to separate individual whales and, thereby unlikely than any single individual would be taken on more than one day, or possibly two days, within a year. Across all years, if an individual were to be exposed during a subsequent year, the impact of that exposure is likely independent of the previous exposure given the duration between exposures.

As described in the Description of Marine Mammals in the Specific Geographic Region section, North Atlantic right whales are presently experiencing an ongoing UME (beginning in June 2017). Preliminary findings support human interactions, specifically vessel strikes and entanglements, as the cause of death for the majority of North Atlantic right whales. Given the current status of the North Atlantic right whale, the loss of even one individual could significantly impact the population. No mortality,

serious injury, or injury of North Atlantic right whales as a result of the Project is expected or allowed. Any disturbance to North Atlantic right whales due to Project Company 1's activities is expected to result in at most temporary avoidance of the immediate area of construction. As no injury, serious injury, or mortality is expected or allowed, and Level B harassment of North Atlantic right whales will be reduced to the level of least practicable adverse impact through use of mitigation measures, the allowed number of takes of North Atlantic right whales would not exacerbate or compound the effects of the ongoing UME.

As described in the general *Mysticetes* section above, foundation installation is likely to result in the highest number of annual takes and is of greatest concern given loud source levels. This activity is expected to consist of an approximate total of 201 days over 2 years for WTG and Met Tower installation. For large OSS foundation installation, it is assumed that up to 24 days are necessary for all 4 large OSS foundations to be installed. For WTGs and the Met Tower using monopiles, this assumes that a single WTG monopile is installed per day (*i.e.*, 24-hour period). For WTGs using jacket foundations within pin piles, this assumes 4 pin piles are installed per day. For OSSs using pin piles, this assumes 4 pin piles are installed per day. If Project Company 1 would, on some days, install up to 2 monopile foundations for WTGs or the Met Tower, this would reduce the overall amount of take as the number of days for total pile driving would be expected to have been reduced, meaning the estimate as presented herein is conservative to assume the maximum installation scenario. Project Company 1 has provided a realistic construction schedule (e.g., Project Company 1's schedule reflects the maximum number of piles they anticipate to be able to drive each month in which pile driving is allowed to occur), although we recognize schedules may shift for a variety of reasons (e.g., weather or supply delays). However, the total number of takes would not exceed the 5-year allowable totals or the maximum annual totals in any given year indicated in tables 23 and 24, respectively. In all cases, these activities would only occur during times when, based on the best available scientific data, North Atlantic right whales are less frequently encountered due to their migratory behavior. The potential types, severity, and magnitude of impacts are

also anticipated to mirror that described in the general *Mysticetes* section above, including avoidance (the most likely outcome), changes in foraging or vocalization behavior, masking, a small amount of TTS, and temporary physiological impacts (e.g., change in respiration, change in heart rate). The effects of the activities are expected to be sufficiently low-level and localized to specific areas as to not meaningfully impact important behaviors such as migratory behavior of North Atlantic right whales. These takes are expected to result in temporary behavioral reactions, such as slight displacement (but not abandonment) of migratory habitat or temporary cessation of feeding. Further, given these exposures are generally expected to occur to different individual right whales migrating through (*i.e.*, most individuals would not be impacted on more than 1 day in a year), with some subset potentially being exposed on no more than a few days within the year, they are unlikely to result in energetic consequences that could affect reproduction or survival of any individuals.

Overall, NMFS expects that any behavioral harassment of North Atlantic right whales incidental to the specified activities would not result in changes to their migration patterns or foraging success, as only temporary avoidance of an area during construction is expected to occur. As described previously, North Atlantic right whales migrating through the Project Area are not expected to remain in this habitat for extensive durations, and any temporarily displaced animals would be able to return to or continue to travel through and opportunistically forage in these areas once activities have ceased.

Although acoustic masking may occur in the vicinity of the foundation installation activities, based on the acoustic characteristics of noise associated with pile driving (e.g., frequency spectra, short duration of exposure) and construction surveys (e.g., intermittent signals), NMFS expects masking effects to be minimal (e.g., impact pile driving) to none (e.g., HRG surveys). In addition, masking would likely only occur during the period of time that a North Atlantic right whale is in the relatively close vicinity of pile driving, which would be rare, given pile driving is intermittent within a day and confined to the months in which North Atlantic right whales are at lower densities and primarily moving through the area, the anticipated mitigation effectiveness, and the likely avoidance behaviors. 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, any TTS would likely be of low amount, limited duration, and limited to frequencies where most construction noise is centered (below 2 kHz). NMFS expects that right whale hearing sensitivity would return to pre-exposure levels shortly after migrating through the area or moving away from the sound source.

As described in the Potential Effects to Marine Mammals and Their Habitat section of the proposed rule (88 FR 65430, September 22, 2023), the distance of the receiver to the source influences the severity of response with greater distances typically eliciting less severe responses. NMFS recognizes North Atlantic right whales migrating could be pregnant females (in the fall) and cows with older calves (in spring) and that these animals may slightly alter their migration course in response to any foundation pile driving; however, as described in the Potential Effects to Marine Mammals and Their Habitat section of the proposed rule (88 FR 65430, September 22, 2023), we anticipate that course diversion would be of small magnitude. Hence, while some avoidance of the pile-driving activities may occur, we anticipate any avoidance behavior of migratory North Atlantic right whales would be similar to that of gray whales (Tyack *et al.*, 1983), on the order of hundreds of meters up to 1 to 2 km (0.62 to 1.24 mi). This diversion from a migratory path otherwise uninterrupted by the Project's activities is not expected to result in meaningful energetic costs that would impact annual rates of recruitment of survival. NMFS expects that North Atlantic right whales would be able to avoid areas during periods of active noise production while not being forced out of this portion of their habitat.

North Atlantic right whale presence in the Project Area is year-round. However, abundance during summer months is lower compared to the winter months with spring and fall serving as "shoulder seasons" wherein abundance waxes (fall) or wanes (spring). Given this year-round habitat usage, in recognition that where and when whales may actually occur during Project activities is unknown as it depends on the annual migratory behaviors, NMFS is requiring a suite of mitigation measures designed to reduce impacts to North Atlantic right whales to the maximum extent practicable.

These mitigation measures (*e.g.*, seasonal/daily work restrictions, vessel separation distances, reduced vessel speed) would not only avoid the likelihood of vessel strikes but also would minimize the severity of behavioral disruptions by minimizing impacts (*e.g.*, through sound reduction using attenuation systems and reduced spatio-temporal overlap of Project activities and North Atlantic right whales). This would further ensure that the number of takes by Level B harassment that are estimated to occur are not expected to affect reproductive success or survivorship via detrimental impacts to energy intake or cow/calf interactions during migratory transit. However, even in consideration of recent habitat use and distribution shifts, Project Company 1 would still be installing foundations when the presence of North Atlantic right whales is expected to be lower.

As described in the Description of Marine Mammals in the Specific Geographic Region section, Project Company 1 would be constructed within the North Atlantic right whale migratory corridor BIA, which represent areas and months within which a substantial portion of a species or population is known to migrate. The width of the Lease is relatively small (26.4 km (16.4 mi) when measured horizontally at the furthest points from the west to east) when compared with the migratory BIA (177.77 km (101.46 mi) when measured horizontally at the furthest points from west to east). The Lease Areas only overlap approximately 14.8 percent of the migratory corridor. The Lease Areas begin approximately 23 km (14.29 mi) east of the closest point on the coastline of New Jersey. While construction activities would be occurring within the migratory path, its placement in deeper waters no closer than 23 km (14.29 mi) offshore and the fact the foundation installation (the most impactful activity) would not occur during the migration period (*i.e.*, no foundation installation would be allowed to occur from December 1st through April 30th, annually, unless Project Company 1 requests and NMFS and other Federal Agency partners approve, a limited amount of pile driving in December) provides high conservation benefits. Overall North Atlantic right whale migration is not expected to be impacted by the planned activities. There are no known North Atlantic right whale feeding, breeding, or calving areas within the Project Area. Prey species are mobile (*e.g.*, calanoid copepods can initiate rapid and directed escape responses) and are broadly

distributed throughout the Project Area (noting again that North Atlantic right whale prey is not particularly concentrated in the Project Area relative to nearby habitats). Therefore, any impacts to prey that may occur are also unlikely to impact marine mammals.

The most significant measure to minimize impacts to individual North Atlantic right whales is the seasonal moratorium on all foundation installation activities from December 1st through April 30th (unless Project Company 1 requests and NMFS and other Federal Agency partners approve a limited amount of pile driving in December), annually, when North Atlantic right whale abundance in the Project Area is expected to be highest. 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 spring migration through the Project Area from calving grounds to primary foraging grounds (*e.g.*, Cape Cod Bay). NMFS expects that exposures to North Atlantic right whales would be reduced due to the additional mitigation measures that would ensure that any exposures above the Level B harassment threshold would result in only short-term effects to individuals exposed.

Foundation pile driving may only begin in the absence of North Atlantic right whales (based on visual detection and PAM). If foundation pile driving has commenced, NMFS anticipates North Atlantic right whales would avoid the area, utilizing nearby waters to carry on pre-exposure behaviors. However, foundation installation activities must be shut down if a North Atlantic right whale is sighted at any distance or acoustically detected at any distance within the 10-km (6.21-mi) PAM Clearance/Shutdown Zone, unless a shutdown is not feasible due to risk of injury or loss of life. Shutdown may occur anywhere if North Atlantic right whales are seen within or beyond the Level B harassment zone, further minimizing the duration and intensity of exposure. NMFS anticipates that if North Atlantic right whales go undetected and they are exposed to foundation installation noise, it is unlikely a North Atlantic right whale would approach the sound source locations to the degree that they would purposely expose themselves to very high noise levels. This is because typical observed whale behavior demonstrates likely avoidance of harassing levels of sound where possible (Richardson *et al.*, 1985). These measures are designed to avoid PTS and also reduce the severity of Level B

harassment, including the potential for TTS. While some TTS could occur, given the mitigation measures (*e.g.*, delay pile driving upon a sighting or acoustic detection and shutting down upon a sighting or acoustic detection), the potential for TTS to occur is low.

The clearance and shutdown measures are most effective when detection efficacy is maximized, as the measures are triggered by a sighting or acoustic detection. To maximize detection efficacy, NMFS requires the combination of PAM and visual observers. NMFS is requiring communication protocols with other Project vessels, and other heightened awareness efforts (*e.g.*, daily monitoring of North Atlantic right whale sighting databases) such that as a North Atlantic right whale approaches the source (and thereby could be exposed to higher noise energy levels), PSO detection efficacy would increase, the whale would be detected, and a delay to commencing foundation installation or shutdown (if feasible) would occur. In addition, the implementation of a soft-start for foundation impact pile driving would provide an opportunity for whales to move away from the source if they are undetected, reducing received levels. Further, Project Company 1 has committed to not installing two WTG or OSS foundation piles simultaneously. North Atlantic right whales would, therefore, not be exposed to concurrent impact pile driving on any given day from the Project and the area ensonified at any given time would be limited.

Additionally, Project Company 1 did request the ability to perform nighttime pile driving of their foundation piles. In order to receive approval to do so, Project Company 1 is required to provide NMFS with an AMP for review which would describe, in detail, how they would perform and ensure adequate monitoring for protected marine mammal species. This AMP must also describe how mitigative procedures during nighttime (or periods of reduced visibility) would be sufficiently effective and protective. Only upon approval of the AMP would Project Company 1 perform nighttime pile driving. Under approval of an AMP, Project Company 1 is still committed to the installation of up to two monopiles or up to four pin piles per day (which is defined as installation within a 24-hour period). Without a request and approval of the AMP, Project Company 1 would only be able to perform pile driving prior to 1.5 hours before civil sunset and not before 1 hour after civil sunrise. An exception exists due to safety of the crew and stability of the pile whereas if Project Company 1

begins impact pile driving prior to this defined period, they will be allowed to complete the pile. However, even if nighttime pile driving is not carried through with discussions with the applicant but they wish to complete piles after dark that were started outside the temporal restriction period, Project Company 1 is still required to submit for review and approval an AMP to ensure that they can appropriately monitor and mitigate for marine mammals in reduced visibility conditions (*i.e.*, daylight to darkness during active pile driving).

Finally, for HRG surveys, because of the maximum distance to the Level B harassment threshold isopleth (141 m (462.6 ft) via the GeoMarine Geo-Source) as compared to the requirement that vessels maintain a distance of 500 m (1,640 ft) from any North Atlantic right whales, the fact that whales are unlikely to remain in close proximity to an HRG survey vessel for any length of time, and that the acoustic source would be shut down if a North Atlantic right whale is observed within 500 m (1,640 ft) of the source, any exposure to noise levels above the harassment threshold (if any) would be very brief. To further minimize exposures, ramp-up of sparkers and CHIRPs (if applicable) must be delayed during the clearance period if PSOs detect a North Atlantic right whale (or any other ESA-listed species) within 500 m (1,640 ft) of the acoustic source. With implementation of the mitigation requirements, take by Level A harassment is neither anticipated nor allowed during HRG surveys. Potential impacts associated with Level B harassment would include low-level, temporary behavioral modifications, most likely in the form of avoidance behavior. Given the precautions taken to minimize both the number and intensity of Level B harassment on North Atlantic right whales, it is highly unlikely that the anticipated low-level exposures would impact the reproductive success or survival of any marine mammals.

As described previously, no serious injury or mortality, or Level A harassment, of North Atlantic right whale is anticipated or has been allowed. Extensive North Atlantic right whale-specific mitigation measures (beyond the robust suite required for all species) are expected to further minimize the number and severity of takes by Level B harassment. Given the documented habitat use within the area, the majority of the individuals predicted taken (including no more than 25 instances of take, by Level B harassment only, over the course of the 5-year rule, with an annual maximum of no more

than 13 takes) would be impacted on a maximum of 2 days in a year as North Atlantic right whales utilize this area for migration and would be expected to be transiting rather than residing in the area for extended periods of time. Further, any impacts to North Atlantic right whales are expected to be in the form of lower-level behavioral disturbance. Given the magnitude and severity of the impacts discussed above, and in consideration of the required mitigation and other information presented, Project Company 1's activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by Level B harassment anticipated and allowed would have a negligible impact on the North Atlantic right whale stock.

Fin Whale

The fin whale is listed as Endangered under the ESA, and the western North Atlantic stock is considered both Depleted and Strategic under the MMPA. No UME has been designated for this species or stock. No serious injury or mortality is anticipated or allowed for this species.

The rule allows up to 46 takes, by harassment only, over the 5-year effective period of the rule. The maximum annual allowable take, by Level A harassment and Level B harassment, would be 4 and 18, respectively (combined, this annual take ($n=22$) equates to approximately 0.3 percent of the stock abundance, if each take were considered to be of a different individual), with far lower numbers than that expected in the years without foundation installation (*e.g.*, years when only HRG surveys would be occurring). The Project Area does not overlap any known areas of specific biological importance to fin whales. It is likely that some subset of the individual whales exposed could be taken several times annually.

Level B harassment is expected to be in the form of behavioral disturbance, primarily resulting in avoidance of the Project Area where foundation installation is occurring, and some low-level TTS and masking that may limit the detection of acoustic cues for relatively brief periods of time. Any potential PTS would be minor (limited to a few dB) and any TTS would be of short duration and concentrated at half or one octave above the frequency band of pile-driving noise (most sound is below 2 kHz) which does not include the full predicted hearing range of fin whales.

Fin whales are present in the waters off of New Jersey year round and are one of the most frequently observed large whales and cetaceans in continental shelf waters, principally from Cape Hatteras in the Mid-Atlantic northward to Nova Scotia, Canada (Sergeant, 1977; Sutcliffe and Brodie, 1977; CETAP, 1982; Hain *et al.*, 1992; Geo-Marine, 2010; BOEM 2012; Edwards *et al.*, 2015; Hayes *et al.*, 2022). Fin whales have high relative abundance in the Mid-Atlantic and Project Area, most observations occur in the winter and summer months (Geo-Marine, 2010; Hayes *et al.*, 2022) though detections do occur in spring and fall (Watkins *et al.*, 1987; Clark and Gagnon 2002; Geo-Marine, 2010; Morano *et al.*, 2012). However, fin whales typically feed in waters off of New England and within the Gulf of Maine, areas north of the Project Area, as New England and Gulf of St. Lawrence waters represent major feeding ground for fin whales (Hayes *et al.*, 2022). Hain *et al.* (1992), based on an analysis of neonate stranding data, suggested that calving takes place during October to January in latitudes of the U.S. mid-Atlantic region; however, it is unknown where calving, mating, and wintering occur for most of the population (Hayes *et al.*, 2022).

Given the documented habitat use within the area, some of the individuals taken would likely be exposed on multiple days. However, as described the Project Area does not include areas where fin whales are known to concentrate for feeding or reproductive behaviors and the predicted takes are expected to be in the form of lower-level impacts. Given the magnitude and severity of the impacts discussed above (including no more than 46 takes by harassment only over the course of the 5-year rule, and a maximum annual allowable take by Level A harassment and Level B harassment, of 4 and 18, respectively), and in consideration of the required mitigation and other information presented, Project Company 1's activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated and allowed will have a negligible impact on the western North Atlantic stock of fin whales.

Humpback Whale

The West Indies DPS of humpback whales is not listed as threatened or endangered under the ESA, but the Gulf of Maine stock, which includes individuals from the West Indies DPS, is considered Strategic under the

MMPA. However, as described in the Description of Marine Mammals in the Specific Geographic Region section of this preamble, humpback whales along the Atlantic Coast have been experiencing an active UME as elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since January 2016. Of the cases examined, approximately 40 percent had evidence of human interaction (*i.e.*, vessel strike or entanglement). Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or DPS of which the Gulf of Maine stock is a part) remains stable at approximately 12,000 individuals.

The rule allows up to 41 takes by harassment only over the 5-year period. The maximum annual allowable take, by Level A harassment and Level B harassment, is 4 and 17, respectively (combined, this maximum annual take ($n=21$) equates to approximately 1.5 percent of the stock abundance, if each take were considered to be of a different individual), with far lower numbers than that expected in the years without foundation installation (*e.g.*, years when only HRG surveys would be occurring). Given that humpback whales have been commonly sighted off of New Jersey, it is likely that some subset of the individual whales exposed could be taken several times annually.

Among the activities analyzed, pile driving is likely to result in the highest number of Level A harassment annual takes (4) of humpback whales, with up to 8 takes by Level A harassment expected over the entire foundation pile driving period (2026–2027). The maximum number of annual take allowed, by Level B harassment, is highest for foundation pile driving ($n=104$; WTGs plus OSS pin piles), with a total of 21 takes by Level B harassment expected of the 2-year foundation pile driving period (2026–2027).

As described in the Description of Marine Mammals in the Specific Geographic Region section, humpback whales are known to occur regularly throughout the coastal and offshore waters of the Mid-Atlantic Bight, including within New Jersey waters, with strong seasonality where peak occurrences occur April to November during the annual movement to feeding grounds that are located from the south of the New England region to the northern area of Norway (Geo-Marine, 2007). Other scientific literature reports sightings of humpback whales in every season, with the majority of sightings occurring during the winter (Whitt *et al.*, 2015; Brown *et al.*, 2019; King *et al.*, 2021; Zoidis *et al.*, 2021). In the western

North Atlantic, humpback whales feed during spring, summer, and fall over a geographic range encompassing the eastern coast of the U.S. Feeding is generally considered to be focused in areas north of the Project Area, including a feeding BIA in the Gulf of Maine/Stellwagen Bank/Great South Channel but has been documented farther south and off the coast of New Jersey. When foraging, humpback whales tend to remain in the area for extended durations to capitalize on the food sources.

Assuming humpback whales who are feeding in waters within or surrounding the Project Area behave similarly, we expect that the predicted instances of disturbance could be comprised of some individuals that may be exposed on multiple days if they are utilizing the area as foraging habitat (but no more than a few days, given the small number of overall takes). Also similar to other baleen whales, if migrating, such individuals would likely be exposed to noise levels from the Project above the harassment thresholds only once during migration through the Project Area.

For all the reasons described in the *Mysticetes* section above, we anticipate the impacts of this harassment to align with those already described. Any potential PTS would be minor (limited to a few dB), any TTS would be of short duration, and both would be concentrated at half or one octave above the frequency band of pile-driving noise (most sound is below 2 kHz), which does not include the full predicted hearing range of humpback whales. As described in the *Mysticete* section above, if PTS is incurred, it would be of a small degree. Any masking or physiological responses would also be of low magnitude and severity for reasons described above.

Given the magnitude and severity of the impacts discussed above (including no more than 41 takes over the course of the 5-year rule, and a maximum annual allowable take, by Level A harassment and Level B harassment, of 8 and 33, respectively), and in consideration of the required mitigation measures and other information presented, Project Company 1's activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated and allowed will have a negligible impact on the Gulf of Maine stock of humpback whales.

Minke Whale

Minke whales are not listed under the ESA, and the Canadian East Coast stock is not considered Depleted nor strategic under the MMPA. There are no known areas of specific biological importance in or adjacent to the Project Area. As described in the Description of Marine Mammals in the Specific Geographic Region section, a UME has been designated for this species but is pending closure. No serious injury or mortality is anticipated or allowed for this species.

The rule allows up to 360 takes, by harassment only, over the 5-year period. The maximum annual allowable take, by Level A harassment and Level B harassment, would be 17 and 161, respectively (combined, this maximum annual take ($n=178$) equates to approximately 0.8 percent of the stock abundance, if each take were considered to be of a different individual), with far lower numbers than that expected in the years without foundation installation (e.g., years when only HRG surveys would be occurring). As described in the Description of Marine Mammals in the Specific Geographic Region section of the proposed rule (88 FR 65430, September 22, 2023), minke whales are common offshore the U.S. Eastern Seaboard with a strong seasonal component in the continental shelf and in deeper, off-shelf waters (CETAP, 1982; Hayes *et al.*, 2022). In the Project area, minke whales are predominantly migratory and their known feeding areas are north, including a feeding BIA in the southwestern Gulf of Maine and George's Bank. Therefore, they would be more likely to be moving through (with each take representing a separate individual), though it is possible that some subset of the individual whales exposed could be taken up to a few times annually.

As described in the Description of Marine Mammals in the Specified Geographic Region section, there is a UME for minke whales (see <https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2024-minke-whale-unusual-mortality-event-along-atlantic-coast>), along the Atlantic coast from Maine through South Carolina, with highest number of deaths in Massachusetts, Maine, and New York, and preliminary findings in several of the whales have shown evidence of human interactions or infectious diseases. However, we note that the population abundance is greater than 21,000 and the take allowed through this action is not expected to exacerbate the UME in any way.

We anticipate the impacts of this harassment to follow those described in the general *Mysticetes* section above. Any potential PTS would be minor (limited to a few dB), any TTS would be of short duration, and both would be concentrated at half or one octave above the frequency band of pile-driving noise (most sound is below 2 kHz) which does not include the full predicted hearing range of minke whales. Level B harassment would be temporary, with primary impacts being temporary displacement of the Project Area but not abandonment of any migratory or foraging behavior.

Given the magnitude and severity of the impacts discussed above (including no more than 360 takes of the course of the 5-year rule, and a maximum annual allowable take that is reasonably expected to occur by Level A harassment and Level B harassment, of 17 and 161, respectively), and in consideration of the required mitigation and other information presented, Project Company 1's activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated and allowed will have a negligible impact on the Canadian Eastern Coastal stock of minke whales.

Sei Whale

Sei whales are listed as Endangered under the ESA, and the Nova Scotia stock is considered both Depleted and Strategic under the MMPA. There are no known areas of specific biological importance in or adjacent to the Project Area and no UME has been designated for this species or stock. No serious injury or mortality is anticipated or allowed for this species.

The rule allows up to 28 takes, by harassment only, over the 5-year period. The maximum annual allowable take by Level A harassment and Level B harassment, would be 2 and 11, respectively (combined, this maximum annual take ($n=13$) equates to approximately 0.2 percent of the stock abundance, if each take were considered to be of a different individual). As described in the Description of Marine Mammals in the Area of Specified Activities section of the proposed rule (88 FR 65430, September 22, 2023), most of the sei whale distribution is concentrated in Canadian waters and seasonally in northerly U.S. waters, though they are uncommonly observed in the waters off of New Jersey. Because sei whales are migratory and their known feeding areas are east and north of the Project Area (e.g., there is a

feeding BIA in the Gulf of Maine), they would be more likely to be moving through and, considering this and the very low number of total takes, it is unlikely that any individual would be exposed more than once within a given year.

With respect to the severity of those individual takes by behavioral Level B harassment, we would anticipate impacts to be limited to low-level, temporary behavioral responses with avoidance and potential masking impacts in the vicinity of the turbine installation to be the most likely type of response. Any potential PTS would be minor (limited to a few dB), any TTS would be of short duration, and both would be concentrated at half or one octave above the frequency band of pile-driving noise (most sound is below 2 kHz) which does not include the full predicted hearing range of sei whales. Moreover, any TTS would be of a small degree. Any avoidance of the Project Area due to the Project's activities would be expected to be temporary with no abandonment of any migratory or foraging behavior.

Given the magnitude and severity of the impacts discussed above (including no more than 28 takes of the course of the 5-year rule, and a maximum annual allowable take by Level A harassment and Level B harassment, of 2 and 11, respectively), and in consideration of the required mitigation and other information presented, Project Company 1's activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated and allowed will have a negligible impact on the Nova Scotia stock of sei whales.

Odontocetes

In this section, we include information here that applies to all of the odontocete species and stocks addressed below. Odontocetes include dolphins, porpoises, and all other whales possessing teeth. Nine odontocete species (comprising ten stocks) of cetaceans (*i.e.*, sperm whale, Atlantic spotted dolphin, Atlantic white-sided dolphin, bottlenose dolphin, common dolphin, long-finned pilot whale, short-finned pilot whale, Risso's dolphin, harbor porpoise) may be taken by harassment, with one of these listed by the ESA (*i.e.*, sperm whale). These species, to varying extents, utilize the specified geographic region, including the Project Area, for the purposes of migration, foraging, and socializing. Odontocetes are in the mid-

frequency hearing group. In this section, we further divide them into the following subsections: sperm whales, dolphins and small whales, and harbor porpoises. These sub-sections include more specific information, as well as conclusions for each stock represented.

All of the takes of odontocetes allowed incidental to Project Company 1's specified activities are by pile driving and HRG surveys. No serious injury or mortality is anticipated or allowed. We anticipate that, given ranges of individuals (*i.e.*, that some individuals remain within a small area for some period of time), and non-migratory nature of some odontocetes in general (especially as compared to mysticetes), these takes are more likely to represent multiple exposures of a smaller number of individuals than is the case for mysticetes, though some takes may also represent one-time exposures to an individual. Foundation installation is likely to disturb odontocetes to the greatest extent, compared to HRG surveys. While we expect animals to avoid the area during foundation installation, their habitat range is extensive compared to the area ensouffled during these activities.

As described earlier, Level B harassment may include direct disruptions in behavioral patterns (*e.g.*, avoidance, changes in vocalizations (from masking) or foraging), as well as those associated with stress responses or TTS. Odontocetes are highly mobile species and similar to mysticetes, NMFS expects any avoidance behavior to be limited to the area near the sound source. While masking could occur during foundation installation, it would only occur in the vicinity of and during the duration of the activity, and would not generally occur in a frequency range that overlaps most odontocete communication or any echolocation signals. The mitigation measures (*e.g.*, use of sound attenuation systems, implementation of clearance and shutdown zones) would also minimize received levels such that the severity of any behavioral response would be expected to be less than exposure to unmitigated noise exposure.

Any masking or TTS effects are anticipated to be of low-severity. First, the frequency range of pile driving, the most impactful activity to be conducted in terms of response severity, falls within a portion of the frequency range of most odontocete vocalizations. However, odontocete vocalizations span a much wider range than the low frequency construction activities planned for the Project. As described above, recent studies suggest odontocetes have a mechanism to self-

mitigate (*i.e.*, reduce hearing sensitivity) the impacts of noise exposure, which could potentially reduce TTS impacts. Any masking or TTS is anticipated to be limited and would typically only interfere with communication within a portion of an odontocete's range and as discussed earlier, the effects would only be expected to be of a short duration and, for TTS, a relatively small degree.

Furthermore, odontocete echolocation occurs predominantly at frequencies significantly higher than low frequency construction activities. Therefore, there is little likelihood that threshold shift would interfere with feeding behaviors. For HRG surveys, the sources operate at higher frequencies than foundation installation activities. However, sounds from these sources attenuate very quickly in the water column, as described above. Therefore, any potential for PTS and TTS and masking is very limited. Further, odontocetes (*e.g.*, common dolphins, spotted dolphins, bottlenose dolphins) have demonstrated an affinity to bow-ride actively surveying HRG surveys. Therefore, the severity of any harassment, if it does occur, is anticipated to be minimal based on the lack of avoidance previously demonstrated by these species.

The waters off the coast of New Jersey are used by several odontocete species. However, none except the sperm whale are listed under the ESA, and there are no known habitats of particular importance. In general, odontocete habitat ranges are far-reaching along the Atlantic coast of the U.S. and the waters off of New Jersey, including the Project Area, do not contain any particularly unique odontocete habitat features.

Sperm Whale

Sperm whales are listed as endangered under the ESA, and the North Atlantic stock is considered both Depleted and Strategic under the MMPA. The North Atlantic stock spans the East Coast out into oceanic waters well beyond the U.S. exclusive economic zone. Although listed as endangered, the primary threat faced by the sperm whale across its range (*i.e.*, commercial whaling) has been eliminated. Current potential threats to the species globally include vessel strikes, entanglement in fishing gear, anthropogenic noise, exposure to contaminants, climate change, and marine debris. There is no currently reported trend for the stock and, although the species is listed as endangered under the ESA, there are no specific issues with the status of the stock that cause particular concern (*e.g.*, no UMEs). There are no known areas of

biological importance (*e.g.*, critical habitat or BIAs) in or near the Project Area. No mortality or serious injury is anticipated or allowed for this species.

The rule allows up to 15 takes, by Level B harassment only over the 5-year period. The maximum annual allowable take by Level B harassment, is seven, which equates to approximately 0.12 percent of the stock abundance, if each take were considered to be of a different individual, with no take expected in the years without foundation installation (*e.g.*, years when only HRG surveys would be occurring). Given sperm whale's preference for deeper waters, especially for feeding, it is unlikely that individuals will remain in the Project Area for multiple days, and therefore, the estimated takes likely represent exposures of different individuals on 1 day annually.

If sperm whales are present in the Project Area during any Project activities, they will likely be only transient visitors and not engaging in any significant behaviors. Further, the potential for TTS is low for reasons described in the general *Odontocete* section, but if it does occur, any hearing shift would be small and of a short duration. Because whales are not expected to be foraging in the Project Area, any TTS is not expected to interfere with foraging behavior.

Given the magnitude and severity of the impacts discussed above (including no more than 15 takes, by Level B harassment only, over the course of the 5-year rule, and a maximum annual allowable take of 7), and in consideration of the required mitigation and other information presented, Project Company 1's activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by Level B harassment anticipated and allowed will have a negligible impact on the North Atlantic stock of sperm whales.

Dolphins and Small Whales

The 7 species and 8 stocks included in this group (which are indicated in table 2 in the *Delphinidae* families) are not listed under the ESA; however, the Northern Migratory Coastal stock of bottlenose dolphins and short-finned pilot whales are listed as Strategic under the MMPA. There are no known areas of specific biological importance in or around the Project Area. As described above, no UMEs have been designated for any of these species. No serious injury or mortality is anticipated or allowed for these species.

The 7 delphinid species (constituting 8 stocks) with takes allowed for the Project are Atlantic spotted dolphin, Atlantic white-sided dolphin, bottlenose dolphin, common dolphin, long-finned pilot whale, short-finned pilot whale, and Risso's dolphin. The rule would allow for 2 (Atlantic white-sided dolphin) to 3 (Risso's dolphin) takes by Level A harassment and 52 to 8,153 takes (depending on species) by Level B harassment only, over the 5-year period. The maximum annual allowable take for these species by Level A harassment would range from 0 (multiple delphinid species) to 1 (Atlantic white-sided dolphin) and 2 (Risso's dolphin), and Level B harassment would range from 20 (short-finned pilot whale) to 3,836 (bottlenose dolphin—Western North Atlantic Offshore stock). Overall, the maximum annual take equates to approximately 0.11 (short-finned pilot whale) to 29.36 (bottlenose dolphin—Northern Migratory Coastal stock) percent of each species/stock's abundance (species/stock-dependent), if each take were considered to be of a different individual, which is not likely the case, with far lower numbers than that expected in the years without pile driving activities (e.g., years when only HRG surveys would be occurring). Further, though the estimated numbers of take are comparatively higher than the numbers for mysticetes, we note that for all species they are relatively low relative to the population abundance.

The number of takes, likely movement patterns of the affected species, and the intensity of any Level B harassment, combined with the availability of alternate nearby foraging habitat suggests that the likely impacts would not impact the reproduction or survival of any individuals. While delphinids may be taken on several occasions, none of these species are known to have small home ranges within the Project Area or known to be particularly sensitive to anthropogenic noise. Some TTS can occur but it would be limited to the frequency ranges of the activity and any loss of hearing sensitivity is anticipated to return to pre-exposure conditions shortly after the animals move away from the source or the source ceases.

For the two stocks of bottlenose dolphins (Offshore and Northern Migratory Coastal stocks), given both the comparatively higher number of allowed takes for each stock and the higher number of allowed takes relative to each stock's abundance (refer back to table 24), while some of the takes likely represent exposures of different individuals on 1 day a year, it is likely that some subset of the individuals exposed could be taken several times

annually. Further, as for most other dolphin species and as described above for odontocetes broadly, given the number of estimated takes for some species and the behavioral patterns of odontocetes, we anticipate that a fair number of these instances of take in a day represent a few exposures each of a smaller number of individuals, meaning the actual number of individuals taken is lower. Although some amount of repeated exposure to some individuals is likely given the duration of activity planned by Project Company 1, the intensity of any Level B harassment combined with the availability of alternate nearby foraging habitat suggests that the likely impacts would not impact the reproduction or survival of any individuals.

Overall, most of the populations of all delphinid and small whale species and stocks for which we allow take are stable (no declining population trends). For others, two stocks are labeled as strategic (i.e., Northern Migratory Coastal stock of bottlenose dolphins and Western North Atlantic stock of short-finned pilot whales). Neither of these stocks are experiencing existing UMEs. No mortality, serious injury, or Level A harassment is anticipated or allowed for either of these species. Given the magnitude and severity of the impacts discussed above and in consideration of the required mitigation and other information presented, as well as the status of these stocks, Project Company 1's activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated and allowed will have a negligible impact on all of the species and stocks addressed in this section.

Harbor Porpoises

Harbor porpoises are not listed under the ESA, and the Gulf of Maine/Bay of Fundy stock is considered neither depleted nor strategic under the MMPA. The stock is found predominantly in northern U.S. coastal waters (less than 150 m (492.13 ft) depth) and up into Canada's Bay of Fundy (between New Brunswick and Nova Scotia). Although the population trend is not known, there are no UMEs or other factors that cause particular concern for this stock. No mortality or non-auditory injury are anticipated or allowed for this stock.

The rule allows up to 359 takes, by harassment only, over the 5-year period. The maximum annual allowable take by Level A harassment and Level B harassment, would be 13 and 191, respectively (combined, this annual take

($n=204$) equates to approximately 0.24 percent of the stock abundance, if each take were considered to be of a different individual). Given the number of takes, while many of the takes likely represent exposures of different individuals on 1 day a year, some subset of the individuals exposed could be taken up to a few times annually.

Regarding the severity of takes by Level B harassment, because harbor porpoises are particularly sensitive to noise, it is likely that a fair number of the responses could be of a moderate nature, particularly to pile driving. In response to pile driving, harbor porpoises are likely to avoid the area during construction, as previously demonstrated in Tougaard *et al.* (2009) in Denmark, in Dahne *et al.* (2013) in Germany, and in Vallejo *et al.* (2017) in the United Kingdom, although a study by Graham *et al.* (2019) may indicate that the avoidance distance could decrease over time. Given no primary foraging habitat is known off the New Jersey coast, any avoidance of the area by individuals is not likely to impact the reproduction or survival of any individuals as the porpoises would be able to seek alternative foraging areas.

With respect to PTS and TTS, the effects on an individual are likely relatively low given the frequency bands of pile driving (most energy below 2 kHz) compared to harbor porpoise hearing (150 Hz to 160 kHz peaking around 40 kHz). Specifically, TTS is unlikely to impact hearing ability in their more sensitive hearing ranges, or the frequencies in which they communicate and echolocate. We expect any PTS that may occur to be within the very low end of their hearing range where harbor porpoises are not particularly sensitive and any PTS would be of small magnitude. As such, any PTS would not interfere with key foraging or reproductive strategies necessary for reproduction or survival.

As discussed in Hayes *et al.* (2022), harbor porpoises are seasonally distributed. During fall (October through December) and spring (April through June), harbor porpoises are widely dispersed from New Jersey to Maine, with lower densities farther north and south. During winter (January to March), intermediate densities of harbor porpoises can be found in waters off New Jersey to North Carolina, and lower densities are found in waters off New York to New Brunswick, Canada. In non-summer months they have been seen from the coastline to deep waters (>1,800 m (>5,905.5 ft); Westgate *et al.*, 1998), although the majority are found over the continental shelf. While harbor porpoises are likely to avoid the area

during any of the Project's construction activities, as demonstrated during European wind farm construction, the time of year in which work would occur is when harbor porpoises are not in highest abundance, and any work that does occur would not result in the species' abandonment of the waters off of New Jersey.

Given the magnitude and severity of the impacts discussed above, and in consideration of the required mitigation and other information presented, Project Company 1's activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated and allowed will have a negligible impact on the Gulf of Maine/Bay of Fundy stock of harbor porpoises.

Phocids (Harbor Seals and Gray Seals)

The harbor seal and gray seal are not listed under the ESA, and neither the western North Atlantic stock of gray seal nor the western North Atlantic stock of harbor seal are considered depleted or strategic under the MMPA. There are no known areas of specific biological importance in or around the Project Area. As described in the Description of Marine Mammals in the Specific Geographic Region section, a UME has been designated for harbor seals and gray seals and is described further below. No serious injury or mortality is anticipated or allowed for this species.

For the harbor seals, this rule allows up to 1,582 takes (12 by Level A harassment and 1,570 by Level B harassment) over the 5-year period. For gray seals, this rule allows up to 702 takes (4 by Level A harassment and 698 by Level B harassment) over the 5-year period. The maximum annual allowable take for each species by Level A harassment would be 2 (gray seal) and 8 (harbor seal), and 323 (gray seal) and 738 (harbor seal) by Level B harassment. Combined, the maximum annual take for each species ($n=325$ for gray seals and $n=738$ for harbor seals) equates to approximately 1.16 and 1.22 percent of the stock abundance, respectively, if each take were considered to be of a different individual). Though harbor seals and gray seals are considered migratory and no specific feeding areas have been designated in the area, the higher number of takes relative to the stock abundance suggests that while some of the takes likely represent exposures of different individuals on 1 day a year, it is likely that some subset of the individuals exposed could be taken several times annually.

Harbor and gray seals occur in New Jersey waters most often from December through April, with harbor seal occurrences being more common than gray seals (Reynolds, 2021). Seals are more likely to be close to shore (e.g., closer to the edge of the area ensounded above NMFS' harassment threshold), such that exposure to foundation installation would be expected to be at comparatively lower levels. A study by Toth *et al.* (2018) found that harbor seals forage on a variety of prey and do not appear to be food specialists and that they might utilize both oceanic environments, as well as more nearshore and shallower estuarine environments for foraging. As described in the Potential Effects to Marine Mammals and Their Habitat section in the proposed rule (88 FR 65430, September 22, 2023), construction of wind farms in Europe resulted in pinnipeds temporarily avoiding construction areas but returning within short time frames after construction was complete (Carroll *et al.*, 2010; Hamre *et al.*, 2011; Hastie *et al.*, 2015; Russell *et al.*, 2016; Brasseur *et al.*, 2010). Effects on pinnipeds that are taken by Level B harassment in the Project Area would likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring). Most likely, individuals would simply move away from the sound source and be temporarily displaced from those areas (see Lucke *et al.*, 2006; Edren *et al.*, 2010; Skeate *et al.*, 2012; Russell *et al.*, 2016).

Given the low anticipated magnitude of impacts from any given exposure (e.g., temporary avoidance), even repeated Level B harassment across a few days of some small subset of individuals, which could occur, is unlikely to result in impacts on the reproduction or survival of any individuals. Moreover, pinnipeds would benefit from the mitigation measures described in 50 CFR part 217—Regulations Governing the Taking and Importing of Marine Mammals Incidental to Specified Activities.

As described above, noise from pile driving is mainly low frequency and, while any PTS and TTS that does occur would fall within the lower end of pinniped hearing ranges (50 Hz to 86 kHz), PTS and TTS would not occur at frequencies around 5 kHz where pinniped hearing is most susceptible to noise-induced hearing loss (Kastelein *et al.*, 2018). In summary, any PTS and TTS would be of small degree and not occur across the entire, or even most sensitive, hearing range. Hence, any impacts from PTS and TTS are likely to

be of low severity and not interfere with behaviors critical to reproduction or survival.

Elevated numbers of harbor seal and gray seal mortalities were first observed in July 2018 and occurred across Maine, New Hampshire, and Massachusetts until 2020 (see <https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-life-distress/2018-2020-pinniped-unusual-mortality-event-along>). Based on tests conducted so far, the main pathogen found in the seals belonging to that UME was phocine distemper virus, although additional testing to identify other factors that may be involved in this UME are underway. This UME is pending closure and considered nonactive. In 2022, another UME was declared is occurring in Maine with some harbor and gray seals testing positive for highly pathogenic avian influenza (HPAI) H5N1 (see <https://www.fisheries.noaa.gov/marine-life-distress/2022-pinniped-unusual-mortality-event-maine-closed>). For harbor seals, the population abundance is over 61,000 and annual M/SI ($n=339$) is well below PBR (1,729) (per the draft 2023 SARs; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports>). The population abundance for gray seals in the United States is over 27,000, with an estimated overall abundance, including seals in Canada, of approximately 450,000. In addition, the abundance of gray seals is likely increasing in the U.S. Atlantic, as well as in Canada (per the draft 2023 SARs; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports>). As no injury, serious injury, or mortality is expected or allowed, and Level B harassment of gray and harbor seals will be reduced to the level of least practicable adverse impact through use of mitigation measures, the allowed number of takes would not exacerbate or compound the effects of the ongoing UME. The 2022 UME has since been closed.

Given the magnitude and severity of the impacts discussed above, and in consideration of the required mitigation and other information presented, Project Company 1's activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated and allowed will have a negligible impact on harbor and gray seals.

Small Numbers

As noted above, only small numbers of incidental take may be allowed 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 estimated to be taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an ITA 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 is authorizing incidental take by Level A harassment and/or Level B harassment only of 16 species of marine mammals (with 17 managed stocks). No mortality or serious injury has been allowed in this final rulemaking. The maximum number of instances of takes by combined Level A harassment and Level B harassment possible within any 1 year relative to the best available population abundance is less than one-third for all species and stocks potentially impacted (see table 24). Further, as described above, for most species, including the Northern Migratory Coastal stock of Bottlenose dolphins which have the highest percentage (29.36), a subset of the instances of take enumerated are expected to represent repeated takes of the same individuals, which means that the numbers of individuals taken are a lower percentage than those listed in table 23 for instances of takes. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers (86 FR 5322, January 19, 2021).

Based on the analysis contained herein of the activities and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals would be taken relative to the population size of the 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.

Classification

Endangered Species Act (ESA)

Section 7(a)(2) of the ESA of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency ensure 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 promulgation of rulemakings, NMFS consults internally whenever we propose to allow take for endangered or threatened species, in this case with the NMFS GARFO.

There are four marine mammal species under NMFS jurisdiction that are listed as endangered or threatened under the ESA that may be taken by harassment incidental to construction of the Atlantic Shores South Project: (1) the North Atlantic right whale; (2) sei whale, (3) fin whale, and (4) sperm whale. The Permit and Conservation Division requested initiation of section 7 consultation on July 19, 2023 with NMFS GARFO on the issuance of these regulations and associated 5-year LOA under section 101(a)(5)(A) of the MMPA.

NMFS issued a Biological Opinion on December 18, 2023 concluding that the promulgation of the rule and issuance of LOA thereunder is not likely to jeopardize the continued existence of threatened and endangered species under NMFS' jurisdiction and is not likely to result in the destruction or adverse modification of designated or proposed critical habitat. The Biological Opinion is available at: <https://www.fisheries.noaa.gov/s3/2024-02/GARFO-2023-01804.pdf>.

Project Company 1 is required to abide by the promulgated regulations, as well as the reasonable and prudent measures and terms and conditions of the Biological Opinion and Incidental Take Statement, as issued by NMFS.

National Environmental Policy Act (NEPA)

To comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order 216–6A, NMFS must evaluate our proposed action (*i.e.*, promulgation of regulation) and alternatives with respect to potential impacts on the human environment. NMFS participated as a cooperating agency on the BOEM final Environmental Impact Statement (FEIS)

for the Atlantic Shores South Project offshore New Jersey (2024 Atlantic Shores South FEIS), which was finalized on May 31, 2024 (89 FR 47174) and is available at: <https://www.boem.gov/renewable-energy/state-activities/atlantic-shores-south>. In accordance with 40 CFR 1506.3, NMFS independently reviewed and evaluated the 2024 Atlantic Shores South FEIS and determined that it is adequate and sufficient to meet our responsibilities under NEPA for the promulgation of this rule and issuance of the associated LOA. NMFS, therefore, has adopted the 2024 Atlantic Shores South FEIS through a joint Record of Decision (ROD) with BOEM. The joint ROD for adoption of the 2024 Atlantic Shores South FEIS and promulgation of this final rule and subsequent issuance of LOA can be found at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>.

Executive Order 12866 (as Amended by Executive Order 14094)

The Office of Management and Budget (OMB) has determined that this rule is not significant for purposes of Executive Order 12866 (58 FR 51735, September 30, 1993; as amended by Executive Order 14094 (88 FR 21879, April 11, 2023)).

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461, August 16, 2002), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3520) unless that collection of information displays a currently valid OMB control number. These requirements have been approved by OMB under control number 0648–0151

and include applications for regulations, subsequent LOA, and reports. Send comments regarding any aspect of this data collection, including suggestions for reducing the burden, to NMFS.

Coastal Zone Management Act (CZMA)

The Coastal Zone Management Act requires that any applicant for a required Federal license or permit to conduct an activity, within the coastal zone or within the geographic location descriptions (*i.e.*, areas outside the coastal zone in which an activity would have reasonably foreseeable coastal effects), affecting any land or water use or natural resource of the coastal zone be consistent with the enforceable policies of a state's federally approved coastal management program. NMFS determined that Project Company 1's application for ITRs is an unlisted activity and, thus, is not subject to Federal consistency requirements in the absence of the receipt and prior approval of an unlisted activity review request from the state by the Director of NOAA's Office for Coastal Management. Pursuant to 15 CFR 930.54, NMFS published a NOR of Project Company 1's application in the **Federal Register** on September 29, 2022 (87 FR 59061), a notice regarding an extension to the application public comment period on October 28, 2022 (87 FR 65193) and published the proposed rule on September 22, 2023 (88 FR 65430). The state of New Jersey did not request approval from the Director of NOAA's Office for Coastal Management to review Project Company 1's application as an unlisted activity, and the time period for making such request has expired. Therefore, NMFS has determined the ITA is not subject to Federal consistency review.

List of Subjects in 50 CFR Part 217

Administrative practice and procedure, Endangered and threatened species, Fish, Fisheries, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: August 27, 2024.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, NMFS amends 50 CFR part 217 to read as follows:

PART 217—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

■ 1. The authority citation for part 217 continues to read:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

■ 2. Add subpart EE, consisting of §§ 217.300 through 217.309, to read as follows:

Subpart EE—Taking Marine Mammals Incidental to the Atlantic Shores South Project Offshore of New Jersey

Sec.

217.300 Specified activity and specified geographical region.

217.301 Effective dates.

217.302 Permissible methods of taking.

217.303 Prohibitions.

217.304 Mitigation requirements.

217.305 Monitoring and reporting requirements.

217.306 Letter of Authorization.

217.307 Modifications of Letter of Authorization.

217.308–217.309 [Reserved]

Subpart EE—Taking Marine Mammals Incidental to the Atlantic Shores South Project Offshore of New Jersey

§ 217.300 Specified activity and specified geographical region.

(a) This subpart applies to activities associated with the Atlantic Shores South Project (hereafter referred to as the “Project”) by Atlantic Shores Offshore Wind Project 1, LLC (*i.e.*, Project Company 1), a joint venture between EDF–RE Offshore Development LLC (a wholly owned subsidiary of EDF Renewables, Inc.) and Shell New Energies US LLC (and a subsidiary of Atlantic Shores Offshore Wind LLC), collectively and hereafter referred to as the Letter of Authorization Holder, or “LOA Holder”, and those persons it authorizes or funds to conduct activities on its behalf in the area outlined in paragraph (b) of this section. Requirements imposed on LOA Holder must be implemented by those persons it authorizes or funds to conduct activities on its behalf.

(b) The specified geographical region is the Mid-Atlantic Bight, which includes, but is not limited to, the Bureau of Ocean Energy Management (hereafter, “BOEM”) lease areas on the Outer Continental Shelf (hereafter, “OCS”)—A–0499 and OCS–A–0570 Commercial Lease of Submerged Lands

for Renewable Energy Development (hereafter, “Lease Areas”), two export cable routes, and two sea-to-shore transition points located at the Atlantic City and the Monmouth landfall locations.

(c) The specified activities are impact pile driving of wind turbine generators (hereafter, “WTG”), offshore substations (hereafter, “OSS”), and a meteorological tower (hereafter, “Met Tower”); vibratory pile driving (installation and subsequent removal) of cofferdams; fishery and ecological monitoring surveys; placement of scour protection; trenching, laying, and burial activities associated with the installation of the export cable from OSSs to shore-based converter stations and inter-array cables between turbines; high-resolution geophysical (hereafter, “HRG”) site characterization surveys; vessel transit within the specified geographical region to transport crew, supplies, and materials; and WTG operation.

§ 217.301 Effective dates.

This subpart is effective from January 1, 2025, through December 31, 2029.

§ 217.302 Permissible methods of taking.

Under the LOA, issued pursuant to §§ 216.106 and 217.306, LOA Holder and those persons it authorizes or funds to conduct activities on its behalf may incidentally, but not intentionally, take marine mammals within BOEM Lease Areas, along export cable routes, and the two sea-to-shore transition points located in New Jersey at Atlantic City and Monmouth in the following ways, provided LOA Holder is in complete compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA:

(a) By Level B harassment associated with the acoustic disturbance resulting from impact pile driving of WTG, OSS, and Met Tower foundations, vibratory pile driving of temporary cofferdams, and HRG site characterization surveys; and

(b) By Level A harassment associated with the acoustic injury of marine mammals by impact pile driving WTG, OSS, and Met Tower foundations.

(c) Take by mortality (death) or serious injury of any marine mammal species is not authorized.

(d) The incidental take of marine mammals by the activities listed in paragraphs (a) and (b) of this section is limited to the following stocks:

TABLE 1 TO PARAGRAPH (d)

Marine mammal species	Scientific name	Stock
North Atlantic right whale	<i>Eubalaena glacialis</i>	Western North Atlantic.
Fin whale	<i>Balaenoptera physalus</i>	Western North Atlantic.
Humpback whale	<i>Megaptera novaeangliae</i>	Gulf of Maine.
Minke whale	<i>Balaenoptera acutorostrata</i>	Canadian Eastern Coastal.
Sei whale	<i>Balaenoptera borealis</i>	Nova Scotia.
Sperm whale	<i>Physeter macrocephalus</i>	North Atlantic.
Atlantic spotted dolphin	<i>Stenella frontalis</i>	Western North Atlantic.
Atlantic white-sided dolphin	<i>Lagenorhynchus acutus</i>	Western North Atlantic.
Bottlenose dolphin	<i>Tursiops truncatus</i>	Western North Atlantic—Offshore. Northern Migratory Coastal.
Common dolphin	<i>Delphinus delphis</i>	Western North Atlantic.
Long-finned pilot whale	<i>Globicephala melas</i>	Western North Atlantic.
Short-finned pilot whale	<i>Globicephala macrorhynchus</i>	Western North Atlantic.
Risso's dolphin	<i>Grampus griseus</i>	Western North Atlantic.
Harbor porpoise	<i>Phocoena phocoena</i>	Gulf of Maine/Bay of Fundy.
Gray seal	<i>Halichoerus grypus</i>	Western North Atlantic.
Harbor seal	<i>Phoca vitulina</i>	Western North Atlantic.

§ 217.303 Prohibitions.

Except for the takings described in § 217.302 and authorized by LOA issued under § 217.306 or § 217.307, it is unlawful for any person to do any of the following in connection with the activities described in this subpart:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or LOA issued under § 217.306 or § 217.307;

(b) Take any marine mammal not specified in § 217.302(d);

(c) Take any marine mammal specified in the LOA in any manner other than as specified in the LOA; or

(d) Take any marine mammal specified in § 217.302(d), after NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammals.

§ 217.304 Mitigation requirements.

When conducting the activities identified in § 217.300(c) within the area described in § 217.300(b), LOA Holder must implement the mitigation measures contained in this section and any LOA issued under §§ 217.306 or 217.307. These mitigation measures include, but are not limited to:

(a) *General conditions.* LOA Holder must comply with the following general measures:

(1) A copy of any issued LOA must be in the possession of LOA Holder and its designees, all vessel operators, visual protected species observers (PSOs), passive acoustic monitoring (PAM) operators, pile driver operators, and any other relevant designees operating under the authority of the issued LOA;

(2) LOA Holder must conduct training for construction, survey, vessel personnel, and the marine mammal monitoring team (PSO and PAM operators) prior to the start of all in-

water activities in order to explain responsibilities, communication procedures, marine mammal detection and identification, mitigation, monitoring, and reporting requirements, safety and operational procedures, and authorities of the marine mammal monitoring team(s). This training must be repeated for new personnel who join the work during the Project. A description of the training program must be provided to NMFS at least 60 calendar days prior to the initial training before in-water activities begin. NMFS Office of Protected Resources will review, provide comments (if warranted) and approve the training program prior to on-water construction beginning. Confirmation of all required training must be documented on a training course log sheet and reported to NMFS Office of Protected Resources prior to initiating Project activities;

(3) Prior to and when conducting any in-water specified activities and vessel operations, LOA Holder personnel and contractors (e.g., vessel operators, PSOs) must use available sources of information on North Atlantic right whale presence in or near the Project Area including daily monitoring of the Right Whale Sightings Advisory System, NMFS' website at: <https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales>, and monitoring the U.S. Coast Guard's VHF Channel 16 throughout the day to receive notification of any sightings and/or information associated with any Slow Zones (i.e., Dynamic Management Areas (DMAs) and/or acoustically-triggered Slow Zones) to provide situational awareness for both vessel operators, PSO(s) and PAM operator(s) teams. The marine mammal monitoring team must

monitor these systems no less than every 4 hours every day;

(4) Any marine mammal observed by Project personnel must be immediately communicated to any on-duty PSO(s), PAM operator(s), and all vessel captains. Any large whale observation or acoustic detection by a PSO(s) or a PAM operator(s) must be conveyed to all vessel captains;

(5) For North Atlantic right whales, any visual detection by a PSO or acoustic detection by a PAM operator at any distance (where applicable for the specified activities) within the PAM Clearance/Shutdown Zone must trigger a delay to the commencement of pile driving and HRG surveys;

(6) In the event that a large whale is sighted or acoustically detected that cannot be confirmed as a non-North Atlantic right whale, it must be treated as if it were a North Atlantic right whale for purposes of mitigation;

(7) Any PSO has the authority to call for a delay or shutdown of Project activities. If a delay to commencing an activity is called for by a PSO, LOA Holder must take the required mitigative action. If a shutdown of an activity is called for by a PSO, LOA Holder must take the required mitigative action unless shutdown would result in imminent risk of injury or loss of life to an individual(s), pile refusal, or pile instability. Any disagreements between the Lead PSO and the activity operator or between the Lead PSO and another PSO/PAM operator regarding delays or shutdowns must only be discussed after the mitigative action has occurred;

(8) Any marine mammals observed within a clearance or shutdown zone must leave (of their own volition) prior to commencing pile driving activities or HRG surveys;

(9) 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 been met, is observed entering or within the relevant clearance zone prior to beginning a specified activity, the activity must be delayed. If an activity is ongoing and 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 been met, is observed entering or within the relevant shutdown zone, the activity must be shut down (*i.e.*, cease) immediately, unless shutdown would result in imminent risk of injury or loss of life to an individual(s), pile refusal, or pile instability. The activity must not commence or resume until the animal(s) has been confirmed to have left the clearance or shutdown zones and is on a path away from the applicable zone or after 15 minutes with no further sightings for small odontocetes and pinnipeds or 30 minutes with no further sightings for all other species;

(10) For in-water construction heavy machinery activities listed in § 217.300(c), if a marine mammal is on a path towards or comes within 10 meters (m) (32.8 feet (ft)) of equipment, LOA Holder must cease operations until the marine mammal has moved more than 10 m on a path away from the activity to avoid direct interaction with equipment;

(11) All vessels must be equipped with a properly installed, operational Automatic Identification System (AIS) device and LOA Holder must report all Maritime Mobile Service Identity (MMSI) numbers to NMFS Office of Protected Resources (pr.itp.monitoringreports@noaa.gov) prior to initial vessel transit;

(12) By accepting the LOA, LOA Holder consents to on-site observation and inspections by Federal agency personnel (including NOAA personnel) during activities described in this subpart, for the purposes of evaluating the implementation and effectiveness of measures contained within the LOA and this subpart; and

(13) It is prohibited to assault, harm, harass (including sexually harass), oppose, impede, intimidate, impair, or in any way influence or interfere with a PSO, PAM Operator, or vessel crew member acting as an observer, or attempt the same. This prohibition includes, but is not limited to, any action that interferes with an observer's responsibilities, or that creates an intimidating, hostile, or offensive environment. Personnel may report any

violations to the NMFS Office of Law Enforcement.

(b) *Vessel strike avoidance measures.* LOA Holder must comply with the following vessel strike avoidance measures while in the specific geographic region, unless a deviation is necessary to maintain safe maneuvering speed and justified because the vessel is in an area where oceanographic, hydrographic, and/or meteorological conditions severely restrict the maneuverability of the vessel; an emergency situation presents a threat to the health, safety, or life of a person(s); or when a vessel is actively engaged in emergency rescue or response duties, including vessel-in distress or environmental crisis response. An emergency is defined as a serious event that occurs without warning and requires immediate action to avert, control, or remedy harm. Speed over ground will be used to measure all vessel speeds:

(1) Prior to the start of the Project's activities involving vessels, all vessel personnel must receive a protected species training that covers, at a minimum, identification of marine mammals that have the potential to occur where vessels would be operating; detection and observation methods in both good weather conditions (*i.e.*, clear visibility, low winds, low sea states) and bad weather conditions (*i.e.*, fog, high winds, high sea states, with glare); sighting communication protocols; all vessel speed and approach limit mitigation requirements (*e.g.*, vessel strike avoidance measures); and information and resources available to the Project personnel regarding the applicability of Federal laws and regulations for protected species. This training must be repeated for any new vessel personnel who join the Project. Confirmation of the vessel personnel's training and understanding of the Incidental Take Authorization (hereafter, "ITA") requirements must be documented on a training course log sheet and reported to NMFS within 30 calendar days of completion of training;

(2) All vessel operators, operating at any speed and regardless of their vessel's size, must slow down, stop their vessel, or alter course to avoid striking any marine mammal;

(3) While in transit, all vessels, regardless of their size, must have a dedicated visual observer aboard and on duty at all times whose sole responsibility (*i.e.*, must not have duties other than observing) is to monitor for marine mammals within a 180 degrees (hereafter, "°") direction of the forward path of the vessel (90° port to 90° starboard) located at an appropriate

vantage point for ensuring vessels are maintaining appropriate separation distances. Visual observers must be equipped with alternative monitoring technology (*e.g.*, night vision devices, infrared cameras) 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 subpart. These visual observers may be third-party observers (*i.e.*, NMFS-approved PSOs; see § 217.305(a)) or trained crew members (see paragraph (b)(1) of this section);

(4) At the onset of transiting and continuously thereafter, vessel operators must monitor the U.S. Coast Guard's VHF Channel 16, over which North Atlantic right whale sightings are broadcasted. At the onset of transiting and at least once every 4 hours, vessel operators and/or trained crew member(s) must also monitor the Project's Situational Awareness System (if applicable), WhaleAlert, NMFS' website at: <https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales>, and relevant NOAA information systems such as the Right Whale Sighting Advisory System (hereafter, "RWSAS") for the presence of North Atlantic right whales;

(5) Any large whale sighting by any Project-personnel, including any LOA Holder staff, contractors, or vessel crew, must be immediately communicated to all Project-associated vessel operators, PSOs, and PAM operators for situational awareness. Conversely, any large whale observation or detection via a sighting network (*e.g.*, *Mysticetus* or similar software) by PSOs or PAM operators must be conveyed to vessel operator(s) and crew. An ongoing large whale sighting log sheet must be maintained on each vessel and retained for vessel operator(s) review each day prior to first day's transit for awareness of recent sightings;

(6) All vessel operators must abide by existing applicable vessel speed regulations (see 50 CFR 224.105). Nothing in this subpart exempts vessels from any other applicable marine mammal speed or approach regulations;

(7) Vessels must transit at 10 kn (11.5 mph) or less within any active North Atlantic right whale Slow Zone (*i.e.*, Dynamic Management Areas (hereafter, "DMA") or acoustically triggered slow zone);

(8) All vessel operators, regardless of their vessel's size, must immediately reduce vessel speed to 10 kn (11.5 mph) or less for at least 24 hours when a North Atlantic right whale is sighted at any distance by any Project-related personnel or acoustically detected by any Project-related PAM system. Each subsequent observation or acoustic detection in the Project Area shall trigger an additional 24-hour period. If a North Atlantic right whale is reported by Project personnel or via any of the monitoring systems (refer back to paragraph (b)(4) of this section) that vessel must operate at 10 kn (11.5 mph) or less for 24 hours following the reported detection;

(9) All vessels, regardless of size, must immediately reduce speed to 10 kn (11.5 mph) or less when any large whale, mother/calf pairs, or large assemblages of cetaceans are observed within 500 m (1,640 ft) of an underway vessel;

(10) If vessel(s) are traveling at speeds greater than 10 kn (11.5 mph) (*i.e.*, during periods where no other speed restrictions are enacted) in the transit corridor (defined as from a port to the Lease Areas or return), in addition to the required dedicated visual observer, LOA Holder must monitor the transit corridor in real-time with PAM prior to and during transits. If a North Atlantic right whale is detected via visual observation or PAM detection within or approaching the transit corridor, all vessels in the transit corridor must travel at 10 kn (11.5 mph) or less for 24 hours following the detection. Each subsequent detection shall trigger a 24-hour reset. A slowdown in the transit corridor expires when there has been no further visual or acoustic detection in the transit corridor in the past 24 hours;

(11) All vessels must maintain a minimum separation distance of 500 m (1,640 ft) from North Atlantic right whales. If underway, all vessels must steer a course away from any sighted North Atlantic right whale at 10 kn (11.5 mph) or less such that the 500-m (1,640-ft) minimum separation distance requirement is not violated. If a North Atlantic right whale is sighted within 500 m (1,640 ft) of an underway vessel, that vessel operator must reduce speed and shift the engine to neutral. Engines must not be engaged until the whale has moved outside of the vessel's path and beyond 500 m (1,640 ft). If a large whale is observed but cannot be confirmed as a species other than a North Atlantic right whale, the vessel operator must assume that it is a North Atlantic right whale and take the vessel strike avoidance measures described in this paragraph;

(12) All vessels must maintain a minimum separation distance of 500 m (1,640 ft) from all ESA-listed large whales (*i.e.*, sperm whales, fin whales, sei whales). If one of these species is sighted within 500 m (1,640 ft) of a transiting vessel, the vessel must shift the engine(s) to neutral. Engines must not be engaged until the whale has moved outside of the vessel's path and beyond 500 m (1,640 ft);

(13) All vessels must maintain a minimum separation distance of 100 m (328 ft) from all non-ESA-listed large whales (*i.e.*, humpback whales and minke whales). If one of these species is sighted within 100 m (328 ft) of a transiting vessel, the vessel must shift the engine(s) to neutral. Engines must not be engaged until the whale has moved outside of the vessel's path and beyond 100 m (328 ft);

(14) All vessels must maintain a minimum separation distance of 50 m (164 ft) from all delphinid cetaceans and pinnipeds with an exception made for those that approach the vessel (*i.e.*, bow-riding dolphins). If a delphinid cetacean or pinniped is sighted within 50 m (164 ft) of a transiting vessel, the vessel must shift the engine to neutral, with an exception made for those that approach the vessel (*e.g.*, bow-riding dolphins). Engines must not be engaged until the animal(s) has moved outside of the vessel's path and beyond 50 m (164 ft);

(15) When a marine mammal(s) is sighted while the vessel(s) is transiting, 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, slow down, and avoid abrupt changes in direction until the animal has left the area). This measure does not apply to any vessel towing gear or any situation where respecting the relevant separation distance would be unsafe (*i.e.*, any situation where the vessel is navigationally constrained);

(16) All vessels underway must not divert or alter course to approach any marine mammal;

(17) Vessel operators must check, daily, for information regarding the establishment of mandatory or voluntary vessel strike avoidance areas (*i.e.*, Dynamic Management Areas (DMAs), Seasonal Management Areas (SMAs), Slow Zones) and any information regarding North Atlantic right whale sighting locations; and

(18) LOA Holder must submit a North Atlantic Right Whale Vessel Strike Avoidance Plan (hereafter, "VSAP") to NMFS Office of Protected Resources for review and approval at least 180 calendar days prior to the planned start of vessel activity. The VSAP must

provide details on the vessel-based observer and PAM protocols for transiting vessels in the vessel transit corridor. If the VSAP is not submitted and approved by NMFS prior to vessel operations, all Project vessels must travel at speeds of 10 kn (11.5 mph) or less. LOA Holder must comply with any approved VSAP.

(c) *WTG, OSS, and Met Tower foundation installation.* LOA Holder must comply with the following WTG, OSS, and Met Tower foundation installation measures unless doing so could result in 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, or the lead engineer determines there is risk of pile refusal or pile instability:

(1) Foundation installation via impact pile driving must not occur December 1st through April 30th, annually, wherein foundation installation via impact pile driving must be avoided in December unless necessary to complete Project 1 or Project 2 in a given year and after receipt of prior approval by NMFS. Before any December pile driving may occur, and for NMFS Office of Protected Resources to fully evaluate this request, LOA Holder is required to provide a written request by October 15th, which must include, but is not limited to the following information: the installation schedule and types of piles to be installed, the maximum number of piles anticipated to be installed in December, and any planned or additional practicable mitigative measures that could be implemented to further reduce activities to North Atlantic right whales and other marine mammal species;

(2) Monopiles must be no larger than 15-m in diameter, representing the larger end of the planned monopile design. During all monopile installation, the minimum amount of hammer energy necessary to effectively and safely install and maintain the integrity of the piles must be used. Hammer energies must not exceed 4,400 kilojoules (kJ) for monopile installation. No more than two monopiles may be installed per day;

(3) Pin piles must be no larger than 5-m in diameter. During all pin pile installation, the minimum amount of hammer energy necessary to effectively and safely install and maintain the integrity of the piles must be used. Hammer energies must not exceed 2,500 kJ for pin pile installation. No more than four pin piles may be installed per day;

(4) LOA Holder must only perform foundation pile driving during daylight hours, defined as no earlier than 1 hour prior to civil sunset or later than 1.5 hours prior to civil sunrise, and may only continue pile driving into darkness

if stopping operations represents a risk to human health, safety, and/or pile stability, unless the LOA Holder submits, and NMFS approves, an Alternative Monitoring Plan, which would allow pile driving to begin after daylight hours have ended. Until this is submitted, reviewed, and approved by NMFS, LOA Holder may not begin any new pile driving outside of the daylight hours previously defined in this subsection;

(5) Soft-start must occur at the beginning of impact driving and at any time following a cessation of impact pile driving of 30 minutes or longer;

(6) Monitoring of the clearance zones must begin 60 minutes immediately prior to initiation of pile driving. The shutdown zones must be monitored during all pile driving. If a marine mammal is detected within or about to enter the applicable clearance zones 30 minutes prior to the beginning of pile driving (including soft-start if impact pile driving) or during pile driving, pile driving must be delayed or shutdown until the animal has been visually observed exiting the clearance zone or until a specific time period has elapsed with no further sightings. The specific time periods are 15 minutes for small odontocetes and pinnipeds, and 30 minutes for all other species;

(7) For North Atlantic right whales, any visual observation by a PSO or acoustic detection within 10 km (6.21 mi) must trigger a delay to the commencement of pile driving. Pile driving may only commence if no North Atlantic right whale visual or acoustic detections have occurred within the clearance zones during the 60-minute monitoring period;

(8) LOA Holder must deploy at least two fully functional noise abatement systems during all foundation pile driving;

(i) A single bubble curtain must not be used;

(ii) Any bubble curtain(s) must distribute air bubbles using an air flow rate of at least $0.5 \text{ m}^3/(\text{minute} \cdot \text{m})$. The bubble curtain(s) must surround 100 percent of the piling perimeter throughout the full depth of the water column. In the unforeseen event of a single compressor malfunction, the offshore personnel operating the bubble curtain(s) must adjust the air supply and operating pressure such that the maximum possible sound attenuation performance of the bubble curtain(s) is achieved;

(iii) 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;

(iv) No parts of the ring or other objects may prevent full seafloor contact with a bubble curtain ring;

(v) A full maintenance check (e.g., manually clearing holes) must occur prior to each pile being installed;

(vi) LOA Holder must inspect and carry out appropriate maintenance on the noise attenuation system prior to every pile driving event and prepare and submit a Noise Attenuation System (NAS) inspection/performance report. For piles for which thorough SFV is carried out, this report must be submitted as soon as it is available, but no later than when the interim SFV report is submitted for the respective pile. Performance reports for piles monitoring with abbreviated SFV must be submitted with the weekly pile driving reports;

(vii) Corrections to the bubble ring(s) to meet the performance standards in paragraph (c)(9) of this section must occur prior to impact pile driving of foundation piles; and

(viii) For any noise mitigation device used in addition to the double bubble curtain, LOA Holder must inspect and carry out maintenance on the system and ensure the system is functioning properly prior to every pile driving event.

(9) LOA Holder must utilize PAM systems, as described in a NMFS-approved PAM Plan. The PAM system components (i.e., acoustic buoys) must not be placed closer than 1 km (0.6 mi) to the pile being driven so that the activities do not mask the PAM system. LOA Holder must demonstrate and prove the detection range of the system they plan to deploy while considering potential masking from pile-driving and vessel noise. The PAM system must be able to:

(i) Detect all marine mammals;

(ii) Maximize baleen whale detections; and

(iii) Must be capable of detecting North Atlantic right whales at 10 km (6.21 mi).

(10) Concurrently, LOA Holder must utilize PSO(s) and PAM operator(s), as described in § 217.305(c). PAM operators must be deployed and monitoring for marine mammals in accordance with a NMFS-approved PAM Plan. If a marine mammal is detected (visually or acoustically entering or within the respective shutdown zone after pile driving has begun, the PSO must call for a shutdown of pile driving and LOA Holder must stop pile driving immediately. If pile driving is not shut down due to a safety or pile instability/

refusal situation, LOA Holder must reduce hammer energy to the lowest level practicable and the reason(s) for not shutting down must be documented and reported to NMFS Office of Protected Resources within the applicable monitoring reports (e.g., weekly, monthly);

(11) If a marine mammal is detected (visually or acoustically) entering or within the respective shutdown zone after pile driving has begun, the PSO must call for a shutdown of pile driving and LOA Holder must stop pile driving immediately. If pile driving is not shut down due to a safety or pile instability/refusal situation, LOA Holder must reduce hammer energy to the lowest level practicable and the reason(s) for not shutting down must be documented and reported to NMFS Office of Protected Resources within the applicable monitoring reports (e.g., weekly, monthly) (see § 217.305(g));

(12) A visual observation at any distance from a PSO or an acoustic detection of a North Atlantic right whale within the 10 km (6.21 mi) PAM Clearance/Shutdown Zone triggers shutdown requirements under paragraph (c)(11) of this section. If pile driving has been shut down due to the presence of a North Atlantic right whale, pile driving may not restart until the North Atlantic right whale has neither been visually nor acoustically detected for 30 minutes;

(13) If pile driving has been shut down due to the presence of a marine mammal other than a North Atlantic right whale, pile driving must not restart until either the marine mammal(s) has voluntarily left the specific clearance zones and has been visually or acoustically confirmed beyond that clearance zone, or when specific time periods have elapsed with no further sightings or acoustic detections have occurred. The specific time periods are 15 minutes for small odontocetes and pinnipeds, and 30 minutes for all other marine mammal species. In cases where these criteria are not met, pile driving may restart only if necessary to maintain pile stability or avoid refusal, during which time LOA Holder must use the lowest hammer energy practicable;

(14) LOA Holder must conduct thorough sound field verification (hereafter, "SFV") measurements during pile driving activities associated with the installation of, at minimum, the first three monopile foundations installed each calendar year and the first three jacket foundations (inclusive of all pin piles installed for a given jacket foundation). For all thorough SFV, measurements must continue until at least three monopiles and three jacket

foundations demonstrate distances to harassment thresholds are at or below those modeled, assuming 10 decibels (hereafter, “dB”) of attenuation. Subsequent thorough SFV measurements are also required should larger piles be installed or if additional foundations are driven that may produce louder sound fields than those previously measured (e.g., higher hammer energy, greater number of strikes, *etc.*). All thorough SFV measurements must be conducted as follows:

(i) Measurements must be made at a minimum of four distances from the foundation(s) being driven, along a single transect, in the direction of lowest transmission loss, including, but not limited to, 750 m (2,460 ft) and three additional ranges, including, at least, the applicable modeled Level B harassment isopleth, assuming 10 dB attenuation. At least one additional measurement at an azimuth 90 degrees from the array at 750 m (2,460 ft) must be made. At each location, there must be a near bottom and mid-water column hydrophone;

(ii) The recordings must be continuous throughout the duration of all pile driving of each pile for a given foundation;

(iii) The SFV measurement systems must have a sensitivity appropriate for the expected sound levels from pile driving received at the nominal ranges throughout the installation of the pile(s). The frequency range of SFV measurement systems must cover the range of at least 20 hertz (hereafter, “Hz”) to 20 kilohertz (hereafter, “kHz”). The SFV measurement systems must be designed to have omnidirectional sensitivity so that the broadband received level of all pile driving exceeds the system noise floor by at least 10 dB. The dynamic range of the SFV measurement system must be sufficient such that, at each piling location, the signals must avoid poor signal-to-noise ratios for low amplitude signals and avoid clipping, nonlinearity, and saturation for high amplitude signals;

(iv) All hydrophones used in SFV measurements systems are required to have undergone a full system, traceable laboratory calibration conforming to International Electrotechnical Commission (hereafter, “IEC”) 60565, or an equivalent standard procedure, from a factory or accredited source to ensure the hydrophone receives accurate sound levels, at a date not to exceed 2 years before deployment. Additional *in-situ* calibration checks using a pistonphone are required to be performed before and after each hydrophone deployment. If the measurement system employs filters

via hardware or software (e.g., high-pass, low-pass, *etc.*), which are not already accounted for by the calibration, the filter performance (*i.e.*, the filter’s frequency response) must be known, reported, and the data corrected before analysis;

(v) LOA Holder must be prepared with additional equipment (e.g., hydrophones, recording devices, hydrophone calibrators, cables, batteries, *etc.*), which exceeds the amount of equipment necessary to perform the measurements, such that technical issues can be mitigated before measurement; and

(vi) LOA Holder must submit interim thorough SFV reports within 48 hours after each foundation is measured (see § 217.305(g) for interim reporting requirements).

(15) For thorough SFV on monopile and jacket foundations:

(i) If any of the thorough SFV measurements from any foundation (monopile or jacket) indicate the distances to NMFS’ marine mammal Level A harassment or Level B harassment thresholds, assuming 10-dB attenuation, are greater than those modeled, before the next foundation is installed, LOA Holder must identify and propose for review and concurrence: additional, modified, and/or alternative noise attenuation measures or operational changes that present a reasonable likelihood of reducing sound levels to the modeled distances on subsequent foundations; provide a written explanation to NMFS Office of Protected Resources supporting that determination and requesting concurrence to proceed; and, following NMFS Office of Protected Resource’s concurrence, deploy those additional measure or modifications on any subsequent foundation that are installed;

(A) LOA Holder must also increase clearance and shutdown zone sizes to those identified by NMFS Office of Protected Resources. For every 1,500 m (4,921.3 ft) that a marine mammal clearance or shutdown zone is expanded, additional PSOs must be deployed from additional platforms/ vessels to ensure adequate and complete monitoring of the expanded shutdown and/or clearance zone;

(B) Following installation of the foundation with additional, alternative, or modified noise attenuation measures/ operational changes, SFV must be conducted on two additional foundations. If the SFV results from all three of those foundations are within the distances to isopleths of concern modeled assuming 10 dB attenuation, LOA Holder must continue to

implement the approved additional, alternative, or modified sound attenuation measures/operational changes;

(C) If, after all practicable measures that could be taken to reduce noise levels have been successfully implemented and exhausted, thorough SFV measurements continue to indicate that the distances to the marine mammal harassment thresholds are greater than those modeled assuming 10 dB attenuation, LOA Holder must consult with NMFS Office of Protected Resources to evaluate the circumstances before additional piles are installed; and

(ii) If, through SFV indicate that ranges to isopleths corresponding to the Level A harassment and/or Level B harassment thresholds are less than those predicted by modeling (assuming 10-dB attenuation), LOA Holder may request a modification of the minimum visibility, clearance, and shutdown zones from NMFS Office of Protected Resources. For NMFS Office of Protected Resources to consider a modification request for reduced zone sizes, LOA Holder must have conducted thorough SFV measurements on three foundations and ensure that subsequent foundations would be installed under conditions that are predicted to produce smaller harassment zones than those modeled assuming 10-dB of attenuation, provided LOA Holder continue to implement the approved additional, alternative, or modified sound attenuation measures/operational changes.

(16) LOA Holder must conduct abbreviated SFV monitoring, consisting of a single acoustic recorder with a bottom and midwater hydrophone, placed at an appropriate distance from each pile driven foundation installations, on all foundations for which thorough SFV monitoring, as described in paragraph (c)(15) of this section, is not performed. Results of abbreviated SFV monitoring must be included in the weekly pile driving reports;

(i) Abbreviated SFV monitoring duration and equipment must comply with the conditions specified in paragraphs (c)(14)(ii) through (v) of this section; and

(ii) If the results of abbreviated SFV monitoring indicate that distances to the identified Level A and Level B harassment thresholds for marine mammals may have been exceeded during the pile driving event, LOA Holder must notify NMFS Office of Protected Resources as soon as possible after receiving such results, and include an explanation of suspected or identified factors that contributed to the

potential exceedance and corrective actions that were taken, or planned to be taken, to avoid potential exceedance on subsequent piles. Additional actions may include: adjustments or additions to the noise attenuation system or pile driving operations and/or additional thorough SFV monitoring.

(17) LOA Holder must conduct SFV measurements during turbine operations to estimate turbine operational source levels and transmission loss rates in accordance with an NMFS-approved SFV Plan;

(18) LOA Holder must submit a SFV Plan to NMFS Office of Protected Resources for review and approval at least 180 calendar days prior to planned start of foundation installation activities and abide by the SFV Plan, if approved. At minimum, the SFV Plan must describe how thorough and abbreviated SFV would be conducted, and if the first three monopile foundation/first three entire jacket foundations (inclusive of all pin piles for a given jacket foundation) installation sites selected for thorough SFV measurements are representative of the remainder of the monopile and jacket foundation installation sites or include information in the SFV Plan on which additional sites/scenarios would be selected for thorough SFV measurements. This SFV Plan must also describe approaches that LOA Holder could take to adjust noise attenuation systems or add systems in the case that any SFV measurements obtained demonstrate that noise levels are above those modeled (assuming 10 dB of attenuation). Prior to operations for each Project, the SFV Plan must also include how operational noise would be monitored. Operational parameters (*e.g.*, direct drive information, turbine rotation rate) as well as sea state conditions and information on nearby anthropogenic activities (*e.g.*, vessels transiting or operating in the area) must be reported. Additionally, the SFV Plan must also include methodology for collecting, analyzing, and preparing thorough and abbreviated SFV measurement data for submission to NMFS Office of Protected Resources and describe how the effectiveness of the sound attenuation methodology would be evaluated based on the results. Pile driving may not occur until NMFS approves the SFV Plan;

(19) LOA Holder must submit a Foundation Installation Pile Driving Marine Mammal Monitoring Plan to NMFS Office of Protected Resources for review and approval at least 180 calendar days prior to planned start of foundation pile driving and abide by the Foundation Installation Pile Driving Marine Mammal Monitoring Plan if

approved. LOA Holder must obtain both NMFS Office of Protected Resources and NMFS Greater Atlantic Regional Fisheries Office Protected Resources Division's concurrence with this Plan prior to the start of any pile driving. The Plan must include, but is not limited to, the following: the final pile driving Project design (*e.g.*, number and type of piles, hammer type, noise abatement systems, anticipated start date, *etc.*) and a description of all monitoring equipment and PAM operator and PSO protocols (including number and location of PSOs and PAM operators) for all foundation pile driving. No foundation pile installation can occur without NMFS' approval of the Foundation Installation Pile Driving Marine Mammal Monitoring Plan. More information on what this Plan must include can be found in the LOA; and

(20) LOA Holder must submit a Passive Acoustic Monitoring Plan (hereafter, "PAM Plan") to NMFS Office of Protected Resources for review and approval at least 180 calendar days prior to the planned start of foundation installation activities and abide by the PAM Plan, if approved. The PAM Plan must include a description of all proposed PAM equipment, address how the proposed passive acoustic monitoring must follow standardized measurement, processing methods, reporting metrics, and metadata standards for offshore wind. The PAM Plan must describe all proposed PAM equipment, procedures, and protocols including proof that vocalizing North Atlantic right whales will be detected within the clearance and shutdown zones. No pile installation can occur if LOA Holder's PAM Plan does not receive approval from NMFS Office of Protected Resources and NMFS Greater Atlantic Regional Fisheries Office Protected Resources Division.

(d) *Cofferdam installation and removal.* The following requirements apply to the installation and removal of cofferdams at the cable landfall construction sites:

(1) Installation of cofferdams must not occur during nighttime hours (defined as the hours between 1.5 hours prior to civil sunset and 1 hour after civil sunrise);

(2) LOA Holder must establish and implement clearance zones for the installation and removal of cofferdams using visual monitoring. These zones must be measured using the radial distance from the cofferdam being installed and/or removed;

(3) LOA Holder must utilize PSO(s), as described in § 217.305(d). At least two on-duty PSOs must monitor for marine mammals at least 30 minutes

before, during, and 30 minutes after vibratory pile driving associated with cofferdam installation;

(4) If a marine mammal(s) is observed entering or is observed within the clearance zones, before vibratory pile driving has begun, the activity must not commence until the animal(s) has exited the zone or a specific amount of time has elapsed since the last sighting. The specific time periods are 15 minutes for small odontocetes and pinnipeds and 30 minutes for all other marine mammal species;

(5) If a marine mammal is observed entering or within the respective shutdown zone after vibratory pile driving has begun, the PSO must call for a shutdown of vibratory pile driving. LOA Holder must stop pile driving immediately unless shutdown is not practicable due to imminent risk of injury or loss of life to an individual or if there is a risk of damage to the vessel that would create a risk of injury or loss of life for individuals or if the lead engineer determines there is refusal or instability. In any of these situations, LOA Holder must document the reason(s) for not shutting down and report the information to NMFS Office of Protected Resources in the annual report (as described in § 217.305(h)). In cases where shutdown is not feasible, pile driving may restart only if necessary to maintain pile stability at which time LOA Holder must use the lowest energy practicable to maintain stability; and

(6) Vibratory pile driving must not restart until either the marine mammal(s) has voluntarily left the specific clearance zones and has been visually confirmed beyond that clearance zone or when specific time periods have elapsed with no further sightings or acoustic detections have occurred. The specific time periods are 15 minutes for small odontocetes and pinnipeds and 30 minutes for all other marine mammal species.

(e) *HRG surveys.* The following requirements apply to HRG surveys operating sub-bottom profilers (hereinafter, "acoustic sources") (*i.e.*, sparkers and Compressed High Intensity Radiated Pulse (CHIRPs)):

(1) LOA Holder must establish and implement clearance and shutdown zones for HRG surveys using visual monitoring, as described in paragraph (c) of this section;

(2) LOA Holder must utilize PSO(s), as described in § 217.305(e);

(3) LOA Holder must abide by the relevant Project Design Criteria (hereafter, "PDCs"; specifically, PDCs 4, 5, and 7) of the programmatic consultation completed by NMFS'

Greater Atlantic Regional Fisheries Office on June 29, 2021 (revised September 2021), pursuant to section 7 of the Endangered Species Act (hereafter, “ESA”). To the extent that any relevant Best Management Practices (hereafter, “BMPs”) described in these PDCs are more stringent than the requirements herein, those BMPs supersede these requirements and must be implemented;

(4) Acoustic sources must be deactivated when not acquiring data or preparing to acquire data, except as necessary for testing. Acoustic sources must be used at the lowest practicable source level to meet the survey objective, when in use, and must be turned off when they are not necessary for the survey;

(5) Prior to starting the survey and after receiving confirmation from the PSOs that the clearance zone is clear of any marine mammals, LOA Holder is required to ramp-up acoustic sources to half power for 5 minutes prior to commencing full power, unless the equipment operates on a binary on/off switch (in which case ramp-up is not required). LOA Holder must also ensure 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 the initiation of survey activities using acoustic sources;

(6) Ramp-up and activation must be delayed if a marine mammal(s) enters its respective shutdown zone. Ramp-up and activation may only be reinitiated if the animal(s) has been observed exiting its respective shutdown zone or until 15 minutes for small odontocetes and pinnipeds, and 30 minutes for all other species, has elapsed with no further sightings;

(7) Prior to a ramp-up procedure starting or activating acoustic sources, the acoustic source operator (operator) must notify a designated PSO of the planned start of ramp-up as agreed upon with the Lead PSO. The notification time should not be less than 60 minutes prior to the planned ramp-up or activation in order to allow the PSOs time to monitor the clearance zone(s) for 30 minutes prior to the initiation of ramp-up or activation (pre-start clearance). During this 30-minute pre-start clearance period, the entire applicable clearance zones must be visible, except as indicated in paragraph (f)(12) of this section;

(8) Ramp-ups must be scheduled so as to minimize the time spent with the source activated;

(9) A PSO conducting pre-start clearance observations must be notified

again immediately prior to reinitiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed;

(10) LOA Holder must implement a 30-minute clearance period of the clearance zones immediately prior to the commencing of the survey or when there is more than a 30-minute break in survey activities or PSO monitoring. A clearance period is a period when no marine mammals are detected in the relevant zone;

(11) If a marine mammal is observed within a clearance zone during the clearance period, ramp-up and acoustic surveys may not begin until the animal(s) has been observed voluntarily exiting its respective clearance zone or until a specific time period has elapsed with no further sighting. The specific time period is 15 minutes for small odontocetes and pinnipeds, and 30 minutes for all other species;

(12) In any case when the clearance process has begun in conditions with good visibility, including via the use of night vision equipment (i.e., infrared (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. Ramp-up may occur at times of poor visibility, including nighttime, if appropriate visual monitoring has occurred with no detections of marine mammals in the 30 minutes prior to beginning ramp-up;

(13) Once the survey has commenced, LOA Holder must shut down acoustic sources if a marine mammal enters a respective shutdown zone, except 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) so long as no marine mammals have been detected. The shutdown requirement does not apply to small delphinids of the following genera: *Delphinus*, *Stenella*, *Lagenorhynchus*, and *Tursiops*. If there is uncertainty regarding the identification of a marine mammal species (i.e., whether the observed marine mammal belongs to one of the delphinid genera for which shutdown is waived), the PSOs must use their best professional judgment in making the decision to call for a shutdown. Shutdown is required if a delphinid that belongs to a genus other than those specified in paragraph (e)(13) of this section is detected in the shutdown zone;

(14) If an acoustic source has been shut down due to the presence of a marine mammal, the use of an acoustic

source may not commence or resume until the animal(s) has been confirmed to have left the Level B harassment zone or until a full 15 minutes (for small odontocetes and seals) or 30 minutes (for all other marine mammals) have elapsed with no further sighting; and

(15) If an acoustic source is shut down for a period longer than 30 minutes, all clearance and ramp-up procedures must be initiated. If an acoustic source is shut down for reasons other than mitigation (e.g., mechanical difficulty) for less than 30 minutes, acoustic sources may be activated again without ramp-up only if PSOs have maintained constant observation and no additional detections of any marine mammal occurred within the respective shutdown zones.

(f) *Fisheries monitoring surveys.* The following measures apply to fishery monitoring surveys:

(1) All captains and crew conducting fishery surveys must be trained in marine mammal detection and identification. Marine mammal monitoring will be conducted by the captain and/or a member of the scientific crew within 1 nautical mile (nmi) (1.85 km; 1.2 mi) and 15 minutes prior to deploying gear, during, and for 15 minutes after haul back;

(2) Survey gear must be deployed as soon as possible once the vessel arrives on station. Gear must not be deployed if there is a risk of interaction with marine mammals. Gear may be deployed after 15 minutes of no marine mammal sightings within 1 nmi (1,852 m) of the sampling station;

(3) LOA Holder and/or its cooperating partners, contracted vessels, or commercially hired captains must implement the following “move-on” rule: if marine mammals are sighted within 1 nmi (1.2 mi) of the planned location and 15 minutes before gear deployment, then LOA Holder and/or its cooperating partners, contracted vessels, or commercially hired captains, as appropriate, must move the vessel away from the marine mammal to a different section of the sampling area. If, after moving on, marine mammals are still visible from the vessel, LOA Holder and its cooperating partners, contracted vessels, or commercially hired captains must move again or skip the station;

(4) If a marine mammal is at risk of interacting with deployed gear, all gear must be immediately removed from the water. If marine mammals are sighted before the gear is fully removed from the water, LOA Holder must take the most appropriate action to avoid marine mammal interaction and the vessel must slow its speed and maneuver the vessel away from the animals to minimize

potential interactions with the observed animal;

(5) Unless using ropeless gear, LOA Holder must maintain visual marine mammal monitoring effort during the entire period of time that gear is in the water (*i.e.*, throughout gear deployment, fishing, and retrieval);

(6) All fisheries monitoring gear must be fully cleaned and repaired (if damaged) before each use/deployment;

(7) LOA Holder's fixed gear must comply with the Atlantic Large Whale Take Reduction Plan regulations at 50 CFR 229.32 during fisheries monitoring surveys;

(8) Trawl tows must be limited to a maximum of a 20-minute trawl time at 3.0 kn (3.45 mph);

(9) All gear must be emptied as close to the deck/sorting area and as quickly as possible after retrieval;

(10) During trawl surveys, vessel crew must open the codend of the trawl net close to the deck in order to avoid injury to animals that may be caught in the gear;

(11) All fishery survey-related lines must include the breaking strength of all lines being less than 1,700 pounds (lbs) (771 kilograms (kg)). This may be accomplished by using whole buoy line that has a breaking strength of 1,700 lbs (771 kg); or buoy line with weak inserts that result in line having an overall breaking strength of 1,700 lbs (771 kg);

(12) During any survey that uses vertical lines, buoy lines must be weighted and must not float at the surface of the water and all groundlines must be composed entirely of sinking lines. Buoy lines must utilize weak links. Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots. The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited;

(13) All in-water survey gear, including buoys, must be properly labeled with the scientific permit number or identification as LOA Holder's research gear. All labels and markings on the gear, buoys, and buoy lines must also be compliant with the applicable regulations, and all buoy markings must comply with instructions received by the NOAA Greater Atlantic Regional Fisheries Office Protected Resources Division;

(14) All survey gear must be removed from the water whenever not in active survey use (*i.e.*, no wet storage);

(15) All reasonable efforts, that do not compromise human safety, must be undertaken to recover gear; and

(16) All lost gear associated with the fishery surveys must be reported to the NOAA Greater Atlantic Regional Fisheries Office Protected Resources Division (nmfs.gar.incidental-take@noaa.gov) within 24 hours of the documented time of missing or lost gear. This report must include information on any markings on the gear and any efforts undertaken or planned to recover the gear.

§ 217.305 Monitoring and reporting requirements.

(a) *Protected species observer (PSO) and passive acoustic monitoring (PAM) operator qualifications.* LOA Holder must implement the following measures applicable to PSOs and PAM operators:

(1) LOA Holder must use independent, NMFS-approved PSOs and PAM operators (*i.e.*, the PSOs and PAM operators must be employed by a third-party observer provider) must have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant crew with regard to the presence of protected species and mitigation requirements;

(2) All PSOs and PAM operators must have successfully attained a bachelor's degree in one of the natural sciences. The educational requirements may be waived if the PSO or PAM operator has acquired the relevant skills through a suitable amount of alternate experience. Requests for such a waiver must be submitted to NMFS Office of Protected Resources and must include written justification containing alternative experience. Alternate experiences that may be considered include but are not limited to: previous work experience conducting academic, commercial, or government-sponsored marine mammal visual and/or acoustic surveys; or previous work experience as a PSO/PAM operator. All PSOs and PAM operators should demonstrate good standing and consistently good performance of all assigned duties;

(3) PSOs must have visual acuity in both eyes (with correction of vision being permissible) sufficient enough to discern moving targets on the water's surface with the ability to estimate the target size and distance (binocular use is allowable); ability to conduct field observations and collect data according to the 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, the dates and times of when in-water construction activities

were conducted, the dates and time when in-water construction activities were suspended to avoid potential incidental take of marine mammals from construction noise within a defined shutdown zone, and marine mammal behavior; and the ability to communicate orally, by radio, or in-person, with Project personnel to provide real-time information on marine mammals observed in the area;

(4) All PSOs must be trained in northwestern Atlantic Ocean marine mammal identification and behaviors and must be able to conduct field observations and collect data according to assigned protocols. Additionally, PSOs must have the ability to work with all required and relevant software and equipment necessary during observations (as described in paragraphs (b)(5) and (6) of this section);

(5) All PSOs and PAM operators must successfully complete a relevant training course within the last 5 years, including obtaining a certificate of course completion;

(6) PSOs are responsible for obtaining NMFS' approval. NMFS may approve PSOs as conditional or unconditional. A conditionally approved PSO may be one who has completed training in the last 5 years but has not yet attained the requisite field experience. An unconditionally approved PSO is one who has completed training within the last 5 years and attained the necessary experience (*i.e.*, demonstrate experience with monitoring for marine mammals at clearance and shutdown zone sizes similar to those produced during the respective activity);

(7) At least one PSO for each activity (*e.g.*, foundation installation, cable landfall construction, and HRG surveys) on each vessel must be designated as the Lead PSO. The Lead PSO must meet the minimum requirements described in paragraphs (a)(2) through (5) of this section and have a minimum of 90 days of at-sea experience visually monitoring marine mammals, including baleen whales, and no more than 18 months may have elapsed since the conclusion of their last at-sea experience;

(8) PSOs for cable landfall construction (*i.e.*, vibratory pile installation and removal) and HRG surveys may be unconditionally or conditionally approved. A conditionally approved PSO must be paired with an unconditionally approved PSO. PSOs for foundation installation must be unconditionally approved;

(9) PAM operators are responsible for obtaining NMFS approval. To be approved as a PAM operator, the person must meet the following qualifications. The PAM operator must: demonstrate

that they have prior experience with relevant acoustic software and equipment and real-time acoustic detection systems and/or have completed specialized training for operating PAM systems and detecting and identifying Atlantic Ocean marine mammals sounds, in particular: North Atlantic right whale sounds, humpback whale sounds, and how to deconflict them from similar North Atlantic right whale sounds, and other co-occurring species' sounds in the area including sperm whales; be able to distinguish between whether a marine mammal or other species sound is detected, possibly detected, or not detected; be able to review and classify acoustic detections in real-time (prioritizing North Atlantic right whales and noting detection of other cetaceans) during the real-time monitoring periods where localization of sounds or deriving bearings and distance are possible and demonstrate experience in using this technique; have the qualifications and relevant experience/training to safely deploy and retrieve equipment and program the software, as necessary; and must be able to test software and hardware functionality prior to operation;

(10) LOA Holder must submit previously approved PSOs and PAM operators to NMFS Office of Protected Resources for review and confirmation of their approval for specific roles at least 30 business days prior to commencement of the activities requiring PSOs/PAM operators or 15 business days prior to when new PSOs/PAM operators are required after activities have commenced;

(11) For prospective PSOs and PAM operators not previously approved, or for PSOs and PAM operators whose approval is not current, LOA Holder must submit resumes for approval at least 60 business days prior to PSO and PAM operator use. Resumes must include information related to relevant education, experience, and training, including dates, duration, location, and description of prior PSO or PAM operator experience. Resumes must be accompanied by relevant documentation of successful completion of necessary training;

(12) PSOs may work as PAM operators and vice versa, pending NMFS-approval; however, they may only perform one role at any single time and must not exceed work time restrictions, which must be tallied cumulatively; and

(13) All PSOs and PAM operators must complete a Permits and Environmental Compliance Plan training and a 2-day refresher session

that must be held with the PSO/PAM operator provider and Project compliance representative(s) prior to the start of in-water Project activities requiring PSOs and PAM operators.

(b) *General PSO and PAM operator requirements.* The following measures apply to PSOs and PAM operators and must be implemented by LOA Holder:

(1) PSOs must monitor for marine mammals prior to, during, and following all impact pile driving, vibratory pile driving, and HRG surveys that use sub-bottom profilers (with specific monitoring durations and needs described in paragraphs (c) through (f) of this section, respectively). Monitoring must be done while free from distractions and in a consistent, systematic, and diligent manner;

(2) All PSOs must be located at the best vantage point(s) on any platform, as determined by the Lead PSO. PAM operators may be located on a vessel or remotely on-shore, but must have the appropriate equipment (*i.e.*, computer station equipped with a data collection software system and acoustic data analysis software) available wherever they are stationed, and data or data products must be streamed in real-time or in near real-time;

(3) All on-duty PSOs must remain in real-time contact with the on-duty PAM operator(s). PAM operator(s) must immediately communicate all acoustic detections of marine mammals to PSOs, including any determination regarding species identification, distance, and bearing (where relevant) relative to the pile being driven and the degree of confidence (*e.g.*, possible, probable detection) in the determination. All on-duty PSOs and PAM operator(s) must remain in contact with the on-duty construction personnel responsible for implementing mitigations (*e.g.*, delay to pile driving) to ensure communication on marine mammal observations can easily, quickly, and consistently occur between all on-duty PSOs, PAM operator(s), and on-water Project personnel;

(4) The PAM operator must inform the Lead PSO(s) on duty of animal detections, including any determination regarding species identification, distance, bearing, and degree of confidence in the determinations, approaching or within applicable ranges of interest to the activity occurring via the data collection software system, (*e.g.*, *Mysticetus* or similar system) who must be responsible for requesting that the designated crewmember implement the necessary mitigation procedures (*i.e.*, delay);

(5) PSOs must use high magnification (25x) binoculars, standard handheld

(7x) binoculars, and the naked eye to search continuously for marine mammals. During foundation installation, at least two PSOs on the pile driving-dedicated PSO vessel(s) must be equipped with functional Big Eye binoculars (*e.g.*, 25 × 150; 2.7 view angle; individual ocular focus; height control); these must be pedestal mounted on the deck at the best vantage point that provides for optimal sea surface observation and PSO safety;

(6) During periods of low visibility (*e.g.*, darkness, rain, fog, poor weather conditions, *etc.*), PSOs must use alternative technology (*i.e.*, infrared or thermal cameras) to monitor the clearance and shutdown zones as approved by NMFS;

(7) PSOs and PAM operators must not exceed 4 consecutive watch hours on duty at any time, must have a 2-hour (minimum) break between watches, and must not exceed a combined watch schedule of more than 12 hours in a 24-hour period. If the schedule includes PSOs and PAM operators on-duty for 2-hour shifts, a minimum 1-hour break between watches must be allowed; and

(8) During daylight hours when equipment is not operating, LOA Holder 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.

(c) *PSO and PAM operator requirements during WTG, OSS, and Met Tower foundation installation.* The following measures apply to PSOs and PAM operators during WTG, OSS, and Met Tower foundation installation and must be implemented by LOA Holder:

(1) At least three on-duty PSOs must be stationed and observing from the pile driving activity platform. Additionally, LOA Holder must use two dedicated-PSO vessels and each vessel must have at least three PSOs on duty. LOA Holder may request NMFS approval to use alternative technology *in lieu* of one or two of the dedicated PSO vessels that provide similar marine mammal detection capabilities. If NMFS approves the use of alternative technology *in lieu* of the additional PSO vessels, LOA Holder must abide by any conditions of approved, as specified by NMFS;

(2) PSOs and PAM operator(s), using a NMFS-approved PAM system, must monitor for marine mammals 60 minutes prior to, during, and 30 minutes following all pile-driving. If PSOs cannot visually monitor the minimum visibility zone for the 60 minutes prior to and during pile

driving, pile-driving operations must not commence or must shutdown if they are currently active; and

(3) LOA Holder must conduct PAM for at least 24 hours prior to pile driving activities. The PAM operator(s) must review all detections from the previous 24-hour period prior to starting foundation pile driving.

(d) *PSO requirements during cable landfill construction.* The following measures apply to PSOs during cofferdam installation and removal and must be implemented by LOA Holder:

(1) At least two PSOs must be on active duty during all activities related to the installation and removal of cofferdams; and

(2) PSOs must monitor the clearance zone for the presence of marine mammals for 30 minutes before, throughout the installation of the sheet piles, and for 30 minutes after all vibratory pile driving activities have ceased. Sheet pile installation and removal must 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 the initiation of vibratory pile driving.

(e) *PSO requirements during HRG surveys.* The following measures apply to PSOs during HRG surveys using CHIRPs and sparkers and must be implemented by LOA Holder:

(1) Between four and six PSOs must be present on every 24-hour survey vessel and two to three PSOs must be present on every 12-hour survey vessel;

(2) At least one PSO must be on active duty monitoring 30 minutes before, during, and 30 minutes after HRG surveys conducted during daylight (*i.e.*, from 30 minutes prior to civil sunrise through 30 minutes following civil sunset) and at least two PSOs must be on active duty monitoring 30 minutes before, during, and 30 minutes after HRG surveys conducted at night;

(3) PSOs on HRG vessels must begin monitoring 30 minutes prior to activating acoustic sources, during the use of these acoustic sources, and for 30 minutes after use of these acoustic sources has ceased;

(4) Any observations of marine mammals must be communicated to PSOs on all nearby survey vessels during concurrent HRG surveys; and

(5) During daylight hours when survey equipment is not operating, LOA Holder 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.

(f) *Monitoring requirements during fisheries monitoring surveys.* The following measures apply during fisheries monitoring surveys and must be implemented by LOA Holder:

(1) All captains and crew conducting fishery surveys must be trained in marine mammal detection and identification; and

(2) Marine mammal monitoring must be conducted within 1 nmi from the planned survey location by the trained captain and/or a member of the scientific crew for 15 minutes prior to deploying gear, throughout gear deployment and use (unless using ropeless gear), and for 15 minutes after haul back.

(g) *Reporting.* LOA Holder must comply with the following reporting measures:

(1) Prior to initiation of any specified activities, LOA Holder must demonstrate, in a report submitted to NMFS Office of Protected Resources, that all required training for LOA Holder personnel (including the vessel crews, vessel captains, PSOs, and PAM operators) has been completed;

(2) LOA Holder must use a standardized reporting system during the effective period of the LOA. All data collected related to the Project must be recorded using industry-standard software that is installed on field laptops and/or tablets. Unless stated otherwise, all reports must be submitted to NMFS Office of Protected Resources (PR.ITP.MonitoringReports@noaa.gov), dates must be in MM/DD/YYYY format, and location information must be provided in Decimal Degrees with the coordinate system information (*e.g.*, North American Datum of 1983 (NAD83), World Geodetic System 1984 (WGS84), *etc.*);

(3) For all visual monitoring efforts and marine mammal sightings, the following information must be collected and reported to NMFS Office of Protected Resources: the date and time that monitored activity begins or ends; the construction activities occurring during each observation period; the watch status (*i.e.*, sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform); the PSO who sighted the animal; the time of sighting; the weather parameters (*e.g.*, wind speed, percent cloud cover, visibility); the water conditions (*e.g.*, Beaufort sea state, tide state, water depth); all marine mammal sightings, regardless of distance from the activity; species (or lowest possible taxonomic level possible); the pace of the animal(s); the estimated number of animals

(minimum/maximum/high/low/best); the estimated number of animals by cohort (*e.g.*, adults, yearlings, juveniles, calves, group composition, *etc.*); the description (*i.e.*, as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics); the description of any marine mammal behavioral observations (*e.g.*, observed behaviors such as feeding or traveling) and observed changes in behavior, including an assessment of behavioral responses thought to have resulted from the specific activity; the animal's closest distance and bearing from the pile being driven or specified HRG equipment and estimated time entered or spent within the Level A harassment and/or Level B harassment zone(s); the activity at time of sighting (*e.g.*, impact pile driving, vibratory pile driving, construction surveys); use of any noise attenuation device(s); and specific phase of activity (*e.g.*, ramp-up of HRG equipment, HRG acoustic source on/off, soft-start for pile driving, active pile driving, *etc.*); the marine mammal occurrence in Level A harassment or Level B harassment zones; the description of any mitigation-related action implemented, or mitigation-related actions called for but not implemented, in response to the sighting (*e.g.*, delay, shutdown, *etc.*) and time and location of the action; other human activity in the area; and other applicable information, as required in any LOA issued under § 217.306;

(4) If a marine mammal is acoustically detected during PAM, the following information must be recorded and reported to NMFS: location of hydrophone (latitude and longitude; in decimal degrees) and site name; bottom depth and depth of recording unit (in meters); recorder (model & manufacturer) and platform type (*i.e.*, bottom-mounted, electric glider, *etc.*), and instrument ID of the hydrophone and recording platform (if applicable); time zone for sound files and recorded date/times in data and metadata (in relation to Universal Coordinated Time (UTC); *i.e.*, Eastern Standard Time (EST) time zone is UTC-5); duration of recordings (start/end dates and times; in International Organization for Standardization (ISO) 8601 format, yyyy-mm-ddTHH:MM:SS.sssZ); deployment/retrieval dates and times (in ISO 8601 format); recording schedule (must be continuous); hydrophone and recorder sensitivity (in dB re. 1 microPascal (μPa)); calibration curve for each recorder; bandwidth/sampling rate (in Hz); sample bit-rate of

recordings; and detection range of equipment for relevant frequency bands (in meters):

(i) For each detection, the following information must be noted: species identification (if possible); call type and number of calls (if known); temporal aspects of vocalization (date, time, duration, *etc.*; date times in ISO 8601 format); confidence of detection (detected, or possibly detected); comparison with any concurrent visual sightings; location and/or directionality of call (if determined) relative to acoustic recorder or construction activities; location of recorder and construction activities at time of call; name and version of detection or sound analysis software used, with protocol reference; minimum and maximum frequencies viewed/monitored/used in detection (in Hz); and name of PAM operator(s) on duty.

(ii) [Reserved]

(5) LOA Holder must compile and submit weekly reports during foundation installation to NMFS Office of Protected Resources that document the daily start and stop of all pile driving associated with the Project; the start and stop of associated observation periods by PSOs and PAM operators; details on the deployment of PSOs and PAM operators; a record of all observations/detections of marine mammals (acoustic and visual); any mitigation actions (or if mitigation actions could not be taken, provide reasons why); details on the noise attenuation system(s) used and its performance; and all abbreviated SFV results, including any indications that distances to the identified Level A harassment and Level B harassment thresholds for marine mammals were exceeded and an explanation of factors that contributed to each exceedance (if found) and corrective actions that were taken to avoid exceedance on subsequent piles. The weekly report must also identify which turbines become operational and when (a map must be provided). Once all foundation pile installation is completed, weekly reports are no longer required by LOA Holder;

(6) LOA Holder must compile and submit monthly reports to NMFS Office of Protected Resources during foundation installation that include a summary of all information in the weekly reports, including Project activities carried out in the previous month, vessel transits (number, type of vessel, MMIS number, and route), number of piles installed, all detections of marine mammals, and any mitigative action taken. The monthly report must also identify which turbines become

operational and when (a map must be provided). Once all foundation pile installation is completed, monthly reports are no longer required by LOA Holder;

(7) LOA Holder must submit a draft annual report to NMFS Office of Protected Resources following completion of activities each year. LOA Holder must provide a final report within 30 calendar days following resolution of NMFS' comments on the draft report. The draft and final reports must detail the following: the total number of marine mammals of each species/stock detected and how many were within the designated Level A harassment and Level B harassment zone(s) with comparison to authorized take of marine mammals for the associated activity type; marine mammal detections and behavioral observations before, during, and after each activity; what mitigation measures were implemented (*i.e.*, number of shutdowns or clearance zone delays, *etc.*) or, if no mitigative actions were taken, why not; operational details (*i.e.*, days and duration of impact and vibratory pile driving, days and amount of HRG survey effort, *etc.*); any PAM systems used; the results, effectiveness, and which noise attenuation systems were used during relevant activities (*i.e.*, foundation impact pile driving); summarized information related to situational reporting; and any other important information relevant to the Project, including additional information that may be identified through the adaptive management process;

(8) LOA Holder must submit its draft 5-year report to NMFS Office of Protected Resources on all visual and acoustic monitoring conducted within 90 calendar days of the completion of activities occurring under the LOA. A 5-year report must be prepared and submitted within 60 calendar days following receipt of any NMFS Office of Protected Resources comments on the draft report. The draft and final 5-year report must include, but is not limited to, the following: the total number (annually and across all 5 years) of marine mammals of each species/stock detected and how many were detected within the designated Level A harassment and Level B harassment zone(s) with comparison to authorized take of marine mammals for the associated activity; summary table(s) indicating the amount of each activity type (*e.g.*, pile installation, HRG) completed in each of the 5 years and total; Environmental Systems Research Institute, Inc. (ESRI) vector Geographic Information System (GIS) shapefile(s) of

the final location of all piles, cable routes, and other permanent structures including an indication of what year it was installed and began operating; ESRI vector GIS shapefile of all North Atlantic right whale sightings, including dates and group sizes; a 5-year summary and evaluation of all SFV data collected; a 5-year summary and evaluation of all PAM data collected; a 5-year summary and evaluation of marine mammal behavioral observations; a 5-year summary and evaluation of mitigation and monitoring implementation and effectiveness; and a list of recommendations to inform environmental compliance assessments for future offshore wind actions;

(9) LOA Holder must provide the initial results of the thorough SFV measurements (see § 217.304(c)(15)) to NMFS Office of Protected Resources in an interim report after each foundation installation event as soon as they are available and prior to any subsequent foundation installation, but no later than 48 hours after each completed foundation installation event. The report must include, at minimum: hammer energies and schedule used during pile driving, including the total number of strikes and the maximum hammer energy; the model-estimated acoustic ranges ($R_{95\%}$) to compare with the real-world sound field measurements; peak sound pressure level (SPL_{pk}), root-mean-square sound pressure level that contains 90 percent of the acoustic energy (SPL_{rms}), and sound exposure level (SEL , in single strike for pile driving, SEL_{ss}), for each hydrophone, including at least the maximum, arithmetic mean, minimum, median (L_{50}) and L_5 (95 percent exceedance) statistics for each metric; estimated marine mammal Level A harassment and Level B harassment acoustic isopleths, calculated using the maximum-over-depth L_5 (95 percent exceedance level, maximum of both hydrophones) of the associated sound metric; comparison of modeled results assuming 10-dB attenuation against the measured marine mammal Level A harassment and Level B harassment acoustic isopleths; estimated transmission loss coefficients; pile identifier name, location of the pile and each hydrophone array in latitude/longitude; depths of each hydrophone; one-third-octave band single strike SEL spectra; full filter characteristics (if filtering is applied); and hydrophone specifications including the type, model, and sensitivity. LOA Holder must also report any immediate observations which are suspected to have a significant impact on the results

including but not limited to: observed noise mitigation system issues, obstructions along the measurement transect, and technical issues with hydrophones or recording devices. If any *in-situ* calibration checks for hydrophones reveal a calibration drift greater than 0.75 dB, pistonphone calibration checks are inconclusive, or calibration checks are otherwise not effectively performed, LOA Holder must indicate full details of the calibration procedure, results, and any associated issues in the 48-hour interim reports;

(10) LOA Holder must conduct abbreviated SFV for all foundation installations for which the thorough SFV monitoring is not carried out, whereas a single acoustic recorder must be placed at an appropriate distance from the pile. All results must be included in the weekly reports. Any indications that distances to the identified Level A harassment and Level B harassment thresholds for marine mammals were exceeded must be addressed by LOA Holder, including an explanation of factors that contributed to the exceedance and corrective actions that were taken to avoid exceedance on subsequent piles;

(11) The final results of all SFV measurements from all foundation installations must be submitted no later than 90 calendar days following completion of all annual SFV measurements. The final reports must include all details included in the interim report and descriptions of any notable occurrences, explanations for results that were not anticipated, or actions taken during foundation installation. The final report must also include at least the maximum, mean, minimum, median (L_{50}) and L_5 (95 percent exceedance) statistics for each metric; the SEL and SPL power spectral density and/or one-third octave band levels (usually calculated as decade band levels) at the receiver locations should be reported; range of transmission loss coefficients; the local environmental conditions, such as wind speed, transmission loss data collected on-site (or the sound velocity profile); baseline pre-activity and post-activity ambient sound levels (broadband and/or within frequencies of concern); a description of depth and sediment type, as documented in the Construction and Operation Plan (COP), at the recording and foundation installation locations; the extents of the measured Level A harassment and Level B harassment zone(s); hammer energies required for pile installation and the number of strikes per pile; the hydrophone equipment and methods (*i.e.*, recording device, bandwidth/sampling rate;

distance from the pile where recordings were made; the depth of recording device(s)); a description of the SFV measurement hardware and software, including software version used, calibration data, bandwidth capability and sensitivity of hydrophone(s), any filters used in hardware or software, any limitations with the equipment, and other relevant information; the spatial configuration of the noise attenuation device(s) relative to the pile; a description of the noise abatement system and operational parameters (*e.g.*, bubble flow rate, distance deployed from the pile, *etc.*), and any action taken to adjust the noise abatement system. A discussion which includes any observations which are suspected to have a significant impact on the results including but not limited to: observed noise mitigation system issues, obstructions along the measurement transect, and technical issues with hydrophones or recording devices;

(12) If at any time during the Project LOA Holder becomes aware of any issue or issues which may (to any reasonable subject-matter expert, including the persons performing the measurements and analysis) call into question the validity of any measured Level A harassment or Level B harassment isopleths to a significant degree, which were previously transmitted or communicated to NMFS Office of Protected Resources, LOA Holder must inform NMFS Office of Protected Resources within 1 business day of becoming aware of this issue or before the next pile is driven, whichever comes first;

(13) Full PAM detection data, metadata, and location of recorders (or GPS tracks, if applicable) must be submitted within 90 calendar days following completion of foundation installation pile driving each season and every 90 calendar days for transit lane PAM using the International Organization for Standardization (ISO) standard metadata forms and instructions available on the NMFS Passive Acoustic Reporting System website at: <https://www.fisheries.noaa.gov/resource/document/passive-acoustic-reporting-system-templates>. Concurrently, the full acoustic recordings from real-time systems must also be sent to the National Centers for Environmental Information (NCEI) at: <https://www.ncei.noaa.gov/products/passive-acoustic-data> for archiving;

(14) Inclusive of all instances wherein an exemption to a measure is taken (which must be reported to NMFS Office of Protected Resources within 24 hours), LOA Holder must submit

situational reports if the following circumstances occur, including but not limited to the following:

(i) If a North Atlantic right whale is sighted with no visible injuries or entanglement at any time by project PSOs or project personnel, the LOA Holder must, as soon as possible but within 24 hours, download and complete the *Real-Time North Atlantic Right Whale Reporting Template* spreadsheet found at: <https://www.fisheries.noaa.gov/resource/document/template-datasheet-real-time-north-atlantic-right-whale-acoustic-and-visual> and save the completed spreadsheet as a .csv file and email it to NMFS NEFSC-PSD (ne.rw.survey@noaa.gov), NMFS GARFO-PRD (nmfs.gar.incidental-take@noaa.gov), and NMFS OPR (pr.itp.monitoringreports@noaa.gov). If unable to report a sighting through the spreadsheet within 24 hours, call the relevant regional hotline (Greater Atlantic Region's (Maine to Virginia/ North Carolina border) Hotline at 866-755-6622 or the Southeast Region's (North Carolina through the Gulf of Mexico) Hotline at 877-WHALE-HELP (877-942-5343)). Report the following information: the time (note time format), date (MM/DD/YYYY), location (latitude/longitude in decimal degrees; coordinate system used) of the observation, number of whales, animal description/certainty of observation (follow up with photos/video if taken), reporter's contact information, and Lease Areas number/project name, PSO/personnel name who made the observation, and PSO provider company (if applicable) (PAM detections are not reported to the Hotlines). If unable to report via the template or the regional hotline, enter the sighting via the WhaleAlert app (<http://www.whalealert.org/>). If this is not possible, report the sighting to the U.S. Coast Guard via channel 16. The report to the Coast Guard must include the same information as would be reported to the Hotline;

(ii) If a North Atlantic right whale is detected via real-time PAM, data must be submitted using the NMFS Passive Acoustic Reporting System Metadata and Detection data spreadsheets and instructions available at: <https://www.fisheries.noaa.gov/resource/document/passive-acoustic-reporting-system-templates>, as soon as feasible but no longer than 24 hours after the detection;

(iii) If a large whale other than a North Atlantic right whale is observed at any time by PSOs or Project personnel, LOA Holder must report the sighting to the

WhaleAlert app at: <http://www.whalealert.org/>;

(iv) In the event that personnel involved in the Project discover a stranded, entangled, injured, or dead marine mammal, the LOA Holder must immediately report the observation to NMFS. If in the Greater Atlantic Region (Maine through Virginia), call the NMFS Greater Atlantic Stranding Hotline (866-755-6622), and if in the Southeast Region (North Carolina through Florida), call the NMFS Southeast Stranding Hotline (877-WHALE-HELP (877-942-5343)). Separately, the LOA Holder must report, within 24 hours, the incident to NMFS Office of Protected Resources (PR.ITP.MonitoringReports@noaa.gov) and, if in the Greater Atlantic Region, to the NMFS Greater Atlantic Regional Fisheries Office (GARFO; nmfs.gar.incidental-take@noaa.gov) or, if in the Southeast Region, to the NMFS Southeast Regional Office (SERO; secmammalreports@noaa.gov). The report must include contact (e.g., name, phone number, etc.), time, date, and location (i.e., specify coordinate system) of the first discovery (and updated location information, if known and applicable); species identification (if known) or description of the animal(s) involved; condition of the animal(s) (including carcass condition if the animal is dead); observed behaviors of the animal(s) (if alive); photographs or video footage of the animal(s) (if available); and general circumstances under which the animal was discovered; and

(v) In the event of a suspected or confirmed vessel strike of a marine mammal by any vessel associated with the Project or other means by which Project activities caused a non-auditory injury or death of a marine mammal, the LOA Holder must immediately report the incident to NMFS. If in the Greater Atlantic Region (Maine through Virginia), call the NMFS Greater Atlantic Stranding Hotline (866-755-6622), and if in the Southeast Region (North Carolina through Florida) call the NMFS Southeast Stranding Hotline (877-WHALE-HELP (877-942-5343)). Separately, the LOA Holder must immediately report the incident to NMFS Office of Protected Resources (PR.ITP.MonitoringReports@noaa.gov) and, if in the Greater Atlantic Region, to the NMFS Greater Atlantic Regional Fisheries Office (GARFO; nmfs.gar.incidental-take@noaa.gov) or, if in the Southeast Region, to the NMFS Southeast Regional Office (SERO; secmammalreports@noaa.gov). The report must include time, date, and location (i.e., specify coordinate system) of the incident; species identification (if

known) or description of the animal(s) involved (i.e., identifiable features including animal color, presence of dorsal fin, body shape and size, etc.); vessel strike reported information (e.g., name, affiliation, email for person completing the report); vessel strike witness (if different than the reporter) information (e.g., name, affiliation, phone number, platform for person witnessing the event, etc.); vessel name and/or MMSI number; vessel size and motor configuration (inboard, outboard, jet propulsion); vessel's speed leading up to and during the incident; vessel's course/heading and what operations were being conducted (if applicable); part of vessel that struck marine mammal (if known); vessel damage notes; status of all sound sources in use at the time of the strike; if the marine mammal was seen before the strike event; description of behavior of the marine mammal before the strike event (if seen) and behavior immediately following the strike; description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike; environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, visibility, etc.) immediately preceding the strike; estimated (or actual, if known) size and length of marine mammal that was struck; if available, description of the presence and behavior of any other marine mammals immediately preceding the strike; other animal-specific details, if known (e.g., length, sex, age class); behavior or estimated fate of the marine mammal post-strike (e.g., dead, injured but alive, injured and moving, external visible wounds (linear wounds, propeller wounds, non-cutting blunt-force trauma wounds), blood or tissue observed in the water, status unknown, disappeared); to the extent practicable, any photographs or video footage of the marine mammal(s); and, any additional notes the witness may have from the interaction. For any numerical values provided (i.e., location, animal length, vessel length, etc.), please provide if values are actual or estimated. The LOA Holder must immediately cease activities until the NMFS Office of Protected Resources 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 LOA. NMFS Office of Protected Resources may impose additional measures to minimize the likelihood of further prohibited take and ensure MMPA compliance. The LOA Holder may not

resume their activities until notified by NMFS Office of Protected Resources.

(15) Any lost gear associated with the fishery surveys will be reported to the NOAA Greater Atlantic Regional Fisheries Office Protected Resources Division (nmfs.gar.incidentaltake@noaa.gov) as soon as possible or but no later than 24 hours of the documented time of missing or lost gear. This report must include information on any markings on the gear and any efforts undertaken or planned to recover the gear. All reasonable efforts, that do not compromise human safety, must be undertaken to recover gear.

§ 217.306 Letter of Authorization.

(a) To incidentally take marine mammals pursuant to this subpart, LOA Holder must apply for and obtain a LOA;

(b) LOA, unless suspended or revoked, may be effective for a period of time not to exceed December 31, 2029, the expiration date of this subpart;

(c) In the event of projected changes to the activity or to mitigation and monitoring measures required by the LOA, LOA Holder must apply for and obtain a modification of the LOA as described in § 217.307;

(d) The LOA must set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (i.e., mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(e) Issuance of the LOA must be based on a determination that the level of taking must be consistent with the findings made for the total taking allowable under the regulations of this subpart; and

(f) Notice of issuance or denial of the LOA must be published in the **Federal Register** within 30 calendar days of a determination.

§ 217.307 Modifications of Letter of Authorization.

(a) Any LOA issued under §§ 217.302 and 217.306 or this section for the activities identified in § 217.300(a) may be modified upon request by LOA Holder, provided that:

(1) The specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for this subpart (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) NMFS Office of Protected Resources determines that the

mitigation, monitoring, and reporting measures required by the previous LOA under this subpart were implemented.

(b) For any modification request to the LOA by the applicant that includes changes to the activities or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section), the LOA may be modified, provided that:

(1) NMFS Office of Protected Resources determines that the changes to the activity or the mitigation, monitoring, or reporting do not change the findings made for the regulations in this subpart and do not result in more than a minor change in the maximum annual or total estimated number of takes of any species or stock; and

(2) NMFS Office of Protected Resources may, if appropriate, publish a notice of proposed modified LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) LOA issued under §§ 217.302 and 217.306 or this section for the activities identified in § 217.300(a) may be modified by NMFS under the following circumstances:

(1) Through adaptive management, NMFS Office of Protected Resources may modify (*e.g.*, delete, modify, or add to) the existing mitigation, monitoring, or reporting measures (after consulting with the LOA Holder regarding the practicability of the modifications), if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring;

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in the LOA include, but are not limited to:

(A) Results from LOA Holder's monitoring;

(B) Results from other marine mammals and/or sound research or studies; and

(C) Any information that reveals marine mammals may have been taken

in a manner, extent, or number not allowed by the regulations in this subpart or subsequent LOA.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS Office of Protected Resources shall publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) If NMFS Office of Protected Resources determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in the LOA issued pursuant to §§ 217.302 and 217.306 or this section, any LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within 30 calendar days of the issuance of a LOA under this subpart.

§§ 217.308–217.309 [Reserved]

[FR Doc. 2024–19587 Filed 9–23–24; 8:45 am]

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Part III

Federal Communications Commission

47 CFR Part 9

Facilitating Implementation of Next Generation 911 Services (NG911);
Location-Based Routing for Wireless 911 Call; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 9

[PS Docket Nos. 21–479, 18–64; FCC 24–78; FR ID 238221]

Facilitating Implementation of Next Generation 911 Services (NG911); Location-Based Routing for Wireless 911 Calls

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (the FCC or Commission) adopted a Report and Order to advance the nationwide Next Generation 911 (NG911) transition rules that define the responsibilities and set deadlines for originating service providers (OSPs) to implement NG911 capabilities on their networks and deliver 911 calls to NG911 systems established by 911 authorities. In addition, the rules preserve the authority of state, territorial, regional, Tribal, and local government to adopt alternative approaches to the configuration, timing, and cost responsibility for NG911 implementation within their jurisdictions.

DATES: *Effective date:* November 25, 2024.

Compliance date: Compliance will not be required for §§ 9.31(a) through (c) and 9.34(a) and (b) until a document is published in the **Federal Register** announcing a compliance date and revising or removing §§ 9.31(d) and 9.34(c).

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact John Evanoff of the Public Safety and Homeland Security Bureau, Policy and Licensing Division, at John.Evanoff@fcc.gov or 202–418–0848.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in PS Docket Nos. 21–479 and 18–64, FCC 24–78, adopted on July 18, 2024, released on July 19, 2024, and corrected via an Erratum released on September 5, 2024. The full text of this document is available for public inspection at <https://docs.fcc.gov/public/attachments/FCC-24-78A1.pdf>. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice).

Congressional Review Act

The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Synopsis

I. Introduction

This document is a summary of the Commission's Report and Order (Order). In the Order, we take steps that will advance the nationwide transition to Next Generation 911 (NG911). Like communications networks generally, dedicated 911 networks are evolving from Time Division Multiplexing (TDM)-based circuit-switched architectures to internet Protocol (IP)-based architectures. With the transition to NG911, legacy 911 networks will be replaced by IP-based technologies and applications, which provide new capabilities and improved interoperability and system resilience. Most states have begun to invest significantly in NG911, but some have experienced delays in communications providers connecting to these IP-based networks. As a result of these delays, state and local 911 authorities incur prolonged costs because of the need to maintain both legacy and IP networks during the transition. Managing 911 traffic on both legacy and IP networks at the same time may also result in increased vulnerability and risk of 911 outages.

To facilitate the NG911 transition, we adopt rules that will require wireline providers, Commercial Mobile Radio Service (CMRS) providers, covered text providers, providers of interconnected Voice over internet Protocol (VoIP) services, and providers of internet-based Telecommunications Relay Service (internet-based TRS) (collectively “originating service providers” or “OSPs”)¹ to take actions to start or continue the transition to NG911 in coordination with 911 Authorities.² The

¹ For purposes of this document and the Order and the rules we adopt, “wireline provider” means “[a] local exchange carrier (as defined in 47 U.S.C. 153(32)) that provides service using wire communication (as defined in 47 U.S.C. 153(59)),” and “covered text provider” has the meaning given such term under 47 CFR 9.10(q)(1). The terms “CMRS,” “interconnected VoIP service,” and “internet-based TRS” have the meanings identified in 47 CFR 9.3.

² “911 Authority” means “[a] state, territorial, regional, Tribal, or local governmental entity that

rules create a consistent NG911 transition framework at the national level, while also affording flexibility to 911 Authorities to modify the transition framework at the State, regional, local, territorial, or Tribal level.

We implement a two-phased approach to guide the transition to NG911. Each phase is initiated by a 911 Authority submitting a valid request to OSPs within the jurisdiction where the 911 Authority is located for the OSPs to comply with NG911 requirements, including:

- **Phase 1:** Upon receiving a valid Phase 1 request from a 911 Authority, an OSP must commence delivery of 911 traffic in IP-based Session Initiation Protocol (SIP) format to one or more in-state NG911 Delivery Points designated by the 911 Authority. Phase 1 will enable 911 Authorities to deploy Emergency Services IP Networks (ESInets) in a cost-effective manner by selecting convenient delivery points to receive 911 traffic; will improve 911 reliability by using an IP-based format, rather than legacy format, to deliver 911 traffic; and will establish the transmission platforms necessary for upgrading to Phase 2.

- **Phase 2:** Upon receiving a valid Phase 2 request from a 911 Authority, an OSP must commence delivery of 911 traffic to the designated in-state NG911 Delivery Point(s) in an IP-based SIP format that complies with NG911 commonly accepted standards identified by the 911 Authority, including having location information embedded in the call signaling using Presence Information Data Format—Location Object (PIDF-LO)³ or the functional equivalent. In Phase 2, the OSP must install and put into operation all equipment, software applications, and other infrastructure, or acquire all services, necessary to use a Location Information Server (LIS) or its functional equivalent for the verification of its customer location information and records.⁴ Phase 2 will facilitate use of

operates or has administrative authority over all or any aspect of a communications network for the receipt of 911 traffic at NG911 Delivery Points and for the transmission of such traffic from that point to PSAPs.”

³ See Internet Engineering Task Force (IETF), Dynamic Extensions to the Presence Information Data Format Location Object (PIDF-LO) (Sept. 2010), <https://datatracker.ietf.org/doc/html/rfc5962> (RFC 5962), and A Presence-based GEOPRIV Location Object Format (Dec. 2005), <https://datatracker.ietf.org/doc/html/rfc4119> (RFC 4119).

⁴ “Location Information Server (LIS)” means “[a] Functional Element that provides locations of endpoints. A LIS can provide Location-by-Reference or Location-by-Value, and, if the latter, in geodetic or civic forms. A LIS can be queried by an endpoint for its own location, or by another entity for the location of an endpoint.”

the functional elements of Next Generation 911 Core Services (NGCS), which can deliver dynamic information to Public Safety Answering Points (PSAPs), enabling them to use policy routing functions to dynamically reroute 911 traffic to avoid network disruptions, thus reducing the impact of outages on 911 continuity.

For both Phase 1 and Phase 2, 911 Authorities must meet specific readiness criteria in order to make a valid request for OSP delivery of NG911 traffic. For Phase 1, the 911 Authority must certify that it has all the necessary infrastructure installed and operational to receive 911 traffic in SIP format and to transmit such traffic to the PSAPs connected to it. The 911 Authority must also identify the NG911 Delivery Points that it has designated and notify the OSP(s) of these delivery points via a registry or direct written notification. For Phase 2, the 911 Authority must certify: (1) that it has all of the necessary infrastructure installed and operational to receive 911 traffic in SIP format that complies with NG911 commonly accepted standards and to transmit such traffic to the PSAPs connected to it; and (2) that its ESInet is connected to a fully functioning NGCS network that can provide access to a Location Validation Function (LVF) and interface with the LIS or functional equivalent provided by the OSP.⁵

Nationwide CMRS providers,⁶ covered text providers,⁷ interconnected VoIP providers, and wireline providers other than rural incumbent local exchange carriers (RLECs) will have six months following a 911 Authority's valid Phase 1 request to comply with Phase 1 requirements, and six months following a valid Phase 2 request to comply with Phase 2 requirements.

⁵ In the NG911 environment, a LVF works with the LIS to validate the location of a civic address prior to a call being placed to 911. See, e.g., NENA: The 9-1-1 Association (NENA), The Next Generation 9-1-1 Guide for 9-1-1 Authorities at 38 (Apr. 21, 2020) https://cdn.ymaws.com/www.nena.org/resource/resmgr/standards/nena-ref-005.1-2020_ng911_guid.pdf (NENA NG911 Guide for 911 Authorities). The functionality of the LVF within NG911 replaces the E911 master street address guide (MSAG) validation in legacy 911 environments. *Id.* In this document and the Order, we define "Location Validation Function" (LVF) as "[a] Functional Element in an NG911 Core Services (NGCS) consisting of a server where civic location information is validated against the authoritative Geographic Information System (GIS) database information. A civic address is considered valid if it can be located within the database uniquely, is suitable to provide an accurate route for an emergency call, and is adequate and specific enough to direct responders to the right location."

⁶ The term "nationwide CMRS provider" has the meaning given such term under 47 CFR 9.10(i)(1)(iv).

⁷ The term "covered text provider" has the meaning given such term under 47 CFR 9.10(q)(1).

RLECs,⁸ non-nationwide CMRS providers,⁹ and internet-based TRS providers will have one year following a 911 Authority's valid Phase 1 request to comply with Phase 1 requirements, and one year following a valid Phase 2 request to comply with Phase 2 requirements. Completion of Phase 1 is a prerequisite to commencement of Phase 2; however, if Phase 1 has already been achieved or an OSP completes Phase 1 in less than the allotted six-month or one-year period, the Phase 2 implementation period can commence immediately, provided the 911 Authority has met the Phase 2 readiness criteria. To facilitate collaboration between 911 Authorities and OSPs, we also permit 911 Authorities and OSPs to enter into mutual agreements that modify the Phase 1/Phase 2 terms and timelines, and our rules presumptively do not alter or invalidate such agreements that already exist.

The rules presumptively address cost allocation between OSPs and 911 Authorities for implementation of NG911. In the absence of an alternative cost arrangement implemented by a 911 Authority at the state or local level, OSPs will be financially responsible for the costs of transmitting 911 traffic to the NG911 Delivery Points designated by 911 Authorities starting at Phase 1. Thus, by default, our rules establish NG911 Delivery Points as the demarcation points where the OSP's responsibility for the cost of transmitting 911 traffic ends and the 911 Authority's responsibility begins. In addition, in both Phase 1 and Phase 2, OSPs will be presumptively responsible for the costs associated with translating 911 traffic into the required IP-based format, including associated routing and location information.

The rules are intended to expedite the NG911 transition and help ensure that the nation's 911 system functions effectively and reliably, with advanced capabilities. In addition, the rules respond to the petition filed in 2021 by the National Association of State 911 Administrators (NASNA),¹⁰ which urged the Commission to take actions to resolve uncertainty and disputes between OSPs and state 911 Authorities regarding the NG911 transition. The rules create a consistent framework for

⁸ "Rural incumbent local exchange carrier (RLEC)" has the meaning given such term under 47 CFR 54.5.

⁹ A "non-nationwide CMRS provider" has the meaning given such term under 47 CFR 9.10(i)(1)(v).

¹⁰ Petition for Rulemaking; Alternatively, Petition for Notice of Inquiry, CC Docket No. 94-102, PS Docket Nos. 18-64, 18-261, 11-153, and 10-255 (filed Oct. 19, 2021), <https://www.fcc.gov/ecfs/document/1019188969473/1> (NASNA Petition).

ensuring that OSPs take the necessary steps to implement the transition to NG911 capabilities in coordination with 911 Authorities. At the same time, we recognize and do not preempt the long-standing authority of State and local government over the provision of 911 service. Thus, 911 Authorities at the State, local, and Tribal level remain free to establish alternative provisions within their jurisdictions for the implementation of NG911, definition of demarcation points, and allocation and recovery of costs.

II. Background

911 service is a vital part of our nation's emergency response and disaster preparedness system. Since the first 911 call was placed in 1968,¹¹ the American public has increasingly come to depend on 911 service. The National Emergency Number Association (NENA) estimates that some form of 911 service is available to over 98 percent of the population and to over 97 percent of the counties in the United States,¹² and data collected in our annual 911 fee report indicate that over 217 million calls are made to 911 in the United States each year.¹³ The availability of this critical service is due largely to the dedicated efforts of State, local, territorial, and Tribal authorities and providers, who have used the 911 dialing code to provide access to increasingly advanced and effective emergency service capabilities.¹⁴

A. 911 Implementation

The Universal Emergency Number. In 1999, Congress amended section 251(e) of the Communications Act of 1934, as amended (the Act), and directed the Commission to designate "911" as the nationwide abbreviated dialing code for wireline and wireless voice services in order to obtain public safety and emergency services.¹⁵ In 2000, the

¹¹ Federal Communications Commission (FCC), *911 and E911 Services*, <https://www.fcc.gov/general/9-1-1-and-e9-1-1-services> (May 15, 2024).

¹² NENA, *9-1-1 Statistics*, <https://www.nena.org/page/911Statistics> (last visited May 29, 2024).

¹³ FCC, *Fifteenth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges* at 16, tbl.3 (2023), <https://www.fcc.gov/sites/default/files/15th-annual-911-fee-report-2023.pdf> (Fifteenth Annual 911 Fee Report).

¹⁴ See *Implementation of 911 Act; The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, WT Docket No. 00-110, CC Docket No. 92-105, Fourth Report and Order and Third Notice of Proposed Rulemaking (65 FR 56752 (Sept. 19, 2000)), and Notice of Proposed Rulemaking (65 FR 56757 (Sept. 19, 2000)), 15 FCC Rcd 17079, 17084, para. 9 (2000) (911 Implementation Notice).

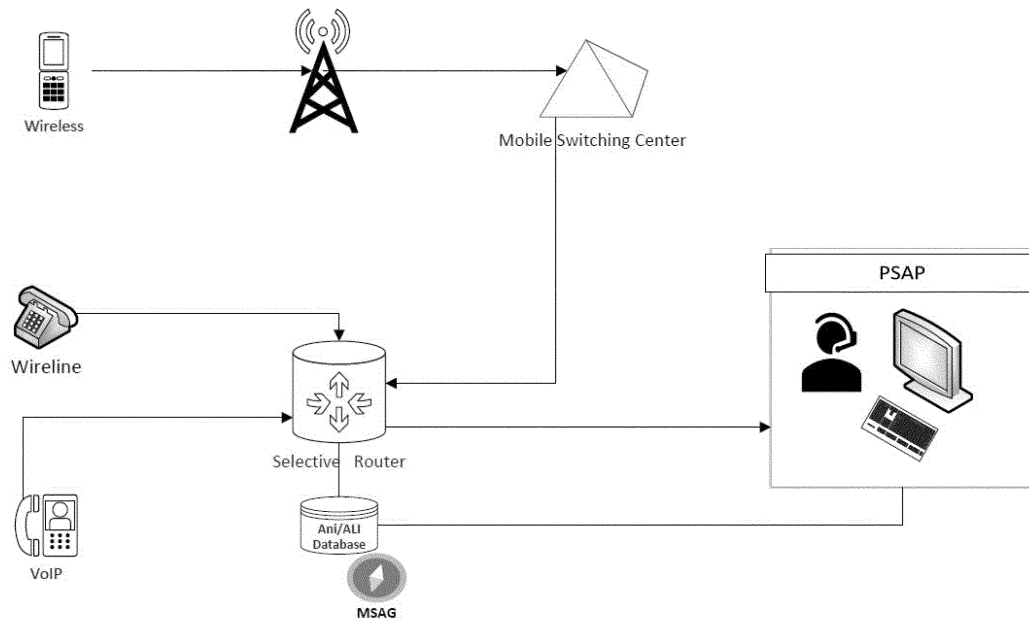
¹⁵ Wireless Communications and Public Safety Act of 1999, Public Law 106-81, sec. 3(a), 113 Stat. 1286, 1287 (911 Act) (codified at 47 U.S.C.

Commission designated 911 as the national emergency telephone number to be used for reporting emergencies and requesting emergency assistance.¹⁶ In 2001, the Commission established a period for wireline and wireless carriers to transition to routing 911 calls to a PSAP in areas where one had been designated or, in areas where a PSAP had not yet been designated, either to an existing statewide default point or to an appropriate local emergency authority.¹⁷

Legacy 911 Call Routing. In legacy E911 systems, 911 calls are typically routed through the use of a wireline network element—called a selective

router—to a geographically appropriate PSAP based on the caller's location.¹⁸ The selective router serves as the entry point for wireline 911 calls originated from competitive and incumbent Local Exchange Carrier (LEC) central offices over dedicated trunks,¹⁹ as well as 911 calls originated by wireless²⁰ and interconnected VoIP²¹ callers that are delivered by wireless and interconnected VoIP networks to the selective router. In legacy architectures, PSAPs are connected to telephone switches in the selective router by dedicated trunk lines.²² Historically, the selective router and connecting trunk

lines have been implemented, operated, and maintained by a subset of incumbent LECs and largely paid for by state or local 911 authorities through state tariffs or contracts.²³ Network implementation has varied from carrier to carrier and jurisdiction to jurisdiction, but legacy E911 has typically been based on traditional circuit-switched architecture and implemented with legacy components that place significant limitations on the functions that can be performed over the network.²⁴ Below is a simplified diagram that demonstrates legacy 911 architecture.



Legacy Demarcation Point. Although the Commission has not previously set a cost demarcation point for wireline, interconnected VoIP, or internet-based

TRS providers in the E911 environment, the Commission has set a demarcation point for purposes of the wireless transition to E911. Early in the

implementation of E911 Phase I by wireless carriers, King County, Washington sought clarification of the demarcation point for costs in wireless

251(e)(3)). The purpose of the 911 Act is to enhance public safety by encouraging and facilitating the prompt deployment of a nationwide, seamless communications infrastructure for emergency services that includes wireless communications. 911 Implementation Notice, 15 FCC Rcd at 17081, para. 1 (citing 911 Act sec. 2(b)). The 911 Act further directs the Commission to encourage and support the states in developing comprehensive emergency communications throughout the United States so that all jurisdictions offer seamless networks for prompt emergency service. *Id.*

¹⁶ 911 Implementation Notice, 15 FCC Rcd at 17084–85, para. 11.

¹⁷ See *Implementation of 911 Act; The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, WT Docket No. 00–110, CC Docket No. 92–105, Fifth Report and Order, First Report and Order, and Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 22264, 22293–95, app. B (2001), 67 FR 1643 (Jan. 14, 2002) (911 Implementation Order). The Commission codified in former § 64.3001 the obligation of telecommunications carriers to transmit all 911

calls to a PSAP, to a designated statewide default answering point, or to an appropriate local emergency authority. *Id.* In addition, the Commission codified in former § 64.3002 the periods for transition to 911 as the universal emergency telephone number. *Id.* The Commission subsequently renumbered §§ 64.3001 and 64.3002 as current §§ 9.4 and 9.5, respectively. *Implementing Kari's Law and Section 506 of RAY BAUM'S Act; Inquiry Concerning 911 Access, Routing, and Location in Enterprise Communications Systems; Amending the Definition of Interconnected VoIP Service in Section 9.3 of the Commission's Rules*, PS Docket Nos. 18–261 and 17–239, GN Docket No. 11–117, Report and Order, 34 FCC Rcd 6607, 6742, app. B (2019), 84 FR 66716 (Dec. 5, 2019) (Kari's Law/RAY BAUM'S Act Order), corrected by Erratum, 34 FCC Rcd 11073 (PSHSB 2019), 85 FR 9390 (Feb. 19, 2020), also corrected by Second Erratum, 37 FCC Rcd 10274 (PSHSB 2022), 87 FR 60104 (Oct. 4, 2022); see 47 CFR 9.4, 9.5.

¹⁸ See *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04–

36 and 05–196, First Report and Order (70 FR 37273 (June 29, 2005)) and Notice of Proposed Rulemaking (70 FR 37307 (June 29, 2005)), 20 FCC Rcd 10245, 10251, 10252, paras. 13, 15 (2005) (VoIP 911 Order), *aff'd sub nom. Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006). In the event a 911 Authority has only implemented basic 911, or utilizes a standalone ANI/ALI database, the 911 Authority may or may not utilize selective routers in its architecture. See Letter from Alexandra Mays, Assistant General Counsel & Director, Regulatory Affairs, Competitive Carriers Association (CCA), to Marlene H. Dortch, Secretary, FCC, at 2 (received July 12, 2024) (CCA July 12, 2024 *Ex Parte*).

¹⁹ VoIP 911 Order at 10252, para. 15.

²⁰ See *id.* at 10252–53, para. 17.

²¹ See *id.* at 10269, paras. 40–41.

²² See *id.* at 10250–51, para. 12.

²³ *Id.* at 10251, para. 14.

²⁴ *Id.* at 10252, para. 14.

E911 Phase I implementation.²⁵ In 2001, the Wireless Telecommunications Bureau (WTB) issued a decision (King County Letter) identifying the input to the 911 selective router maintained by the incumbent LEC as the “proper demarcation point” for allocating wireless E911 Phase I information delivery responsibilities and costs in instances when CMRS providers and 911 authorities could not agree on an appropriate demarcation point.²⁶ In 2002, the Commission issued an Order on Reconsideration (King County Order on Reconsideration) affirming WTB’s decision.²⁷ The Commission affirmed that for a wireless carrier to satisfy its obligation to provide E911 Phase I information to the PSAP under section 20.18(d) (now section 9.10(d)), the wireless carrier must deliver and bear the costs to deliver E911 Phase I information to the equipment in the existing 911 system that “analyzes and distributes it,” *i.e.*, the 911 selective router.²⁸ The Commission also affirmed that PSAPs were required to bear E911 Phase I costs for delivery beyond the 911 selective router.²⁹ Finally, the Commission extended this determination to apply to CMRS providers’ delivery of wireless E911 Phase II information to selective routers.³⁰ Together, these decisions provided guidance to facilitate implementation of E911 in TDM networks. However, the Commission has not previously sought to address the demarcation of service providers’ cost responsibilities in the NG911 environment.

²⁵ Letter from Marlys R. Davis, E911 Program Manager, King County E–911 Program Office, Department of Information and Administrative Services, to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (May 25, 2000).

²⁶ Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, FCC, to Marlys R. Davis, E911 Program Manager, King County E–911 Program Office, Department of Information and Administrative Services, King County, Washington, 2001 WL 491934, at *1 (WTB May 7, 2001) (King County Letter) (clarifying that “wireless carriers are responsible for the costs of all hardware and software components and functionalities that precede the 911 Selective Router” and that “PSAPs . . . must bear the costs of maintaining and/or upgrading the E911 components and functionalities beyond the input to the 911 Selective Router”).

²⁷ *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Request of King County, Washington*, CC Docket No. 94–102, Order on Reconsideration, 17 FCC Rcd 14789, 14789, 14793, paras. 1, 9–10 (2002) (King County Order on Reconsideration) (affirming the King County Letter on reconsideration and extending WTB’s analysis to E911 Phase II service).

²⁸ King County Order on Reconsideration, 17 FCC Rcd at 14790, 14792–93, paras. 4, 7–8.

²⁹ See *id.* at 14790–91, 14792–93, paras. 4, 7–8.

³⁰ *Id.* at 14793, paras. 9–10.

Interconnected Voice Over Internet Protocol (VoIP). Regarding interconnected VoIP, the Commission has recognized that consumers expect certain types of emerging voice technology to have the same ability to reach emergency services when dialing 911 as traditional wireline and wireless services.³¹ This recognition resulted in the 2005 VoIP 911 Order, in which the Commission imposed 911 service obligations on providers of interconnected VoIP.³² The Commission declined to establish an E911 demarcation point for interconnected VoIP service, but it stated that “[t]o the extent that it becomes a concern, we believe that the demarcation point that the Commission established for wireless E911 cost allocation would be equally appropriate for VoIP.”³³

911 Parity. By 2008, Congress recognized that the nation’s 911 system was “evolving from its origins in the circuit-switched world into an IP-based network”³⁴ and that for interconnected VoIP providers to fulfill their 911 service obligations to subscribers, they must have access to the same emergency services capabilities and infrastructure as other voice providers.³⁵ Congress

³¹ See, e.g., VoIP 911 Order, 20 FCC Rcd at 10247–48, paras. 4–5.

³² *Id.* at 10246, 10256, paras. 1, 22; see also 47 CFR 9.3 (defining *interconnected VoIP service*), 9.11–9.12 (giving interconnected VoIP providers duties and rights with respect to provision of 911 service). The Commission later clarified that the 911 VoIP requirements extended to “outbound only” interconnected VoIP providers, that is, VoIP providers that permit users to initiate calls that terminate to the PSTN even if they do not also allow users to receive calls from the PSTN. Kari’s Law/RAY BAUM’S Act Order, 34 FCC Rcd at 6670–71, 6675, paras. 174, 183. While section 615b uses the term “IP-enabled voice service,” it defines this term as having the same meaning as “interconnected VoIP” in § 9.3 of the Commission’s rules. 47 U.S.C. 615b(8). We refer to both of these terms in this document and the Order as “interconnected VoIP service” (and to providers of such a service as “interconnected VoIP providers”) and in doing so intend to encompass all VoIP services subject to 911 obligations under part 9 of our rules, including providers of internet Protocol Captioned Telephone Service (IP CTS), who are also the providers of the associated interconnected VoIP service. IP CTS is a form of Telecommunications Relay Service (TRS) “that permits an individual with a hearing or a speech disability to communicate in text using an internet Protocol-enabled device via the internet, rather than using a text telephone (TTY) and the public switched telephone network.” 47 CFR 64.601(a)(24). We also include other providers of internet-based TRS, video relay service (VRS), and Internet Protocol Relay Service (IP Relay).

³³ VoIP 911 Order, 20 FCC Rcd at 10274, para. 53 n.164.

³⁴ *Implementation of the NET 911 Improvement Act of 2008*, WC Docket No. 08–171, Report and Order, 23 FCC Rcd 15884, 15893, para. 22, 74 FR 31860 (July 6, 2009) (citing New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. 110–283, Preamble, sec.102, 122 Stat. 2620 (2008) (NET 911 Act)).

³⁵ See H.R. Rep. No. 110–442, at 6–7 (2007).

passed the New and Emerging Technologies Improvement Act of 2008 (NET 911 Act) to facilitate the rapid deployment of VoIP 911 services and encourage the transition to a national IP-enabled emergency network.³⁶ The NET 911 Act extended critical 911 service-related rights, protections, and obligations to VoIP service providers,³⁷ and mandated parity for VoIP providers vis-à-vis other voice providers subject to 911 obligations with respect to the rates, terms, and conditions applicable to exercising their rights and obligations to provision VoIP 911 service.³⁸

B. Transition to Next Generation 911

1. Legal and Policy Landscape

Like communications networks generally, 911 networks are evolving from TDM-based architectures to IP-based architectures. With the transition to NG911, the circuit-switched architecture of legacy 911 will eventually be entirely replaced by IP-based technologies and applications that provide all of the same functions as the legacy 911 system, as well as new capabilities. In its end state, NG911 will facilitate interoperability and system resilience, improve connections between 911 call centers, and support the transmission of text, photos, videos, and data to PSAPs by individuals seeking emergency assistance.³⁹

Congress has recognized the Commission’s role in facilitating the transition to NG911. As part of the 2010 National Broadband Plan, the Commission recommended that Congress consider developing a new “legal and regulatory framework for development of NG911 and the transition from legacy 911 to NG911 networks.”⁴⁰ Also in 2010, Congress enacted the Twenty-First Century Communications and Video Accessibility Act (CVAA), which authorized the Commission to implement regulations necessary to achieve reliable and interoperable communication that ensures access to

³⁶ NET 911 Act, Preamble.

³⁷ *Id.* secs. 101, 201(a).

³⁸ *Id.* sec. 101(2) (codified at 47 U.S.C. 615a–1(b)).

³⁹ See, e.g., City of New York Office of Technology & Innovation, 2022 Annual Report on Implementation of Next Generation 9–1–1 in NYC at 4 (2022), <https://www.nyc.gov/assets/oti/downloads/pdf/reports/annual-report-next-generation-911-2022.pdf> (listing the primary technical benefits of NG911); see also NENA, Why NG9–1–1 at 1–2 (2009), https://cdn.ymaws.com/www.nena.org/resource/resmgr/ng9-1-1_project/whyng911.pdf (identifying the purposes of NG911).

⁴⁰ FCC, Connecting America: The National Broadband Plan, Recommendation 16.14 at 326 (2010), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf (last visited May 16, 2023) (National Broadband Plan).

an IP-enabled emergency network by individuals with disabilities, where achievable and technically feasible.⁴¹ In 2012, Congress enacted the Next Generation 9–1–1 Advancement Act of 2012 (NG911 Act) as part of the Middle Class Tax Relief and Job Creation Act of 2012, and directed the Commission to prepare and submit a report to Congress on recommendations for the legal and statutory framework for NG911 services.⁴² In 2013, the Commission submitted that report, recommending among other things that Congress: (1) facilitate the exercise of existing authority over NG911 by certain federal agencies (including the Commission); and (2) consider enacting legislation that would ensure there is no gap between federal and state authority over NG911.⁴³ The Commission stated that “[t]he Commission already has sufficient authority to regulate the 911 and NG911 activity of, inter alia, wireline and wireless carriers, interconnected VoIP providers, and other IP-based service providers.”⁴⁴

The technological and regulatory landscape underlying 911 has evolved significantly since 2013. The Commission has adopted requirements for text-to-911, real-time text, wireless indoor location accuracy, and dispatchable location.⁴⁵ In addition, the

Commission has updated 911 outage and reliability rules, including establishing reliability requirements for covered 911 service providers.⁴⁶ With respect to technology, E911 Phase II is now widely implemented,⁴⁷ and many state and local jurisdictions have deployed ESInets and taken other transitional steps towards NG911.⁴⁸ Although the NG911 transition remains ongoing and there are no fully enabled NG911 systems yet operating,⁴⁹ the technical architecture of NG911 systems has been developed in detail and is well-established,⁵⁰ and one service provider—Verizon—states that it has achieved end-to-end readiness with two local jurisdictions based on the NENA i3 standard.⁵¹

2. Standards Work and Federal Advisory Committee Reports

NENA i3 Transitional and End State NG911. The public safety community

and Order and Order on Reconsideration, 35 FCC Rcd 7752 (2020), 85 FR 53234 (Aug. 28, 2020); Kari’s Law/RAY BAUM’S Act Order, 34 FCC Rcd 6607.

⁴⁶ E.g., *Amendments to Part 4 of the Commission’s Rules Concerning Disruptions to Communications; Improving 911 Reliability; New Part 4 of the Commission’s Rules Concerning Disruptions to Communications*, PS Docket Nos. 15–80, 13–75, and 04–35, Second Report and Order, 37 FCC Rcd 13847 (2022), 88 FR 9756 (Feb. 15, 2023).

⁴⁷ NENA, 9–1–1 Statistics, <https://www.nena.org/page/911Statistics> (last visited May 16, 2023).

⁴⁸ According to the most recent National 911 Annual Report, 2,287 PSAPs reported using an ESInet across 47 states in 2021, nearly a 5% increase from the 2020 data. National 911 Program, National 911 Annual Report, 2021 Data at 8, 60, 64 (2023), https://www.911.gov/assets/2021-911-Profile-Database-Report_FINAL.pdf (National 911 Annual Report).

⁴⁹ Association of Public-Safety Communications Officials-International, Inc. (APCO) Comments at 1–2 (rec. Jan. 19, 2022) (APCO Comments) (“ECCs should be able to receive, process, and share appropriate information with responders in the field and with other ECCs in a secure and fully interoperable fashion [but] no part of the country can be described as having achieved this vision of NG9–1–1 with end-to-end broadband communications for ECCs.”); see also APCO, APCO International’s Definitive Guide to Next Generation 9–1–1 at 9 (2022), https://www.apcointl.org/ext/pages/APCOng911Guide/APCO_NG911_Report_Final.pdf (noting that comprehensive, end-to-end NG911 “does not yet exist anywhere in the country”).

⁵⁰ See FCC, Task Force on Optimal PSAP Architecture (TFOPA), Adopted Final Report (2016), https://transition.fcc.gov/pshs/911/TFOPA/TFOPA_FINALReport_012916.pdf (TFOPA Final Report).

⁵¹ See Press Release, Verizon continues industry leadership with additional NG911 i3 deployment (June 20, 2023), <https://www.verizon.com/about/news/verizon-continues-industry-leadership-additional-ng911-i3-deployment> (discussing i3 deployment in Livingston Parish, LA); Press Release, NGA, NGA, Verizon, Logan County (W. Va.) deploy nation’s first End State NENA i3 (Dec. 16, 2022), <https://www.prnewswire.com/news-releases/nga-verizon-logan-county-w-va-deploy-nations-first-end-state-nena-i3-301705551.html> (discussing i3 deployment in Logan County, WV).

has recognized the need to evolve to NG911, and industry associations and standards bodies have worked toward defining standard architectures and protocols for NG911. For example, NENA’s “i3” standard describes a system architecture for NG911 that standardizes the structure and design of the software services, databases, network elements, and interfaces needed to process multimedia emergency calls and data for NG911.⁵² The i3 standard is intended to “support[] end-to-end IP connectivity,” while using “gateways . . . to accommodate legacy wireline and wireless originating networks that are non-IP as well as legacy PSAPs that interconnect to the i3 solution architecture.”⁵³ In addition, NENA i3 addresses the concept of the ESInet, “an IP-based inter-network (network or networks) that can be shared by all public safety agencies that may be involved in any emergency,” and identifies “a set of core services that process 9–1–1 calls on that network (NGCS–NG9–1–1 Core Services).”⁵⁴ The i3 standard envisions that NG911 will reach a mature “end state”⁵⁵ after all PSAPs have migrated from legacy E911 systems based on TDM circuit-switched telephony to all-IP systems that operate over ESInets and provide the full array of NGCS.⁵⁶ The standard

⁵² NENA, NENA i3 Standard for Next Generation 9–1–1 at 2 (Oct. 7, 2021), https://cdn.ymaws.com/www.nena.org/resource/resmgr/standards/NENA-STA-010.3e-2021_i3_Stan.pdf (NENA i3). In July 2021, NENA released the third version of the i3 standard for NG911. See NENA, *NENA Releases New Version of the i3 Standard for Next Generation 9–1–1* (July 12, 2021) <https://www.nena.org/news/572966/NENA-Releases-New-Version-of-the-i3-Standard-for-Next-Generation-9-1-1.htm>. In October 2021, the NENA i3 standard was approved by the American National Standards Institute (ANSI). See NENA, *ANSI Approves NENA’s i3 Standard for Next Generation 9–1–1* (Oct. 7, 2021), <https://www.nena.org/news/582667/ANSI-Approves-NENAs-i3-Standard-for-Next-Generation-9-1-1.htm>.

⁵³ NENA i3 at 2.

⁵⁴ NENA i3 at 2 (footnote omitted).

⁵⁵ The NENA i3 standard describes how NG911 works after transition, including ongoing interworking requirements for IP-based and Time Division Multiplexed (TDM)-based PSAPs and originating networks. The i3 standard does not provide solutions for how legacy PSAPs, originating networks, Selective Routers (SRs), and Automatic Location Identification (ALI) systems evolve. Rather, the i3 standard describes the end state when transition is complete. According to the NENA i3 standard, “[a]t that point, SRs and existing ALI systems are decommissioned and all 9–1–1 calls are routed using the Emergency Call Routing Function (ECRF) and arrive at the ESInet/NGCS via Session Initiation Protocol (SIP).” NENA i3 at 2.

⁵⁶ *Id.* at 2. To get to this “end state,” the NENA i3 standard observes that it is critical to understand several underlying assumptions. For example, “[a]ll calls entering the ESInet are SIP-based. Gateways, if needed, are outside of, or on the edge of, the ESInet. Calls that are IP-based, but use a protocol other than SIP or are not fully i3-compliant, must

⁴¹ Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat 2751 sec. 106(g) (2010) (CVAA) (codified at 47 U.S.C. 615c(g)).

⁴² Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96 (2012), Title VI, Subtitle E, Next Generation 9–1–1 Advancement Act (NG911 Act) sec. 6509.

⁴³ FCC, Legal and Regulatory Framework for Next Generation 911 Services, Section 4.1.2.2 at 28–29 (2013), https://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0227/DOC-319165A1.pdf (last visited May 16, 2023) (2013 NG911 Framework Report).

⁴⁴ *Id.* at 28.

⁴⁵ E.g., *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications; Framework for Next Generation 911 Deployment*, PS Docket Nos. 11–153 and 10–255, Second Report and Order (79 FR 55367 (Sept. 16, 2014)) and Third Further Notice of Proposed Rulemaking (79 FR 55413 (Sept. 16, 2014)), 29 FCC Rcd 9846 (2014) (T911 Second Report and Order); *Transition from TTY to Real-Time Text Technology; Petition for Rulemaking to Update the Commission’s Rules for Access to Support the Transition from TTY to Real-Time Text Technology, and Petition for Waiver of Rules Requiring Support of TTY Technology*, CG Docket No. 16–145, GN Docket No. 15–178, Report and Order (82 FR 7699 (Jan. 23, 2017)) and Further Notice of Proposed Rulemaking (82 FR 7766 (Jan. 23, 2017)), 31 FCC Rcd 13568 (2016); *Wireless E911 Location Accuracy Requirements*, PS Docket No. 07–114, Fourth Report and Order, 30 FCC Rcd 1259 (2015), 80 FR 11806 (Mar. 4, 2015); *Wireless E911 Location Accuracy Requirements*, PS Docket No. 07–114, Fifth Report and Order (85 FR 2660 (Jan. 16, 2020)) and Fifth Further Notice of Proposed Rulemaking (85 FR 2683 (Jan. 16, 2020)), 34 FCC Rcd 11592 (2019); *Wireless E911 Location Accuracy Requirements*, PS Docket No. 07–114, Sixth Report

also recognizes that achieving end state NG911 will take time and that significant intermediate and transitional mechanisms are needed in the interim. Accordingly, the i3 standard provides for Legacy Network Gateways (LNGs) and other transitional network elements to ensure that TDM-based OSPs can originate 911 calls and that legacy PSAPs can receive them while the NG911 transition is ongoing.

Task Force on Optimal PSAP Architecture. In 2014, the FCC established the Task Force on Optimal PSAP Architecture (Task Force or TFOPA) to provide recommendations regarding actions that PSAPs can take to optimize their security, operations, and funding as they implement NG911.⁵⁷ In its Final Report, TFOPA noted that the transition to NG911 requires comprehensive changes across the “Originating Service Environment (OSE),” which includes originating service providers as part of a broader environment that provides the 911 caller’s location as part of the call setup.⁵⁸ This environment includes IP call set-up, location determination, validation, and delivery to ESInets across the country.⁵⁹ In addition, the three TFOPA Working Groups issued supplemental reports in 2016 concerning (1) an “Optimal Cybersecurity Approach for PSAPs”;⁶⁰

be interworked to i3-compliant SIP prior to being presented to the ESInet.” NENA 13 at 3.

⁵⁷ See T911 Second Report and Order, 29 FCC Rcd at 9881, paras. 79–80 (2014).

⁵⁸ TFOPA Final Report at 114.

⁵⁹ *Id.* at 105.

⁶⁰ FCC, Task Force on Optimal PSAP Architecture, Working Group 1 Supplemental Report (2016), https://transition.fcc.gov/pshs/911/TFOPA/TFOPA_WG1_Supplemental_Report-120216.pdf (TFOPA WG 1 Report).

⁶¹ FCC, Task Force on Optimal PSAP Architecture, Working Group 2 Supplemental Report (2016), https://transition.fcc.gov/pshs/911/TFOPA/TFOPA_WG2_Supplemental_Report-120216.pdf (TFOPA WG 2 Report). Regarding readiness, TFOPA WG 2, for example, observed that the NG911 transition process followed a “maturity continuum” ranging from a “legacy state” through “foundational, transitional, and intermediate” stages, on the way to a goal of full “end state” NG911 relative to PSAPs. TFOPA WG 2 Report at 12–14. Specifically, the WG 2 Report defined “Jurisdictional End State” (noting that a jurisdiction could be a Local, Regional, State or Tribal Authority and could be intrastate or interstate) as “the state in which PSAPs are served by i3 standards-based systems and/or elements, from ingress through multimedia ‘call’ handling. Originating Service Providers are providing SIP interfaces and location information during call set-up time. Within the jurisdiction, ESInets are interconnected providing interoperability which is supported by established agreements, policies and procedures. Systems in the End State are NG9–1–1 Compliant.” TFOPA WG 2 Report at 13. Based on anecdotal information, including based on ESInet and NG911 early adopter case studies, TFOPA WG 2 noted that a “phased” implementation model offers the greatest opportunity for success, as opposed to a one-step implementation. TFOPA WG 2 Report at 12, 76–88.

(2) an “NG 9–1–1 Readiness Scorecard”;⁶¹ and (3) a “Funding Sustainment Model.”⁶²

Communications Security, Reliability, and Interoperability Council (CSRIC) VI and Small Carrier NG911 Considerations. In 2017, the Commission directed CSRIC VI to recommend measures to improve both legacy 911 and NG911 systems, including recommending ways in which the Commission can further the NG911 transition, enhance the reliability and effectiveness of NG911, and assist small originating service providers as they transition to providing NG911 service.⁶³ The CSRIC VI Working Group 1 considered four types of small originating service providers: wireless carriers, LECs, television cable operators, and internet/Data Service Providers.⁶⁴ The CSRIC NG911 Transition Report describes the issues these carriers face as they update their networks to support NG911, and it advises the FCC on small carrier concerns related to NG911 implementation.⁶⁵ The Transition Report is organized into three major sections, dealing with the scope and nature of the report;⁶⁶ analysis, findings and recommendations;⁶⁷ and a small carrier readiness checklist⁶⁸ structured

⁶² FCC, Task Force on Optimal PSAP Architecture, Working Group 3 Supplemental Report (2016), https://transition.fcc.gov/pshs/911/TFOPA/TFOPA_WG3_Supplemental_Report-120216.pdf (TFOPA WG 3 Report). TFOPA WG 3 discusses among other things, 911 network and call routing, including providing historical context regarding the relationship between 911 networks and 911 jurisdictions relative to selective routing, and the role of FCC rules and state policies relative to originating service provider cost responsibilities. TFOPA WG 3 Report at 19–20.

⁶³ CSRIC VI Working Group 1, *Transition Path to NG9–1–1 Final Report—Small Carrier NG9–1–1 Transition Considerations*, secs. 1.1, 3.1 (Sept. 2018), <https://www.fcc.gov/sites/default/files/csrc6wg1sept18ng911report.docx> (CSRIC NG911 Transition Report). The FCC charged CSRIC VI with defining the long term network requirements for transmitting emergency services information to emergency services organizations and personnel that is beyond communications between PSAPs, and between the public and PSAPs. *Id.* sec. 1.1. CSRIC VI Working Group 1 was charged to specifically look at service provider support for public safety transition to NG911. *Id.*

⁶⁴ *Id.* sec. 1.1.

⁶⁵ *Id.*

⁶⁶ *Id.* sec. 3.

⁶⁷ The “Analysis, Findings and Recommendation” section builds on a review of today’s legacy environment and addresses service provider interconnection with both transitional and “end-state” NG9–1–1 systems, call and data related matters, security, and regulatory/policy factors. *Id.* sec. 5.1.

⁶⁸ The small carrier checklist is structured around three stages of small carrier “readiness” to support NG9–1–1. *Id.* sec. 5.2. Essential “elements” of readiness are identified, ranging from public safety governance and regulatory matters, to routing and location matters, geographic information system

around service provider support for migration to NG911. The report’s recommendations relating to small carriers address: (1) transition timelines;⁶⁹ (2) the regulatory environment;⁷⁰ (3) NG911 funding;⁷¹ (4) interconnection options;⁷² and (5) delivering caller location to the NG911 ESInet.⁷³ The report includes advice on how small carriers should prepare to deliver their 911 traffic in an NG911 compatible manner; what economic challenges small carriers may face; and what barriers to implementation, if any, the FCC should address.⁷⁴

One of CSRIC’s chief recommendations was for the Commission to “explore opportunities to resolve [the] cost recover[y] debate,” referring to disputes between carriers and 911 Authorities over how to fairly allocate the costs of NG911 networks.⁷⁵ CSRIC suggested that the Commission update its *King County* decision in order to resolve ongoing uncertainty about cost responsibilities in the NG911 environment.⁷⁶ CSRIC also suggested a three-stage structure for the transition to NG911, ranging from current legacy 911 systems; through a “transitory phase” in which carriers may not yet

(GIS) needs, network considerations, security and operational planning requirements. *Id.*

⁶⁹ CSRIC advises that small carrier transition timelines will vary by carrier depending on the resources they have available to focus on the transition and notes that it is important that small carriers work with their state or regional 911 Authority to coordinate their transition timelines and expectations. *Id.* sec. 5.1.6.1.

⁷⁰ Historically, state and Federal statutes or regulations regarding time division multiplex (TDM) network interconnection to a legacy 9–1–1 selective router in a particular Local Access and Transport Area (LATA) by small carriers has often been based on the process for interconnecting with the largest incumbent Local Exchange Carrier (ILEC) in an area. *Id.* sec. 4.1 As traffic exchange evolves into full IP environment, regulatory and technical expectations and responsibilities may change. *Id.* sec. 1.1.

⁷¹ CSRIC advises that 911 Authorities should understand historical cost recovery models for rural carriers and remain flexible to accommodate any economic challenges caused by the migration to NG911. *Id.* sec. 1.1.

⁷² *Id.* sec. 1.1 (“Small carriers need to evaluate the interconnection options to the NG9–1–1 ESInet based upon negotiations with the NG9–1–1 System Service Provider (SSP). They may interconnect with native IP or via gateways based upon their own network transition plans.”).

⁷³ *Id.* sec. 5.2.2 (“[A] ‘pure’ or ‘end-state’ NG9–1–1 implementation assumes OSPs have changed the means by which they deliver 9–1–1 calls, however it is not realistic or expected that all small carrier OSPs will change at the same time. Therefore, the model is complicated by mechanisms to ‘transition’ from legacy methods to NG9–1–1 methods. The LNG is required until all OSPs deliver location information with their 9–1–1 call setup messages (location-by-value) or provide location databases that may be queried (location-by-reference).”).

⁷⁴ See *id.* secs. 1.1, 3.2.

⁷⁵ *Id.* sec. 5.1.5.

⁷⁶ *Id.*

originate 911 traffic in IP but are able to interconnect with a 911 Authority's ESInet and deliver IP-based traffic via IP translation; and an "End State . . . where the small carrier has deployed an IP-based network."⁷⁷ In CSRIC's transitional phase, the originating service provider would deliver 911 calls in IP via one of two options—either (1) by providing an LNG itself and converting its TDM signaling to SIP before interconnecting with the ESInet using native SIP and converting the legacy data access protocols (e.g., E2) to those used by the ESInet, or (2) by using legacy signaling (e.g., TDM) and data access protocols (e.g., E2) to interconnect with the ESInet at an LNG provided by the ESInet vendor.⁷⁸ CSRIC also suggested that smaller carriers with fewer resources may need a longer timeline to transition to NG911, and it stressed the importance of coordination between carriers and 911 Authorities.⁷⁹ Overall, the CSRIC NG911 Transition Report called on the FCC to provide structure and certainty to the NG911 transition via rulemaking while maintaining some flexibility and accounting for smaller carriers' more-limited resources.

C. Recent Regulatory Changes

NASNA Petition. In October 2021, NASNA filed a petition asking the Commission to initiate a rulemaking or notice of inquiry to facilitate the transition to NG911 (NASNA Petition).⁸⁰ Specifically, NASNA asked the Commission to assert authority over the delivery of 911 communications by OSPs to ESInets and to amend the Commission's rules as needed to advance the transition to NG911.⁸¹ As part of its petition, NASNA urged the Commission to set a default cost demarcation point in the NG911 environment analogous to its *King County* ruling in the E911 environment.⁸² NASNA also asked the Commission to set deadlines for OSPs to begin delivering 911 traffic in NG911 format when the relevant state or local 911 Authority achieves NG911 readiness, and to establish a registry through which 911 authorities would notify OSPs of their NG911 readiness

status.⁸³ The Public Safety and Homeland Security Bureau (PSHSB or Bureau) placed the Petition on public notice in December 2021, and received twenty-two comments, eight replies, and seven *ex partes*.⁸⁴

Wireless Location-Based Routing. In December 2022, the Commission issued the Location-Based Routing Notice proposing to require CMRS and covered text providers to implement location-based routing for 911 calls and texts nationwide.⁸⁵ As part of that proceeding, the Commission sought comment on aspects of the NG911 transition raised by the NASNA Petition as they applied to CMRS and covered text providers. Specifically, the Commission proposed to require CMRS and covered text providers to deliver 911 calls, texts, and associated routing information in IP format upon request of 911 Authorities that have established the capability to accept NG911-compatible IP-based 911 communications.⁸⁶ In addition, the Commission proposed to establish time frames for CMRS and covered text providers to deliver IP-based 911 traffic.⁸⁷ Further, the Commission sought comment on whether to make available a registry or database that would allow state and local 911 authorities to notify CMRS and covered text providers of the 911 authorities' readiness to accept IP-based communications.⁸⁸ The Commission noted that these proposals, if adopted, would effectively implement a key element of NASNA's petition with respect to transition to NG911 for wireless 911 calls and texts, which represent an estimated 80 percent of 911 traffic in many areas.⁸⁹

NG911 Notice Proposed Framework. In June 2023, the Commission issued the NG911 Notice seeking to establish a framework that would expedite the nation's transition to NG911 by

proposing comprehensive requirements that would apply to wireline, CMRS, interconnected VoIP, and internet-based TRS providers.⁹⁰ First, the Commission proposed to require wireline, interconnected VoIP, and internet-based TRS providers to complete all translation and routing to deliver 911 calls, including associated location information, in the requested IP-based format to an ESInet or other designated point(s) that allow emergency calls to be answered upon request of 911 authorities who have certified the capability to accept IP-based 911 communications.⁹¹ Second, as state and local 911 authorities transition to IP-based networks, the Commission proposed to require wireline, interconnected VoIP, CMRS, and internet-based TRS providers to transmit all 911 calls to destination point(s) designated by a 911 Authority.⁹² Third, the Commission proposed that in the absence of agreements by states or localities on alternative cost recovery mechanisms, wireline, interconnected VoIP, CMRS, and internet-based TRS providers must cover the costs of transmitting 911 calls to the point(s) designated by a 911 Authority, including any costs associated with completing the translation and routing necessary to deliver such calls and associated location information to the designated destination point(s) in the requested IP-based format.⁹³

In the NG911 Notice, the Commission explained that it sought to create a consistent framework for ensuring that all originating service providers take the necessary steps to implement the transition to NG911 in coordination with 911 Authorities.⁹⁴ In addition, the Commission sought to align the NG911 transition rules for wireline,

⁹⁰ *Facilitating Implementation of Next Generation 911 Services (NG911)*, PS Docket No. 21-479, Notice of Proposed Rulemaking, 38 FCC Rcd 6204, 6205-06, para. 2 (2023), 88 FR 43514 (July 10, 2023) (NG911 Notice).

⁹¹ *Id.* at 6205-06, para. 2.

⁹² *Id.* at 6205-06, para. 2. In the NG911 Notice, "destination point" includes "a public safety answering point (PSAP), designated statewide default answering point, local emergency authority, ESInet, or other point(s) designated by 911 authorities that allow emergency calls to be answered, upon request of 911 authorities who have certified the capability to accept IP-based 911 communications." *Id.*

⁹³ NG911 Notice, 38 FCC Rcd at 6205-06, para. 2. Under this proposal, the Commission noted that "states and localities would remain free to establish alternative cost allocation arrangements with providers. However, in the absence of such arrangements, providers would be presumptively responsible for the costs associated with delivering traffic to the destination point(s) identified by the appropriate 911 authority." *Id.*

⁹⁴ NG911 Notice, 38 FCC Rcd at 6206, para. 3.

⁷⁷ *Id.* sec. 5.2.1.

⁷⁸ *Id.* sec. 5.2.1. At the transitional phase, CSRIC anticipates that the ESInet vendor would have "deployed aspects of NG9-1-1 as discussed in the Transitional State, Intermediate State or Jurisdictional End State as defined by the TFOPA Report." *Id.*

⁷⁹ *Id.* sec. 5.1.6.

⁸⁰ NASNA Petition at 1.

⁸¹ *Id.* at 2, 4-5.

⁸² *Id.* at 2-3, 5-7.

⁸³ *Id.* at 3, 7-8.

⁸⁴ *Public Safety and Homeland Security Bureau Seeks Comment on Petition for Rulemaking Filed by the National Association of State 911 Administrators*, CC Docket No. 94-102 and PS Docket Nos. 21-479, 18-261, 18-64, 11-153, and 10-255, Public Notice, 36 FCC Rcd 17805 (PSHSB 2021), <https://www.fcc.gov/document/pshsb-seeks-comment-nasna-petition-rulemaking> (Public Notice). Comments, replies, and *ex partes* in this proceeding may be viewed in the Commission's Electronic Comment Filing System (ECFS): [https://www.fcc.gov/ecfs/search/search-filings/results?q=\(proceedings.name:\(%2221-479%22\)\)](https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2221-479%22))).

⁸⁵ *Location-Based Routing for Wireless 911 Calls*, PS Docket No. 18-64, Notice of Proposed Rulemaking, 37 FCC Rcd 15183, 15184, para. 1 & n.1 (2022), 88 FR 2565 (Jan. 17, 2023) (LBR Notice).

⁸⁶ *Id.* at 15185, 15202, paras. 4, 46.

⁸⁷ *Id.* at 15203, para. 50.

⁸⁸ *Id.* at 15204, para. 52.

⁸⁹ NENA, 9-1-1 Statistics, <https://www.nena.org/page/911Statistics> (last visited May 30, 2024).

interconnected VoIP, and internet-based TRS providers with similar requirements that the Commission had proposed for CMRS and covered text providers in the LBR Notice, thereby promoting consistency across service platforms.⁹⁵ The Commission also explained that the demarcation point and cost allocation proposals sought to address what NASNA described in its Petition as “the critical component, and biggest regulatory roadblock, to transitioning to NG911 services.”⁹⁶ PSHSB announced the comment and reply comment filing deadlines for the NG911 Notice on July 10, 2023, and the Commission received 47 comments, 28 replies, and a number of ex partes.⁹⁷

LBR Order. In 2024, we issued the LBR Order requiring all CMRS providers to implement location-based routing nationwide for wireless calls and real-time text (RTT) communications to 911 call centers.⁹⁸ Under those rules, most 911 voice calls and RTT texts will be routed based on the location of the caller as opposed to the location of the cell tower that handles that call.⁹⁹ However, we deferred to this docket consideration of NG911-related proposals and issues raised in the LBR Notice concerning IP-formatted delivery of wireless 911 voice calls, texts, and associated routing information.¹⁰⁰ Accordingly, we incorporate comments received on these issues and proposals in response to the LBR Notice into this proceeding, and we address the NG911 requirements applicable to all originating service providers in this document and the Order.

⁹⁵ *Id.*

⁹⁶ *Id.* (citing NASNA Petition at 6).

⁹⁷ *Public Safety and Homeland Security Bureau Announces Comment and Reply Comment Dates for the Notice of Proposed Rulemaking on Facilitating Implementation of Next Generation 911 Services (NG911)*, PS Docket No. 21–479, Public Notice, DA 23–596, 2023 WL 4503161 (PSHSB July 10, 2023). A list of entities that filed comments, replies, and ex partes may be found in Appendix C of the Order. Comments, replies, and ex partes in this proceeding may be viewed in the Commission’s Electronic Comment Filing System (ECFS): [https://www.fcc.gov/ecfs/search/search-filings/results?q=\(proceedings.name:\(%2221-479%22\)\)](https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2221-479%22))). We note that there are also comments, replies, and ex partes filed in response to the LBR Notice pertaining to issues that we address in this proceeding. Those filings can be viewed in the location-based routing docket (PS Docket No. 18–64) in the Commission’s ECFS: [https://www.fcc.gov/ecfs/search/search-filings/results?q=\(proceedings.name:\(%2218-64%22\)\)](https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2218-64%22))).

⁹⁸ *Location-Based Routing for Wireless 911 Calls*, PS Docket No. 18–64, Report and Order, FCC 24–4, 2024 WL 356874 (Jan. 26, 2024), <https://www.fcc.gov/document/fcc-adopts-rules-improve-wireless-911-call-routing-0>, 89 FR 18488 (Mar. 13, 2024) (LBR Order).

⁹⁹ See LBR Order at *2, para. 3.

¹⁰⁰ *Id.* at *2, *24, *32, *37, *38, paras. 3, 66, 92, 110, 113.

III. Discussion

In this document and the Order, we require OSPs to support the NG911 transition. In the sections below and in the Order, we explain the basis for adopting NG911 transition rules, including the significant and potentially life-saving benefits that NG911 affords, and we set forth the scope and extent of our NG911 requirements. We also find that the deadlines adopted are achievable and technically feasible for OSPs.

A. The Need for Rules To Facilitate the NG911 Transition

In the NG911 Notice and LBR Notice, the Commission proposed to expedite the nationwide transition to NG911 by adopting certain requirements that would apply to wireline, CMRS, covered text, interconnected VoIP, covered text providers, and internet-based TRS providers.¹⁰¹ Together, our proposals were intended not only to expedite this vital transition, but also to help ensure that the nation’s 911 system functions effectively and utilizes advanced capabilities.¹⁰² In addition, the proposed rules in the NG911 Notice responded to the petition from NASNA, the organization that represents state 911 administrators, urging the Commission to adopt rules to facilitate the transition to NG911.¹⁰³

As the Commission noted in the NG911 Notice, to achieve the transition to NG911, state and local 911 authorities must implement IP-based technologies and applications that will provide all of the functions of the legacy E911 system as well as new capabilities.¹⁰⁴ NG911 relies on IP-based architecture to provide an expanded array of emergency communications services that encompasses both the core functionalities of legacy E911 and additional functionalities that take advantage of the enhanced capabilities of IP-based devices and networks.¹⁰⁵ The transition to NG911 involves fundamental changes in the technology that 911 Authorities use to receive and process 911 traffic, and it requires equally fundamental changes in the way OSPs deliver 911 traffic to PSAPs.¹⁰⁶

¹⁰¹ NG911 Notice, 38 FCC Rcd at 6205–06, paras. 1–2; LBR Notice, 37 FCC Rcd at 15201, para. 46.

¹⁰² NG911 Notice, 38 FCC Rcd at 6206, para. 3; LBR Notice, 37 FCC Rcd at 15202, para. 48.

¹⁰³ NG911 Notice, 38 FCC Rcd at 6206, para. 3; NASNA Petition.

¹⁰⁴ NG911 Notice, 38 FCC Rcd at 6212, para. 15.

¹⁰⁵ *Id.*; *Framework for Next Generation 911 Deployment*, PS Docket No. 10–255, Notice of Inquiry, 25 FCC Rcd 17869, 17877, para. 18 (2010), 76 FR 2297 (Jan. 13, 2011) (NG911 NOI).

¹⁰⁶ See NG911 Notice, 38 FCC Rcd at 6212–13, para. 16.

The benefits that result from the transition to NG911 include improvements to 911 network reliability and resilience,¹⁰⁷ improvements to interoperability between PSAPs, and location information that is available to PSAPs more quickly. As the Commission observed in the NG911 Notice, in its end state, NG911 will also support the transmission of text, photos, video, and data.¹⁰⁸

Most states have already made significant commitments to implementing NG911.¹⁰⁹ Thirty-seven states and jurisdictions reported to the FCC in 2023 that they had ESInets operating in 2022.¹¹⁰ Despite investments in these new capabilities, however, some states report experiencing delays in OSPs connecting to their ESInets.¹¹¹ Disputes with OSPs include issues of both cost allocation and the points to which the OSPs will deliver 911 traffic.¹¹² In addition, some commenters contend that some OSPs have financial incentives to delay transitioning from legacy 911 to NG911, resulting in protracted disputes and mounting costs for 911 Authorities, and

¹⁰⁷ Letter from Lauren Kravetz, Vice President, Government Affairs, Intrado Life & Safety, Inc. (Intrado), to Marlene Dortch, Secretary, FCC, PS Docket No. 21–479, at 1 (filed Mar. 26, 2024) (Intrado Mar. 26, 2024 *Ex Parte*); Industry Council for Emergency Response Technologies, Inc. (iCERT) NG911 Notice Comments at 1 (rec. Aug. 9, 2023) (iCERT NG911 Notice Comments).

¹⁰⁸ NG911 Notice, 38 FCC Rcd at 6209, para. 10 (citing City of New York Office of Technology & Innovation, 2022 Annual Report on Implementation of Next Generation 9–1–1 in NYC at 4 (2022), <https://www.nyc.gov/assets/oti/downloads/pdf/reports/annual-report-next-generation-911-2022.pdf>) (listing the primary technical benefits of NG911).

¹⁰⁹ Forty-four states, the District of Columbia, Guam, and Puerto Rico reported expenditures on NG911 programs in calendar year 2022. Fifteenth Annual 911 Fee Report at 3. The total amount of reported NG911 expenditures in 2022 was \$512,168,670.94. *Id.*

¹¹⁰ *Id.*

¹¹¹ See also, e.g., Minnesota Department of Public Safety/Emergency Communication Networks Division (Minnesota DPS–ECN) NG911 Public Notice Comments at 1 (rec. Jan. 19, 2022) (Minnesota DPS–ECN NG911 Public Notice Comments); Pennsylvania Emergency Management Agency (Pennsylvania Emergency Mgmt. Agency) NG911 Public Notice Comments at 4–5 (rec. Jan. 19, 2022) (Pennsylvania Emergency Mgmt. Agency NG911 Public Notice Comments).

¹¹² See also, e.g., AT&T Services, Inc. (AT&T) NG911 Notice Comments at 7 (rec. Aug. 9, 2023) (AT&T NG911 Notice Comments); Comtech Telecommunications Corp. (Comtech) NG911 Notice Comments at 7 (rec. Aug. 9, 2023) (Comtech NG911 Notice Comments) (“[D]isputes relating to [point of interconnection] locations and cost demarcations are a major source of OSP disputes and delays.”); Pennsylvania Emergency Mgmt. Agency NG911 Public Notice Comments at 4 (“One ILEC is requesting that Pennsylvania build the network all the way out to their switch(es) and that [Pennsylvania Emergency Mgmt. Agency], or Pennsylvania’s NG911 system service provider assume all costs associated with this effort.”).

further contributing to delays.¹¹³ As a result of these delays, 911 Authorities incur prolonged and compounded costs because they must maintain both legacy and IP networks during the transition.¹¹⁴ Managing 911 traffic on both legacy and IP networks may also result in increased vulnerability and risk of 911 outages.¹¹⁵

¹¹³ See, e.g., Inteliquent, Inc. (Inteliquent) NG911 Notice Reply at 2 (rec. Sept. 8, 2023) (“The current arrangement provides a disincentive to efficiently migrate to an NG911 system because it increases the revenue for a [Covered 911 Service Provider] to operate legacy/transitory 911 services.”); Letter from Susan Ornstein, Senior Director, Legal & Regulatory Affairs, Comtech, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 21–479, Attach. at 8 (filed Nov. 6, 2023) (Comtech Nov. 6, 2023 *Ex Parte*) (reporting that it is “[e]xclusively seeing RLEC resistance to NG911 transitions,” that “[n]otices around NG911 connectivity are ignored, not respected or responded to in a timely manner,” and that RLECs have “[f]inancial incentive for noncooperation with 911 Authorities”); Comtech NG911 Public Notice Comments at 4–5 (rec. Jan. 19, 2022) (Comtech NG911 Public Notice Comments) (“Currently, in the absence of an FCC-defined framework for NG911 deployments, 911 Authorities and NG911 service providers are effectively held hostage by OSPs and Legacy 911 Providers’ willingness to cause delays in the transition process, as such activity is without regulatory consequence—and in certain cases—to a delaying company’s financial benefit.”).

¹¹⁴ See, e.g., iCERT NG911 Notice Reply at 3 (rec. Sept. 8, 2023) (iCERT NG911 Notice Reply) (“[T]he need to accommodate TDM-based 911 calls creates added costs for State and local 911 authorities.”); *id.* at 4 (“[A]doption of the proposed rule would reduce the cost burdens of maintaining and operating legacy 911 infrastructure”); Comtech NG911 Notice Reply at 4 (rec. Sept. 8, 2023) (Comtech NG911 Notice Reply) (arguing that maintaining both legacy and IP-based systems for delivery of 911 traffic involves significant costs); Minnesota DPS–ECN NG911 Notice Comments at 3 (discussing the costs of maintaining duplicative legacy and NG911 network components); Nebraska Public Service Commission (Nebraska PSC) NG911 Notice Comments at 2 (rec. Aug. 9, 2023) (Nebraska PSC NG911 Notice Comments) (discussing increased costs until NG911 transition is complete); South Carolina Revenue and Fiscal Affairs Office (South Carolina RFA) NG911 Notice Comments at 4 (rec. Aug. 8, 2023) (South Carolina RFA NG911 Notice Comments) (providing an analysis of cost savings in South Carolina to complete the transition to NG911).

¹¹⁵ Motorola Solutions Connectivity, Inc. (MSCI) NG911 Notice Comments at 2 (rec. Aug. 9, 2023) (MSCI NG911 Notice Comments); Comtech NG911 Notice Comments at 4 (citing MSCI NG911 Notice Comments at 2). Specifically, the introduction of IP based elements requires dedicated monitoring and security measures separate from legacy systems, and the continued presence of legacy components of 911 networks presents a risk of outages. For example, as noted by NASNA, the 911 Authority for the State of California tracks reliability and availability of the legacy 911 system and their statistics indicate an increase in the rate of downtime. “In 2017 the average number of minutes of outage was 17,000 minutes per month, but in 2022 the average increased to over 59,000 outage minutes per month.” National Association of State 911 Administrators (NASNA) LBR Notice Comments at 7–8 (rec. Feb. 16, 2023) (NASNA LBR Notice Comments). This decrease in the reliability of legacy systems will best be offset when NG911 is fully implemented.

Adopting rules in this proceeding is necessary to advance the critical transition to NG911, with its vital public safety benefits for the entire American public. Currently, as 911 Authorities deploy NG911 infrastructure, there are no rules at the federal level describing what OSPs must do to support the transition. The lack of rules creates uncertainty for 911 stakeholders and increases delays in the transition. In addition, the increased costs incurred to support both 911 and NG911 systems concurrently while the transition to NG911 is delayed reduce the limited amount of funding actually available to implement NG911 itself, further stalling the eventual transition to lifesaving NG911 technology across the country. The magnitude of delays and costs in the national transition to NG911 to date demonstrates the necessity and importance of the Commission taking action to establish a regulatory framework for the orderly and efficient implementation of NG911. In addition, we believe that promulgating a consistent regulatory approach to 911 for all OSPs reflects the reality that distinctions between OSP types are becoming less relevant as technologies converge and advance.¹¹⁶ This “all platforms” approach promotes accountability, transparency, and certainty.

Numerous commenters on the NG911 Notice have voiced support for the Commission’s goals in this rulemaking and have acknowledged the need for rules to facilitate the transition to NG911, although some have advocated for changes to the proposed rules.¹¹⁷ For

¹¹⁶ See CCA July 12, 2024 *Ex Parte* at 2 (noting that non-nationwide CMRS providers may also be covered text providers or interconnected VoIP providers); *but see* Letter from Robert G. Morse, Associate General Counsel, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, PS Docket Nos. 21–479, 18–64 at 3 (Verizon July 10, 2024 *Ex Parte*) (arguing that the record only reflects interconnection delays for RLECs).

¹¹⁷ See, e.g., Alaska Telecom Association (Alaska Telecom Assoc.) NG911 Notice Comments at 1 (rec. Aug. 9, 2023) (Alaska Telecom Assoc. NG911 Notice Comments) (“ATA supports the Commission’s efforts to encourage the transition to NG911 technology but cautions that any requirements adopted by the FCC must afford adequate flexibility to reflect the complexities associated with IP delivery and the realistic capabilities of providers.”); NASNA NG911 Notice Comments at 8 (rec. Aug. 8, 2023) (NASNA NG911 Notice Comments) (supporting various proposed rules from the NG911 Notice but suggesting revisions, e.g., “[w]hile the commission’s proposed rules facilitate the 911 authorities’ transition to i3 SIP capabilities with all originating service providers, the rules should also support the interoperability needs of the call delivery process”); Association of Public-Safety Communications Officials-International, Inc. (APCO) NG911 Notice Comments at 2 (rec. Aug. 9, 2023) (APCO NG911 Notice Comments) (indicating support of

example, NASNA says it is “grateful” to the Commission for its “forward-thinking action in facilitating NG911,” says “[t]his rulemaking will be instrumental” in moving NG911 forward, and “urges timely implementation of effective rules to make NG911 a reality nationwide.” The Maine PUC “applauds the FCC for undertaking this rulemaking to expedite the much-needed transition to NG911.”¹¹⁸ The Pennsylvania Emergency Management Agency notes that Pennsylvania’s ability to successfully and completely implement NG911 service and retire legacy E911 technologies is hampered by the current lack of rules clarifying roles and responsibilities among stakeholders, and that a regulatory framework is needed.¹¹⁹ Similarly, Communications Equality Advocates (CEA) “[a]pplauds” the Commission’s efforts to pave the way for full migration to NG911.¹²⁰ NENA supports the Commission’s NG911 rulemaking proceeding and “commends” the Commission for initiating a proceeding “to build a framework to make NG9–1–1 in our nation a reality.”¹²¹ APCO indicates support of the Commission adopting NG911 rules, noting the Commission’s proposals “have the potential to accelerate the transition” to NG911.¹²²

Commission NG911 rulemaking but recommending modifications to proposals); Letter from Don Brittingham, Policy Committee Chair, iCERT, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 21–479, Attach. at 5 (filed Nov. 2, 2023) (iCERT Nov. 2, 2023 *Ex Parte*), (“While end-state NG9–1–1 is the goal, FCC rules should recognize and accommodate various stages of NG9–1–1 implementation.”).

¹¹⁸ Maine Public Utilities Commission (Maine PUC) NG911 Notice Comments at 1 (rec. Aug. 9, 2023) (Maine PUC NG911 Notice Comments); *accord id.* at 3.

¹¹⁹ Letter from Gregory R. Kline, Deputy Director for 911, Pennsylvania Emergency Mgmt. Agency, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 21–479, at 1, 4 (filed June 24, 2024) (encouraging the FCC to establish uniform timelines and requirements for all technologies to connect to the NG911 system utilizing the IP-based format and emphasizing that without uniform regulation, “achieving the NG911 end state will be hampered by the application of different standards among the various 911 stakeholders”).

¹²⁰ Communications Equality Advocates (CEA) NG911 Notice Comments at 5 (rec. Aug. 9, 2023) (CEA NG911 Notice Comments). Mission Critical Partners also “applauds” the Commission “for taking this essential next step toward facilitating NG911 nationwide” and states that “MCP encourages the Commission to move forward with this rulemaking forthwith.” Mission Critical Partners, LLC (Mission Critical Partners) NG911 Notice Comments at 12 (rec. Aug. 9, 2023) (Mission Critical Partners NG911 Notice Comments).

¹²¹ NENA NG911 Notice Comments at 16 (rec. Aug. 7, 2023) (NENA NG911 Notice Comments); *accord id.* at 1 (“applaud[ing] the Commission for initiating a rulemaking proceeding to expedite the NG9–1–1 transition”).

¹²² APCO NG911 Notice Comments at 2; *see id.* at 1–2 (discussing recommended changes to the

Commenter iCERT notes its “strong support for accelerating the implementation of NG911 across the country,” urges the FCC “to establish a clear regulatory framework,” and urges the FCC “to act promptly in this proceeding” due to the “urgent need to implement NG911 throughout the nation.”¹²³ Comtech expresses support for the Commission’s proposed NG911 rules and notes “the urgent need for swift adoption of these rules to help mitigate NG911 deployment delays.”¹²⁴ Other commenters note the benefits of transitioning to NG911 and support Commission action to facilitate that transition.¹²⁵ Only one commenter

Commission’s proposals and arguing that implementation of NG911 “will save lives”).

¹²³ iCERT Nov. 2, 2023 *Ex Parte* at 1–2; see also Letter from Don Brittingham, Policy Committee Chair, iCERT, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 21–479, at 1 (filed Dec. 13, 2023) (iCERT Dec. 13, 2023 Office of Commissioner Starks *Ex Parte*); Letter from Don Brittingham, Policy Committee Chair, iCERT, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 21–479, at 1 (filed Dec. 13, 2023) (iCERT Dec. 13, 2023 Office of Commissioner Carr *Ex Parte*); Letter from Don Brittingham, Policy Committee Chair, iCERT, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 21–479, at 1 (filed Dec. 13, 2023) (iCERT Dec. 13, 2023 Office of Commissioner Gomez *Ex Parte*); iCERT NG911 Notice Comments at 1–2; iCERT NG911 Notice Reply at 1–2.

¹²⁴ Comtech Nov. 6, 2023 *Ex Parte* at 1; see also Letter from Susan OrNSTein, Senior Director, Legal & Regulatory Affairs, Comtech, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 21–479, at 1 (filed Nov. 2, 2023); Letter from Susan OrNSTein, Senior Director, Legal & Regulatory Affairs, Comtech, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 21–479, at 1 (filed Nov. 8, 2023).

¹²⁵ See, e.g., Hamilton Relay, Inc. (Hamilton Relay) NG911 Notice Comments at 1 (rec. Aug. 9, 2023) (Hamilton Relay NG911 Notice Comments) (“Hamilton supports the Commission’s efforts to expedite the NG911 transition and ensure that the nation’s emergency call handling systems function effectively and with the most advanced capabilities available.”); CCA NG911 Notice Comments at 1 (rec. Aug. 9, 2023) (CCA NG911 Notice Comments) (stating that CCA supports efforts to facilitate the nationwide transition to NG911 and to make NG911 requirements consistent across the industry and noting that “[u]ltimately, NG911 can lead to greater consistency and efficiency, lower costs, and better 911 capabilities and public safety outcomes”); CTIA NG911 Notice Reply at 1, 11 (rec. Sept. 10, 2023) (CTIA NG911 Notice Reply) (“The FCC can help by establishing a national, uniform framework for the NG911 transition that provides certainty and flexibility to address complex technical and operational issues, including key terms, conditions, and processes, and by encouraging collaboration among stakeholders.”); Jack Varnado NG911 Notice Comments at 1–2 (rec. Aug. 9, 2023) (filed on behalf of Livingston Parish Sheriff’s Office and Livingston Parish Communications District (Livingston Parish)) (Livingston Parish NG911 Notice Comments) (supporting the need for NG911 and certain Commission rules); PTI Pacifica Inc. dba IT&E (IT&E) NG911 Notice Comments at 1–3 (rec. Aug. 9, 2023) (IT&E NG911 Notice Comments) (saying “fully supports” the transition to NG911 and indicating support for the Commission’s adoption of rules); Windstream Services, LLC (Windstream) NG911 Notice Reply at 1–4 (rec. Sept. 8, 2023) (Windstream NG911 Notice Reply) (saying “fully supports the transition” to NG911 but urging

appears to be opposed to the Commission adopting rules in some form to facilitate the transition to NG911.¹²⁶

Therefore, based on the foregoing and the record as a whole, we conclude that there is a need for the Commission to establish rules to facilitate the NG911 transition. We believe the rules provide a regulatory framework that will assist in expediting the critical transition to NG911 nationwide, which will serve to greatly promote public safety in the years to come.

B. Definitions of Key Terms

In this section, we discuss and adopt definitions for certain key terms, such as “Next Generation 911 (NG911),” “commonly accepted standards,” “Emergency Services internet Protocol Network (ESInet),” and other terms. The definitions we adopt for additional key terms, such as “911 Traffic,” “NG911 Delivery Point,” “Session Initiation Protocol (SIP),” “Functional Element,” “Location Validation Function (LVF),” and “Location Information Server (LIS)” are discussed in subsequent sections of this document and the Order.

Next Generation 911 (NG911). In the NG911 Notice, the Commission sought comment on defining the term “Next Generation 911.”¹²⁷ As reflected in relevant proposed legislation and the comments of parties in the NG911 and LBR proceedings, stakeholders have varying views on how, or even whether,

changes to the Commission’s proposed approaches); AT&T NG911 Notice Comments at 2–3, 12 (indicating support for the Commission to adopt rules and saying the NG911 Notice’s policy goals for NG911 deployment are “highly laudable,” but urging modifications to the proposed rules); South Carolina Telephone Coalition (South Carolina RLECs) NG911 Notice Comments at 1–4, 16 (rec. Aug. 9, 2023) (South Carolina RLECs NG911 Notice Comments) (supporting “an orderly and rapid transition to NG911 and commend[ing] the Commission for its leadership,” but advocating for modifications to the proposed rules). See also Letter from National Association of Counties (NACo), National Association of Regulatory Utility Commissioners (NARUC), National Association of State Utility Consumer Advocates (NASUCA), NASNA, National States Geographic Information Council (NSGIC), NENA, Urban and Regional Information Systems Association (URISA), iCERT, World Institute on Disability (WID), to Charles E. Schumer, Senator, Senate Democratic Leader, United States Senate, et al., at 2 (Jan. 23, 2024), https://cdn.ymaws.com/www.nena.org/resource/resmgr/govaffairs/joint_Letter_Congress_1_23_2.pdf (stating that “full, nationwide implementation of NG911” remains an important national priority that is “critical to the safety and security of our nation”).

¹²⁶ Letter from Steve Samara, President, Pennsylvania Telephone Association, and Norman J. Kennard, Counsel on behalf of the Pennsylvania Telephone Association, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 21–479, at 8–9 (Pennsylvania Telephone Association July 2, 2024 *Ex Parte*).

¹²⁷ See, e.g., NG911 Notice, 38 FCC Rcd at 6229–30, para. 51.

to define Next Generation 911 in the Commission’s rules. In the NG911 Notice, the Commission noted that there are multiple definitions of “NG911” in proposed federal legislation and a definition of “Next Generation 9–1–1 services” in federal law.¹²⁸ The Spectrum Auction Reauthorization Act of 2023 (H.R. 3565), a bill introduced in May 2023, proposed the following definition of “Next Generation 9–1–1”:

[A]n internet Protocol-based system that— (A) ensures interoperability; (B) is secure; (C) employs commonly accepted standards; (D) enables emergency communications centers to receive, process, and analyze all types of 9–1–1 requests for emergency assistance; (E) acquires and integrates additional information useful to handling 9–1–1 requests for emergency assistance; and (F) supports sharing information related to 9–1–1 requests for emergency assistance among emergency communications centers and emergency response providers.¹²⁹

Several other pieces of recent proposed federal legislation have used the same or a very similar definition of NG911.¹³⁰

¹²⁸ NG911 Notice, 38 FCC Rcd at 6229–30, para. 51.

¹²⁹ Spectrum Auction Reauthorization Act of 2023, H.R. 3565, 118th Cong. sec. 159(d)(12) (2023); Press Release, U.S. House of Representatives Energy and Commerce Committee, Chair Rodgers Announces Full Committee Markup of 19 Bills (May 22, 2023), <https://energycommerce.house.gov/posts/chair-rodgers-announces-full-committee-markup-of-19-bills> (linking to text of H.R. 3565).

¹³⁰ The same definition of NG911 used in H.R. 3565 was also used in a March 2023 House bill, H.R. 1784 (the Next Generation 9–1–1 Act of 2023), and in a 2022 House bill, H.R. 7624 (the Spectrum Innovation Act of 2022). See H.R. 1784, 118th Cong. sec. 159(d)(12) (2023), <https://www.congress.gov/bills/118th/congress/house-bill/1784/text>; H.R. 7624, 117th Cong. sec. 159(d)(11) (2022), <https://www.congress.gov/bills/117th/congress/house-bill/7624/text>. In addition, a bill introduced in the Senate in July 2023, S. 2712, proposes a similar definition of NG911: “NEXT GENERATION 9–1–1.—The term ‘Next Generation 9–1–1’ means an interoperable, secure, internet Protocol-based system that—(A) employs commonly accepted standards; (B) enables emergency communications centers to receive, process, and analyze all types of 9–1–1 requests for emergency assistance; (C) acquires and integrates additional information useful to handling 9–1–1 requests for emergency assistance; and (D) supports sharing information related to 9–1–1 requests for emergency assistance among emergency communications centers and emergency response providers.” S. 2712, 118th Cong. sec. 4(9) (2023), <https://www.congress.gov/bills/118th/congress/senate-bill/2712/text?s=1&r=72>. Congress used a somewhat different definition of NG911 in the Next Generation 9–1–1 Advancement Act of 2012, for purposes of administration of Federal 911 implementation grants. That earlier statute provides that “Next Generation 9–1–1 services” means “an IP-based system comprised of hardware, software, data, and operational policies and procedures that—(A) provides standardized interfaces from emergency call and message services to support emergency communications; (B) processes all types of emergency calls, including voice, data, and multimedia information; (C) acquires and integrates additional emergency call

Continued

Some commenters on the LBR Notice argued that the Commission should adopt a definition of NG911.¹³¹ For example, APCO urged the Commission to adopt the definition of NG911 “as defined by the public safety community with support from a variety of stakeholders” that appeared in legislation passed by the House of Representatives in 2022 but that was not enacted into law.¹³² By contrast, NENA urged the Commission to “be cautious in adopting formal definitions [of terms such as NG911] . . . without full industry-wide support and without considering all potential consequences of such definitions.”¹³³ NENA also asked the Commission to consider using the term “i3 compatible” or some other mutually agreed upon terminology rather than “IP-enabled” to describe standards-based NG911.¹³⁴

In the NG911 Notice, the Commission sought comment on whether it should adopt one of these definitions or incorporate elements of these or other definitions of NG911 into our rules.¹³⁵ The Commission asked whether a definition of NG911 is necessary for compliance with its proposed NG911 rules and, if so, sought input on crafting a definition that would be technologically neutral.¹³⁶ The Commission noted that recent proposed legislative definitions include

data useful to call routing and handling; (D) delivers the emergency calls, messages, and data to the appropriate public safety answering point and other appropriate emergency entities; (E) supports data or video communications needs for coordinated incident response and management; and (F) provides broadband service to public safety answering points or other first responder entities.” 47 U.S.C. 942(e)(5).

¹³¹ NG911 Notice, 68 FCC Rcd at 6229–30, para. 51.

¹³² APCO LBR Notice Comments, at 5 (rec. Feb. 16, 2023). In its LBR comments, APCO urged the Commission to define NG911 as “an IP-based system that: (A) ensures interoperability; (B) is secure; (C) employs commonly accepted standards; (D) enables emergency communications centers to receive, process, and analyze all types of 9–1–1 requests for emergency assistance; (E) acquires and integrates additional information useful to handling 9–1–1 requests for emergency assistance; and (F) supports sharing information related to 9–1–1 requests for emergency assistance among emergency communications centers and emergency response providers.” *Id.* (citing Spectrum Innovation Act of 2022, H.R. 7624, 117th Cong. sec. 301 (2022)). As noted, this is the same NG911 definition included in the Spectrum Auction Reauthorization Act of 2023 (H.R. 3565) and the Next Generation 9–1–1 Act of 2023 (H.R. 1784).

¹³³ NENA LBR Notice Reply at 7–8 (rec. Mar. 20, 2023) (NENA LBR Notice Reply) (noting that such definitions may have “substantial impacts” on state statutes, Federal and state regulatory bodies, future grant programs, and future case law).

¹³⁴ NENA LBR Notice Comments at 11 (rec. Feb. 15, 2023) (NENA LBR Notice Comments).

¹³⁵ NG911 Notice, 38 FCC Rcd at 6229–30, para. 51.

¹³⁶ *Id.*

qualitative descriptors of NG911 systems, such as security, interoperability, and use of commonly accepted standards, as well as specific technical capabilities.¹³⁷ The Commission asked if it should include any or all of these elements in a definition of NG911 adopted by the Commission, and whether the definitions discussed encompass current NG911 networks and technologies as well as possible future NG911 technologies.¹³⁸

In comments on the NG911 Notice, APCO contends that a definition of NG911 is necessary. APCO again urges the Commission to adopt the same definition of NG911 proposed in the Spectrum Auction Reauthorization Act of 2023 (H.R. 3565), calling this a “comprehensive definition . . . crafted by the public safety community,” and stating that adopting this definition is important for aligning the rules with public safety’s needs and the Commission’s objectives.¹³⁹ Similarly, NASNA indicates a definition of NG911 is needed and advocates adopting the NG911 definition used in H.R. 3565.¹⁴⁰

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ APCO NG911 Notice Comments at 3; *see also* APCO NG911 Notice Reply at 2–3 (rec. Sept. 8, 2023) (APCO NG911 Notice Reply) (noting that commenters offer a variety of opinions on how to define NG911, which “underscores the need for the Commission to provide a common understanding of the public safety community’s goals and expectations for NG9–1–1”; stating that providing a comprehensive NG911 definition is necessary to achieve the Commission’s objectives and that adopting “the public safety community’s comprehensive definition” of NG911 will provide “a north star”). APCO also advocates that adopting this specific NG911 definition “is a basic step to ensure that, should Congress pass NG9–1–1 funding legislation, the Commission’s rules facilitating NG9–1–1 will align with the \$15 billion grant program for communities across the country to deploy NG9–1–1.” APCO NG911 Notice Comments at 3. We note, however, that should Congress pass NG911 funding legislation in the future, Congress will not necessarily use this particular definition of NG911 and may instead adopt a different definition.

¹⁴⁰ NASNA NG911 Notice Comments at 4–5 (NASNA believes the Commission’s proposed rule should reflect the following NG911 definition: “A tiered system consisting of multiple IP-based networks that: (A) ensures interoperability; (B) is secure; (C) employs commonly accepted standards; (D) enables emergency communications centers and Public Safety Answering Points to receive, process, and analyze all types of 911 requests for emergency assistance; (E) acquires and integrates additional information useful to handling 911 requests for emergency assistance; and (F) supports sharing information related to 911 requests for emergency assistance among emergency communications centers and emergency response providers.”). NASNA explains that it believes the standards suggested by APCO and the standards suggested by NENA “both have applicability as it relates to the proposed rules,” but “we believe it is important to acknowledge that an end-to-end NG911 ‘system’ consists of multiple networks and systems which are subject to different, but complementary interoperable standards.” NASNA further explains

Mission Critical Partners also believes that a definition of NG911 is needed, stating that, to speed up the process of migrating to NG911, “it would be best to have the Commission define, for purposes of the rulemaking, what NG911 means.” However, Mission Critical Partners states that “NG911 has been defined differently by many groups,” and advocates for a different and more detailed definition of NG911 than that recommended by APCO and NASNA.¹⁴¹ NENA notes that a definition of NG911 and other terms “can provide stakeholders with clarity” as the transition to NG911 progresses, and recommends that an NG911 definition be standards based.

Nevertheless, NENA again cautions the Commission only to adopt formal definitions for terms with public and private 911 industry-wide support.¹⁴²

Commenters also express differing views on whether a codified definition of NG911 should reference the NENA i3 standard or any specific technical standard. To ensure compatibility and

that, “[w]ith this perspective, NASNA offers a revision to the Next Generation 911 definition as it relates to the rules of this NPRM which recognizes the various networks at work.” NASNA NG911 Notice Comments at 4–5.

¹⁴¹ Mission Critical Partners suggests, “[f]or example,” the following definition: “Next Generation 911, commonly referred to as NG911, is a system of interconnected systems that delivers and processes calls for help from the public and delivers the media to the appropriate [Emergency Communications Center]/PSAP. NG911 must include at a minimum: An IP-based transport ability that interconnects the system components, ECCs/PSAPs, and disparate NG911 systems. This should be a robust, properly sized, resilient network.[:] Ability to receive SIP sessions to include all types of media (voice, video, picture, Real-Time Text [RTT], etc.). While the Commission could limit this requirement to specific types of media, that would require future rule changes.[:] Ability to receive and process call-routing and location data from the geolocation SIP header.[:] Ability to process routing and location data by value and by reference.[:] Ability to have authoritative geographic information system (GIS) information, including address points, street centerlines, and boundary polygons, needed to process calls and sessions.[:] Ability to deliver calls and sessions to ECCs/PSAPs.[:] Ability to bridge additional users into calls in progress, e.g., language services, other ECCs/PSAPs.[:] Ability to apply rules to the routing of calls and sessions using all available data provided in the SIP messaging, including routing and location data that is dereferenced.[:] Ability to provide cybersecurity functions at the edges of all interconnected networks and throughout the inner workings of each NGCS.[:] Ability to transfer calls and sessions between ECCs/PSAPs on the network and to other NG911 systems without the loss of location data.[:] Ability to log, and report on, call data and associated network, service, and system activity.” *Id.* at 10–11.

¹⁴² NENA NG911 Notice Comments at 13–14. NENA sets forth its own definition of NG911, but acknowledges that a variety of other definitions have been proposed and that the NENA definition “is not sufficient for the specific scope of the Commission’s proceeding without modification,” including adding reference “an i3-centric architecture.” *Id.*

interoperability of NG911 systems, NENA argues that any definition of NG911 should reference “an i3-centric architecture.”¹⁴³ Colorado PUC agrees that the Commission should consider including language regarding “i3 standard compatibility” in the NG911 definition, stating that “[t]he vast majority, if not all” implementations of NG911 technology across the country have the goal of deploying i3-based NG911 systems.¹⁴⁴ In contrast, APCO opposes incorporating i3 or any other specific NG911 standard into the Commission’s rules, noting that there are alternative potential standards, that the telecommunications ecosystem and technology continue to evolve, and that Emergency Communications Centers (ECCs) should have flexibility to pursue their preferred approaches with a “technology-neutral approach” that ensures “ECCs can continually benefit from ongoing innovation.”¹⁴⁵ APCO urges that the Commission must avoid rules or assumptions that might “lock ECCs into a particular approach to implementing NG9–1–1” and should not adopt rules “that bake in specific architectures for NG9–1–1.” APCO states that this is why the public safety community’s “comprehensive definition of NG9–1–1 [*i.e.*, the definition in H.R. 3565, H.R. 1784, and H.R. 7624] references the use of ‘commonly accepted standards’ rather than identify[ing] a particular standard for NG9–1–1.”¹⁴⁶ Mission Critical Partners also advocates for a “technology-neutral definition” of NG911 “to reduce any ambiguity by providers or 911

authorities regarding compliance with the proposed NG911 rulemaking.”¹⁴⁷

We find that adopting a definition of NG911 will facilitate compliance with the NG911 rules, as it will help promote clarity and certainty about the Commission’s NG911 requirements. Accordingly, we adopt the definition of NG911 used in the Spectrum Auction Reauthorization Act of 2023 (H.R. 3565), a definition that is supported by multiple stakeholders in the public safety community and that has been used in several recent pieces of proposed Federal legislation. Although not all commenters to this proceeding support this specific definition, we believe that it comes closest to reflecting a broad consensus as to the essential elements that should be included in a definition of NG911. In particular, the definition will advance our goal of a technology-neutral approach to implementation of NG911, and it contains the important requirements that an NG911 system ensure interoperability, be secure, and employ commonly accepted standards.

We decline to reference any specific standard or set of standards as part of the codified definition of NG911. Although NENA and Colorado PUC advocate for including a reference to the i3 standard in the rules, we conclude that the better approach is to adopt a technology-neutral definition that avoids referencing any specific standard. As discussed below, we believe commenters’ concerns that NG911 development be standards-based are fully addressed by including “commonly accepted standards” as an element of our NG911 definition.¹⁴⁸

We have also considered, but decline to adopt, the more detailed NG911 definition suggested by Mission Critical Partners. Mission Critical Partners’ proposed NG911 definition identifies many specific operational and technical functions, such as the ability to “bridge additional users into calls in progress;” “provide cybersecurity functions at the edges of all interconnected networks and throughout the inner workings of each NGCS,” “transfer calls and sessions between ECCs/PSAPs on the network and to other NG911 systems without the loss of location data,” and “log, and report on, call data and

associated network, service, and system activity.” While we anticipate that many NG911 networks will support these capabilities, incorporating this level of detail into the codified definition of NG911 appears unnecessary and could cause confusion to the extent that it goes beyond the level of detail in the draft legislative definition supported by most commenters.¹⁴⁹

The definition of NG911 addresses other concerns raised by commenters on the NG911 Notice. In the NG911 Notice, the Commission sought comment on how to ensure that its proposed rules would support interoperability in the NG911 environment.¹⁵⁰ Commenters confirm the importance of interoperability in NG911 to enable the efficient transfer of emergency calls, texts, and data between ESNets, PSAPs, and first responders.¹⁵¹ In addition, commenters note that the uniform use of commonly accepted standards by OSPs and NG911 vendors is a necessary prerequisite to interoperability,¹⁵² although it is not enough by itself to achieve interoperability.¹⁵³ Consistent with commenters’ views, the definition of NG911 in this document and the

¹⁴⁹ We note, however, that some of the elements of Mission Critical Partners’ proposed “NG911” definition are already included in the “NG911” definition. For example, Mission Critical Partners’ element of “[a]n IP-based transport ability that interconnects the system components, ECCs/PSAPs, and disparate NG911 systems” appears to match our final definition’s requirement of “ensures interoperability,” and its required element of “[a]bility to provide cybersecurity functions at the edges of all interconnected networks and throughout the inner workings of each NGCS” appears to match our final definition’s requirement of “is secure.” Mission Critical Partners NG911 Notice Comments at 10–11.

¹⁵⁰ NG911 Notice, 38 FCC Rcd at 6216, para. 24.

¹⁵¹ See, e.g., H.R. 3565, sec. 301 (defining interoperability as “the capability of emergency communications centers to receive 9–1–1 requests for emergency assistance and information and data related to such requests, such as location information and callback numbers from a person initiating the request, then process and share the 9–1–1 requests for emergency assistance and information and data related to such requests with other emergency communications centers and emergency response providers without the need for proprietary interfaces and regardless of jurisdiction, equipment, device, software, service provider, or other relevant factors”).

¹⁵² Colorado PUC NG911 Notice Comments at 10; NENA NG911 Notice Comments at 5 (stating that the Commission can address interoperability concerns through the adoption of i3 compatible standards in its rules); MSCI LBR Notice Reply at 2 (rec. Mar. 20, 2023) (MSCI LBR Notice Reply) (supporting requiring delivery of 911 calls using the NENA i3 format to “advance the NG911 transition, standardize location information delivery, and promote interoperability”).

¹⁵³ NENA Oct. 24, 2023 *Ex Parte* at 1; see also APCO NG911 Notice Reply at 3 (“The Commission should reject assertions that interoperability will be achieved as a result of requiring delivery of 9–1–1 traffic in an IP-based format or by requiring use of the i3 standard.”).

¹⁴³ *Id.* See also NENA, NENA Releases New Version of the i3 Standard for Next Generation 9–1–1 (July 12, 2021), <https://www.nena.org/news/572966/NENA-Releases-New-Version-of-the-i3-Standard-for-Next-Generation-9-1-1.htm>.

¹⁴⁴ Colorado Public Utilities Commission (Colorado PUC) NG911 Notice Comments at 10 (rec. Aug. 9, 2023) (Colorado PUC NG911 Notice Comments).

¹⁴⁵ Letter from Jeffrey S. Cohen, Chief Counsel, Mark S. Reddish, Senior Counsel, and Alison P. Venable, Government Relations Counsel, APCO International, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 21–479, at 2 (filed Oct. 31, 2023) (APCO Oct. 31, 2023 *Ex Parte*); APCO NG911 Notice Reply at 2 & n.5; APCO NG911 Notice Comments at 1–2.

¹⁴⁶ APCO NG911 Notice Reply at 2; see also APCO Oct. 31, 2023 *Ex Parte* at 2 (noting “the public safety community’s legislative efforts to require the use of ‘commonly accepted standards’ rather than a particular method for achieving the capabilities envisioned” for NG911); APCO NG911 Notice Comments at 1–3 (“The public safety community has coalesced around a comprehensive vision for NG9–1–1 based on a technology-neutral approach that fosters a competitive marketplace and is pursuing significant federal funding legislation that has received broad bipartisan support on Capitol Hill.”).

¹⁴⁷ Mission Critical Partners NG911 Notice Comments at 10; *accord* Intrado Mar. 26 *Ex Parte* at 4–5 (Intrado “typically respond[s] to RFPs by proposing the use of a ‘mutually agreed industry standard,’ with the intention to base the deployment on a foundation of i3 methodology tailored to the circumstances.”).

¹⁴⁸ We agree with commenters that the i3 standard meets the definition of a “commonly accepted standard” under the definition in this document and the Order.

Order therefore specifies that NG911 systems shall “ensure interoperability.”¹⁵⁴

Google and EPIC urge the importance of security, with Google stating that “security has to be built into NG911 and should be part of the Commission’s definition of NG911.”¹⁵⁵ The definition of NG911 adopted here specifically includes that the system “is secure.”¹⁵⁶ CEA urges the Commission to adopt an NG911 definition “that includes accessibility as an essential characteristic,” and notes favorably that the NG911 definition in the Spectrum Auction Reauthorization Act of 2023 (H.R. 3565) requires that NG911 “be capable of processing ‘all types’ of requests.” CEA states that “[w]e read this requirement as mandating that NG911 standards support accessible technologies.” We agree with CEA’s reading and find that adopting the same language used in H.R. 3565 is sufficient to incorporate the accessibility component into the NG911 definition.

Commonly Accepted Standards. The NG911 definition specifies that NG911 systems and technology must be based on “commonly accepted standards.” In the NG911 Notice, we discussed the concept of commonly accepted standards but did not propose a specific definition of that term.¹⁵⁷

Commenters generally support including a definition of “commonly accepted standards” in the rules. The proposed legislation in H.R. 3565 provides a definition of “commonly accepted standards.”¹⁵⁸ NENA offers a

similar definition that “very closely aligns with the definitions as promulgated in multiple NG9–1–1 funding bills as introduced in Congress.”¹⁵⁹ We find that requiring that the commonly accepted standards be developed and approved by an accredited standards development organization will help ensure that there is a minimum threshold for ensuring the integrity and validity of such standards, as technology continues to evolve over time. Accordingly, we adopt the following definition of “commonly accepted standards”:

The technical standards followed by the communications industry for network, device, and internet Protocol connectivity that—(1) enable interoperability; and (2) are—(i) developed and approved by a standards development organization that is accredited by a United States standards body (such as the American National Standards Institute) or an equivalent international standards body in a process that—(A) is open to the public, including open for participation by any person; and (B) provides for a conflict resolution process; (ii) subject to an open comment and input process before being finalized by the standards development organization; (iii) consensus-based; and (iv) made publicly available once approved.

This definition tracks the definition of “commonly accepted standards” set forth in H.R. 3565, with minor non-substantive revisions.¹⁶⁰

As noted above, this definition of “commonly accepted standards” does not specify a particular standard or set of standards to which 911 Authorities or networks must adhere. This approach gives parties flexibility to implement changes or improvements as more advanced technologies become available and allows industry standards to evolve without the need for rule changes.

developed and approved by a standards development organization that is accredited by an American standards body (such as the American National Standards Institute) or an equivalent international standards body in a process—(I) that is open to the public, including open for participation by any person; and (II) provides for a conflict resolution process; (ii) subject to an open comment and input process before being finalized by the standards development organization; (iii) consensus-based; and (iv) made publicly available once approved.”

¹⁵⁹ NENA NG911 Notice Reply at 12–13 & nn.39–40 (rec. Sept. 6, 2023). NENA’s proposed definition requires that the technical standards be “developed and approved by a recognized standards development organization, that may be accredited by a United States or international standards accreditation body.”

¹⁶⁰ The definition we adopt refers to accreditation by a “United States standards body” rather than an “American standards body.” In addition, we have moved the word “that” to precede the (2)(i)(A) provision, so that it modifies both subsections that follow. Finally, we have made non-substantive changes to the introductory wording and numbering of the definition for consistency with adjacent rule provisions.

Equally important, our approach discourages the use of “proprietary . . . standards,”¹⁶¹ which do not meet the definition of “commonly accepted standards” as they (1) would not enable interoperability; and (2) would not be developed and approved by a standards development organization accredited by a United States standards body or equivalent international standards body, subject to an open, consensus-based comment and input process prior to finalization, or made publicly available once approved.

We also emphasize that the NENA i3 standard qualifies as a “commonly accepted standard” under the definition in this document and the Order.¹⁶² As numerous commenters indicate, the i3 standard is the prevailing standard adopted by all NG911 systems currently being deployed in the U.S. (and in Canada and Europe) is the NENA i3 standard.¹⁶³ The i3 standard has been approved by the American National Standards Institute (ANSI),¹⁶⁴ following an open comment and input process, and was made publicly available once approved.¹⁶⁵ In addition, work is ongoing to improve and augment the i3 standard as the NG911 transition proceeds.¹⁶⁶ While we do not specifically reference the i3 standard in our rules, as some commenters advocate,¹⁶⁷ we regard the widespread

¹⁶¹ USTelecom—The Broadband Association (USTelecom) NG911 Notice Comments at 5 (rec. Aug. 9, 2023) (USTelecom NG911 Notice Comments) (discussing that proprietary standards “may vary vendor-by-vendor.”).

¹⁶² See, e.g., Brian Rosen NG911 Notice Comments at 1 (rec. July 28, 2023) (Brian Rosen NG911 Notice Comments); iCERT Nov. 2, 2023 *Ex Parte* at 4; MSCI NG911 Notice Comments at 3; Comtech NG911 Notice Comments at 7; Texas 9–1–1 Alliance, Texas Commission on State Emergency Communications, and Municipal Emergency Communication Districts Association (Texas 9–1–1 Entities) NG911 Notice Comments at 2 (rec. Aug. 8, 2023) (Texas 9–1–1 Entities NG911 Notice Comments).

¹⁶³ NENA Oct. 26, 2023 *Ex Parte* at 1 (“[A]ll known NG9–1–1 deployments today adopt the i3 standard, including across Canada, all deployments in the United States, and the regional version adopted in Europe.”); iCERT Nov. 2, 2023 *Ex Parte*, Attach. at 4 (“All current NG9–1–1 implementations are based on NENA i3.”); Brian Rosen NG911 Notice Reply at 1 (rec. Sept. 8, 2023) (Brian Rosen NG911 Notice Reply) (“[T]here is a single accepted industry standard, and that is the i3 standard.”).

¹⁶⁴ NENA, *NENA Standards and Documents*, <https://www.nena.org/page/standards> (last visited Apr. 11, 2024) (noting that NENA’s i3 is an ANSI-approved standard).

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* (listing published corrections to the NENA i3 standard).

¹⁶⁷ NENA LBR Notice Comments at 11 (supporting “i3 compatible” or some other mutually-agreed upon terminology to describe standards-based NG911); iCERT Nov. 2, 2023 *Ex Parte*, Attach. at 4 (promoting “full interoperability and the use of commonly accepted standards, such

¹⁵⁴ Livingston Parish NG911 Notice Comments at 1; APCO Sept. 22, 2023 *Ex Parte*; iCERT Nov. 2, 2023 *Ex Parte* at 4; Letter from Jeffrey S. Cohen, Chief Counsel, et al., APCO, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 21–479, at 2–3 (filed May 20, 2024).

¹⁵⁵ Google NG911 Notice Comments at 8 (rec. Aug. 9, 2023) (Google NG911 Notice Comments); Electronic Privacy Information Center (EPIC) NG911 Notice Comments at 3, 5 (rec. Aug. 9, 2023) (EPIC NG911 Notice Comments) (agreeing that a definition of NG911 should include “an emphasis on security”; also stating, as a broader observation, that the Commission must address privacy issues for NG911 data, not merely cybersecurity).

¹⁵⁶ See also Google NG911 Notice Comments at 8 (acknowledging that, “[i]ndeed, the Spectrum Auction Reauthorization Act of 2023 (H.R. 3565) introduced in May 2023 includes a definition of ‘Next Generation 9–1–1’ as an IP-based system that ‘is secure’”).

¹⁵⁷ NG911 Notice, 38 FCC Rcd at 6216, 6229–30, paras. 24, 51. In addition, several potential definitions of NG911 that were proposed by commenters or discussed in the NG911 Notice included the term “commonly accepted standards.” See, e.g., NG911 Notice, 38 FCC Rcd 6229–30, para. 51 & n.166; NASNA NG911 Notice Comments at 4–5.

¹⁵⁸ H.R. 3565 states: “The term ‘commonly accepted standards’ means the technical standards followed by the communications industry for network, device, and internet Protocol connectivity that—(A) enable interoperability; and (B) are—(i)

adoption of i3 as a positive trend that will help ensure that the development of NG911 is in accordance with “commonly accepted standards” as defined in our rules. At the same time, our rules provide flexibility that will “help promote a technology-neutral approach that ensures that ECCs can continually benefit from ongoing innovation.”

911 Authority. In the NG911 Notice, the Commission proposed to define “911 Authority” as “[t]he state, territorial, regional, Tribal, or local agency or entity with the authority and responsibility under applicable law to designate the point(s) to receive emergency calls.”¹⁶⁸ The Commission asked if this definition encompassed the diverse set of authorities in the United States that have authority and responsibility to designate the point(s) to receive emergency calls.¹⁶⁹

The South Carolina Revenue and Fiscal Affairs Office (South Carolina RFA) agrees that the NG911 Notice’s proposed definition “sufficiently encompasses the roles and responsibilities of the 911 Authority for the State.” Other commenters, however, propose to modify the definition. NASNA states that the definition should reference 911 Authorities’ broader responsibilities for coordinating the deployment of the ESInet and its data inputs and proposes to define “911 authority” as “[t]he state, territorial, regional, Tribal, or local agency or entity with the authority and responsibility under applicable law to procure and administer an ESInet and NG911 core services on behalf of one or more PSAPs and to designate the point(s) to receive emergency calls.” Commenter Brian Rosen similarly states that the Commission should define “911

Authority” as “the entity contracting for the ESInet and the NGCS service.”¹⁷⁰ Colorado PUC notes that there may be 911 Authorities with concurrent jurisdiction over the same geographic area but “having different roles and responsibilities” over the 911 system and suggests including language indicating this possibility.¹⁷¹ We agree with these commenters and include a reference in our definition of “911 Authority” to the operation or administration of “a communications network for the receipt of 911 traffic at NG911 Delivery Points and for the transmission of such traffic from that point to PSAPs.” This definition better captures the range of responsibilities that 911 Authorities have and is broad enough to accommodate the possibility of overlapping authorities—for example, a state’s public safety agencies and its public utility commission—over various aspects of the state’s 911 network(s).

We find that this modified definition of “911 Authority” will provide greater clarity and assist parties in complying with our rules. Accordingly, we adopt the following definition of “911 Authority”:

“911 Authority”: A state, territorial, regional, Tribal, or local governmental entity that operates or has administrative authority over all or any aspect of a communications network for the receipt of 911 traffic at NG911 Delivery Points and for the transmission of such traffic from that point to PSAPs.¹⁷²

Emergency Services internet Protocol Network (ESInet). In the NG911 Notice, the Commission proposed to adopt a definition of “Emergency Services internet Protocol Network (ESInet)” that would define the term “in reference to the protocol used on the network, the entities that manage the network, and the use of the network for purposes of emergency services communications.”¹⁷³ The Commission’s proposed definition was “[a]n internet Protocol (IP)-based network managed by public safety authorities and used for emergency services communications, including Next Generation 911.”¹⁷⁴

¹⁷⁰ Brian Rosen NG911 Notice Reply at 15 (also stating that “[a] PSAP should not be declaring they are ready, it is the 9–1–1 Authority, often a state entity”).

¹⁷¹ Colorado PUC NG911 Notice Comments at 10 (“For instance, a state may have a single state-level 911 authority, but each region may also have a local 911 authority, with the state and local authorities having different roles and responsibilities.”).

¹⁷² The term “NG911 Delivery Point” is also defined in this rulemaking.

¹⁷³ NG911 Notice, 38 FCC Rcd at 6230, para. 52.

¹⁷⁴ NG911 Notice, 38 FCC Rcd at 6244, app. A (§ 9.28 “Definitions”); *see id.* at 6230, para. 52 (proposing to define “Emergency Services internet

Mission Critical Partners generally supports this definition of ESInet but notes that the ESInet is “simply a transport mechanism.”¹⁷⁵ NASNA proposes to define ESInet as: “[t]he internet Protocol (IP)-based network tier of a Next Generation 911 system that exists between the points designated by the 911 authority and a PSAP, which is used for emergency services communications, including Next Generation 911.” NENA states that “[w]ithin the confines of this proceeding,” it concurs with NASNA’s proposed definition for ESInet.¹⁷⁶ Alaska Telecom notes that the Commission seeks comment on the definitions of both “NG911” and “ESInet,” and says that any definitions adopted should reference “statewide, or at least regional, ESInet development,” as doing so will ensure that deployment of NG911 networks “is coordinated with a statewide (or at a minimum, partially statewide) rollout,” not conducted solely on a PSAP-by-PSAP, provider-by-provider basis.¹⁷⁷

We adopt a definition of “ESInet” similar to that proposed in the NG911 Notice, with slight revisions to add greater clarity and certainty to what constitutes an ESInet for purposes of these NG911 rules. The modifications in this final definition are consistent with the criteria set forth by the Commission in the NG911 Notice, and also reflect wording that NASNA and NENA support and recommend in their proposed “ESInet” definition. The definition is as follows:

Emergency Services internet Protocol Network (ESInet). An internet Protocol (IP)-

Protocol Network (ESInet)” as “[a]n internet Protocol (IP)-based network used for emergency services communications, including Next Generation 911”).

¹⁷⁵ Mission Critical Partners NG911 Notice Comments at 11 (stating that “it is the core services that perform the critical functions that make NG911 work”).

¹⁷⁶ NENA NG911 Notice Reply at 11 (also noting that NENA has its own different “official definition of an ESInet” that it does not recommend adopting in this proceeding, but that NENA will continue to use that other definition in “other forums”). *See also* Brian Rosen NG911 Notice Reply at 16–17 (discussing whether the ESInet should be the default demarcation point for cost allocation, and stating that “[c]loud deployments of NGCS services complicate the definition of what is the ESInet”).

¹⁷⁷ Alaska Telecom Assoc. NG911 Notice Comments at 15–16 (“Furthermore, deploying NG911 networks in coordination with an in-state ESInet (or ESInets) in Alaska will help prevent scenarios in which a 911 authority contracts with an NG911 provider in the contiguous United States rather than Alaska, requiring service providers to somehow deliver traffic to a demarcation point far outside their service areas or in the Lower 48. Such a configuration would impose high costs on carriers serving remote areas and would jeopardize the redundancy and reliability of the 911 communications system in Alaska.”).

as i3”); NASNA NG911 Notice Reply at 2 (rec. Sept. 8, 2023) (NASNA NG911 Notice Reply) (“recognizing the NENA i3 standard as the benchmark standard will improve competition in the marketplace, ensure a standards-based approach, provide a consistent benchmark for a phased path forward for NG911, align the US with other global access to emergency calling, and improve the deployment timeline”); USTelecom NG911 Notice Reply at 5–6 (rec. Sept. 8, 2023) (USTelecom NG911 Notice Reply); Colorado PUC NG911 Notice Comments at 9; Verizon NG911 Notice Comments at 5 (rec. Aug. 9, 2023); Ad Hoc NG911 Service Providers Coalition NG911 Notice Comments at 8 (rec. Aug. 9, 2023) (Ad Hoc NG911 Service Providers Coalition NG911 Notice Comments); Brian Rosen NG911 Notice Comments at 2; Comtech NG911 Notice Comments at 7; Boulder Regional Emergency Telephone Service Authority (BRETSA) NG911 Notice Reply at 6 (rec. Sept. 8, 2023) (BRETSA NG911 Notice Reply) (stating that the “Commission should open a rulemaking docket to adopt the i3 standard for NG911, along with any corollary standards”).

¹⁶⁸ NG911 Notice, 38 FCC Rcd at 6230, 6244, para. 53, app. A (§ 9.28 “Definitions”).

¹⁶⁹ NG911 Notice, 38 FCC Rcd at 6230, para. 53.

based network that is managed or operated by a 911 Authority or its agents or vendors and that is used for emergency services communications, including Next Generation 911.

The adopted definition of “ESInet” reflects the three criteria that we proposed in the NG911 Notice for the definition of “ESInet”—the protocol used on the network, the entities that manage the network, and the use of the network for purposes of emergency services communications.¹⁷⁸ In addition, while our proposed definition provided that the network must be managed by “public safety authorities,” the final definition adopted provides greater clarity by specifying that the network must be managed or operated by a “911 Authority or its agents or vendors,” with “911 Authority” being a term specifically defined elsewhere in the rules.

NASNA and NENA propose stating in the definition that the ESInet is the “internet Protocol (IP)-based tier of a Next Generation 911 system that exists between the points designated by the 911 authority and a PSAP.” While ESInets typically operate in the manner described by NASNA and NENA, we believe that ESInets should be defined functionally without reference to any particular “tier” or network configuration. Alaska Telecom recommends that the “ESInet” definition reference “statewide, or at least regional, ESInet development” to ensure that NG911 networks are not deployed on a PSAP-by-PSAP, provider-by-provider basis. We find that it is not necessary to include specific wording on this issue. The “ESInet” definition is intended to be flexible and leaves the scale of ESInet deployment (e.g., local, state, or regional) to the discretion of stakeholders.

Originating Service Providers. The NG911 Notice discussed wireline providers, rural wireline providers, and non-rural telecommunications wireline providers,¹⁷⁹ but it did not propose specific definitions for “Wireline Provider” or “Non-Rural Wireline Provider.” Similarly, the NG911 Notice did not specifically propose to define the terms “Nationwide CMRS Provider,” “Non-Nationwide CMRS Provider,” and “Rural Incumbent Local Exchange Carrier (RLEC).” In addition, the Commission noted that it had previously defined the term “Covered Text Provider” at 47 CFR 9.10(q)(1),¹⁸⁰ but did not specifically propose to adopt

a definition of that term in this proceeding. However, in the NG911 Notice the Commission sought comment on whether there are “any other terms that we should define for purposes of the cost allocation and IP-delivery rules.”¹⁸¹ The terms “Wireline Provider,” “Non-Rural Wireline Provider,” “Covered Text Provider,” “Nationwide CMRS Provider,” “Non-Nationwide CMRS Provider,” and “Rural Incumbent Local Exchange Carrier (RLEC)” are used in certain NG911 rules. We find that specifically defining these terms will ensure greater clarity and certainty, and will help parties to comply with our regulations. Accordingly, we incorporate and adopt the definitions for these terms that have previously been set forth in other existing statutes and regulations.

The NG911 Notice and the LBR Notice did not specifically propose a defined term that would encompass all providers that would be specifically subject to NG911 rules. We define the term “Originating Service Providers” for purposes of this rulemaking and the new NG911 rules as follows:

Originating Service Providers. Providers that originate 911 traffic, specifically wireline providers; commercial mobile radio service (CMRS) providers, excluding mobile satellite service (MSS) operators to the same extent as set forth in § 9.10(a); covered text providers, as defined in § 9.10(q)(1); interconnected Voice over Internet Protocol (VoIP) providers, including all entities subject to subpart D of this part; and internet-based Telecommunications Relay Service (TRS) providers that are directly involved with routing 911 traffic, pursuant to subpart E of this part.

Other Definitions. Some commenters suggest that the Commission codify definitions of additional terms, such as “Associated Location Information,”¹⁸² “IP-based format,”¹⁸³ and “Phases of Readiness.”¹⁸⁴ We conclude that adopting formal definitions of these terms is unnecessary, but we note that some of the suggested additional terms are discussed and explained in other sections of this document and the

Order.¹⁸⁵ We believe that the formal definitions we adopt in this proceeding provide sufficient certainty, clarity, and guidance for stakeholders at this time.

C. Service Providers’ Obligation To Deliver 911 Traffic in IP Format Upon Request

1. Two-Phased Implementation of IP-Based Transmission Formats

a. Overview

For the transition to NG911, we adopt rules that require OSPs to take steps in two phases to complete all translation and routing to deliver 911 traffic, including associated routing and location information, in the requested IP-based format. These requirements are intended to correspond to and complement the readiness phases for 911 Authorities, such that once a 911 Authority is ready to receive NG911 traffic in a specific IP format, the OSP will be required to deliver it in that format.

In the LBR Notice, the Commission proposed to require CMRS and covered text providers to deliver 911 calls, texts, and associated location information in IP-based format to NG911-capable PSAPs that request it.¹⁸⁶ The Commission reasoned that such a requirement would advance the transition to NG911 by helping address operational and routing issues for jurisdictions that have implemented NG911.¹⁸⁷ The Commission also noted that the 2016 TFOPA Report concluded that a significant impediment to NG911 service was that originating service providers were not prepared to deliver 911 calls via IP technology with location information to NG911 service providers.¹⁸⁸ The Commission reasoned that requiring OSPs to deliver IP-formatted calls and routing information to NG911-capable PSAPs would alleviate the burden on state and local

¹⁸⁵ For example, in this document and section III.C.1.a of the Order, we note that “associated location information” means “the location information that OSPs are required to determine and transmit under current part 9 rules,” and we clarify that “nothing in our rules is intended to change location determination requirements for OSPs.” In this document and in section III.C.1.b.ii of the Order, we discuss the term “IP-based format,” noting that using and defining the technical term “SIP” to describe IP delivery and 911 Authority readiness will provide clarity regarding the Commission’s NG911 rules, as “SIP” is a technically more precise term than “IP-based format” and similar terms. In this document and in section III.C.2 of the Order, we discuss and adopt two phases of readiness “to promote clarity and specificity regarding the readiness that 911 Authorities must achieve to prepare to accept Phase 1 and Phase 2 delivery by OSPs.”

¹⁸⁶ LBR Notice, 37 FCC Rcd at 15201, para. 46.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* (citing TFOPA Final Report at 37).

¹⁷⁸ NG911 Notice, 38 FCC Rcd at 6230, para. 52.

¹⁷⁹ NG911 Notice, 38 FCC Rcd at 6230–31, para. 55.

¹⁸⁰ *Id.* at 6205, para. 2 n.2.

¹⁸¹ *Id.* at 6230, para. 54.

¹⁸² iCERT NG911 Notice Comments at 4 (urging that “the Commission should clarify what it means to ‘include associated location information’ with a 911 call”).

¹⁸³ T-Mobile USA, Inc. (T-Mobile) NG911 Notice Comments at 5 (rec. Aug. 9, 2023) (T-Mobile NG911 Notice Comments); Texas 9–1–1 Entities NG911 Notice Comments at 2; iCERT NG911 Notice Comments at 4 (stating “iCERT recommends that delivery of 911 calls in IP-based format require conformance to ‘commonly accepted standards for NG911’”).

¹⁸⁴ NASNA NG911 Notice Comments at 6–7; T-Mobile NG911 Notice Reply at 9–10 (rec. Sept. 8, 2023) (T-Mobile NG911 Notice Reply); NENA NG911 Notice Reply at 2.

911 Authorities of maintaining transitional gateways and other networks to process and convert legacy calls¹⁸⁹ and would help jurisdictions realize additional public safety benefits available on NG911 networks.¹⁹⁰

In the NG911 Notice, the Commission proposed to require wireline, interconnected VoIP, and internet-based TRS providers to complete all translation necessary to deliver 911 calls, including associated location information, in the requested IP-based format to an ESInet or other designated point(s) that allow emergency calls to be answered upon request of 911 Authorities who have established the capability to accept NG911-compatible, IP-based 911 communications.¹⁹¹ The Commission reasoned that its proposal would help jurisdictions that are seeking to implement NG911 by alleviating the burden on 911 Authorities to maintain transitional gateways and other network elements to process and convert legacy calls¹⁹² and would complement its IP-delivery proposal in the LBR Notice.¹⁹³ In the NG911 Notice, the Commission sought comment on achieving regulatory parity in its requirements for delivery of IP-based 911 calls by CMRS, wireline, interconnected VoIP, and internet-based TRS providers, and asked whether there were reasons to apply different requirements to 911 calls from different platforms.¹⁹⁴ In addition, the Commission sought specific comment on how its proposal should extend to 911 calls that originate on non-IP wireline networks¹⁹⁵ and how to extend its proposed requirement to internet-based TRS.¹⁹⁶

In both the LBR Notice and NG911 Notice, the Commission proposed to require OSPs to complete all NG911 translation steps in a single phase.¹⁹⁷ In

the NG911 Notice, the Commission also sought comment on whether to consider different or additional phases, including NASNA's proposal for three phases based on TFOPA's "NG911 Readiness Scorecard."¹⁹⁸ In addition, the Commission asked related questions regarding the costs and benefits associated with NASNA's suggestion.¹⁹⁹

In response to the NG911 Notice, several commenters, including NASNA, USTelecom, Intrado, MSCI, iCERT, and the Colorado PUC, advocate for regulations that account for multiple phases in the transition to NG911.²⁰⁰ Several of these commenters indicate that a phased approach would better reflect the realities of the ongoing, typically phased, implementation of NG911 thus far. NASNA states that the implementation of NG911 is "typically a multi-phase transition process" and that "there is not just one phase of readiness." Intrado states that "a phased-in approach . . . account[s] for, on the one hand, the significant difference between delivering IP-formatted traffic to the NG911 POI and delivering i3-formatted traffic and, on the other hand, differences in OSP type." iCERT states that "FCC rules should recognize and accommodate various stages of NG911 implementation." MSCI argues that requiring immediate implementation of full NG911 capabilities in a single phase would "complicate, if not frustrate, the Commission's goal to more quickly transition TDM-based communications to IP-based communications." However, some commenters support implementation of the transition in a single phase,²⁰¹ urge the Commission to seek further comment on phased approaches, or urge the Commission to create an industry task force to further study NG911.²⁰²

voice calls, texts, and associated routing information in IP format. LBR Order at *2, para. 3.

¹⁹⁸ NG911 Notice, 38 FCC Rcd at 6224–25, para. 41 (citing the NASNA Petition at 7–8).

¹⁹⁹ *Id.* at 6224–25, para. 41.

²⁰⁰ NASNA NG911 Notice Comments at 3, 6–7; USTelecom NG911 Notice Reply at 6 (citing NASNA NG911 Notice Comments at 9 and Intrado NG911 Notice Comments at 4 (rec. Aug. 9, 2023) (Intrado NG911 Notice Comments)); iCERT Nov. 2, 2023 *Ex Parte*, Attach. at 5; MSCI NG911 Notice Comments at 4; iCERT Dec. 13, 2023 Office of Commissioner Gomez *Ex Parte*, Attach. at 4; iCERT Dec. 13, 2023 Office of Commissioner Starks *Ex Parte*, Attach. at 4; Colorado PUC NG911 Notice Comments at 4.

²⁰¹ Letter from Brandon Abley, Director of Technology, and Jonathan Gilad, Director of Government Affairs, NENA, to FCC, PS Docket No. 21–479, at 3 (filed Dec. 8, 2023); Brian Rosen NG911 Notice Reply at 11–12.

²⁰² Bandwidth Communications, Inc. (Bandwidth) NG911 Notice Reply at 4–5 (rec. Sept. 8, 2023) (Bandwidth NG911 Notice Reply).

We require OSPs to complete in two phases all translation and routing to deliver 911 traffic, including associated location information, in the requested IP-based format.²⁰³ In Phase 1, OSPs will be required to deliver 911 traffic in a basic SIP format, thereby implementing the fundamental IP translation or transport that is a prerequisite for the delivery of 911 traffic in SIP format that complies with commonly accepted standards. In Phase 2, OSPs will be required to deliver 911 traffic in SIP format that complies with NG911 commonly accepted standards. This approach represents a division of the one phase approach proposed in the LBR Notice and NG911 Notice.

We adopt two phases for all OSPs—*i.e.*, wireline providers, CMRS providers, covered text providers, interconnected VoIP providers, and internet-based TRS providers—to facilitate an ordered and synchronized transition to NG911, to better reflect the transition to NG911 as it currently is progressing, and to achieve regulatory parity in the requirements for the delivery of IP-based 911 calls across different platforms. We agree with Colorado PUC that "every implementation of NG911 is being accomplished on a phased basis, so allowing for multiple iterations of requirements to be established is necessary."²⁰⁴ This approach recognizes that OSPs will need additional time to achieve delivery of 911 traffic using NG911 commonly accepted standards in Phase 2.

The phased approach we adopt is consistent with phased approaches recommended by Intrado and MSCI, with minor adjustments to accommodate our regulatory goal of encompassing current and future NG911 commonly accepted standards. Intrado states that "NG911 delivery is divisible into two distinct stages—(1) IP transit (*i.e.*, SIP delivery to the POI) and (2) NG911-formatted call information under

²⁰³ Associated location information means the location information that OSPs are required to determine and transmit under current part 9 rules. We clarify that nothing in our rules is intended to change location determination requirements for OSPs, meaning the accuracy or reliability of the location information provided with 911 calls. *See, e.g.*, 47 CFR 9.8 (indicating the dispatchable location requirement for wireline providers); 9.10(i)(2)(i) (indicating horizontal dispatchable location requirements for CMRS providers); 9.10(i)(2)(ii) (indicating vertical dispatchable location requirements for CMRS providers); 9.11(b)(4) (indicating dispatchable location requirements for interconnected VoIP providers); 9.14(d)(4) (indicating dispatchable location requirements for VRS and IP Relay providers); 9.14(e)(4) (indicating dispatchable location requirements for IP CTS providers).

²⁰⁴ Colorado PUC NG911 Notice Comments at 4 (emphasis omitted).

¹⁸⁹ *Id.* at 15202, para. 47.

¹⁹⁰ *Id.* at 15202, para. 48.

¹⁹¹ NG911 Notice, 38 FCC Rcd at 6215, para. 21.

¹⁹² *Id.* at 6215, para. 22.

¹⁹³ *Id.* at 6216, para. 23 ("Although CMRS providers originate 75 to 80 percent of 911 calls in the U.S., successful implementation of NG911 for all 911 calls cannot occur without similar steps being taken by wireline, interconnected VoIP, and internet-based TRS providers. Therefore, we propose that wireline, interconnected VoIP, and internet-based TRS providers should be subject to similar requirements to deliver 911 communications in IP-based format to those we have proposed for CMRS and covered text providers.").

¹⁹⁴ *Id.* at 6216, para. 23.

¹⁹⁵ *Id.* at 6216–17, para. 25.

¹⁹⁶ *Id.* at 6217–18, para. 26.

¹⁹⁷ *Id.* at 6215, para. 21; LBR Notice, 37 FCC Rcd at 15201, para. 46. In the LBR Order, the Commission deferred to this proceeding, PS Docket No. 21–479, consideration of proposals for CMRS and covered text providers to deliver wireless 911

the i3 standard, with the former being a prerequisite for the latter.” MSCI suggests that the Commission consider “a two-step approach to NG911 deployment. The first step would involve a requirement that an OSP deliver 911 calls in IP format [upon request of a 911 Authority] The second step would involve a requirement that an OSP deliver 911 calls consistent with NENA i3 standard” The rules are very similar to Intrado’s and MSCI’s recommendations.

NASNA proposed a three-phase approach in which the initial phase would be triggered when the 911 Authority has an ESInet that is ready to receive 911 calls from the OSPs via an LNG. Colorado PUC similarly contemplates a phase in which 911 Authorities would maintain an LNG. We conclude that incorporating this initial phase into our rules is unnecessary and potentially counterproductive, as it merely describes the earliest transitional stage in which 911 Authorities continue to maintain LNGs to accommodate OSPs that have not transitioned to IP. We agree with MSCI that including this “legacy phase” could “prolong the migration.”²⁰⁵ Instead, Phase 1 and Phase 2 in our rules correspond to the second and third phases proposed by NASNA, which call for OSPs to first support basic SIP and then support SIP that complies with NG911 commonly accepted standards.

We prefer the two-phase approach to the single-phase approach proposed in the LBR Notice and NG911 Notice because a single-phase approach is less capable of encompassing the sequencing of steps that both 911 Authorities and OSPs must take during the NG911 transition. As discussed by several commenters, a phased regulatory approach aligns with the typical multi-phased implementation of NG911. In addition, we find it unnecessary to seek further comment on whether to adopt a phased approach, given that the Commission sought comment on NASNA’s phased recommendation in the NG911 Notice and has gathered an adequate record for decision.²⁰⁶ We additionally conclude that, in light of the extensive record in this proceeding, an industry task force is not needed to further study these NG911 rules. We also find that a two-phased approach will not needlessly slow the transition to NG911, as argued by APCO, as the phased approach we adopt will ensure that OSPs and 911 Authorities take the

necessary steps at each phase of the transition to NG911.

We affirm the Commission’s reasoning in the LBR Notice and NG911 Notice that IP delivery requirements will advance the transition to NG911 by alleviating the burden on 911 Authorities to maintain transitional gateways and helping 911 Authorities realize the public safety benefits of NG911 networks. We agree with iCERT’s assertion that the need to accommodate TDM-based 911 calls creates added costs for state and local 911 authorities, and that the adoption of IP delivery requirements will reduce the cost burdens of maintaining and operating legacy 911 infrastructure. We also agree with Intrado’s assertion that establishing direct OSP connectivity via SIP to ESInets “will materially reduce the number of 911 outages through improved network reliability and availability.”²⁰⁷ We agree with Comtech that maintaining both legacy and IP-based systems for the delivery of 911 traffic involves significant costs and creates increased vulnerability and risk of 911 outages. NENA also states that it is prohibitively expensive to maintain TDM and IP networks for 911 simultaneously.

In addition, we affirm the principle of parity in NG911 requirements for OSPs at Phases 1 and 2, though as discussed in this document and section III.C.3 of the Order, differences among types of OSPs regarding their current NG911 transition progress and capabilities merit adjustment of compliance timelines for some classes of OSPs. NENA, iCERT, NASNA, Maine PUC, Colorado PUC, Mission Critical Partners, and the Ad Hoc NG911 Service Providers Coalition support parity among different types of OSPs. Several commenters indicate that the Commission should decline to extend IP delivery requirements to wireline and VoIP providers as these services deliver location information to 911 Authorities differently than CMRS providers.²⁰⁸ We

note that interconnected VoIP providers already use a LIS functional element to transmit location information to 911 Authorities, subject to the NENA i2 standard,²⁰⁹ and we therefore find arguments that interconnected VoIP providers cannot provide location information to NG911 networks via a LIS to be unsupported. The record also confirms that it is technically feasible for wireline providers to use a LIS to transmit location information to 911 Authorities, even when they do not originate calls in IP. We also note that nothing under these rules changes the existing obligations that all OSPs have to determine the location of the 911 caller under the OSP-specific rules in part 9.

b. Phase 1

(i) Requirement

Upon receipt of a valid Phase 1 request from a 911 Authority, OSPs must (i) deliver all 911 traffic bound for the relevant PSAPs in the IP-based SIP format requested by the 911 Authority, (ii) obtain and deliver 911 traffic to enable the ESInet and other NG911 network facilities to transmit all 911 traffic to the destination PSAP, (iii) deliver all such 911 traffic to one or more in-state NG911 Delivery Points designated by the 911 Authority, and (iv) complete connectivity testing to confirm that the 911 Authority receives 911 traffic in the IP-based SIP format requested by the 911 Authority. OSPs are not required to originate 911 traffic in an IP format, and therefore may use a legacy TDM-to-IP gateway (LNG) to achieve compliance with these Phase 1 requirements.

The diagram below demonstrates the main high-level functions covered at Phase 1. This diagram is not meant to

9, 2023) (USTelecom NG911 Notice Comments) (stating that it is technically infeasible for some wireline carriers to include location information in IP call headers, requiring continued reliance on ALI databases); Five Area Telephone Cooperative, Inc. and Mid-Plains Rural Telephone Cooperative, Inc. (Five Area Telephone) NG911 Notice Comments at 5 (rec. Aug. 9, 2023) (Five Area Telephone NG911 Notice Comments) (arguing that wireline and VoIP carriers cannot provide the same automated location data as CMRS); NTCA—The Rural Broadband Association (NTCA) NG911 Notice Comments at 16–17 (rec. Aug. 9, 2023) (NTCA NG911 Notice Comments) (arguing that wireline providers should be allowed to continue to rely on ALI for location information and should not have to provide the location information proposed in the LBR proceeding for CMRS and covered text providers).

²⁰⁹ NENA, Interim VoIP Architecture for Enhanced 9–1–1 Services (i2) at page 58 (Dec. 6, 2005), https://cdn.ymaws.com/www.nena.org/resource/resmgr/standards-archived/nena_08-001-v1_interim_voip.pdf (“The i2 solution proposes a Location Information Server (LIS) be the source for distributing location information within an access network.”).

²⁰⁵ Mission Critical Partners NG911 Notice Comments at 8–9 (citing NASNA Petition).

²⁰⁶ NG911 Notice, 38 FCC Rcd at 6224–25, para. 41.

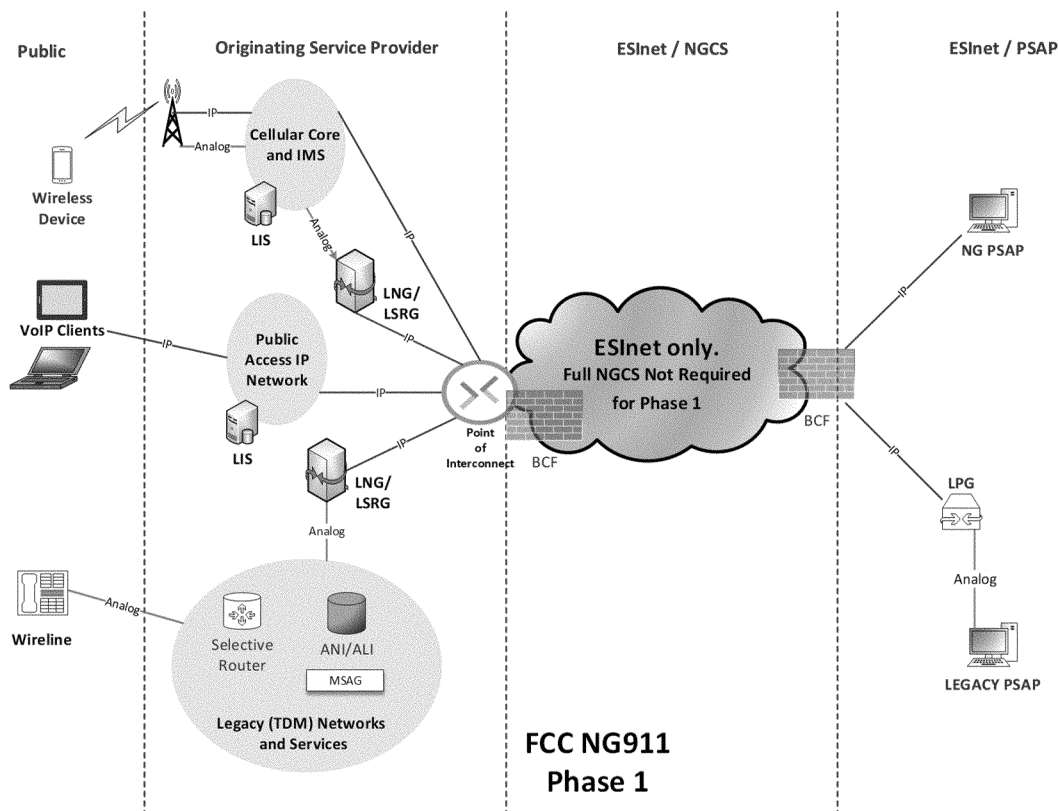
²⁰⁷ Letter from Lauren Kravetz, Vice President, Government Affairs, Intrado, to Marlene Dortch, Secretary, FCC, PS Docket No. 21–479, at 1 (filed Oct. 24, 2023) (Intrado Oct. 24, 2023 *Ex Parte*).

²⁰⁸ South Carolina RLECs NG911 Notice Reply at 13 (rec. Sept. 8, 2023) (South Carolina RLECs NG911 Notice Reply) (stating that it is premature to extend IP delivery requirements to fixed wireline carriers, and that such rules should not be applied to wireline and VoIP because this would be expensive and unnecessary due to differences in how fixed and mobile 911 location data is delivered); Home Telephone ILEC LLC (Home Telephone) NG911 Notice Comments at 15–16 (rec. Aug. 9, 2023) (Home Telephone NG911 Notice Comments) (stating that the Commission should not require wireline providers to deliver location data in IP format, as RLECs lack that capability); USTelecom NG911 Notice Comments at 3 (rec. Aug.

represent required network architectures in an “as built” configuration and is not prescriptive in

nature. The call flow is illustrated by blue lines representing SIP 911 traffic and red lines indicating legacy 911

traffic. In the diagram below, 911 traffic originates on the left side of the diagram and flows from left to right.



**FCC NG911
Phase 1**

The above diagram uses the following acronyms:

- ANI = Automatic Number Identification
- ALI = Automatic Location Information
- BCF = Border Control Function
- ESInet = Emergency Services IP Network
- IMS = IP Multimedia Subsystem
- LIS = Location Information Server
- LNG = Legacy Network Gateway
- LPG = Legacy PSAP Gateway
- LSRG = Legacy Selective Router Gateway
- MSAG = Master Street Address Guide
- NG PSAP = Next Generation 911 PSAP
- NGCS = NG911 Core Services
- TDM = Time Division Multiplex

Implementing Phase 1 will help reduce costs and improve 911 reliability by moving 911 traffic from legacy to IP transmission facilities, and will establish the foundation necessary for subsequent implementation of Phase 2. MSCI and iCERT argue, and we agree, that delivery in IP is a critical first step before compliance with NG911

commonly accepted standards.²¹⁰ Intrado asserts that IP delivery will “materially reduce the number of 911 outages through improved network reliability.” Mission Critical Partners, iCERT, Comtech, and the State of Minnesota Department of Public Safety–Emergency Communication Networks (Minnesota DPS–ECN) indicate that relieving 911 Authorities of the burden of supporting TDM traffic from OSPs will materially reduce costs to those 911 Authorities.

To the extent that OSPs originate 911 traffic in TDM, we find that they should be responsible in Phase 1 for translating such traffic to SIP when delivering it to the designated NG911 Delivery Point. We disagree with Verizon’s argument that requiring each individual TDM-

²¹⁰ MSCI NG911 Notice Comments at 2 (stating that the most urgent element of NG911 is the delivery of 911 calls in IP-based format, and compliance with the NENA i3 standard should not hinder such delivery); iCERT NG911 Notice Comments at 5 (stating that full implementation of end state NG911 capabilities should not be a prerequisite for PSAPs to have 911 delivered in IP format); iCERT Dec. 13, 2023 Office of Commissioner Gomez *Ex Parte*, Attach. at 4; iCERT Dec. 13, 2023 Office of Commissioner Carr *Ex Parte*, Attach. at 4; iCERT Dec. 13, 2023 Office of Commissioner Starks *Ex Parte*, Attach. at 4.

based OSP to provide an LNG “imposes unnecessary costs on OSPs” and that “LNG capabilities should thus presumptively remain the PSAP/NG911 provider’s responsibility.”²¹¹ As most OSPs already transmit traffic via SIP, it is unreasonable to require 911 Authorities to maintain LNGs for the small number of OSPs that continue to originate and transmit their traffic in TDM. In addition, we find that it is not unreasonably costly for OSPs that originate and transmit traffic in TDM to maintain an LNG or contract with a third party to translate 911 traffic. We find that it should be the responsibility of the OSP to translate 911 traffic from legacy formats and deliver 911 traffic in the SIP format requested by the 911 Authority. However, nothing in our rules prevents a 911 Authority from continuing to host an LNG for OSPs to use, either through an alternative agreement with an OSP or by choosing not to use the valid request mechanism in our rules. This possibility was noted by CSRIC, which observed that a 911 Authority’s ESInet provider “can provide the LNG as a service and

²¹¹ Verizon NG911 Notice Reply at 5 (rec. Sept. 8, 2023) (Verizon NG911 Notice Reply).

accommodate small carriers coming on board with minimal expense to the smaller carrier.”²¹²

Connectivity Testing. As part of Phase 1, we require OSPs to conduct connectivity testing to confirm that the 911 Authority receives 911 traffic in the IP-based SIP format requested by the 911 Authority. Such testing will help to ensure that the connection from the OSP to the 911 Authority is implemented correctly and meets the requirements of the 911 Authority. The Commission sought comment on testing related to NG911 delivery in the LBR Notice and NG911 Notice.²¹³ Several commenters emphasize the importance of connectivity testing as part of the process of initiating delivery of 911 traffic to ESInets.²¹⁴ Commenters also note that connectivity testing will require cooperation, coordination, and collaboration among multiple parties, including OSPs, NG911 vendors, and 911 Authorities.²¹⁵ Because the ability of OSPs to complete testing within the required time period depends on such cooperation, we condition the testing requirement on 911 Authorities securing commitments from their NG911 vendors to ensure that such vendors are available to complete connectivity testing by the compliance deadline applicable to the OSP.

(ii) Definitions

To facilitate compliance with our rules for Phase 1 delivery, we adopt definitions for “911 traffic,” “NG911 Delivery Point,” and “Session Initiation Protocol (SIP).” Adopting functional

definitions of these terms will provide guidance to OSPs in complying with our cost allocation and IP-delivery rules and will assist both OSPs and 911 Authorities by providing baseline definitions of important technical terms relevant to their needs. We define the term “911 traffic” as a convenient descriptor of the transmissions regulated under these rules. We similarly define the term “NG911 Delivery Point” as a convenient descriptor of the point to which an OSP’s 911 traffic is delivered. While several commenters called for definitions of the terms “IP-capable,” “IP-based,” and “NG911-capable,”²¹⁶ the term “SIP” is a standard technical term used in NG911 reference materials.²¹⁷ “SIP” was also used by several other commenters in the record.²¹⁸ We believe that referencing “SIP” to describe IP delivery and 911 Authority readiness at Phases 1 and 2 and defining that term will provide clarity regarding the Commission’s NG911 rules, as it is a technically more precise term than “IP-based format” and similar terms.

We find that defining these terms will help to clarify our NG911 requirements and assist parties with compliance. Accordingly, we adopt the following definitions:

- **911 traffic.** Transmissions consisting of all 911 calls (as defined in §§ 9.3, 9.11(b)(2)(ii)(A), 9.14(d)(2)(iii)(A), and 9.14 (e)(2)(ii)(A)) and/or 911 text messages (as defined in § 9.10(q)(9)), as well information about calling parties’ locations and originating telephone numbers and routing

information transmitted with the calls and/or text messages.

- **NG911 Delivery Point.** A geographic location, facility, or demarcation point designated by a 911 Authority where an originating service provider shall transmit and deliver 911 traffic in an IP format to ESInets or other NG911 network facilities.
- **Session Initiation Protocol (SIP).** A signaling protocol used for initiating, maintaining, modifying, and terminating communications sessions between internet Protocol (IP) devices. SIP enables voice, messaging, video, and other communications services between two or more endpoints on IP networks.

c. Phase 2

(i) Requirement

Upon receipt of a 911 Authority’s valid Phase 2 request, OSPs must deliver all 911 traffic bound for the relevant PSAPs to NG911 Delivery Points designated by the 911 Authority in an IP-based SIP format that complies with NG911 commonly accepted standards identified by the 911 Authority, including having location information embedded in the call signaling using Presence Information Data Format—Location Object (PIDF-LO)²¹⁹ or its functional equivalent. OSPs must also either (1) install and put into operation all equipment, software applications, and other infrastructure necessary to use a LIS or its functional equivalent for the verification of their customer location information and records, or (2) acquire services that can be used for the same purpose. In addition, OSPs must complete connectivity testing to confirm that the 911 Authority receives 911 traffic in the IP-based SIP format that complies with the identified NG911 commonly accepted standards. Because Phase 2 builds upon Phase 1, and completion of Phase 1 is a prerequisite for Phase 2, the OSP must also continue to comply with Phase 1 requirements during Phase 2, including the requirement to deliver all such 911 traffic to NG911 Delivery Points designated by the 911 Authority. Phase 2 will facilitate the full use of the functional elements of NGCS, including LVF, which can deliver more dynamic and actionable information to PSAPs than legacy ALI databases, and policy routing functions that can dynamically reroute 911 calls and texts in response to real-time events. This will eliminate the need for 911 Authorities to maintain legacy ANI and ALI components and will provide PSAPs with greater

²¹² CSRIC NG911 Transition Report, sec. 5.1.1.2.2.3.

²¹³ LBR Notice, 37 FCC Rcd at 15208, para. 64; NG911 Notice, 38 FCC Rcd at 6228, para. 47.

²¹⁴ See, e.g., T-Mobile LBR Notice Comments at 12 (rec. Feb. 16, 2023) (“Carriers cannot unilaterally deliver traffic in IP—they must first ensure that PSAPs are ready to receive it, which is verified through comprehensive testing.”) (T-Mobile LBR Notice Comments); Verizon LBR Notice Reply at 4 (rec. Mar. 20, 2023) (“[M]any of the technical and operational details will inevitably need to be addressed as part of the [NG911] implementation process”) (Verizon LBR Notice Reply); CCA NG911 Notice Comments at 7–8 (noting that it is important for OSPs to “meaningfully collaborate” with 911 Authorities on IP traffic delivery by ensuring that sufficient testing occurs to minimize real world issues when IP traffic is exchanged and NG911 is implemented).

²¹⁵ CCA NG911 Notice Comments at 7–8 (“It is important for OSPs to meaningfully collaborate with 911 authorities on IP traffic delivery and NG911 to ensure readiness, account for any unique local circumstances or complexities, and ensure that sufficient planning and testing occurs to minimize real world issues when IP traffic is exchanged and NG911 is implemented.”); BRETSA NG911 Notice Reply at i (“The ESInet or NGCS provider is also the party which can confirm that the PSAPs are IP-ready, and which must cooperate in provisioning and testing IP call delivery.”); T-Mobile LBR Notice Comments at 12.

²¹⁶ Comtech NG911 Notice Comments at 7; CTIA LBR Notice Reply at 2, 9–10; NENA LBR Notice Reply at 4–5; Southern Communications Services, Inc. d/b/a Southern Linc (Southern Linc) LBR Notice Reply at 8–9 (rec. Mar. 20, 2023).

²¹⁷ See, e.g., NENA i3 at 3; NENA, NENA Knowledge Base (May 17, 2024), [https://kb.nena.org/wiki/SIP_\(Session_Initiation_Protocol\)](https://kb.nena.org/wiki/SIP_(Session_Initiation_Protocol)).

²¹⁸ See, e.g., USTelecom NG911 Notice Reply at 4 (discussing the NG911 Notice’s “proposal to require OSPs to provide location data with the SIP message”); T-Mobile NG911 Notice Comments at 4 (“SIP connectivity is a foundational building block for NG911.”); Intrado NG911 Notice Reply at 3 (rec. Sept. 8, 2023) (Intrado NG911 Notice Reply) (explaining its proposal that the first stage of PSAP readiness would be that a 911 Authority is “ready to certify that it can receive IP-formatted (i.e., SIP) traffic at the designated IP POI”). Regarding IP Service Delivery, NASNA urged the Commission to assist with the transition to NG911 by, among other things, amending the Commission’s rules to “specifically address NG911, including the standardized requirements associated with NG911 (e.g., Session Initiation Protocol [SIP] format and provide location information attached to the SIP header of the call using Presence Information Data Format Location Object [PIDF-LO]).” NG911 Notice, 38 FCC Rcd at 6214–15, para. 20 (citing NASNA Petition at 4–5).

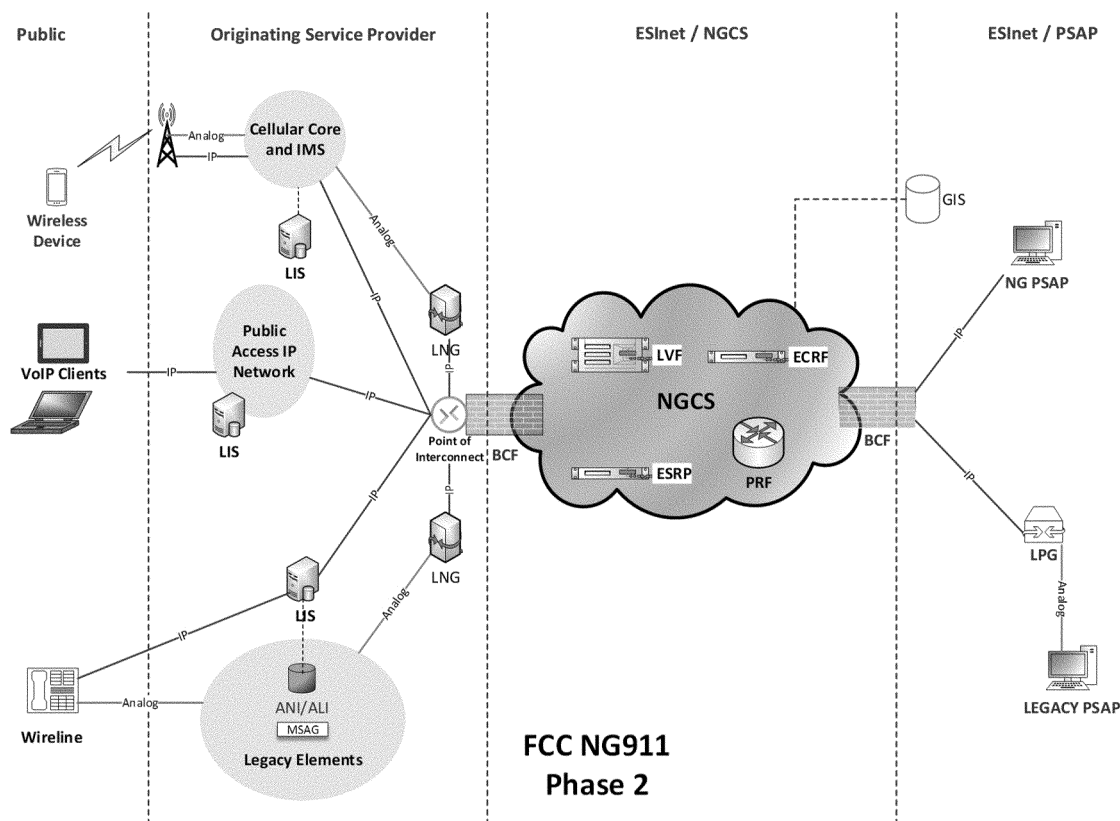
²¹⁹ See RFC 4119.

flexibility to avoid network disruptions and reduce the impact of outages on 911 continuity.

We provide the below illustrative diagram to demonstrate the main high-

level functions covered at Phase 2. This diagram is not meant to represent required network architectures in an “as built” configuration and is not prescriptive in nature. The call flow is

illustrated by blue lines representing SIP 911 traffic and red lines indicating legacy 911 traffic. In the below diagram, 911 traffic originates on the left side of the diagram and flows from left to right.



FCC NG911
Phase 2

The above diagram uses the following acronyms:

- ANI = Automatic Number Identification
- ALI = Automatic Location Information
- BCF = Border Control Function
- ECRF = Emergency Call Routing Function
- ESInet = Emergency Services IP Network
- ESRP = Emergency Services Routing Proxy
- GIS = Geographic Information System
- IMS = IP Multimedia Subsystem
- LIS = Location Information Server
- LNG = Legacy Network Gateway
- LPG = Legacy PSAP Gateway
- LVF = Location Validation Function
- MSAG = Master Street Address Guide
- NG PSAP = Next Generation 911 PSAP
- NGCS = NG911 Core Services
- PRF = Policy Routing Function

OSPs may comply with Phase 2 either by originating 911 traffic in IP format or by maintaining or accessing an LNG to convert the traffic in order to deliver 911 traffic in SIP format that complies

with the NG911 commonly accepted standards identified by the requesting 911 Authority. This addresses a concern raised by several commenters that requiring IP origination, as opposed to delivery, could be burdensome for some wireline providers.²²⁰ Although some commenters support an origination requirement,²²¹ AT&T notes that this could require certain OSPs to make “inefficient alterations to network components that are nearing end-of-life.” USTelecom states that in some instances OSPs would have to

²²⁰ USTelecom NG911 Notice Comments at 2–3; US Telecom NG911 Notice Reply at 2; Steven Samara NG911 Notice Comments at 8 (rec. Aug. 9, 2023) (filed on behalf of Pennsylvania Telephone Association) (Pennsylvania Telephone Association NG911 Notice Comments); Fastwyre Broadband (Fastwyre) NG911 Notice Reply at 4 (rec. Sept. 7, 2023); AT&T NG911 Notice Comments at 6; Bandwidth NG911 Notice Reply at 2–3; NENA NG911 Notice Reply at 7.

²²¹ WTA—Advocates for Rural Broadband (WTA) NG911 Notice Comments at 8 (rec. Aug. 9, 2023)) (WTA NG911 Notice Comments); Letter from Brandon Abley, Director of Technology, and Jonathan Gilad, Director of Government Affairs, NENA, to FCC, PS Docket No. 21–479, at 1 (filed Jan. 17, 2024).

“overbuild their existing networks with fiber on an abbreviated timeline, a proposition that is not only unnecessary but would be extremely costly.” USTelecom also notes that some wireline providers have carrier of last resort (COLR) obligations “prohibiting them from retiring legacy networks and technology.” We agree that in light of these considerations, IP origination should be encouraged but not required, so long as OSPs ensure that 911 calls originated in TDM are translated and delivered in SIP format. Therefore, in both Phase 1 and Phase 2, we permit OSPs to choose between upgrading networks to enable IP origination or converting their TDM traffic to IP before delivery to the NG911 network.²²²

²²² Verizon indicates that its current approach for deploying NG911 includes working with NGCS providers to implement and test capabilities, which results in a “fairly straightforward process” for delivering 911 calls to the NGCS provider’s PSAP customers as those jurisdictions implement their own NG911 capabilities. Letter from Robert G. Morse, Associate General Counsel, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, PS Docket Nos. 18–64

The Competitive Carriers Association (CCA) questions whether the Commission provided sufficient notice of a proposed requirement for wireless carriers to translate 911 traffic to IP.²²³ We find that both the NG911 Notice and LBR Notice clearly proposed requirements for TDM-based wireless carriers to translate 911 traffic to IP. The proposed rules in the LBR Notice specified that CMRS providers would be required to deliver calls in the requested IP-based format.²²⁴ In the NG911 Notice, the Commission proposed that valid requests by 911 Authorities for IP-based service would trigger obligations for all OSPs, including CMRS providers.²²⁵ Therefore, there has been sufficient notice, and the Commission finds CCA's concern unwarranted.

Some wireline commenters argue that it is not technically feasible for wireline carriers to translate 911 calls from TDM to IP with the inclusion of location data that is required for Phase 2.²²⁶ We disagree. There are several commercially available solutions that offer LIS services to wireline providers, as well as gateway products for translating calls from TDM to IP with the inclusion of location data.²²⁷ We

and 21–479, at 1–2 (filed July 13, 2023) (Verizon July 13, 2023 *Ex Parte*). OSPs may wish to consider Verizon's approach in order to prepare for the timelines adopted under these rules, but we do not specifically require OSPs to take this approach.

²²³ CCA NG911 Notice Comments at 3–4 (stating that “the draft implementing regulations in the [NG911] NPRM contain clear language about the requirement of TDM-based wireline carriers to translate 911 traffic to IP, but there is no such language related to wireless carriers”).

²²⁴ LBR Notice, 37 FCC Rcd at 15216, app. A; *accord id.* at 15201, para. 46 (“We propose to require CMRS and covered text providers to deliver 911 calls, texts, and associated routing information in IP-based format to NG911-capable PSAPs that request it.”).

²²⁵ NG911 Notice, 38 FCC Rcd at 6224–25, para. 41.

²²⁶ Home Telephone NG911 Notice Comments at 15–16 (arguing that the Commission should not require wireline providers to deliver location data in IP format, as RLECs lack that capability); USTelecom NG911 Notice Comments at 3 (stating that it is technically infeasible for some wireline carriers to include location information in IP call headers); South Dakota Telecommunications Association NG911 Notice Comments at 12–14 (rec. Aug. 9, 2023) (South Dakota Telecommunications Association NG911 Notice Comments) (asking that carriers be exempt from delivering IP location until technically feasible); Five Area Telephone Notice Comments at 5–7, 15 (arguing that wireline and VoIP carriers cannot provide the same automated location data as CMRS providers and so should allow more time for OSPs to provide location information in the call path).

²²⁷ See, e.g., Virginia Department of Emergency Management, MSAG and ALI Maintenance After Next Generation 9–1–1 Go-Live (2022), <https://gismaps.vdem.virginia.gov/websites/PSC/RegionalAdvisoryCommittee/Documents/20221117MSAGALIMaint.pdf> (indicating that AT&T and Intrado offer this gateway translation service to wireline OSPs).

therefore find that it is technically feasible for wireline providers to provide location information to 911 Authorities in a format that complies with NG911 commonly accepted standards. Further, we agree with NCTA that “any provider that continues to originate traffic in TDM format should bear responsibility for adding appropriate location information and converting such calls to IP format before delivering them to the demarcation point.”²²⁸

APCO urges the Commission to explore options for ensuring that PSAPs receive actionable location information in the form of dispatchable location.²²⁹ We clarify that nothing in our rules is intended to change existing location accuracy requirements for OSPs, including rules that require provision of dispatchable location when feasible.²³⁰

We decline to adopt the Texas 9–1–1 Entities' alternative proposal to establish different requirements for OSPs that already are capable of originating 911 calls in IP format versus OSPs that continue to rely on legacy TDM switching facilities for voice traffic within their networks.²³¹ Under the Texas 9–1–1 Entities proposal, IP-capable OSPs would be required to fully support delivery of 911 calls in Phase 2 NG911 format, but non-IP capable OSPs would deliver calls to LNGs designated by 911 Authorities or their NG911 service providers. The 911 Authorities or their service providers would be responsible for operating the LNGs, which would translate the 911 calls into IP format. We decline to adopt this proposal because it would require 911 Authorities to continue to operate and maintain LNGs to support a small number of TDM-based OSPs, thereby incentivizing OSPs to continue to maintain legacy infrastructure, increase costs, and lengthen the time to

transition to NG911.²³² Instead, our rules appropriately shift the burden of maintaining translation gateways to those OSPs that continue to originate legacy 911 calls that require translation.²³³

Connectivity testing. In Phase 2, we require OSPs to complete connectivity testing to confirm that the 911 Authority receives 911 traffic in the IP-based SIP format that complies with the NG911 commonly accepted standards identified by the requesting 911 Authority. Such testing is important to ensure that the connection from the OSP to the 911 Authority is implemented correctly and meets the requirements of the 911 Authority. Several commenters raise the importance of testing as part of the process of initiating delivery of 911 traffic to ESInets in a way that complies with NG911 commonly accepted standards. As with Phase 1 valid requests, we also adopt a condition prerequisite that 911 Authorities secure commitments from their NG911 vendors at Phase 2 in order to ensure that such vendors are available to complete connectivity testing by the compliance deadline applicable to the OSP.

(ii) Definitions

To facilitate Phase 2 implementation, there are definitions of “Functional Element,” “Location Information Server (LIS),” and “Location Validation Function (LVF)” in the NG911 regulations in this document and the Order. In the LBR Notice and NG911 Notice, the Commission proposed to

²³² NENA NG911 Notice Comments at 10 (“[L]ong-term maintenance of NG9–1–1 compliant services is much more cost effective than maintaining legacy systems in perpetuity.”); Comtech NG911 Notice Reply at 5 (noting the importance of “replacing the circuit-switched [TDM] architecture of legacy 911 networks with [IP]-based technologies and applications”); Brian Rosen NG911 Notice Reply at 20–21 (stating that 911 Authorities should not remain responsible for LNGs).

²³³ See, e.g., NENA NG911 Notice Comments at 10; Ad Hoc NG911 Service Providers Coalition NG911 Notice Reply at 6 (rec. Sept. 8, 2023) (urging the Commission to “refrain from establishing two sets of rules to accommodate the long-anticipated sunset of TDM technology”); Comtech NG911 Notice Reply at 5; Brian Rosen NG911 Notice Reply at 20–21; South Carolina RFA NG911 Notice Comments at 6–7; NCTA NG911 Notice Comments at 2 (rec. Aug. 9, 2023) (NCTA NG911 Notice Comments) (the Commission “generally should not establish exceptions that would encourage companies to continue to rely on legacy TDM technology after the 911 Authority has transitioned to NG911.”); see also BRETSA NG911 Notice Reply at i (warning against “build[ing] layers of delay into the . . . deployment of NG911”); MSCI NG911 Notice Reply at 7 (rec. Sept. 8, 2023) (MSCI NG911 Notice Reply) (opposing “proposals to allow different parties to play by different rules, which will only serve to increase costs and lengthen the time it takes to reach end-state NG911 deployment”).

²²⁸ NCTA—The internet & Television Association (NCTA) NG911 Notice Reply at 2 (rec. Aug. 9, 2023) (NCTA NG911 Notice Reply).

²²⁹ Letter from Jeffrey S. Cohen, Chief Counsel, APCO International, to Marlene Dortch, Secretary, FCC, PS Docket Nos. 21–479, 18–64, and 07–114, at 1 (filed Sept. 22, 2023) (APCO Sept. 22, 2023 *Ex Parte*).

²³⁰ See, e.g., 47 CFR 9.8 (indicating the dispatchable location requirement for wireline providers); 9.10(i)(2)(i) (indicating horizontal dispatchable location requirements for CMRS providers); 9.10(i)(2)(ii) (indicating vertical dispatchable location requirements for CMRS providers); 9.11(b)(4) (indicating dispatchable location requirements for interconnected VoIP providers); 9.14(d)(4) (indicating dispatchable location requirements for VRS and IP Relay providers); 9.14(e)(4) (indicating dispatchable location requirements for IP CTS providers).

²³¹ See NG911 Notice, 38 FCC Rcd at 6221, para. 32; Texas 9–1–1 Entities NG911 Public Notice Comments at 7–8 (rec. Jan. 19, 2022).

require OSPs to complete all translation necessary to deliver 911 calls, including associated location information, in the requested IP-based format to an ESN or other designated point(s) that allow emergency calls to be answered upon request of 911 authorities who have established the capability to accept NG911-compatible, IP-based 911 communications.²³⁴ We are establishing functional requirements to facilitate the provision of location information with 911 traffic for Phase 2.²³⁵ Under our Phase 2 default rules, LIS based location validation uses LVF, and this interaction is analogous to the interaction between the ANI/ALI database and MSAG in the E911 context. However, in the NG911 environment, LVF replaces the functionality of the MSAG. Given the extent to which our rules use these terms, we find that defining them will provide greater certainty and clarity regarding our NG911 requirements and will assist parties in complying with our rules. To codify our approach, we adopt a definition of “functional elements” that will be part of our definitions for LIS and LVF. Accordingly, we adopt the following definitions for these terms:

- *Functional Element*. A set of software features that may be combined with hardware interfaces and operations on those interfaces to accomplish a defined task.
- *Location Information Server (LIS)*. A Functional Element that provides locations of endpoints. A LIS can provide Location-by-Reference or Location-by-Value, and, if the latter, in geodetic or civic forms. A LIS can be queried by an endpoint for its own location, or by another entity for the location of an endpoint.
- *Location Validation Function (LVF)*. A Functional Element in an NG911 Core Services (NGCS) consisting of a server

where civic location information is validated against the authoritative Geographic Information System (GIS) database information. A civic address is considered valid if it can be located within the database uniquely, is suitable to provide an accurate route for an emergency call, and is adequate and specific enough to direct responders to the right location.

d. Modification of Phase Requirements by Mutual Agreement

We encourage OSPs and 911 Authorities to collaborate throughout the transition to NG911. To facilitate such collaboration, and consistent with our proposals in the NG911 Notice and LBR Notice, we permit 911 Authorities and OSPs to enter into mutual agreements specifying requirements, timetables, and other terms that are different from the Phase 1 and Phase 2 rules in this document and the Order. Commenters confirm that such flexibility is important to address unique or unforeseen challenges that OSPs may face in transitioning from legacy 911 to NG911.²³⁶ The alternative agreement rule provides additional flexibility beyond what was proposed in the NG911 Notice and LBR Notice, which focused on alternative agreements establishing different compliance timeframes for OSPs, as well as different cost recovery mechanisms for certain providers.²³⁷ The rules allow 911 Authorities and OSPs to mutually address specific concerns beyond timeframes for compliance, including designation of NG911 delivery points or cost allocation for OSPs. We find that this additional flexibility should be beneficial to both 911 Authorities and OSPs.

When OSPs and 911 Authorities enter into an alternative agreement, we require OSPs to notify the Commission of the agreement and its pertinent terms,

as was proposed in the NG911 Notice and LBR Notice,²³⁸ within 30 days of the date of execution of the agreement. We also require that the notice specifically identify each provision of the agreement that differs from the rules. Mission Critical Partners recommends that for certain deployment agreements, “an explanation and detailed plan with a timeline should be included and provided to the Commission and the 911 authority requesting the service.” We permit but do not require that the actual plans and timeline documents themselves be provided to the Commission. We delegate authority to PSHSB to issue instructions for OSPs to provide notification to the Commission of the modification of the agreement and its pertinent terms.

e. Internet-Based TRS Providers

The Phase 1 and Phase 2 requirements apply to internet-based TRS providers. However, ClearCaptions and Hamilton Relay point out that whereas most internet-based TRS providers directly support 911 calling, internet Protocol Captioned Telephone Service providers generally rely on underlying providers for routing emergency calls.²³⁹ We therefore clarify that Phase 1 and Phase 2 requirements only apply to internet-based TRS providers that are directly involved with routing 911 traffic, pursuant to part 9, subpart E of the Commission’s rules.

Brian Rosen suggests that the Commission take additional steps to impose additional requirements on IP CTS, IP Relay, and videoconferencing services. We did not make such proposals in the NG911 Notice and therefore decline to take such steps at this time as they are outside the scope of this proceeding.

2. Valid Requests for Delivery of 911 Traffic in IP-Based Transmission Formats

We adopt rules defining the prerequisites that 911 Authorities must meet in order to make a valid request to OSPs for compliance with the requirements of Phase 1 and Phase 2. In the LBR Notice and NG911 Notice, the Commission proposed that for a 911 Authority request to be deemed valid, the 911 Authority would certify that it (1) is technically ready to receive 911 calls and texts in the IP-based format requested, (2) is specifically authorized

²³⁴ LBR Notice, 37 FCC Rcd at 15203, 15215, para. 52, app. A; NG911 Notice, 38 FCC Rcd at 6215, para. 21.

²³⁵ Under our part 9 rules, dispatchable location refers to “[a] location delivered to the PSAP with a 911 call that consists of the validated street address of the calling party, plus additional information such as suite, apartment or similar information necessary to adequately identify the location of the calling party, except for Commercial Mobile Radio Service providers, which shall convey the location information required by Subpart C of this Part.” 47 CFR 9.3. Under rule 9.10(i), dispatchable location refers to “[a] location delivered to the PSAP by the CMRS provider with a 911 call that consists of the street address of the calling party, plus additional information such as suite, apartment or similar information necessary to adequately identify the location of the calling party. The street address of the calling party must be validated and, to the extent possible, corroborated against other location information prior to delivery of dispatchable location information by the CMRS provider to the PSAP.” 47 CFR 9.10(i).

²³⁶ See, e.g., NENA NG911 Notice Comments at 9 (stating that the rules should permit a more lenient timeline if a state or local 911 authority determines that a different timeline is appropriate); BRETSA NG911 Notice Reply at ii (recommending that states be given the flexibility to adopt rules that diverge from the Commission’s default requirements as necessitated by state policy); Verizon NG911 Notice Reply at 3 (stressing the need for flexibility in deadlines due to unforeseen challenges); CTIA NG911 Notice Reply at 7 (stating that OSPs and PSAPs need flexibility to work through various implementation and testing issues); AT&T NG911 Notice Comments at 7 (stating that timetables should be adaptable to unforeseen circumstances); and Alaska Telecom Assoc. NG911 Notice Comments at 7 (discussing unique challenges in Alaska).

²³⁷ NG911 Notice, 38 FCC Rcd at 6205–06, 6224, 6226–28, 6243–48, paras. 2, 39, 45, 47, app. A (§ 9.29(a)(2), (c)(2), (d)(2), (e)); LBR Notice, 37 FCC Rcd at 15202, 15216, para. 50, app. A (§ 9.10(s)(6)(iii)).

²³⁸ NG911 Notice, 38 FCC Rcd at 6243–48, app. A (§ 9.29(a)(2), (c)(2), (d)(2)); LBR Notice, 37 FCC Rcd at 15216, app. A (§ 9.10(s)(6)(iii)).

²³⁹ ClearCaptions, LLC (ClearCaptions) NG911 Notice Comments at 1 (rec. Aug. 9, 2023); Hamilton Relay NG911 Notice Comments at 2.

to accept calls and/or texts in the IP-based format requested, and (3) has provided notification to the OSPs receiving the request that it meets these requirements.²⁴⁰ The Commission also sought comment on whether other prerequisites were needed to determine a 911 Authority's readiness.²⁴¹

For both Phases 1 and 2, we adopt the three general prerequisites for a valid request proposed in the LBR Notice and NG911 Notice: technical readiness, authorization, and notification. We adopt a valid request definition at each phase that specifies the functional requirements that NG911 networks must achieve prior to OSP compliance. In order to facilitate communication between 911 Authorities and OSPs, valid requests must indicate the location of NG911 Delivery Point(s) designated by the 911 Authority. Finally, we implement a process by which OSPs may file a petition contesting whether the 911 Authority has met the prerequisites for a Phase 1 or Phase 2 valid request, but we decline to automatically toll OSP compliance deadlines based on submission of such a petition.

a. Phase 1 Valid Requests

In order for a Phase 1 request to be valid for purposes of our rules, the requesting 911 Authority must certify that it has all of the necessary infrastructure installed and operational to receive 911 traffic in a basic SIP format and transmit such traffic to the PSAP(s) connected to it. We believe that this certification is sufficient to establish that the 911 Authority is technically ready for Phase 1. We agree with Intrado that "there is normally party consensus regarding a 911 Authority's technical capability to receive 911 traffic in IP-format (*i.e.*, SIP)," and we therefore do not believe that establishing additional specific technical requirements to meet the elements of a Phase 1 valid request is necessary.

We believe that Phase 1 is a reasonable interim step in 911 Authority readiness to establish the ingress of IP traffic to an ESInet. While Verizon argues that establishing IP connectivity at the ESInet is "not always necessary for the PSAP and its NG911 vendor to migrate to NG911" and that "full NG911 implementation is a viable and potentially better alternative to the two-stage approach," the record indicates that most 911 Authorities have

implemented or plan to implement IP connectivity as a transitional step in their implementation of NG911. For OSPs that wish to deliver Phase 2 without implementing Phase 1 first, we note that OSPs and 911 Authorities may mutually agree on such an approach. As our goal is a prompt transition to NG911, to the extent that 911 Authorities and OSPs are ready to proceed directly to Phase 2, we encourage them to take that step using the mutual agreement process.

b. Phase 2 Valid Requests

For a Phase 2 request to be deemed valid, the requesting 911 Authority must certify that it has all of the necessary infrastructure installed and operational to receive 911 traffic in SIP format that complies with NG911 commonly accepted standards and to transmit such traffic to the PSAP(s) connected to it. The 911 Authority also must certify that its ESInet is connected to a fully functioning NGCS network that can provide access to a LVF and interface with a LIS or its functional equivalent provided by the OSP. We believe that these elements functionally describe the prerequisites for an NG911 network to accept traffic in SIP format that complies with NG911 commonly accepted standards.

The readiness prerequisites that we adopt for a valid Phase 2 request are generally supported by commenters.²⁴² For example, T-Mobile provides a checklist of elements that it uses when considering "i3 NG911 Readiness."²⁴³ T-Mobile's checklist asks questions regarding whether the PSAP's NGCS supports standards-based NG911 connectivity to T-Mobile's LIS. This element is similar to the Phase 2 prerequisite that the 911 Authority be able to interface with the LIS or functionally equivalent capability provided by the OSP. Our readiness prerequisites additionally stipulate that the ESInet is connected to a fully functioning NGCS network, which is similar to T-Mobile's checklist questions regarding the extent of NGCS deployment. While the Phase 2 readiness elements we in this document and the Order are less granular and do not specify every element in T-Mobile's

checklist, the two are substantially consistent.

Several wireless industry commenters support the completion of an HTTP-Enabled Location Delivery (HELD) certification as a prerequisite of 911 Authority readiness.²⁴⁴ While 911 Authorities need not certify to the Commission that they or their NGCS providers have a HELD certification, we recognize that use of the HELD protocol may enable providers to access location information from a LIS, depending on technical requirements. We decline to include this certification as a required element because it is not clear that a HELD certification is necessary in every situation for a 911 Authority to access a LIS. ATIS indicates that it is working to develop technical documentation to include "readiness checklists and guidelines for PSAPs/911 Authorities to request NG911 connectivity," and we encourage such work to the extent that it serves to provide technical guidance to 911 Authorities in achieving readiness to initiate a Phase 1 or 2 request.²⁴⁵ We also encourage OSPs, 911 service providers, and 911 Authorities to collaborate to develop methods, processes, and best practices to facilitate responses to 911 Authorities' valid requests, as suggested by APCO.²⁴⁶

c. Other Readiness Considerations

Designation of NG911 Delivery Points. As part of a Phase 1 or 2 valid request, the requesting 911 Authority includes the designated location of NG911 Delivery Point(s) relevant to Phase 1 or 2. We agree with Verizon that the establishment of NG911 Delivery Points is a threshold capability for technical readiness; however, as discussed in this document and section III.D.1 of the Order, we disagree that such a designation should be the result of a "mutual agreement regarding the location and terms and conditions governing" the NG911 Delivery Points. The inclusion of the location of NG911 Delivery Point(s) as part of a Phase 1 and 2 valid request will facilitate OSPs'

²⁴⁴ *Id.* at 7–9, Exh. B; Verizon NG911 Notice Comments at 6; Alaska Telecom Assoc. NG911 Notice Comments at 11. See IETF, HTTP-Enabled Location Delivery (HELD) (Sept. 2010), <https://datatracker.ietf.org/doc/rfc5985/> (RFC 5985) (describing HELD as an application-layer protocol that may be "used for retrieving location information from a server within an access network").

²⁴⁵ Alliance for Telecommunications Industry Solutions (ATIS) NG911 Notice Comments at 6–7 (rec. Aug. 9, 2023) (ATIS NG911 Notice Comments).

²⁴⁶ Letter from Jeffrey S. Cohen, Chief Counsel, Mark. S. Reddish, Senior Counsel, and Alison P. Venable, Government Relations Counsel, APCO, to Marlene Dortch, Secretary, FCC, PS Docket No. 21–479, at 2 (filed Apr. 18, 2024) (APCO Apr. 18, 2024 *Ex Parte*).

²⁴⁰ LBR Notice, 37 FCC Rcd at 15202–03, para. 51; NG911 Notice, 38 FCC Rcd at 6224, para. 40.

²⁴¹ LBR Notice, 37 FCC Rcd at 15203, para. 51; NG911 Notice, 38 FCC Rcd at 6225–26, para. 42.

²⁴² Texas 9–1–1 Entities NG911 Notice Reply at 10 (rec. Sept. 8, 2023) (Texas 9–1–1 Entities NG911 Notice Reply); NASNA NG911 Notice Reply at 3–4; Bandwidth NG911 Notice Comments at 6.

²⁴³ Letter from Kristine Laudadio Devine, Counsel, T-Mobile, to Marlene H. Dortch, Secretary, FCC, PS Docket Nos. 18–64 and 21–479, at 7–9, Exh. B (filed July 26, 2023) (T-Mobile July 26, 2023 *Ex Parte*).

compliance with Phase 1 and 2 by the relevant deadline.

Readiness established at time of request. A Phase 1 or 2 valid request indicates that the 911 Authority is ready at the time the request is made to receive 911 traffic from an OSP in Phase 1 or 2 format. Several commenters support this approach. We agree with T-Mobile that a valid request also includes the readiness of any vendors used by the 911 Authority to implement NG911 services. We require readiness at the time of the valid request in order to address concerns that a valid request indicating future readiness could slow the NG911 transition. We agree with Verizon that readiness at the time of a valid request is an “appropriate departure from the trigger for six-month deployment of wireless E911 Phase 1 and 2, which allowed a PSAP to certify that it would be capable within that period.”²⁴⁷ For the foregoing reasons, we decline to implement Comtech’s suggestion that a valid request “is one in which the applicable 911 Authority certifies that it will be technically ready to receive 911 calls in the requested IP-based format.”²⁴⁸

Individual PSAP readiness not a required part of a valid request. Neither phase would require individual PSAPs connected to the ESInet to be NG911-ready. The 911 Authority is responsible for ensuring that all connected PSAPs can receive 911 communications via the ESInet, either by implementing NG911 upgrades or by translating/converting the communications after they have transited the ESInet via a Legacy PSAP Gateway. BRETSA, NASNA, and Mission Critical Partners agree with this approach.²⁴⁹ As such, we decline to specifically require that 911 Authorities implement NG911 call handling equipment at the PSAP prior to the initiation of a valid request for either Phase 1 or 2, as suggested by some commenters.²⁵⁰ This will provide

flexibility to 911 Authorities in upgrading PSAPs while enabling the NG911 network to capture the benefits of receiving 911 traffic in either a basic SIP format at Phase 1 or SIP format that complies with NG911 commonly accepted standards at Phase 2. iCERT states that criteria for readiness should include “details about any arrangements that have been entered into with NG911 service providers to secure equipment, interconnection agreements, and other service arrangements that will ensure PSAPs are ready to accept IP-based 911 calls.” We disagree that 911 Authorities must provide such details to OSPs as a component of a valid request, as the 911 Authority remains responsible for the delivery of 911 calls and texts to PSAPs connected to the ESInet.

Connectivity testing not required prior to a valid request. As noted above, for both Phase 1 and 2 valid requests, we require the 911 Authority to certify that it has obtained commitments from an ESInet vendor, NGCS vendor, and/or call handling equipment vendor needed to facilitate and complete connectivity testing within the compliance timeframe applicable to the originating service provider. However, we decline to require testing as a prerequisite to a 911 Authority’s valid request, as suggested by some commenters. In order to meet the readiness element to receive 911 traffic at Phase 1 or 2, we believe that it is highly likely that 911 Authorities would need to have completed at least some internal testing of their network elements to ensure that they are operational and functioning effectively. The nature and extent of this testing is likely to vary based on the specific NG911 vendors the 911 Authority has selected. We believe that our approach to require 911 Authorities to demonstrate readiness for connectivity testing with OSPs accomplishes our goal of facilitating timely OSP compliance with NG911 rules.

We permit flexible compliance timelines, subject to mutual agreement of OSPs and 911 Authorities, to accommodate variability in the length of testing, as suggested by some commenters.²⁵¹ We emphasize that our

rules function as a default. In situations in which connectivity testing takes longer than the time allotted under our default NG911 rules, OSPs and 911 Authorities may wish to consider establishing by mutual agreement extended deployment timelines.

d. Authorized Requesting Entities

For purposes of the rules in this document and the Order, only “911 Authorities” as defined in our rules may make a valid request to OSPs for compliance with the requirements of Phase 1 or 2. The Commission stated in the NG911 Notice that the appropriate authority to request IP-based service from OSPs would be “the local or state entity with the authority and responsibility to designate the point(s) that allow emergency calls to be answered.”²⁵² The Commission also proposed that a valid request would be made by a local or state entity that certifies that it is “specifically authorized to accept calls in the IP-based format requested.”²⁵³ We adopt these proposals with minor modifications to the structure of the rule for clarity.

We limit valid requests to 911 Authorities, as defined in the Commission’s NG911 rules. We recognize that the entity with sufficient jurisdiction and authority to request the delivery of NG911 service from OSPs depends on the governance structure that applies to that 911 jurisdiction. We decline to assume that a request should come from a state-level entity, as suggested by Maine PUC and Colorado PUC.²⁵⁴ We also decline to limit authorized requests to statewide authorities or ESInets, as suggested by Bandwidth. In declining to limit or prioritize requests from statewide authorities, we acknowledge that some NG911 networks are local or regional, rather than state-wide.²⁵⁵ In some instances, the appropriate jurisdictional authority may be a state 911 administrator, and in other instances, the local or regional 911 office may be the appropriate requesting entity. Texas 9–1–1 Entities states, and we agree, that

²⁴⁷ Verizon NG911 Notice Comments at 7 (emphasis omitted).

²⁴⁸ Comtech NG911 Notice Reply at 7 (emphasis omitted).

²⁴⁹ BRETSA NG911 Notice Comments at 4 (“The fact that PSAPs served by the ESInet may receive calls via LPG is a distinction without a difference.”); NASNA NG911 Notice Reply at 4 & n.5 (stating that PSAPs are ready to receive “Phase III 99 calls for service” “[w]ith or without the use of legacy PSAP gateways”); Mission Critical Partners NG911 Notice Comments at 7–8 (“While IP call delivery should be deployed by ECCs/PSAPs, their readiness for doing so should not be a major factor in the overall level of NG911 readiness for requiring OSPs to provide IP connectivity.”).

²⁵⁰ ATIS NG911 Notice Comments at 6 (“[A] 911 authority should be required to demonstrate that PSAP call handling equipment in their jurisdiction is capable of accepting and processing 911 calls that are routed via an ESInet.”); T-Mobile NG911 Notice

Reply at 3 (quoting ATIS NG911 Notice Comments at 6); Verizon NG911 Notice Comments at 5 (“Capable PSAP call-handling equipment is a long-acknowledged component of PSAP readiness, and the NG911 environment is no exception.”).

²⁵¹ See, e.g., CTIA NG911 Notice Reply at 2 (“Implementation variables and testing will be unique to each PSAP and OSP, and thus flexible timeframes and deadlines are necessary.”); Verizon NG911 Notice Reply at 3 (“Flexibility will be necessary to account for the unforeseen challenges that NG911 vendors and OSPs can face in procuring, deploying and testing the network facilities and equipment necessary to support NG911.”).

²⁵² NG911 Notice, 38 FCC Rcd at 6229, para. 50.

²⁵³ *Id.* at 6224, para. 40.

²⁵⁴ Maine PUC NG911 Notice Comments at 2 (stating that “a request should come from the respective state, unless the state indicates that there is another 911 jurisdictional authority designated and that additional 911 jurisdictional authority has coordinated with other authorities within the state”); Colorado PUC NG911 Notice Comments at 7 (arguing that a registry should be structure to assume a state-level 911 Authority will make the request).

²⁵⁵ See, e.g., Livingston Parish NG911 Notice Comments at 1 (describing how individual local parishes in Louisiana coordinate to contract for NG911 solutions).

“there are various potential governance and ESInet/NGCS deployment scenarios nationwide.”²⁵⁶ We also agree with NENA that the “entity having sufficient jurisdiction to make the request to deliver NG9–1–1 calls depends entirely on how the local 9–1–1 service is governed, designed, and configured.” We decline to require, as argued by Verizon, that “to the extent a valid request is dependent on a vendor’s actions” certifications submitted by 911 Authorities should include an affidavit signed by the director or officer of the vendor “subject to the same affidavit standards” as an OSP’s petition challenging the validity of a request.” We emphasize that 911 Authorities are responsible for ensuring the readiness of their vendors prior to making a Phase 1 or Phase 2 request. We believe that the petition process for OSPs challenging the validity of a request is sufficient to guard against premature requests.

We decline to allow parties other than a 911 Authority to submit Phase 1 and 2 requests. BRETSA argues that 911 Authorities “should have the discretion to appoint” other parties, such as the NGCS provider, “to negotiate, implement, and test the delivery of 9–1–1 calls in the requested format.” Several other commenters argue that NGCS providers should play a role in determining readiness to receive NG911 traffic.²⁵⁷ We agree with Verizon that our rules do not prohibit a 911 Authority and its vendor from entering into a letter of authorization or similar arrangement to facilitate “technical and operational business-to-business discussions.” We recognize that NGCS providers have an important role and encourage 911 Authorities to work closely with their NGCS providers in establishing readiness. However, consistent with prior 911 technology transitions²⁵⁸ and to minimize confusion, we identify a governmental entity as the appropriate entity to initiate a valid request.

²⁵⁶ Texas 9–1–1 Entities LBR Notice Comments at 6 (rec. Feb. 16, 2023) (Texas 9–1–1 Entities LBR Notice Comments).

²⁵⁷ Mission Critical Partners NG911 Notice Comments at 9 (stating that “the deployment phase [should] be negotiated between the OSP and NGCS provider and approved by the 911 authority”); MSCI NG911 Notice Comments at 5 (stating that providers like MSCI are often best positioned to determine whether a particular 911 Authority is ready to accept calls in IP format, and urging the Commission to encourage close collaboration”); CCA NG911 Notice Comments at 8–9 (arguing for collaboration between 911 Authorities and OSPs to communicate NG911 readiness); NENA NG911 Notice Reply at 2 (“The timing of the formal request to originate NG9–1–1 calls should rest squarely with the ESInet operator.”).

²⁵⁸ See 47 CFR 9.10(q)(10)(iii)(B).

e. Notification Mechanism for Valid Requests

As part of a valid Phase 1 or Phase 2 request to an OSP, the requesting 911 Authority must provide notification to each OSP provider that includes the certifications and information required by our rules. In the LBR Notice and the NG911 Notice, the Commission proposed that 911 Authorities could provide this notification either by submission to a Commission-provided registry or by written notification to individual OSPs.²⁵⁹ As discussed below, we adopt this proposal and allow 911 Authorities to use either notification method.

Several commenters support the proposal to establish a voluntary centralized registry for submission of valid requests from 911 Authorities.²⁶⁰ A centralized registry will reduce the administrative burden on 911 Authorities to make individual requests to OSPs for Phase 1 and 2. It will also reduce the administrative burden on OSPs to track valid requests; we disagree with RWA and CTIA that monitoring a centralized registry is a burdensome requirement for small, rural OSPs.²⁶¹ RWA’s members, as covered text providers, already monitor a similar registry on the Commission’s website in the text-to-911 context, and checking the NG911 registry requires only incremental additional resources. We agree with Maine PUC that the registry will provide “clarity and predictability, as well as a similar expectation for all providers.” We also agree with Mission Critical Partners that a voluntary registry may help resolve challenges 911 Authorities face in identifying all OSPs in their coverage area. Therefore, we provide the option of the voluntary registry as an efficient mechanism to submit requests to all OSPs within a 911 Authority’s jurisdiction. We also decline to require 911 Authorities to use a direct

²⁵⁹ NG911 Notice, 38 FCC Rcd at 6224, para. 40; LBR Notice, 37 FCC Rcd at 15202–03, para. 51.

²⁶⁰ Maine PUC NG911 Notice Comments at 3; Colorado PUC NG911 Notice Comments at 8; Michael Coonfield NG911 Notice Comments at 1 (rec. Aug. 9, 2023) (filed on behalf of Oklahoma 9–1–1 Management Authority (Oklahoma 9–1–1 Management Authority NG911 Notice Comments); Minnesota DPS–ECN NG911 Notice Comments at 7, 8; Texas 9–1–1 Entities LBR Notice Comments at 6 n.23; Bandwidth NG911 Notice Comments at 9; Intrado NG911 Notice Reply at 5; Mission Critical Partners NG911 Notice Comments at 7; Jon Marcy, Kevin Brown, and John Holloway, Defense Information Systems Agency (DISA) LBR Notice Comments at 2 (rec. Feb. 8, 2023); NENA NG911 Notice Reply at 3; NENA LBR Notice Comments at 9.

²⁶¹ Rural Wireless Association, Inc. (RWA) NG911 Notice Comments at 3 (rec. Aug. 9, 2023) (RWA NG911 Notice Comments); CTIA July 10, 2024 *Ex Parte* at 5.

notification mechanism to inform OSPs of their valid requests, as requested by CCA, as 911 Authorities may not be aware of all of the OSPs within their jurisdiction and requiring them to identify and separately notify each OSP is unduly burdensome and inefficient. We direct PSHSB to develop, implement, and maintain a centralized electronic registry for submission of Phase 1 and Phase 2 requests by 911 Authorities. We leave to the Bureau’s discretion whether to consolidate the registry with existing Bureau registries for PSAPs and text-to-911 notifications, if the Bureau determines such a step to be necessary or beneficial.²⁶² We further direct PSHSB to open a new docket and issue guidance regarding filing of NG911 valid requests, and to work with OSPs, 911 Authorities, and industry organizations such as CTIA²⁶³ to ensure that all OSPs receive timely notice of valid requests.

We do not require 911 Authorities to use the registry to notify OSPs of Phase 1 and Phase 2 requests. As an alternative to providing notice in the registry, 911 Authorities may notify OSPs of Phase 1 and Phase 2 requests by direct written notification. Direct notification is permitted at any time after the rules take effect, regardless of when the registry is made available.

CTIA and ATIS argue that notification in the registry should not be the trigger for OSP compliance deadlines.²⁶⁴ CTIA argues that any deadlines imposed should be “triggered only when OSPs and PSAPs have agreed that a PSAP is capable of receiving NG911-compatible traffic.” Similarly, ATIS argues that 911 Authorities should “engage directly” with OSPs to “become technically ready and capable to receive IP format calls in the first instance.” We find that

²⁶² FCC, *911 Master PSAP Registry* (May 15, 2024), <https://www.fcc.gov/general/9-1-1-master-psap-registry>; FCC, *PSAP Text-to-911 Readiness and Certification Registry* (Text-to-911 Registry) (Apr. 30, 2024), <https://www.fcc.gov/general/psap-text-to-911-readiness-and-certification-form>. Oklahoma, Minnesota DPS, Intrado, and AT&T support the combination of the Commission’s NG911 centralized database with other registry functions. Oklahoma 9–1–1 Management Authority NG911 Notice Comments at 1; Minnesota DPS–ECN NG911 Notice Comments at 7, 8; Intrado NG911 Notice Comments at 9; AT&T LBR Notice Comments at 5–6 (rec. Feb. 16, 2023) (AT&T LBR Notice Comments); *but see* Verizon July 10, 2024 *Ex Parte* at 8 (urging the Commission to establish a stand-alone registry “dedicated solely to NG911 implementation” given material differences between existing Commission rules and NG911 rules, and governance structures specific to NG911).

²⁶³ CTIA July 10, 2024 *Ex Parte* at 5 (committing to working with Bureau staff to ensure that a registry is sufficiently robust and reliable to ensure that OSPs have sufficient notice of 911 Authority requests for Phase 1 or Phase 2).

²⁶⁴ CTIA NG911 Notice Comments at 7; ATIS LBR Notice Comments at 5 (rec. Feb. 16, 2023).

notification of a valid request is sufficient to trigger OSP compliance deadlines. However, we encourage 911 Authorities and OSPs to communicate directly with one another both before and after valid Phase 1 and Phase 2 requests.

We decline to adopt several notification alternatives proposed by commenters. NENA suggests that the national “Forest Guide,” a component of NG911 architecture specified in the i3 standard, could serve as a centralized database for NG911 transition notifications.²⁶⁵ However, it is unclear whether a national Forest Guide is operational or could be used for the purpose suggested. We also decline to implement a “push notification feature,” as suggested by Intrado. We have not previously determined that such a feature is necessary and the Commission does not maintain the information required in order to implement such a feature. We therefore instead require OSPs to monitor the central registry, as is the case for the existing Text-to-911 Registry.

f. OSP Petitions Challenging Validity of 911 Authority Requests

Some commenters convey concerns regarding attestations they have received from 911 Authorities as part of the ongoing NG911 transition; namely, that attestations of readiness do not translate to actual readiness.²⁶⁶ To address circumstances in which an OSP believes that a 911 Authority has submitted an invalid Phase 1 or 2 request, an OSP may submit a petition challenging the 911 Authority’s request. The petition must be submitted within 60 days of receipt of the request and must document the basis for the OSP’s assertion that the request does not satisfy a requirement or requirements of a Phase 1 or 2 valid request. This petition process is subject to procedural requirements set forth in 47 CFR 1.41, 1.45, and 1.47. The petition must be in the form of an affidavit and include specific information relating to the progress of NG911 implementation. In particular, the affidavit must be signed by a director or officer of the OSP and include the basis for the OSP’s assertion that the 911 Authority’s request does not satisfy one or more of the conditions for a Phase 1 or Phase 2 valid request;

each of the specific steps that the OSP has taken to implement Phase 1 or Phase 2 requirements; the basis for the OSP’s assertion that it cannot make further implementation efforts until the 911 Authority satisfies the conditions for a Phase 1 or Phase 2 valid request; and the specific steps that must be completed by the OSP and, to the extent known, the 911 Authority or other parties before the OSP can implement the Phase 1 or Phase 2 requirements. All affidavits must be correct, and the director or officer who signs the affidavit has the duty to personally determine that the affidavit is correct. An OSP that challenges a 911 Authority’s valid request must describe the steps it has taken toward implementing Phase 1 or Phase 2 requirements that are not dependent on the readiness of the 911 Authority. We anticipate that this requirement will deter OSPs from using the request challenge process as a pretext to delay implementation, while ensuring that OSPs are able to successfully use the challenge process when it is necessary.²⁶⁷ We do not adopt the suggestion by some commenters that a petition should automatically toll the compliance deadline triggered by the request.²⁶⁸ We delegate authority to PSHSB to review and decide petitions, including whether to pause implementation deadlines for the OSP that has submitted the petition, affirm the request of the 911 Authority as valid, or take other action as necessary. If the Bureau upholds the 911 Authority request as valid, the OSP may be subject to enforcement of the original Phase 1 or Phase 2 compliance date. We direct PSHSB to open a new docket and issue guidance regarding OSP petitions challenging the validity of 911 Authority requests.

We anticipate that the availability of the petition process will deter 911

Authorities from making premature Phase 1 and Phase 2 requests and will provide reasonable recourse for OSPs that believe that they have received an invalid request. A 911 Authority may file an opposition to the OSP’s petition and the OSP may file a reply to that opposition in accordance with 47 CFR 1.45. A copy of the document (petition, opposition, or reply) must be served on the other party (911 Authority or OSP) at the time of filing in accordance with 47 CFR 1.47. We decline, as suggested by Comtech, to adopt “attestation requirements” in which a 911 Authority would certify specific elements in response to an OSP dispute of a request. 911 Authorities already are required to certify their readiness when submitting a Phase 1 or 2 request, and a requirement to submit further attestations would do little to resolve the dispute while entrenching parties in their positions. We believe that the OSP petition regarding requests, an option for the 911 Authority to respond, and a chance for the Bureau to consider such requests provide both OSPs and 911 Authorities with a clear pathway to resolve disputes.

3. OSP Implementation Timeframes

a. Default Timeframes

At Phase 1, we require non-rural wireline providers, nationwide CMRS providers, covered text providers, and interconnected VoIP providers to comply with NG911 requirements within six months after receiving a Phase 1 valid request. We provide additional time to RLECs, non-nationwide CMRS providers, and internet-based TRS providers, which must comply with our NG911 requirements within 12 months after receiving a Phase 1 valid request.

At Phase 2, we require non-rural wireline providers, nationwide CMRS providers, covered text providers, and interconnected VoIP providers to comply with our N911 requirements within six months after the latest of: (1) the 911 Authority’s Phase 2 valid request; or (2) the date when the OSP is required to comply with Phase 1 requirements, or when it does comply with those requirements (whichever is earlier). Similarly, RLECs, non-nationwide CMRS providers, and internet-based TRS providers must comply with our NG911 requirements within 12 months after the latest of: (1) the 911 Authority’s Phase 2 valid request; or (2) the date when the OSP is required to comply with Phase 1 requirements, or when it does comply with those requirements (whichever is earlier).

²⁶⁵ NENA NG911 Notice Comments at 11; see also NENA i3 at 285 (describing the Forest Guide).

²⁶⁶ T-Mobile NG911 Notice Comments at 4 (“In T-Mobile’s experience, while many PSAPs request SIP connectivity, PSAPs are not always prepared to actually receive SIP calls.”); AT&T NG911 Notice Comments at 8 (“[I]t is not uncommon for a state or local 911 authority to believe in good faith that it is prepared to trigger a technology transition, only for unforeseen readiness issues to arise later.”).

²⁶⁷ See Letter from Michael Beirne, Director, Regulatory Affairs, CTIA to Marlene H. Dortch, Secretary, FCC, PS Docket Nos. 21–479, 18–64 at 3 (filed July 10, 2024) (CTIA July 10, 2024 *Ex Parte*) (recommending that the Commission adopt a version of § 9.31(c)(5) that would require OSPs to describe steps taken that are not dependent on the 911 Authority as part of a challenge, as opposed to a version that would require OSPs to take all steps toward implementation that are not dependent on the readiness of the 911 Authority as a prerequisite to a challenge); Verizon July 10, 2024 *Ex Parte* at 2, 7 (requesting that the Commission remove a requirement for OSPs to take all steps toward implementation not dependent on the readiness of the 911 Authority as a prerequisite to a challenge).

²⁶⁸ T-Mobile NG911 Notice Reply at 4; Alaska Telecom Assoc. NG911 Notice Comments at 4, 11; Bandwidth NG911 Notice Reply at 4 (stating that “if a deadline is adopted, it must include dispute resolution and tolling mechanisms”); CTIA NG911 Notice Comments at 7–8; Intrado NG911 Notice Comments at 7.

Our rules also allow 911 Authorities and OSPs to negotiate alternative agreements regarding the timelines for

compliance with NG911 requirements at either Phase 1 or 2. This approach will help expedite the transition to NG911

while providing 911 Authorities and OSPs flexibility to manage the transition at the state and local level.

TABLE SUMMARIZING NG911 COMPLIANCE TIMEFRAMES FOR OSPs

Providers	Compliance timeframe	
	Phase 1 ²⁶⁹	Phase 2 ²⁷⁰
Non-rural Wireline Providers	6	6
RLECs	12	12
CMRS Providers (Nationwide)	6	6
CMRS Providers (Non-nationwide)	12	12
Covered Text Providers	6	6
Interconnected VoIP Providers	6	6
Internet-based TRS Providers	12	12

Wireline and Interconnected VoIP Providers. In the NG911 Notice, the Commission proposed that all wireline and interconnected VoIP providers be required to deliver 911 calls in IP format within six months after a valid request or six months from the effective date of such requirement.²⁷¹ Public safety commenters and NG911 vendors express general support for this timeline,²⁷² and there is specific support for the proposed timeframes for interconnected VoIP providers. However, some commenters recommend longer compliance timeframes.²⁷³ For

example, South Carolina recommends that local exchange carriers be given between six and twelve months to convert their technology to IP-based transmission. NCTA similarly states that “[a] twelve-month transition period should be sufficient for most providers once they receive notice that the 911 Authority has implemented NG911.” Some wireline commenters recommend longer timeframes of between two and three years for RLECs, ILECs, or smaller providers.²⁷⁴ Several commenters

based switch from planning to changeover can take 6–18 months depending on complexity”); South Carolina RFA NG911 Notice Comments at 8, 11 (recommending a compliance timeframe of between six and twelve months for a local exchange carrier to convert their technology to IP-based transmission, and that less than six months may not be enough time for a local exchange carrier to upgrade, and more than twelve months will minimize the incentive for a local exchange carrier to implement network improvements); NCTA NG911 Notice Reply at 2 (stating that “[a] twelve-month transition period should be sufficient for most providers once they receive notice that the 911 Authority has implemented NG911”); Bandwidth NG911 Notice Reply at 4 (stating that 12–18 months is needed to implement delivery of traffic in IP format because 911 Authorities and NG911 vendors lack standardized implementations and because of difficulties coordinating across multiple ESInets and complying with state requirements); ATIS NG911 Notice Comments at 2, 8 (stating that 18 months should be allowed if implementation of new Legacy Network Gateways and support of associated location data (replacing legacy ALI systems) is required, and that six months is insufficient for implementing functional enhancements or the proposed circuit changes); AT&T NG911 Notice Comments at 10 (stating that 18 to 24 months may be a more reasonable deadline for completing the transition); CTIA NG911 Notice Comments at 7 (recommending 18 to 24 months from PSAP readiness to provide the time needed for OSPs and PSAPs to work through the various implementation issues and testing that will be necessary to deliver 911 calls in IP-format). Texas 9–1–1 Entities states that the 911 Authorities in Texas are “willing to agree to provide for a minimum of eighteen months advance notice.” Texas 9–1–1 Entities NG911 Notice Reply at 16.

²⁷⁴ Intrado NG911 Notice Reply at 4 (recommending that the Commission adopt rules that incent and accelerate RLECs and ILECs to retire their TDM networks over a reasonable period of time, such as 24 months, with sufficient safeguards to avoid inadvertent impacts to 911 networks);

indicate that the time required will be variable based on several factors, including the responsiveness of third-party transport providers, whether the NG911 implementation is standards-based, the availability of suppliers and installation personnel, resource constraint, and supply chain issues.²⁷⁵

Pennsylvania Telephone Association NG911 Notice Comments at 8 (stating that installing new switches and upgrading to IP format can take between nine months and three years); Alaska Telecom Assoc. NG911 Notice Comments at 8 (“[T]he FCC should afford additional time to smaller providers for any NG911 rules it may adopt.”); Texas 9–1–1 Entities NG911 Notice Reply at 15 (stating that some rural wireline carriers raise concerns that there should be at least 24 months to the transition from being able to use an ALI database); Rally Networks NG911 Notice Comments at 2–3 (stating that “[m]odernizing a TDM based switch from planning to changeover can take 6–18 months depending on complexity”); NCTA NG911 Notice Reply at 2 & n.7 (stating that the Commission should consider whether different treatment is warranted in extremely remote areas where unique circumstances have impaired the ability of a provider to transition to IP-based network equipment); CCA NG911 Notice Comments at 2–3 (stating that additional time is needed for smaller and rural carriers to comply with new NG911 requirements).

²⁷⁵ Alaska Telecom. Assoc. NG911 Notice Comments at 7; Bandwidth NG911 Notice Reply at 4; Frontier Communications Parent, Inc. (Frontier) NG911 Notice Reply at 6 (rec. Sept. 8, 2023) (Frontier NG911 Notice Reply); WTA NG911 Notice Comments at 7; Pennsylvania Telephone Association NG911 Notice Comments at 8 (“RLECs will often have limited options for third-party transport providers, so timeframes will be dependent on other carriers’ schedules and limitations.”); Verizon NG911 Notice Comments at 5 (“[I]f a PSAP/NG911 provider requests and insists on a non-standards-based NG911 solution or use of a non-standards-based IP format, implementation will require far more than six months given the need to engage in further end-to-end testing.”); Intrado NG911 Notice Comments at 5 (stating that the lack of standardized implementations across 911 Authorities and vendors contributes to varied implementation requirements); ATIS NG911 Notice Comments at 8 (stating that the service provider should be able to receive a waiver if it experiences supply chain issues); CCA NG911 Notice Comments at 2–3 (stating that smaller and rural carriers have significant resource complaints and supply chain challenges that lead them to need additional time and flexibility to comply with FCC requirements); USTelecom NG911 Notice Reply at 6 (indicating

²⁶⁹ Expressed in months after Phase 1 valid request.

²⁷⁰ Expressed in months after the latest of: (1) the 911 Authority’s Phase 2 valid request; or (2) the date when the OSP is required to comply with Phase 1 requirements, or when it does comply with those requirements (whichever is earlier).

²⁷¹ NG911 Notice, 38 FCC Rcd at 6226, para. 45.
²⁷² Colorado PUC NG911 Notice Comments at 8–9 (agreeing with six-month time frames for deployment); Maine PUC NG911 Notice Comments at 2; NENA NG911 Notice Comments at 9; Ad Hoc NG911 Service Providers Coalition NG911 Notice Comments at 13 (stating that “[t]he Coalition supports the six-month timeframe for OSPs to deliver SIP-based calls to IP-ready PSAPs”); MSCI NG911 Notice Reply at 6, 7 (calling six months “sufficient”); Comtech NG911 Notice Comments at 8 (stating that six months “constitutes ample notice”). See also USTelecom NG911 Notice Comments at 5 (stating that six months is reasonable only if 911 Authorities must meet substantial technical readiness requirements, including a demonstration of actual capability to receive and process NG911 IP calls); Mission Critical Partners NG911 Notice Comments at 10 (stating that six months is appropriate for SIP-only deployment, but a different timeline may be appropriate to get to full end-state NG911); NASNA NG911 Notice Comments at 9 (agreeing with six-month timeframes but recommending that the Commission adopt a phased approach); Letter from Frank Rainwater, Executive Director, South Carolina RFA, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 21–479, at 2 (filed Apr. 19, 2024).

²⁷³ South Dakota Telecommunications Association NG911 Notice Comments at 13–14 (stating that 18 months following a request would be reasonable); Jonathan Cannon NG911 Notice Comments at 2–3 (rec. Aug. 8, 2023) (filed on behalf of Rally Networks) (Rally Networks NG911 Notice Comments) (stating that “[m]odernizing a TDM

We determine that six months per phase provides adequate time for non-RLEC wireline providers and interconnected VoIP providers to transition first to basic SIP at Phase 1, and second to SIP format that complies with NG911 commonly accepted standards at Phase 2. By splitting the transition into two six-month phases, we provide a longer total transition timeframe for wireline and interconnected VoIP providers than was originally proposed. We find that this approach balances the concerns raised by commenters that sought a longer total timeframe than six months with the need to ensure an expeditious transition, which could be complete under these rules within a year of the 911 Authority's Phase 1 request. The time period we implement for non-RLEC wireline providers and interconnected VoIP providers takes into account the various factors raised by commenters.

We adopt an extended timeframe of 12 months per phase for RLECs to complete Phase 1 and Phase 2. As RLEC commenters note, RLECs operate in rural and sometimes remote areas and can face resource limitations and other challenges when transitioning to NG911, *e.g.*, finding vendors that can perform the required work, negotiating and executing contracts, and upgrading networks (*e.g.*, installation of new switches).²⁷⁶ Compliance with NG911

that implementation takes longer than six months if a 911 Authority uses a non-standard IP format or NG911 solution).

²⁷⁶ See, *e.g.*, Alaska Telecom Assoc. NG911 Notice Comments at 7–9 (stating that smaller providers should be afforded additional time than proposed in the NG911 Notice); CCA NG911 Notice Comments at 2–3 (stating that “smaller and rural carriers have significant resource constraints and supply chain challenges that lead them to need additional time and flexibility to comply with FCC requirements”); Five Area Telephone NG911 Notice Comments at 7, 12, 13, 15 (discussing cost recovery concerns and stating that need at least twenty-four months is needed to comply following a 911 Authority request because OSPs must hire contractors or third parties or upgrade their networks); Intrado NG911 Notice Comments at 4 (stating that, except in the case of certain ILECs/RLECs, interconnecting parties typically can establish IP-formatted (*i.e.*, SIP) delivery relatively quickly); Rural Telephone Company Consortium (RTCC) NG911 Notice Comments at 11 n.25 (rec. Aug. 9, 2023) (RTCC NG911 Notice Comments) (discussing the availability of middle-mile transport facilities in an area, the cost of “cross-connects” for transport, and the technical capability of service providers); Pennsylvania Telephone Association NG911 Notice Comments at 8 (stating that installing new switches and upgrading to an IP format can take between nine months and three years); South Dakota Telecommunications Association NG911 Notice Comments at 12–14 (discussing the potential need for different customer premises equipment and the technical feasibility of embedding location information in TDM-originated calls); USTelecom NG911 Notice Comments at 3 (discussing issues for some wireline providers to include location

requirements at each phase may take longer for RLECs to complete given these factors.

CMRS Providers. In the LBR Notice, the Commission proposed that nationwide CMRS providers would have six months and non-nationwide CMRS providers would have 12 months to deliver IP-formatted calls, texts, and location information following the effective date of the rule or a valid request, whichever is later.²⁷⁷ Some commenters support the timelines as proposed in the LBR Notice, while other commenters support longer timeframes.²⁷⁸ Verizon indicates that a six-month timeline is feasible only if “the PSAP has fully implemented i3 in its network through a NG911 provider that has deployed its service in coordination with Verizon.”²⁷⁹ Non-nationwide CMRS providers requested longer timeframes to comply with NG911 delivery requirements.²⁸⁰ T-Mobile opposes the implementation of Commission deadlines for the transition to NG911 altogether.

We determine that six months per phase provides adequate time for nationwide CMRS providers to transition to basic SIP in Phase 1 and to SIP format that complies with NG911 commonly accepted standards in Phase 2. By adopting a phased approach, we address concerns raised by commenters while balancing the needs of 911 Authorities to complete the NG911 transition in a timely manner. We also determine that 12 months per phase (for twenty-four months total) provides adequate time for non-nationwide CMRS providers to transition to Phase 1

information in IP call headers); Letter from Derrick B. Owens, Senior Vice President of Government and Industry Affairs, and Gerard J. Duffy, Regulatory Counsel, WTA—Advocates for Rural Broadband (WTA), to Marlene H. Dortch, Secretary, FCC, PS Docket No. 21–479 (filed Feb. 7, 2024).

²⁷⁷ LBR Notice, 37 FCC Rcd at 15202, para. 50.

²⁷⁸ AT&T LBR Notice Comments at 7 (stating that “the Commission should allow 18–24 months before requiring provision of LBR information in IP-based format”); Verizon LBR Notice Reply at 4 (stating that “the NPRM’s proposed strict six-month period is not consistent with Verizon’s real-world experience” and “a minimum implementation of 18 months from a request would be reasonable *provided* that the PSAP’s vendor has initiated the most critical hardware, software and network implementation efforts”).

²⁷⁹ Verizon LBR Notice Comments at 6 (rec. Feb. 16, 2023).

²⁸⁰ RWA LBR Notice Comments at 3–4 (rec. Feb. 16, 2023) (arguing that non-nationwide CMRS providers should have 30 months from a valid PSAP request); CCA NG911 Notice Comments at 2–3 (“[S]maller and rural carriers have significant resource constraints and supply chain challenges that lead them to need additional time and flexibility to comply with FCC requirements.”); CCA July 12, 2024 *Ex Parte* at 1–2 (stating that compliance will require outside vendors, and that multiple delivery points may place “significant burdens on providers”).

and 2. This longer timeframe accounts for the unique challenges raised by non-nationwide CMRS providers in their comments, while ensuring that the NG911 transition proceeds in a timely manner in order to provide crucial benefits to public safety. Longer timelines for non-nationwide CMRS providers, such as the 18 months per phase favored by RWA and CCA, would result in significant and unwarranted additional delay for users of these non-nationwide CMRS providers’ services and for 911 Authorities. We disagree with T-Mobile’s opposition to implementation deadlines; the record indicates that timelines are needed to provide certainty for both OSPs and 911 Authorities and to expedite the transition to NG911.²⁸¹

Internet-based TRS providers. The Commission proposed in the NG911 Notice that internet-based TRS providers would be required to deliver 911 calls in IP format within 12 months after a valid request or 12 months from the effective date of such requirement, consistent with previous Commission action regarding these services.²⁸² We determine that 12 months per phase provides adequate time for internet-based TRS providers to comply with NG911 requirements at Phase 1 and 2. Internet-based TRS providers are primarily small entities and have operational differences that distinguish them from other types of providers,²⁸³ warranting a longer timeframe for compliance.

Covered Text Providers. The Commission proposed in the LBR Notice that covered text providers would have six months to deliver IP-formatted texts and location information following the effective date of the rule or a valid request, whichever is later.²⁸⁴ No commenter to either the LBR Notice or NG911 Notice addressed compliance timelines for covered text providers to deliver 911 texts to 911 Authorities that have implemented NG911. We therefore adopt the six-month transition timeline at each phase for covered text providers. We believe this timeframe to be reasonable in light of prior Commission transition periods for covered text providers to implement technology changes.²⁸⁵

Sequencing of Phase 1 and Phase 2. Under the rules for all OSPs, compliance with Phase 1 requirements

²⁸¹ See, *e.g.*, NASNA Petition at 5.

²⁸² NG911 Notice, 38 FCC Rcd at 6226, para. 45.

²⁸³ See Kari’s Law/RAY BAUM’S Act Order, 34 FCC Rcd at 6687–89, paras. 208, 210, 21; 47 CFR 64.601(a)(23), (24), (51).

²⁸⁴ LBR Notice, 37 FCC Rcd at 15202, para. 50.

²⁸⁵ T911 Second Report and Order, 29 FCC Rcd at 9871, para. 47.

is a prerequisite for Phase 2, meaning that an OSP's transition to Phase 1 must be completed before the implementation period can start for Phase 2 for a particular requesting 911 Authority. We recognize that the NG911 transition is ongoing and that many OSPs have already achieved Phase 1 connectivity with NG911 networks.²⁸⁶ In such scenarios, 911 Authorities may initiate a Phase 2 request without having to first issue a Phase 1 request. We decline to adopt NASNA's recommended 18-month waiting period between valid requests at each phase, which we believe could unnecessarily slow the transition to NG911.²⁸⁷

In other instances, a 911 Authority may have met the conditions for providing a valid request for Phase 2 as well as Phase 1, but an OSP may not yet have implemented either phase of the transition. In such a case, the 911 Authority may send the OSP valid requests for both Phase 1 and Phase 2 simultaneously, or it may send the OSP a Phase 2 valid request after it has issued the Phase 1 request but before the OSP's deadline for complying with it. In such scenarios, the six- or twelve-month period of time for the OSP to come into compliance with the Phase 2 request would begin on the date of its Phase 1 compliance deadline or when it complies with the Phase 1 requirements, whichever is earlier, rather than on the earlier date when the Phase 2 request was issued. For example, if the 911 Authority issues both Phase 1 and Phase 2 requests to a nationwide CMRS provider on January 2, 2026, then the provider's deadline for implementing the Phase 1 request would be six months later (on July 2, 2026), and its deadline for implementing Phase 2 would be six months after that (on January 2, 2027). However, if the nationwide CMRS provider complied with its Phase 1 requirements on June 2, 2026, then its deadline for implementing Phase 2 would be six months after that (on December 2, 2026). This provision should benefit both OSPs and 911 Authorities and could accelerate the implementation of Phase 2 NG911 in some circumstances. It accounts for the practical hurdles facing some OSPs that have not yet implemented the Phase 1 requirements

and accommodates their need to do so before they start implementing Phase 2. It also relieves 911 Authorities of a potentially burdensome procedural hurdle by making it unnecessary to issue separate, sequential Phase 1 and Phase 2 requests to OSPs that have not yet implemented Phase 1. A 911 Authority would not need to wait until an OSP finishes implementing the Phase 1 requirements to issue a Phase 2 request to that OSP. Instead, the 911 Authority could issue both valid requests to the OSP simultaneously and establish firm milestone dates for the OSP to comply with both phases in sequence. As discussed in this document and section III.C.3.b of the Order, 911 Authorities and OSPs may also reach alternative agreements regarding timelines.

CTIA and CCA suggest that there are instances in which an originating service provider may provide more than one type of service across the same network, which could potentially subject that originating service provider to inconsistent compliance deadlines.²⁸⁸ We clarify that when an originating service provider is subject to both six- and twelve-month timelines for different services on the same network as the result of a 911 Authority's valid request, the originating service provider may comply with its obligations under the later of the two deadlines. This approach ensures the full benefit of extended NG911 transition deadlines for specific types of OSPs where an OSP uses a combination of network elements in a local area.

As an alternative to setting timelines for OSPs to complete the transition to NG911, AT&T and ATIS propose that we focus our rules on setting timelines for OSPs to take specific affirmative steps toward transitioning to IP delivery, such as placing circuit orders. We recognize that setting deadlines for individual implementation steps could provide additional certainty, but focusing on individual steps without requiring completion of all necessary steps is unlikely to achieve our objectives. In addition, the concerns raised by AT&T and ATIS are addressed by other modifications that we have made to our proposals from the NG911 Notice, including adopting a two-phase approach and lengthening the amount of time for OSPs to comply with NG911 obligations, ensuring 911 Authority readiness at the time of valid request,

and providing flexibility to agree to alternative timelines for compliance with 911 Authorities.

Brian Rosen, RWA, and Verizon suggest that OSPs may need a longer timeline to make the required transition the first time that an OSP connects to an ESInet or NG911 vendor. These commenters recommend increasing the time frame for OSPs to connect to the first ESInet and then retaining a six-month timeline for subsequent connections. RWA argues that the Commission should extend the timeline for the first connection to an ESInet but revert to a shorter timeline for subsequent valid requests. Verizon similarly indicates that the onboarding process for the first time it connects to an NG911 vendor can take several months to a year, but that lead time is not needed for the vendor's subsequent 911 Authority customers. We decline to establish different timelines for "first-time" transition by OSPs. Although such transitions may take longer as OSPs connect with ESInets and NG911 service providers for the first time, our rules provide ample flexibility for OSPs and 911 Authorities to address these issues. We encourage 911 Authorities to collaborate with OSPs that are connecting to ESInets and NG911 vendors in the first instance. In addition, the Commission's waiver process is available to providers facing extraordinary circumstances.²⁸⁹

Rally Networks proposes that instead of a six-month compliance period, the Commission should require 911 authorities to pre-notify any OSPs that will need technology upgrades in order to comply with the NG911 rules, or that we should allow RLECs to propose and negotiate compliance timelines with 911 Authorities after a 911 Authority request. With regards to the first proposal, nothing in our rules prevents 911 Authorities from pre-notifying OSPs, including RLECs, as they take steps to prepare for the transition to NG911. In addition, the steps that 911 Authorities take to prepare for NG911, including selecting contractors for their NG911 network, are typically public and accessible on 911 Authorities' websites. We find that these resources are sufficient to provide OSPs with notice of the transition and make it unnecessary to require pre-notification by 911 Authorities before transmittal of a Phase 1 or Phase 2 request. With regards to the second proposal, under the rules, OSPs and 911 Authorities may agree to alternative timelines for compliance with NG911 requirements. Nothing in our rules would prevent an

²⁸⁶ For example, T-Mobile states that it "has deployed SIP connectivity for a total of 3,415 PSAPs (comprising 1,448 wireless PSAPs and 1,967 VoIP PSAPs), with an additional 1,178 wireless PSAPs that are in the process of or are planning for IP connectivity." T-Mobile NG911 Notice Comments at 1.

²⁸⁷ NASNA NG911 Notice Comments at 9 (indicating that there should be at least 18 months between requests to OSPs to move between its recommended phases).

²⁸⁸ CTIA July 10, 2024 *Ex Parte* at 4–5 (non-nationwide CMRS providers may also be covered text providers); CCA July 12, 2024 *Ex Parte* at 2 (non-nationwide CMRS providers may also be covered text providers or interconnected VoIP providers).

²⁸⁹ See 47 CFR 1.3.

RLEC, for example, from proposing and negotiating compliance timelines with a 911 Authority following the 911 Authority's valid request.

Due to unique challenges in Alaska, Alaska Telecom Association (Alaska Telecom. Assoc.) requests "an implementation extension or exemption for non-IP networks, or portions of networks" and "longer implementation timelines as well as an opportunity for waivers of timing requirements." Alaska Telecom. Assoc. also requests that "any NG911 rules should provide carriers in Alaska with a presumptive waiver of mandated IP-delivery deadlines, provided such a carrier can demonstrate that it is working in good faith with the PSAP to complete the request."²⁹⁰ We observe that NG911 implementation timelines are tied to the readiness of the 911 Authority, and Alaska Telecom. Assoc. notes that "PSAPs in Alaska have not yet launched NG911 service." We decline to provide additional time specifically for Alaska telecommunications providers as part of these rules, but reiterate that OSPs may negotiate with 911 Authorities for separate compliance timelines under our rules. We also decline to provide a presumptive waiver of compliance deadlines for Alaska OSPs. Providers facing extraordinary circumstances may request relief under the Commission's existing waiver process.²⁹¹

b. Modification of Deadlines by Agreement

We allow 911 Authorities and OSPs to mutually agree on implementation deadlines that are different from the default compliance deadlines in this document and the Order. This approach addresses commenter requests that we allow flexibility in our compliance timelines, and it is supported by AT&T,²⁹² Colorado PUC,²⁹³ CTIA,²⁹⁴

Mission Critical Partners,²⁹⁵ NENA,²⁹⁶ and RWA.²⁹⁷ This approach is also consistent with the proposals in the NG911 Notice and LBR Notice to permit the modification of deadlines by agreement.²⁹⁸ We encourage OSPs to communicate with 911 Authorities if they experience situations that may warrant alternative agreements. We also encourage 911 Authorities and OSPs to reach an alternative agreement in instances in which challenges are encountered by 911 Authorities and their vendors.²⁹⁹ If an alternative agreement is reached, the OSP must notify the Commission of the key terms of the agreement and the alternative deadline within 30 days of the execution of the agreement so that the Commission is aware of any changes to the default obligations of OSPs. We direct PSHSB to open a new docket and issue guidance to OSPs about notifying the Commission regarding alternative agreements.

Mission Critical Partners suggests that there be a mechanism "whereby these agreements could be canceled and a return to the mandated timeline executed if needed." Although the rules do not provide for cancellation or termination of alternative agreements, there is nothing in the rules prohibiting such an outcome, and parties are free to include a cancellation or termination provision in their agreements as they see fit. We also clarify that, upon cancellation or termination of an alternative agreement, the NG911 rules and deadlines will apply when a valid request is in effect, in the absence of any alternative provision.³⁰⁰

D. NG911 Delivery Points and Cost Responsibilities

We adopt default rules requiring that, starting at Phase 1, OSPs must transmit

and deliver 911 traffic to NG911 Delivery Points designated by 911 Authorities and must bear the financial responsibility for such transmission, including costs associated with completing any needed TDM-to-IP translation and the costs of delivering associated routing and location information in the requested IP-based format. Beyond these NG911 Delivery Points, 911 Authorities will be responsible for processing and transmitting such traffic to PSAPs. We emphasize that these are default rules that do not preclude alternative arrangements between 911 Authorities and OSPs at the state or local level. Moreover, our rules presumptively do not alter or invalidate existing agreements between state or local 911 Authorities and OSPs,³⁰¹ but will apply in the absence of such agreements.

The NG911 traffic delivery and cost responsibility requirements in this document and the Order are essentially the same as those proposed in the NG911 Notice, subject to a few modifications in response to the record.³⁰² Specifically, as discussed below, OSPs will be obligated to deliver 911 traffic only to NG911 Delivery Points located in the 911 Authority's state or territory; in providing for such delivery, OSPs retain the right to decide which transmission routes to use and which transport, aggregation, and other services to obtain from third parties, if any. Finally, we clarify that OSPs who use the services of third parties will continue to remain ultimately

²⁹⁰ Alaska Telecom Assoc. NG911 Notice Comments at 7 (alternatively recommending an explicit mention of the option to request a waiver or extension).

²⁹¹ See 47 CFR 1.3.

²⁹² AT&T NG911 Notice Comments at 10 (stating that "any rules should permit OSPs and 911 authorities to adopt alternative timetables upon mutual agreement").

²⁹³ Colorado PUC NG911 Notice Comments at 9 (recommending that state and local jurisdictions be allowed to provide reasonable extensions upon request and that this would allow for parties to mutually establish alternative timetables).

²⁹⁴ CTIA NG911 Notice Comments at 7–8 (stating that tolling mechanisms that enable OSPs and PSAPs to collaboratively extend any deadlines as they work through challenges should be permitted).

²⁹⁵ Mission Critical Partners NG911 Notice Comments at 9 (stating that it supports the ability for parties to enter into agreements for other timelines).

²⁹⁶ NENA NG911 Notice Comments at 9 (stating that the rules should permit a more lenient timeline if a state or local 911 Authority determines a different timeline is appropriate).

²⁹⁷ RWA NG911 Notice Comments at 3 (stating that it support the proposal for OSPs to be able to enter into agreements with local and state entities to establish an alternate time frame as "a commonsense alternative" to any deadline codified by the rules).

²⁹⁸ NG911 Notice, 38 FCC Rcd at 6226–7, para. 45; LBR Notice, 37 FCC Rcd at 15202, para. 50.

²⁹⁹ See CTIA July 10, 2024 *Ex Parte* at 4, n.12 (arguing that "technical challenges and delays are also encountered by 911 Authorities and their vendors" and citing to Texas 9–1–1 Entities NG911 Notice Comments at 5; T-Mobile NG911 Reply at 3; AT&T NG911 Notice Comments at 7; Verizon July 13, 2023 *Ex Parte* at 2).

³⁰⁰ See Verizon July 10, 2024 *Ex Parte* at 1, 6 (seeking clarification of the application of NG911 rules when contract is terminated).

³⁰¹ Our rules do not address NG911-related arrangements previously reached by OSPs and 911 Authorities or their vendors. See CTIA NG911 Notice Comments at 5 ("[T]he Commission should also ensure that any new rules adopted in this proceeding do not undermine existing arrangements between wireless providers and 911 [A]uthorities."); Verizon NG911 Notice Reply at 3 (requesting that existing agreements will not be disrupted by NG911 rules). We realize that some NG911 agreements may include "change in law" or "change in regulation" clauses, which call for changes to an agreement's terms in the event the subject matter of the agreement is affected by newly-enacted laws or regulations. We take no position on the extent to which the NG911 rules should trigger such clauses. The RLEC Coalition asks us to clarify that 911 Authorities' agreements with ESInet providers may not be altered by our rules regardless of "change of law" provisions, but we decline. Letter from Brian Ford, Vice President–Federal Regulatory, NTCA (filed on behalf of NTCA and the RLEC Parties (RLEC Coalition)), to Marlene H. Dortch, Secretary, FCC, PS Docket No. 21–479, at 8 (filed July 5, 2024) (RLEC Coalition July 5, 2024 *Ex Parte*). The rules in no way limit 911 Authorities' power to modify terms or agreements with ESInet providers or OSPs, nor do we presume to evaluate an unspecified number of existing contracts with varying terms and state law requirements that are not before us.

³⁰² See NG911 Notice, 38 FCC Rcd at 6218–24, paras. 27–39.

responsible for any acts of their agents that violate the Commission's 911 rules.

We adopt these requirements in light of clear record evidence that the transition to NG911 nationwide is being delayed by uncertainty and disagreements between OSPs and 911 Authorities over the basic terms on which NG911 service is to be provided.³⁰³ Many of these disagreements concern the location of delivery points for 911 traffic and the allocation of cost responsibilities in the NG911 environment.³⁰⁴ We find that the default rules in this document and the Order will help resolve these disputes by eliminating key points of disagreement and facilitating discussions between OSPs and 911 Authorities concerning the issues that they need to coordinate. As a result, we expect these rules to accelerate the rollout of IP-based NG911 service to 911 callers nationwide.

1. Originating Service Providers' Default Responsibility for Transmitting and Delivering 911 Traffic to NG911 Delivery Points Designated by 911 Authorities

Consistent with the proposal in the NG911 Notice, our default rule establishes that 911 Authorities may designate the locations of the NG911 Delivery Points where OSPs will be required to transmit and hand off NG911 traffic starting at Phase 1.³⁰⁵ Many commenting parties, including OSP representatives as well as members of the public safety community, support the default delivery rule proposed in the NG911 Notice.³⁰⁶ However, a number of

parties, including a coalition of RLECs and organizations representing RLECs led by NTCA (collectively, RLEC Coalition), suggest modifications to the proposed rule or argue for alternative approaches.³⁰⁷ Based on the record, we adopt several of the requested modifications to the proposed default rule and decline to adopt others, as discussed below.

Home State NG911 Delivery Points. First, we modify the proposed default rule to require OSPs to transmit and deliver 911 traffic to NG911 Delivery Points designated by a 911 Authority only if those points are located within the same state or territory as the PSAPs connected to the 911 Authority's ESInet.³⁰⁸ This addresses the concern expressed by some RLECs that they could incur unreasonably high transport costs if 911 Authorities had unlimited discretion to require OSPs to deliver traffic to NG911 Delivery Points located anywhere in the country.³⁰⁹ We believe that any such costs would likely be far less substantial than these parties fear, both because the costs of transmitting calls in IP format are not primarily based on the distance the calls must travel and because OSPs could mitigate the distance-related costs to transmit calls in TDM format by converting calls into IP format prior to sending them

for acceptable POIs with the ESInet, which will constitute the demarcation point between OSP and ESInet/NGCS provider responsibility for routing and delivery of 9-1-1 calls." (emphasis omitted)); NCTA NG911 Notice Reply at 1-2; NENA NG911 Notice Comments at 7-8; South Carolina RFA NG911 Notice Comments at 8; Brian Rosen NG911 Notice Comments at 7; AT&T NG911 Notice Comments at 6-7; Mission Critical Partners NG911 Notice Comments at 4; Nebraska PSC NG911 Notice Comments at 2; Oklahoma 9-1-1 Management Authority NG911 Notice Comments at 1 (rec. Aug. 8, 2023).

³⁰⁷ See, e.g., Five Area Telephone NG911 Notice Comments at 8-9; Home Telephone NG911 Notice Comments at 16-18; Letter from Brian Ford, Vice President-Federal Regulatory, NTCA (filed on behalf of the RLEC Coalition)), to Marlene H. Dortch, Secretary, FCC, PS Docket No. 21-479, at 7 (filed Mar. 6, 2024) (RLEC Coalition Mar. 6, 2024 *Ex Parte*); South Carolina RLECs NG911 Notice Comments at 14-16; South Dakota Telecommunications Association NG911 Notice Comments at 10-12.

³⁰⁸ NG911 Delivery Points designated by a local, regional, or Tribal 911 Authority will satisfy this criterion even if they are located outside the boundaries of the 911 Authority's local, regional, or Tribal area, so long as they are located in the same state. NG911 Delivery Points designated by a territorial government's 911 Authority must be located within the same territory to qualify.

³⁰⁹ See, e.g., Five Area Telephone NG911 Notice Comments at 8-9 (requesting in-state limitation to limit OSP costs); South Dakota Telecommunications Association NG911 Notice Comments at 10-12. The RLEC Coalition acknowledges that the home state requirement "may very well ameliorate but not eliminate the cost onsets for an RLEC to either establish facilities or procure transport service beyond its boundary." RLEC Coalition July 5, 2024 *Ex Parte* at 5 n.18.

over any long-distance transmission paths.³¹⁰ OSPs could also mitigate their costs by originating calls in IP format before transmitting them anywhere, entering into cost-sharing arrangements, or using other means.³¹¹ Nonetheless, requiring OSPs to deliver 911 traffic only to designated NG911 Delivery Points within 911 Authorities' home states or territories will provide OSPs, particularly RLECs, with greater certainty regarding potential costs. This requirement is unlikely to increase costs for 911 Authorities given that the cost of transmitting IP traffic to a potentially distant point in a different state or territory is not appreciably greater than the cost of transmitting such traffic over a shorter distance to locations within the same state or territory.

This home-state NG911 Delivery Point qualification also addresses concerns that RLECs could face increased risk of liability if they were required to transport 911 calls to locations in out-of-state jurisdictions. As discussed in more detail below, we believe that the obligation to transmit and deliver 911 calls to NG911 Delivery Points will have little, if any, impact on RLECs' exposure to liability under state tort law. Nonetheless, the home-state qualification may make it easier for RLECs to anticipate and manage those risks without having to evaluate differing tort law standards in multiple states. The home-state qualification also should address RLECs' concerns that an obligation to deliver calls out-of-state would compel them to retain third-party long distance transmission vendors and render them potentially liable for 911 rule violations committed by these vendors. The home-state qualification will reduce the need for RLECs to retain third-party vendors and make it easier for them to monitor the performance of any third-party vendors they do retain.

Finally, we believe it is reasonable to expect 911 Authorities to locate NG911 Delivery Points within the states or territories where they are responsible for the provision of 911 services. By definition, 911 Authorities are state, local, regional, territorial, or Tribal

³¹⁰ See, e.g., Letter from Sarah N. Galieto, Director of Regulatory, and Cheng-yi Liu, Senior Regulatory Counsel, MSCI, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 21-479, at 1-3 (filed May 28, 2024) (MSCI May 28, 2024 *Ex Parte*) (demonstrating the cost savings available to OSPs that choose to transport traffic in IP format).

³¹¹ See, e.g., Letter from Lauren Kravetz, Vice President, Government Affairs, Intrado, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 21-479, at 2 (filed Jan. 30, 2024) (stating that "the POI cost/distance issue raised by several commenters in the docket will no longer apply because IP circuits are priced based on capacity/bandwidth versus Time Division Multiplexing (TDM) circuits, which are priced based on distance/capacity").

³⁰³ The Colorado PUC, for example, reports that "obtaining cooperation and compliance from OSPs" is a "common hurdle that all states must face prior to full implementation of NG911." Colorado PUC NG911 Notice Comments at 2; see also, e.g., Mission Critical Partners NG911 Notice Comments at 12; iCERT Nov. 2, 2023 *Ex Parte* at 2; Intrado NG911 Notice Comments at 1; Comtech NG911 Notice Comments at 7; South Carolina RFA NG911 Notice Comments at 8; Comtech Nov. 6, 2023 *Ex Parte* at Attach. at 5; Livingston Parish NG911 Notice Comments at 1; Brian Rosen NG911 Notice Comments at 7; Comtech NG911 Public Notice Comments at 7; Travis Jensen NG911 Public Notice Comments at 1 (rec. Jan. 21, 2022) (filed on behalf of Arizona Department of Administration 9-1-1 Program Office (Arizona Dept. of Administration)); Pennsylvania Emergency Mgmt. Agency NG911 Public Notice Comments at 4-5.

³⁰⁴ See, e.g., Comtech NG911 Notice Comments at 7 ("Comtech supports FCC adoption of the Proposed NG911 Rules as disputes relating to [point of interconnection] locations and cost demarcations are a major source of OSP disputes and delays." (emphasis omitted)); South Carolina RFA NG911 Notice Comments at 16 (describing two and a half years of ongoing negotiations).

³⁰⁵ NG911 Notice, 38 FCC Rcd at 6218-9, para. 28.

³⁰⁶ See, e.g., BRETSA NG911 Notice Reply at 6 ("The governmental entity with authority over 9-1-1 service in the state, should set the parameters

government entities that typically are responsible for implementing NG911 systems that serve PSAPs within an individual state, a local jurisdiction within a state, or a territory.³¹² Moreover, the end users who initiate 911 communications and the PSAPs that those users are seeking to reach typically are located in the same state or territory. Therefore, from a network design and cost perspective, it would appear logical for a 911 Authority to provide an in-state point where OSPs are required to deliver NG911 traffic, particularly for small OSPs that operate only within that state or territory.³¹³ However, our rules do not preclude 911 Authorities and OSPs from mutually agreeing on out-of-state delivery points. For example, if a 911 Authority retains the same ESInet provider that neighboring authorities have retained, that 911 Authority may agree with an OSP in its state that the OSP's existing connections to the ESInet provider's network in the neighboring states are sufficient NG911 Delivery Points.

OSP's Use of Aggregation Services and Other Cost-Saving Measures. Our default NG911 delivery rule does not prohibit OSPs from using aggregation services, and it allows OSPs to choose the methods of transport they will use to deliver 911 traffic to ESInets. Some RLEC commenters report that ESInet providers have tried to restrict their choices of network arrangements, such as by opposing their shared use of aggregation services.³¹⁴ Such services enable multiple small carriers to bundle their data streams and share the cost of transporting the pooled data stream to a common destination, resulting in lower overall costs than if each OSP paid for separate transport. We agree that OSPs should be allowed to implement such reasonable cost-saving measures, and

we find that this approach could help avoid disputes between OSPs and 911 Authorities.³¹⁵

We encourage OSPs, NGCS providers, ESInet providers, and 911 Authorities to work together to enable OSPs to comply with Phase 1 and 2 delivery obligations. We also expect OSPs to select transport options that are reliable, secure, and comply with industry standards for reliability and security. NTCA, WTA, and Home Telephone argue that the Commission should establish rules requiring the transport of 911 traffic over dedicated SIP lines, and highlight that there are several options available to OSPs to comply with IP delivery rules with varying reliability, including third-party IP transport, dedicated SIP, and public internet.³¹⁶ We decline to establish the requested rules at this time. We also decline to condition OSP obligations on an ESInet operator permitting VPN/internet connections, as suggested by Brian Rosen. At this time, we provide flexibility to 911 Authorities, in concert with their NG911 vendors, to determine the IP-based SIP format to request from OSPs.

Other Restrictions on Designation of NG911 Delivery Point Locations. We decline to impose any restrictions on 911 Authorities' selection of NG911 Delivery Point locations other than the home-state qualification discussed above. For example, we disagree with proposals to relieve a LEC of its NG911 traffic delivery obligations unless the 911 Authority establishes at least one NG911 Delivery Point within the LEC's local service area, or within a specified distance of such service area's boundary. Such a restriction, in effect, would require 911 Authorities in states with many small RLECs to establish individual NG911 Delivery Points for each of those RLECs, which could be inefficient and unreasonably costly to implement.³¹⁷ We decline to adopt a

restriction that, in effect, would compel 911 Authorities to structure their networks in a potentially inefficient manner to accommodate the RLECs' historic service area boundaries, rather than in a more efficient and cost-effective manner to ensure the reliable delivery of public safety emergency services.³¹⁸

For similar reasons, we reject proposals to restrict the number of NG911 Delivery Points a 911 Authority may designate. While some commenters advocate limiting delivery points to two per OSP, a limited number per state, or two per Local Access and Transport Area (LATA),³¹⁹ we see no reason to limit the flexibility of 911 Authorities to determine the number of delivery points available to OSPs. Increasing the number of delivery points can contribute to the resiliency of NG911 networks by providing more options for routing calls to ESInets, while limits on the number of delivery points may create network vulnerabilities or needlessly drive up costs. Moreover, some states have chosen to implement multiple regional ESInets, and it would be reasonable for them to designate a greater number of NG911 Delivery Points than states that have implemented a single statewide ESInet.³²⁰

We also reject proposals to require 911 Authorities to designate NG911 Delivery Points that are "reasonable" or not "excessive" or to require 911 Authorities to negotiate with OSPs "in good faith" over the locations of

would greatly add to the costs of implementing and maintaining an ESInet.").

³¹⁸ We also are adopting other measures to address the RLECs' cost concerns, such as permitting OSPs to continue to originate calls in TDM and convert such calls to SIP format that complies with commonly accepted standards. As discussed above, such transitional architectures are permitted under commonly accepted standards. See, e.g., NENA i3 at 3 ("[T]he scope [of i3] includes gateways for legacy wireline and wireless originating networks (the Legacy Network Gateway) used by originating networks that cannot yet create call signaling matching the interfaces described in this document for the ESInet/NGCS."); TFOPA Final Report at 112–13, 116–17. In addition, we enable RLECs to minimize their costs by protecting their flexibility to select the vendors and routes for transmitting traffic to NG911 Delivery Points.

³¹⁹ See, e.g., Five Area Telephone NG911 Notice Comments at 8–9, 15; South Dakota Telecommunications Association NG911 Notice Comments at 8–9; Brian Rosen NG911 Notice Comments at 7; Verizon NG911 Notice Comments at 3; Mission Critical Partners NG911 Notice Comments at 5; Letter from John Kuykendall, JSI Regulatory Advisor on behalf of the South Carolina RLECs, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 21–479, at 2 (filed Oct. 12, 2023).

³²⁰ See, e.g., South Carolina RLECs NG911 Notice Comments at 7 (reporting that South Carolina has selected a primary, statewide ESInet service provider but that some PSAPs will connect to local ESInets or NG911 service solutions).

³¹² In rare cases, the PSAPs overseen by a 911 Authority may be physically located in multiple states. In such cases, 911 Authorities may designate NG911 Delivery Points in each state where its PSAPs are located.

³¹³ In rare cases, a 911 Authority may be responsible for 911 traffic bound for PSAPs in multiple states. In such cases, the 911 Authority could establish NG911 Delivery Points in each of the states that it serves in order to ensure that OSPs in each of those states have a home-state NG911 Delivery Point where they will be required to deliver 911 traffic.

³¹⁴ See Pennsylvania Telephone Association NG911 Notice Comments at 7 ("[S]ome RLECs with multiple state presence[s] prefer to aggregate NG911 traffic for multiple states, sharing in transport costs. However, some NG911 service providers are unwilling to allow RLEC third[-]party carrier providers to use these national POIs and require RLEC carrier providers to deliver NG911 traffic within the state."); South Dakota Telecommunications Association NG911 Notice Comments at 11; Five Area Telephone NG911 Notice Comments at 7–8, 13.

³¹⁵ See, e.g., AT&T NG911 Notice Comments at 7 ("Notably, disputes arising over transition costs might also be reduced if local 911 authorities use aggregation services, which would expand the number of POIs available to OSPs.").

³¹⁶ NTCA NG911 Notice Comments at 4–5 (urging the Commission to consider the costs of routing 911 traffic over a "dedicated connection" as opposed to "best efforts" public internet connections"); WTA NG911 Notice Comments at 3–5 (urging the Commission to consider the benefits of dedicated SIP lines, as opposed to standard internet delivery); Home Telephone NG911 Notice Comments at 10–13 (encouraging the Commission to require "a dedicated physical trunk for both front-end connections and back-end connections"); see also APOC Oct. 31, 2023 *Ex Parte* at 3 (identifying as an open issue whether 911 traffic must be delivered over traditional dedicated lines or the internet).

³¹⁷ See Colorado PUC NG911 Notice Comments at 6 ("Requiring ESInet design to include potentially dozens of additional points of interface for local wireline providers is simply unreasonable and

interconnection points.³²¹ While we expect 911 Authorities to act reasonably, codifying such conditions in the rules is unnecessary and likely to lead to protracted negotiations that enable OSPs to delay the NG911 transition by refusing to deliver 911 traffic to states' and localities' NG911 networks in a manner that facilitates efficient network design and deployment. The rule will reduce uncertainty, assist with resolving deadlocks in negotiations, and expedite the nationwide transition to NG911.³²²

Finally, we do not adopt a modification requested by one commenter that 911 Authorities be required to provide certain equipment at the NG911 Delivery Point or to comply with the hardware specifications of OSPs or their transport vendors. The record lacks evidence that disagreements over connection hardware have interfered with NG911 adoption, and we expect that OSPs and 911 Authorities will continue to be able to coordinate such logistical details on their own without regulatory intervention. We also are concerned that any default rule concerning hardware

might interfere with 911 Authorities' network architecture plans or impose unwarranted burdens on 911 Authorities if we allowed OSPs to dictate these decisions in all circumstances. While we do not impose any specific hardware requirements, we note that our default rules assign 911 Authorities the responsibility to furnish all NG911 Delivery Point facilities, which includes the connection hardware necessary to receive 911 traffic from the OSP.

2. Default Cost Responsibilities

We adopt the default requirement proposed in the NG911 Notice and confirm that OSPs will be responsible for the cost of transmitting 911 traffic from their end users to the points of interconnection designated by 911 Authorities (*i.e.*, NG911 Delivery Points).³²³ Conversely, our default rule provides that OSPs are not responsible for the cost of transmitting calls from NG911 Delivery Points to PSAPs or for any reformatting or call translation within the NG911 network beyond the point where the OSP has handed off the call.³²⁴ To maintain this allocation, OSPs may not charge 911 Authorities or their vendors for providing the NG911 services that our rules require OSPs to provide, and once OSPs hand off 911 traffic to the 911 Authorities, the 911 Authorities and their vendors are responsible for delivering 911 traffic to PSAPs. OSPs must also bear the cost of compatibility testing for connecting to

and using facilities at the NG911 Delivery Points to ensure compliance with NG911 commonly accepted standards specified by 911 Authorities. This clear allocation of financial responsibilities should resolve delays in the transition to NG911 caused by OSP uncertainty or unwillingness to take responsibility for the cost of transmitting 911 traffic originated by their own users.³²⁵ Most public safety agencies, NG911 service providers, and OSP industry representatives support this default cost responsibility rule as fair, rational, consistent with longstanding regulatory requirements and industry practice, and conducive to expediting the NG911 transition.³²⁶

The NG911 cost responsibility default rule is analogous to the cost requirement the Commission adopted over two decades ago during the implementation of wireless E911. In its 2002 King County Order on Reconsideration, the Commission established a default requirement that CMRS providers bear the costs associated with transmitting 911 calls from their end users to the points where they hand off such calls to the selective routers used to transmit those calls to the appropriate PSAPs.³²⁷

³²¹ See, *e.g.*, Verizon NG911 Notice Comments at 2–4; T-Mobile NG911 Notice Comments at 2–3; CCA NG911 Notice Comments at 5 (warning against “excessive points of delivery”); CTIA NG911 Notice Reply at 8; iCERT NG911 Notice Comments at 8; South Dakota Telecommunications Association NG911 Notice Comments at 9–10 (suggesting duty to negotiate); NCTA NG911 Notice Comments at 3; South Carolina RLECs NG911 Notice Reply at 9–10; USTelecom NG911 Notice Comments at 5 (suggesting reasonableness requirement); Alaska 9–1–1 Advisory Board NG911 Notice Reply at 3 (rec. Sept. 7, 2023); ATIS NG911 Notice Comments at 1, 3. Public safety commenters strongly disagree, arguing that unreasonable limitations on the selection of NG911 Delivery Points could interfere with 911 Authorities' autonomy to plan and design their NG911 infrastructures in a way that meets their individualized needs. See, *e.g.*, South Carolina RFA NG911 Notice Comments at 9; NENA NG911 Notice Comments at 8; Texas 9–1–1 Entities NG911 Notice Comments at 12; MSCI NG911 Notice Comments at 5; Ad Hoc NG911 Service Providers Coalition NG911 Notice Comments at 12–13.

³²² We decline to adopt BRETSA's suggestion to require national and regional OSPs to establish separate call paths to the data centers operated by providers of NGCS in order to provide additional call-path diversity. See BRETSA NG911 Notice Comments at 3. This proposal is beyond the scope of the NG911 Notice. It also conflicts with our decision that NG911 Delivery Points should be located within the same state where a 911 Authority is located; NG911 service providers typically operate only a few data centers in disparate locations across the country, meaning that an OSP potentially would be required to transmit 911 traffic hundreds or thousands of miles to reach the nearest data center serving the relevant 911 Authority. *Id.* (noting the limited number of data center locations). Nonetheless, nothing in our rules would prevent national and regional OSPs from voluntarily establishing connectivity to NGCS core data centers or from negotiating with 911 Authorities to establish such alternative NG911 Delivery Points, and we encourage such steps if doing so would improve 911 resiliency.

³²³ NG911 Notice, 38 FCC Rcd at 6221–6224, paras. 33–39. See also LBR Notice, 37 FCC Rcd at 15198, para. 36 (proposing to “identify ESInets as an example of an end point that state or local 911 authorities can designate for delivery of calls where location-based routing is used” and noting that this would not modify CMRS providers' existing obligations to transmit 911 calls to delivery points designated by 911 authorities, potentially including legacy selective routers); King County Order on Reconsideration, 17 FCC Rcd at 14789, 14792–93, paras. 1, 8–10 (establishing that CMRS providers are responsible for cost of transmitting and delivering calls to selective routers).

³²⁴ In addition, as discussed in greater detail below, OSPs also are responsible for the cost of the hardware and software components needed to transform TDM transmissions into the appropriate IP-based format (if necessary), to retrieve location information, and to route traffic to the appropriate PSAPs. At Phase 1, these components will typically include LNG facilities, ANI/ALI databases, and selective routers; at Phase 2, these components will include NG911 location information-related systems and functionalities. At both phases, however, 911 Authorities, their ESInet vendors, and/or PSAPs will be responsible for deploying, maintaining, or upgrading the NG911 Delivery Point facilities, the transmission of 911 traffic from NG911 Delivery Points to the appropriate PSAPs, PSAP customer premises equipment, and all other NG911 components or functionalities at and beyond the NG911 Delivery Points. Accordingly, OSPs will not be responsible for the costs associated with the latter set of functions unless the parties agree to alternative arrangements.

³²⁵ See NG911 Notice, 38 FCC Rcd at 6221, para. 33 n.118; AT&T NG911 Notice Comments at 7 (“Disputes over the delivery and/or demarcation point and cost allocation have led to delays in NG911 implementation, as the NPRM indicates.”).

³²⁶ See, *e.g.*, NCTA NG911 Notice Reply at 2–3 (“[U]sing the 911 Authority's chosen physical point of demarcation as the demarcation point for purposes of assessing financial responsibility is wholly rational and consistent with industry practice.”); NASNA NG911 Notice Reply at 4; APCO NG911 Notice Comments at 6; Nebraska PSC NG911 Notice Comments at 2; iCERT NG911 Notice Comments at 7; Comtech NG911 Notice Reply at 8–9; Letter from Wesley K. Wright, Counsel on behalf of Inteliquent, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 21–479, at 1 (filed Oct. 10, 2023); CEA NG911 Notice Comments at 7–8; Mission Critical Partners NG911 Notice Comments at 4; Livingston Parish NG911 Notice Comments 2; AT&T NG911 Notice Comments at 6–7 (agreeing “with cost obligations for OSPs extending to the designated demarcation point” and noting that this approach is “consistent with standing precedent in the wireless context established in the *King County Letter*” and “consistent with how AT&T has responded (in its OSP capacity) to requests from PSAPs to date”); Maine PUC NG911 Notice Comments at 2–3; Colorado PUC NG911 Notice Comments at 6–7.

³²⁷ King County Order on Reconsideration, 17 FCC Rcd at 14789, 14792–93, paras. 1, 8–10. CMRS providers are obligated to provide 911 service to their subscribers and to transmit their subscribers' 911 calls, together with information regarding subscribers' location, to the appropriate PSAP, statewide default answering point, or local emergency authority where such emergency calls can be answered. 47 CFR 9.10(b). The rules identify selective routers as the component of the networks that route E911 calls with location information to PSAPs or other locations where emergency calls can be answered. See 47 CFR 9.3. All other OSPs are subject to the same obligations. See, *e.g.*, 47 CFR 9.4 and 9.5 (all telecommunications carriers); *id.* § 9.11(b)(2)(ii) (interconnected VoIP providers).

Like those E911 requirements, the NG911 default rule reasonably holds OSPs responsible for the costs of complying with their own 911 service obligations.³²⁸ By continuing to adhere to our historical approach to E911 cost responsibility, we ensure that the NG911 transition will proceed on the same core principles that have defined prior iterations of 911 service. We provide continuity to the entities whose customers originate more than 80% of 911 calls—the CMRS providers that have been operating under the comparable E911 cost allocation rule for more than 20 years.

Adopting a single default cost standard also promotes our goal to facilitate a technology-neutral implementation of NG911. In NG911 networks, the distinctions between originating service provider types—CMRS, covered text providers, wireline, interconnected VoIP, and internet-based TRS—disappear, as all providers will terminate 911 traffic in an IP-based SIP format that complies with NG911 commonly recognized standards. This uniformity in service will reduce emergency response times; increase reliability and interoperability; and facilitate the integration of life-saving NGCS into emergency response systems. Adopting an “all-platforms” regulatory approach in our NG911 rulemaking is not only possible, but necessary, and we therefore adopt the default cost rule proposed in the NG911 Notice to ensure regulatory parity across service platforms.³²⁹

By contrast, we decline to adopt the proposal advanced by the RLEC Coalition, which argues that cost allocation for wireline carriers, and particularly for RLECs, should operate under different rules from those applicable to wireless providers and all other OSPs.³³⁰ The RLEC Coalition

proposes that for 911 calls originated by RLEC end users, the 911 Authorities, rather than the RLECs themselves, should be financially responsible for the cost of delivering their end user’s 911 traffic from the RLEC local network to the designated NG911 Delivery Point. The RLECs justify this proposed approach by suggesting that 911 Authorities (or their ESInet vendors) are the RLECs’ “customers” and therefore should pay for the services that the RLECs provide.³³¹ This mischaracterizes the nature of the relationship between these entities. In the 911 context, the RLECs’ customers are the end users who purchase their communications services and use them to initiate 911 calls, not the PSAPs that receive 911 calls or the ESInet operators that receive and transmit those calls on the PSAPs’ behalf. The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) has previously affirmed the Commission’s E911 requirements that result in CMRS providers bearing financial responsibility for E911 implementation, noting that the Commission has “imposed upon wireless carriers an obligation to implement a service in the public interest,” and “[w]hether it does this directly or with the cooperation of other governmental safety organizations [e.g., PSAPs], it has no obligation to compensate carriers for their costs.”³³² Just as “PSAPs are not the cost causers for wireless E911 implementation,”³³³ PSAPs (and ESInet vendors that act on their behalf) are not the cost causers for wireline carriers’ NG911 implementation. Indeed, rather than adopting the RLECs’ suggestion that OSPs be treated as providing a service to the ESInet vendors, we could reasonably treat the OSPs as receiving a service from the ESInet vendors, since it is the ESInet vendors that enable the OSPs to satisfy their own obligation to deliver 911 traffic to PSAPs.³³⁴

We also reject RLECs’ argument that it would be unreasonable to require RLECs to bear the cost of transporting 911 traffic to NG911 Delivery Points because some ESInet operators may be entitled to payment for the same transport services under their contracts

with 911 Authorities. This claim is speculative and premature for several reasons. First, the record does not reflect the terms of the many contractual arrangements that have been negotiated between 911 Authorities and their ESInet vendors to date. Even if that information were available, the Commission still would be required to speculate as to whether those agreements will remain in place in future years when the RLECs become responsible for providing NG911 service, which will not occur until after the NG911 rules become effective; 911 Authorities issue valid requests, and the RLECs’ one-year period for compliance has passed. By that time, ESInet operators’ current contracts may have lapsed, been renegotiated, or been amended pursuant to change-in-law or change-in regulation provisions, among other possibilities. The RLECs’ concern over possible unwarranted payments to ESInet providers for transport services also may become moot depending on where 911 Authorities choose to locate their NG911 Delivery Points; whether 911 Authorities agree to depart from the default NG911 rules as permitted by section 9.34; and whether state laws and regulations prohibit such payments under contracts with state agencies. We decline to adopt any rule to address this hypothetical future issue given the numerous unknown variables and because we will not intrude on states’ 911 implementation regimes; the rules are limited to the 911-related services and obligations of OSPs. Moreover, the possibility that some ESInet providers may potentially benefit from our NG911 rules is irrelevant to the Commission’s well-established authority to enact public safety rules as well as the RLECs’ legal obligation to comply with them.

We encourage 911 Authorities and their ESInet service providers not to impose unreasonable fees on OSPs for connecting to or using facilities at NG911 Delivery Points.³³⁵ This is consistent with historic practice and the King County Order on Reconsideration, in which the Commission held that wireless OSPs satisfy their obligation to deliver E911 calls by delivering them to ILEC selective routers and that PSAPs are responsible for all subsequent costs, including the costs to maintain and upgrade the facility itself and all of its

³²⁸ Our adoption of NG911 default cost responsibilities modeled on the Commission’s *King County* decision is consistent with CSRIC VI’s recommendation that we revisit that ruling “[g]iven the vast changes in technology since the Commission’s original wireless demarcation decision.” CSRIC NG911 Transition Report, sec. 5.1.5 (“Absent the Commission updating the King County Ruling to accommodate NG9–1–1 IP environments, [it] exacerbates the debate of ‘who pays.’”).

³²⁹ See, e.g., Mission Critical Partners NG911 Notice Comments at 5 (supporting “equalizing a demarcation point for all OSPs”); NENA NG911 Notice Comments at 3 (supporting “regulatory parity among originating service providers for the delivery of 9–1–1 calls”); iCERT NG911 Notice Reply at 6; Ad Hoc NG911 Service Providers Coalition NG911 Notice Comments at 2.

³³⁰ See, e.g., Letter from Michael R. Romano, Executive Vice President—Federal Regulatory, NTCA, et al. (RLEC Coalition), to Marlene H. Dortch, Secretary, FCC, PS Docket No. 21–479, at 1–3, Exh. 1 (filed Feb. 6, 2023) (RLEC Coalition Alternative Proposal).

³³¹ See, e.g., Letter from Brian Ford, Vice President—Federal Regulatory, NTCA, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 21–479, Attach. at 5 (filed May 21, 2024) (“Ultimately, if a NG911 network provider is not a ‘telecommunications carrier,’ then the only classification left is that the NG911 network provider is a ‘customer’ of the RLEC.”) (emphasis omitted).

³³² *U.S. Cellular Corp. v. FCC*, 254 F.3d 78, 85 (D.C. Cir. 2001); see *id.* at 83–86.

³³³ *Id.* at 84.

³³⁴ 47 CFR 9.4.

³³⁵ See IT&E NG911 Notice Comments at 3 (expressing concern that “the [NG911 Notice’s] broad language . . . could support a range of charges on [OSPs], like PTI, that are not clearly necessary to support the delivery of 911 communications and data to the PSAP demarcation point”); RLEC Coalition July 5, 2024 *Ex Parte* at 8.

components and functionalities.³³⁶ However, we decline to adopt a rule prohibiting such fees, because doing so would impose on the inherent regulatory and oversight powers that 911 Authorities, including PUCs, have over the operations of intrastate emergency communications networks.

The default cost responsibilities of OSPs and 911 Authorities will mirror their respective service obligations at Phase 1 and Phase 2. At Phase 1, our rules require OSPs to deliver 911 traffic in the IP-based SIP format requested by the 911 Authority, using either IP origination or IP translation through an LNG or other solution; obtain and deliver 911 traffic to enable the ESInet and other NG911 network facilities to transmit all 911 traffic to the destination PSAP; and to transmit the 911 traffic to NG911 Delivery Points designated by the 911 Authority, which we anticipate will be located at an ESInet as a general matter. We expect that, at Phase 1, OSPs that rely on TDM architecture will continue to obtain location and routing information from ALI/ANI databases connected to selective routers; and accordingly, OSPs will be responsible for the costs of hardware and software components associated with delivering location and routing information, as well as the costs of transmitting 911 traffic to NG911 Delivery Points. At Phase 1, 911 Authorities are responsible for furnishing the necessary infrastructure at the NG911 Delivery Points and for transporting NG911 traffic from the NG911 Delivery Points to the appropriate PSAPs. Given these service responsibilities, OSPs will not be responsible for the costs associated with deploying, maintaining, or upgrading the NG911 Delivery Point facilities, transport of 911 traffic to the appropriate PSAPs, PSAP customer premises equipment, or any other components or functionalities at or beyond the NG911 Delivery Points.

However, if an OSP relies on IP translation functionalities that a 911 Authority (or its vendor) provides using LNGs or other facilities to comply with its SIP delivery obligation at Phase 1, then the OSP may be required to pay for its use of such facilities. These provisions ensure that OSPs bear the cost of delivering traffic in the required IP-based SIP format. They also give

OSP appropriate incentives to comply with their IP delivery obligation by originating traffic in IP format, since translating TDM calls to IP using LNGs usually will be a more expensive option.

At Phase 2, OSPs will be required to deliver all 911 traffic to NG911 Delivery Points in the IP-based SIP format that complies with commonly accepted NG911 standards identified by the 911 Authority, as well complying with the Phase 1 requirements. In addition, OSPs will be required to put into operation a LIS or functional equivalent or to acquire equivalent services. Accordingly, OSPs will be presumptively responsible for the costs associated with these functions at Phase 2 (as well as the costs associated with their obligations continuing from Phase 1, including IP origination or translation and transport to the input to the NG911 Delivery Point). OSPs, however, will not be responsible for the costs of the functions that 911 Authorities will carry out at Phase 2, such as deploying NGCS. Moreover, as at Phase 1, OSPs will not be responsible for the costs of functions such as furnishing the necessary infrastructure at the NG911 Delivery Points and transmitting 911 traffic beyond the NG911 Delivery Points, which 911 Authorities will continue to carry out at Phase 2. As discussed above, OSPs and 911 Authorities may negotiate and agree to alternative financial arrangements that differ from these default responsibilities. We will monitor developments in the NG911 marketplace to ensure that additional NG911 costs are not unreasonably shifted under this framework to either OSPs or 911 Authorities.³³⁷

E. Legal Authority

1. The Commission's Authority To Promulgate NG911 Rules

The rules in this document and the Order are grounded in the Commission's broad authority to "promot[e] safety of life and property through the use of wire and radio communications," including through use of the nation's 911 system.³³⁸ Congress has enacted

numerous provisions in the Act and other 911-related statutes "that, taken together, establish an overarching federal interest in ensuring the effectiveness of the 911 system."³³⁹ One of the main purposes of the Act is "promoting safety of life and property through the use of wire and radio communications,"³⁴⁰ and public safety is one of the Commission's most important responsibilities.³⁴¹ This statutory objective informs the Commission's exercise of its other statutory authority pursuant to Congress's other directives. Beyond this general mandate, section 251(e)(3) confirms the Commission's authority and responsibility for designating 911 as the universal emergency telephone number for both wireline and wireless telephone service,³⁴² demonstrating Congress's intent to grant the Commission broad authority for "ensuring that 911 service is available throughout the country."³⁴³ In a

Operating in the 1610–1660.5 MHz Band, CC Docket No. 94–102, IB Docket No. 99–67, Report and Order (69 FR 6578 (Feb. 11, 2004)) and Second Further Notice of Proposed Rulemaking (69 FR 6595 (Feb. 11, 2004)), 18 FCC Rcd 25340, 25345, para. 13 (2003) ("We find that Congress has given the Commission broad authority to deal with public safety concerns in wire and radio communications."); *Revision of the Commission's rules to ensure compatibility with enhanced 911 emergency calling systems*, CC Docket No. 94–102, Notice of Proposed Rule Making, 9 FCC Rcd 6170, 6171, para. 7 (1994), 59 FR 54878 (Nov. 2, 1994) ("It is difficult to identify a nationwide wire or radio communication service more immediately associated with promoting safety of life and property than 911."); H.R. Rep. No. 110–442, at 13 (In the Net 911 Act's legislative history, Congress recognized that "[s]hould changes in the marketplace or in technology merit, the Committee expects that the Commission will reexamine its regulations as necessary, consistent with the Commission's general authority under section 1 of the Communications Act of 1934 to promote the 'safety of life and property' through the use of wire and radio communications."); *Nuvio Corp.*, 473 F.3d at 312 (Kavanaugh, J., concurring) (stating that Congress has granted the Commission "broad public safety and 911 authority").

³³⁹ See, e.g., *911 Fee Diversion; New and Emerging Technologies 911 Improvement Act of 2008*, PS Docket Nos. 20–291 and 09–14, Report and Order, 36 FCC Rcd 10804, 10810–11, para. 16 & n.41 (2021), 86 FR 45892 (Aug. 17, 2021) (911 Fee Diversion Order).

³⁴⁰ 47 U.S.C. 151.

³⁴¹ The Act also provided the Commission, inter alia, authority to make rules and regulations, issue orders, and prescribe restrictions and conditions. See, e.g., 47 U.S.C. 154(i), 303(r).

³⁴² 47 U.S.C. 251(e)(3).

³⁴³ *Nuvio Corp.*, 473 F.3d at 311 (Kavanaugh, J., concurring). We reject Pennsylvania Telephone Association's contention that 47 U.S.C. 615 narrowly restricts the Commission's regulatory authority over the 911 system expressed in section 251(e)(3) and the other authorities cited herein and in the Order. See Pennsylvania Telephone Association July 2, 2024 *Ex Parte* at 2–5; 47 U.S.C. 615 ("Nothing in this section shall be construed to authorize or require the Commission to impose obligations or costs on any person."). Section 615

³³⁶ King County Order on Reconsideration, 17 FCC Rcd at 14789, 14792–93, paras. 1, 8–10. The interconnection facility at issue in the King County Order on Reconsideration was the selective router, which is the equipment in legacy 911 systems that analyzes and distributes E911 caller information. *Id.* at 14790, para. 4. In NG911 networks, this function typically will be performed by NG911 service providers connected to ESInets.

³³⁷ Verizon July 10, 2024 *Ex Parte* at 1, 5 (asking that the Commission monitor the NG911 marketplace to ensure that the new regulatory framework is not used to unreasonably shift costs and facility responsibilities to originating service providers).

³³⁸ See, e.g., *Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems; Amendment of Parts 2 and 25 to Implement the Global Mobile Personal Communications by Satellite (GMPCS) Memorandum of Understanding and Arrangements; Petition of the National Telecommunications and Information Administration to Amend Part 25 of the Commission's Rules to Establish Emissions Limits for Mobile and Portable Earth Stations*

subsequent statute, Congress found that “for the sake of our Nation’s homeland security and public safety, a universal emergency telephone number (911) that is enhanced with the most modern and state-of-the-art telecommunications capabilities possible should be available to all citizens in all regions of the Nation.”³⁴⁴ The D.C. Circuit has consistently affirmed the Commission’s duty to consider public safety under the Act and to impose obligations to protect public safety in the public interest.³⁴⁵

In addition to these authorities, the CVAA directly authorizes the Commission to promulgate the NG911 rules and reflects statutory criteria that circumscribe that authority. Congress enacted the CVAA to ensure that people with disabilities have “equal access to emergency services . . . as a part of the migration to a national [IP]-enabled emergency network[.]”³⁴⁶ To further that goal, Congress required the FCC to establish an Emergency Access Advisory Committee (EAAC) to survey people with disabilities and make recommendations to the Commission regarding “the most effective and efficient technologies and methods” by

is not the basis of the Commission’s affirmative authority for the rules in this document and the Order, which renders PTA’s argument moot. In addition, the limiting language in section 615 only applies when the Commission is acting under that specific section; it does not purport to limit the Commission’s powers under its other authorities. Congress enacted section 615 and section 251(e)(3) together in the 911 Act, the purpose of which was to “facilitate the prompt deployment” of a nationwide 911 network. 47 U.S.C. 615 note. While section 615 includes limiting language that the Commission may not “impose obligations or costs” while carrying out its directive in that section to “encourage each State to develop and implement coordinated statewide [911] deployment plans,” Congress did not include such language in section 251(e)(3), which relates to the Commission’s broader responsibility to ensure the existence of a seamless and ubiquitous nationwide 911 network. Congress would not intentionally have used section 615 to create such a consequential gap in the FCC’s otherwise sweeping authority over telecommunications without clearer statutory language which is more capacious in scope. See, e.g., *Whitman v. Am. Trucking Ass’n*, 531 U.S. 457, 468 (2001) (“Congress . . . does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes.”).

³⁴⁴ ENHANCE 911 Act of 2004, Public Law No. 108–494, sec. 102, 118 Stat. 3986, 3986 (2004) (codified at 47 U.S.C. 942 note); see *Nuvio Corp.*, 473 F.3d at 311 (Kavanaugh, J., concurring).

³⁴⁵ See, e.g., *Nuvio Corp.*, 473 F.3d at 307–08 (upholding new E911 requirements on the basis of (among other things) the Commission’s statutory duty to “promot[e] safety of life and property through the use of wire and radio communications” (quoting 47 U.S.C. 151; emphasis omitted)); see also *U.S. Cellular Corp.*, 254 F.3d at 85 (upholding the Commission’s E911 default cost allocation rule based, in part, on the fact that “the Commission . . . imposed upon wireless carriers an obligation to implement a service in the public interest”).

³⁴⁶ 47 U.S.C. 615(c)(a).

which to achieve the CVAA’s purpose.³⁴⁷ Importantly, however, Congress also provided the Commission “the authority to promulgate regulations to implement the recommendations proposed by the [EAAC],” as well as the authority to promulgate “any other regulations, technical standards, protocols, and procedures as are necessary to achieve reliable, interoperable communication that ensures access by individuals with disabilities to an [IP]-enabled emergency network, where achievable and technically feasible.”³⁴⁸

The rules we adopt comport with the CVAA’s mandate because they advance the nationwide transition to NG911—the IP-enabled emergency network addressed in the CVAA—and promote equal and universal access to that network. Expediting the implementation of NG911 will significantly promote IP-based 911 access for people with disabilities, including through the use of internet-based TRS, which is used primarily by persons who are deaf, hard of hearing, deafblind, or have a speech disorder, as well as through the use of wireline, CMRS, covered text, and interconnected VoIP services with multimedia capabilities that cannot be supported on legacy TDM-based networks.³⁴⁹ Indeed, one of EAAC’s recommendations to the Commission was to ensure an “[a]ccessible NG9–1–1 Network” that could “support features, functions and capabilities . . . to enable individuals with disabilities to make multimedia NG9–1–1 emergency calls.”³⁵⁰ Communications Equality Advocates supports the Commission’s proposed regulations, noting the importance of NG911 implementation for enabling people with disabilities to access 911, and agreeing that “ubiquitous deployment of NG911 will yield many benefits, including . . . support for transmission of texts,

³⁴⁷ 47 U.S.C. 615(c).

³⁴⁸ 47 U.S.C. 615(c)(g). This broad mandate rebuts the Pennsylvania Telephone Association’s narrow reading of the CVAA as authorizing the Commission only to “‘establish an advisory committee’ to address closed captioning.” Pennsylvania Telephone Association July 2, 2024 *Ex Parte* at 5. We note that the discussion in this document and the Order and the record as a whole amply demonstrate that the regulations are “achievable and technically feasible.” 47 U.S.C. 615(c)(g); see also CEA NG911 Notice Comments at 8 (supporting the NPRM and observing that the objectives of the CVAA “are now both achievable and technically feasible and thus should be mandated without further delay”).

³⁴⁹ See Emergency Access Advisory Committee (EAAC) Report and Recommendations (Dec. 6, 2011), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-312161A1.doc (EAAC Report) at 21–25 (describing NG911 functions that can be available to persons with disabilities).

³⁵⁰ EAAC Report at 19 (Recommendation P1.1).

photos, videos, and data, all of which are essential for CEA’s constituents.”³⁵¹

As the Commission previously observed when it used its authority under the CVAA shortly after its enactment to require CMRS and interconnected text messaging services to implement text-to-911, the Commission’s regulatory authority under the CVAA is not limited to services that are used exclusively by people with disabilities.³⁵² Nor does the CVAA “requir[e] the FCC to ensure that any rules we adopt confer zero benefits on consumers outside the disability community[.]”³⁵³ Rather, the rules adhere to and advance the CVAA’s mandate precisely because they promote access to NG911 equally between people with and without disabilities on a platform-neutral basis. Moreover, in an emergency situation, many people with disabilities will use the same wireline, CMRS, covered text, and interconnected VoIP services as those without disabilities,³⁵⁴ or they may rely on a caretaker or other person using such services.³⁵⁵ The Commission’s NG911 access rules therefore must broadly cover different types of service providers in order to ensure that persons with disabilities will have full and equal access to emergency services when they are needed.

Other 911-related statutes confirm the Commission’s authority and responsibility to establish and maintain

³⁵¹ CEA NG911 Notice Comments at 5 (footnote omitted); see *id.* at 1–2, 5, 12.

³⁵² *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications; Framework for Next Generation 911 Deployment*, PS Docket Nos. 11–153, 10–255, Report and Order, 28 FCC Rcd 7556, 7598, para. 119 (2013), 78 FR 32169 (May 29, 2013) (“[T]he FCC has authority under the CVAA to require action that is not limited to the disability community.”) (Bounce-Back Order); see also T911 Second Report and Order, 29 FCC Rcd at 9878, para. 71 (affirming that “the CVAA vests the Commission with direct authority to impose 911 bounce-back requirements on both CMRS providers and other providers of interconnected text messaging applications, including [over-the-top] providers”).

³⁵³ T911 Second Report and Order, 29 FCC Rcd at 9878, para. 71.

³⁵⁴ EAAC Report at 19 (Recommendation P1.2); see *id.* at 14 (finding that 14.7% of persons with disabilities have a “mobility disability that does not affect [their] ability to use communications devices”). EAAC found that the respondents to its survey “overwhelmingly want to be able to call PSAPs using the same technologies they use daily and know how to use reliably (just as all other citizens can).” *Id.* at 19 (“Users need to use familiar technologies and methods, such as text/audio/video communication, when calling in an emergency and therefore both want and need to be able to access NG9–1–1 from the same devices they will use every day.”).

³⁵⁵ See also Bounce-Back Order, 28 FCC Rcd at 7598, para. 120 (“In emergency situations, persons with disabilities may need to access emergency services quickly and this may require them to use mobile devices owned by others.”).

a comprehensive and effective 911 system.³⁵⁶ For example, the NET 911 Act articulated the congressional goal “[t]o promote and enhance public safety by facilitating the rapid deployment of IP-enabled 911 and E-911 services, encourage the Nation’s transition to a national IP-enabled emergency network, and improve 911 and E-911 access to those with disabilities.”³⁵⁷ The NET 911 Act also acknowledged that the Commission may modify its 911 regulations from time to time, including to address changes in the market or technology.³⁵⁸ Similarly, RAY BAUM’S Act further acknowledged the Commission’s authority to adopt rules to ensure that dispatchable location information is conveyed with 911 calls “regardless of the technological platform used.”³⁵⁹

Together, the foregoing statutes give the Commission broad authority to ensure that the 911 system is available and accessible and functions effectively to process and deliver 911 calls and texts from all people in need of aid using any type of service, authorize the Commission to adopt the rules herein and in the Order, and represent the repeated endorsement by Congress of the Commission’s ability to act in this context.³⁶⁰ The Commission has previously concluded that “[i]n light of these express statutory responsibilities, regulation of additional capabilities related to reliable 911 service, both today and in an NG911 environment, would be well within Commission’s . . . statutory authority.”³⁶¹ The Commission also has stated that “[t]he Commission already has sufficient authority to regulate the 911 and NG911 activity of, *inter alia*, wireline and wireless carriers, interconnected VoIP providers, and other IP-based service providers” and that its jurisdiction to

regulate 911 extends to the regulation of NG911 across different technologies.³⁶²

The Commission sought comment on this legal framework in the NG911 Notice, and few commenters disagreed with its analysis or its findings that “Congress has given the Commission broad authority to ensure that the 911 system, including 911, E911, and NG911 calls and texts from all providers, is available and functions effectively,” and that “its jurisdiction to regulate 911 extends to the regulation of NG911 across different technologies.”³⁶³ The NG911 rules are well within the scope of this authority, and we reject arguments to the contrary raised by commenters that advocate for a different conclusion. In addition, our action here to adopt NG911 rules is consistent with Congress’s public safety and 911 policy objectives.³⁶⁴

2. Our Rules Are Not Contrary to Sections 251 and 252

We reject the contention of some RLEC commenters that sections 251 and 252 of the Act³⁶⁵ govern OSPs’ transmission of 911 traffic to ESInets or that sections 251 and 252 preclude our adoption of these NG911 rules.³⁶⁶ In particular, we reject the arguments that those statutory provisions foreclose our default requirement that RLECs must transmit traffic to 911 Authorities’ designated NG911 Delivery Points regardless of whether such delivery

points are located outside of the RLECs’ traditional local service boundaries.

These commenters misunderstand the statutory foundation for our actions here, and its relationship to sections 251 and 252 of the Act. In sections 251(a) through (d) and 252 of the Act, Congress adopted a range of obligations for telecommunications carriers focused on the objective of opening the marketplace for telecommunications services to increased competition.³⁶⁷ But we are not implementing those provisions of sections 251 and 252 in this document and the Order. Rather, as discussed above, we are exercising the Commission’s distinct, broad authority over the nation’s 911 system. Thus, sections 251(a) through (d) and 252 do not govern our actions as a legal matter.³⁶⁸ Further, we are not exercising our statutory authority in the advancement of local competition, but to preserve and enhance a vital part of our nation’s emergency response and disaster preparedness system, consistent with our statutory 911 authorities, and also our more general duties under the Act.³⁶⁹ As important as local

³⁶⁷ See, e.g., *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96–98 and 95–185, First Report and Order, 11 FCC Rcd 15499, 15507, para. 6 (1996), 61 FR 45476 (Aug. 29, 1996).

³⁶⁸ We agree with Pennsylvania Telephone Association that the interconnection provisions in sections 251 and 252 of the Act retain their full force and effect, and nothing in the NG911 rules prevents LECs from utilizing them in circumstances where they apply. See Pennsylvania Telephone Association July 2, 2024 *Ex Parte* at 7. However, Pennsylvania Telephone Association argues that by adding the Commission’s 911 authority to section 251(e) of the Act, Congress intended 911 regulation to be subject to the interconnection requirements elsewhere in sections 251 and 252. See Pennsylvania Telephone Association July 2, 2024 *Ex Parte* at 6–7. Section 251(e) concerns numbering and number administration in general, and section 251(e)(3) deals with 911 in particular. Some of section 251(e)’s numbering administration requirements, such as those providing for number portability, share the purpose of opening the marketplace for telecommunications service competition, and therefore are consistent with and may be interpreted alongside the other subsections in section 251 which serve the same purpose. The establishment of 911 as an emergency number in section 251(e)(3), however, relates specifically to numbering administration in section 251(e), and not to the remainder of section 251 that addresses opening the telecommunications marketplace. Reinforcing our conclusion that the interpretation of section 251(e)(3) is not intended to be constrained by the market-opening provisions of section 251 is the fact that Congress granted the Commission other 911-related authority—which we also rely on here—without incorporating it in section 251 of the Act at all. See also *United States v. Seun Banjo Ojedokun*, 16 F.4th 1091, 1103–04 (4th Cir. 2021) (Congress amending one subsection of a statute but not another does not prove intent by inaction), citing *United States v. Price*, 361 U.S. 304, 332 (1960).

³⁶⁹ 47 U.S.C. 151 (The Commission was established, among other things, “so as to make

³⁵⁶ 911 Fee Diversion Order, 36 FCC Rcd at 10810–11, para. 16 (stating that Federal 911-related statutes and the Act’s provisions “establish an overarching federal interest in ensuring the effectiveness of the 911 system”).

³⁵⁷ NET 911 Act, Preamble.

³⁵⁸ See 47 U.S.C. 615a–1(a), (c)(3); see also 47 U.S.C. 615b(10) (defining “enhanced 9–1–1 service” to include services designated by the Commission in future proceedings, as well as services over “equivalent or successor networks and technologies”).

³⁵⁹ RAY BAUM’S Act, Public Law 115–141, div. P, sec. 506(a), (c)(1), 132 Stat. 1080, 1095 (2018) (codified at 47 U.S.C. 615 note).

³⁶⁰ 911 Fee Diversion Order, 36 FCC Rcd at 10810–11, para. 16.

³⁶¹ *Improving 911 Reliability; Reliability and Continuity of Communications Networks, Including Broadband Technologies*, PS Docket Nos. 13–75 and 11–60, Report and Order, 28 FCC Rcd 17476, 17529, para. 150 (2013), 79 FR 3123 (Jan. 17, 2014) (*Improving 911 Reliability Order*).

³⁶² 2013 NG911 Framework Report, sec. 4.1.2.2 at 28–29; *911 Governance and Accountability; Improving 911 Reliability*, PS Docket Nos. 14–193 and 13–75, Policy Statement and Notice of Proposed Rulemaking, 29 FCC Rcd 14208, 14223, para. 34 (2014), 80 FR 3191 (Jan. 22, 2015) (“[T]he Commission has the public safety imperative to oversee each of the increasingly complex component pieces of the nation’s 911 infrastructure.”).

³⁶³ NG911 Notice, 38 FCC Rcd at 6233, para. 61. See, e.g., NENA NG911 Notice Comments at 15 (“NENA agrees that Congress has given the Commission broad authority to ensure that the 9–1–1 system, including 9–1–1, E9–1–1, and NG9–1–1 calls and texts from all providers, is available and functions effectively, and that the FCC’s jurisdiction to regulate 9–1–1 extends to the regulation of NG9–1–1 across different technologies.”); CEA NG911 Notice Comments at 4–5; WTA NG911 Notice Comments at 7.

³⁶⁴ See, e.g., 47 U.S.C. 615 note, 942 note; NG911 Act, sec. 6509; 911 Act, Preamble; ENHANCE 911 Act of 2004, Preamble; NET 911 Act, Preamble.

³⁶⁵ 47 U.S.C. 251 and 252.

³⁶⁶ See, e.g., RLEC Coalition Alternative Proposal at 3; Kansas RLECs NG911 Notice Reply at 1–2 (rec. Sept. 8, 2023) (Kansas RLECs NG911 Notice Reply). *Contra* NG911 Notice, 38 FCC Rcd at 6230–31, paras. 55–56; Colorado PUC NG911 Notice Comments at 10–11; BRETSA NG911 Notice Reply at 11; Verizon NG911 Notice Reply at 5; Comtech NG911 Notice Comments at 10; Texas 9–1–1 Entities NG911 Notice Comments at 3–4; iCERT Nov. 2, 2023 *Ex Parte*, Attach. at 9; Pennsylvania Telephone Association July 2, 2024 *Ex Parte* at 6–7.

competition is, “whenever public safety is involved, lives are at stake.”³⁷⁰ Thus, we also are not persuaded that judgments Congress made when calibrating regulatory requirements designed to promote marketplace competition should limit the tools we employ under other statutory provisions that we find necessary to the public safety objectives of 911.³⁷¹

We also reject the RLECs’ argument that the Commission may not require them to transport 911 traffic to interconnection points outside their state-certificated service areas or that their “network edges” should coincide with the boundaries of those service areas. The definitions of RLECs’ state-certificated service area boundaries are entirely irrelevant to the Commission’s authority, under the Federal statutory provisions discussed above, to adopt rules concerning the implementation of NG911, including the locations where OSPs must deliver 911 traffic in an IP-based format. Indeed, RLECs have long been responsible for ensuring that their subscribers’ 911 calls reach their intended destinations whether or not those destinations lie within the RLECs’ own service area boundaries.³⁷²

available, so far as possible, to all the people of the United States, . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service . . . for the purpose of promoting safety of life and property through the use of wire and radio communications”). Given their very different purposes, the NG911 rules and the statutes authorizing them are not in pari materia (of the same matter) with sections 251(a) through (d) and 252 of the Act and therefore should not be construed together “as if they were one law.” See *Wachovia Bank v. Schmidt*, 546 U.S. 303, 305 (2006); cf. Pennsylvania Telephone Association July 2, 2024 *Ex Parte* at 6.

³⁷⁰ *Mozilla Corp. v. FCC*, 940 F.3d 1, 62 (D.C. Cir. 2019).

³⁷¹ We decline to address the argument advanced by some parties that ESInets’ NG911-related offerings should be classified as “information services” or as “telecommunications services.” See, e.g., Comtech NG911 Notice Reply at 10; Kansas RLECs NG911 Notice Reply at 2; NTCA NG911 Notice Reply at 11–12; Windstream NG911 Notice Reply at 3; South Carolina RLECs NG911 Notice Reply at 6; Pennsylvania Public Utility Commission (Pennsylvania PUC) NG911 Notice Comments at 6; MSCI NG911 Notice Reply at 1–2; Letter from Brian Ford, Vice President–Federal Regulatory, NTCA, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 21–479, at 3–5 (filed June 17, 2024); Letter from John Kuykendall, JSI Regulatory Advisor on behalf of the South Carolina RLECs, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 21–479, at 4–5, 7 (filed June 20, 2024) (South Carolina RLECs June 20, 2024 *Ex Parte*). We need not discuss those issues because they are not necessary to our decision and would have broader implications beyond this proceeding. Accordingly, we make no finding as to the regulatory classification of ESInets or other NG911-related service providers.

³⁷² See, e.g., 47 CFR 9.4, 9.5; *contra* Pennsylvania Telephone Association July 2, 2024 *Ex Parte* at 3–4, 6–7; RLEC Coalition July 5, 2024 *Ex Parte* at 6. Pennsylvania Telephone Association asserts that § 9.4 “merely sets forth a broad statement of the

Moreover, the RLECs mischaracterize the term “network edge.” In the Commission’s intercarrier compensation precedent, “network edges” need not (and often do not) coincide with service area boundaries. In any event, the default cost rule does not require RLECs to extend their physical networks; it only defines their financial responsibilities for the delivery of 911 traffic in the context of NG911 systems. As we make clear above, our NG911 rules do not require RLECs to extend their network facilities; all OSPs are free to satisfy their responsibility for the transmission of 911 calls to the NG911 Delivery Points specified by the 911 Authorities either using the OSPs’ own facilities or using transmission services purchased from others.

3. Preservation of State Authority

The Commission historically has shared authority over the 911 system with state and local government. State and local governance of 911 is exercised by various types of agencies, including public safety agencies and, in some instances, state public utility commissions (PUCs). The rules are consistent with our statutory charge to support 911 Authorities’ efforts to ensure that their public safety infrastructures are connected to reliable networks that enable callers to reach public safety agencies by dialing 911.³⁷³ We find that these NG911 rules “str[ic]k[e] [an] appropriate balance between federal guidance and state and local autonomy.” As discussed above, we rely on state and local 911 Authorities to determine the locations where OSPs must deliver 911 calls, to select the NG911 technical standards that OSPs must implement in Phase 2, and to decide when and how they wish to transition to NG911. These rules thus ensure that 911 Authorities, including PUCs, will retain broad decision-making authority regarding the configuration, timing, and cost responsibility for

OSP’s obligation to ‘transmit’ 911 calls,” and that “[t]he key word – ‘transmit’—simply means to ‘forward’ or ‘convey.’” Pennsylvania Telephone Association July 2, 2024 *Ex Parte* at 3. However, §§ 9.4 and 9.5, taken together, require that carriers do more with 911 calls than “transmit towards” or “transmit in the direction” of a certain location—these sections require carriers to be responsible for the transmission of 911 calls to that location. Section 9.5 clearly discusses the requirement that 911 calls are to be delivered and not just transmitted forward. Further, the 911 Implementation Order discusses carriers’ responsibility to deliver 911 calls, as well as addresses the specific limitation imposed by section 3(b) of the 911 Act (47 U.S.C. 615). 16 FCC Rcd at 22271–78, 22282, 22284, paras. 15, 16, 18, 21, 22, 24–27, 30, 31, 34, 46, 50.

³⁷³ 47 U.S.C. 151–152, 251(e)(3), 615.

NG911 implementation within their jurisdictions.³⁷⁴

Nor do the rules intrude upon state PUCs’ authority over the “charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service.”³⁷⁵ The rules do not affect state PUCs’ authority to “address the terms and conditions and potential additional cost recovery mechanisms that may be necessary for 911-related end-to-end intrastate calls.” The 911 calls subject to these rules are “intrastate,” in that the OSP customers who initiate the 911 calls will be located in the same state as the NG911 Delivery Points where OSPs deliver the calls and the PSAPs to which 911 traffic is routed. As a result, the rules governing Federal/state cost allocation, jurisdictional separations, and other matters involving rate-of-return regulation will treat the costs of transmitting these calls as jurisdictionally intrastate, and hence, subject to state PUCs’ authority.³⁷⁶ Like all of the Commission’s 911-related rules, our NG911 rules govern the manner in which OSPs provide 911 services and their responsibilities for transmitting their subscribers’ 911 calls. But nothing in the pre-existing 911 rules or in the NG911 rules restricts state PUCs’ authority to determine whether and how regulated carriers may recover the costs of compliance.³⁷⁷ The Act and

³⁷⁴ Pennsylvania Telephone Association discusses the role of state legislatures and PUCs and asserts that “[t]he proposed order improperly preempts state legislatures and commissions from exercising their authority over intrastate 911 calls and the 911 authority as conferred by state law and the provisions of §§ 251 and 252.” Pennsylvania Telephone Association July 2, 2024 *Ex Parte* at 2–5, 7–8. The RLEC Coalition also discusses state PUC authority and requests that “should the Commission pursue the approach taken by the *In-State Default Rule* . . . , it should at the very least preserve state commissions’ authority to address the facts and circumstances specific to their jurisdictions.” RLEC Coalition July 5, 2024 *Ex Parte* at 2–7. These concerns are unfounded. We acknowledge that 911 Authorities, when considering and applying our default NG911 rules, may be subject to, and limited by, other non-Federal laws and entities, such as PUCs. Moreover, the Commission is not preempting the authority of either state legislatures or PUCs, and nothing in this document or the Order prohibits PUCs from addressing issues that fall under their jurisdiction. In addition, we decline to adopt the RLEC Coalition’s proposed amendments to the NG911 rules. Letter from Brian Ford, Vice President–Federal Regulatory, NTCA (filed on behalf of the RLEC Coalition), to Marlene H. Dortch, Secretary, FCC, PS Docket No. 21–479, at Attach. B (filed July 8, 2024).

³⁷⁵ 47 U.S.C. 152(b).

³⁷⁶ See, e.g., 47 CFR parts 32, 36, 61, 65, 69.

³⁷⁷ This document and the Order do not preempt state PUCs’ authority to review interconnection disputes in general under section 252 of the Act. See Pennsylvania Telephone Association July 2, 2024 *Ex Parte* at 7. State PUCs continue to have any

Continued

our regulations require all local carriers that qualify for high-cost universal service support (*i.e.*, Eligible Telecommunications Carriers (ETCs)) to provide their subscribers with access to 911 as part of their basic local telecommunications service offerings,³⁷⁸ but these requirements do not interfere with state PUCs' authority over the rates for these local services.

We also reject the argument that the Commission's rules improperly intrude upon state authority by regulating "the network arrangements associated with . . . purely intrastate 911 calls carried over dedicated 911 trunking." This argument is unfounded because our rules do not constrain OSPs' ability to configure their own 911 network arrangements, including dedicated trunking. To the contrary, our rules specifically preserve OSPs' right to make their own decisions about the routing and network facilities they use to deliver 911 traffic to NG911 Delivery Points. Thus, an OSP could comply with any existing or new state requirements that govern the configuration or deployment of its network facilities without violating any Commission rule. There can be no preemption where there is no conflict or inconsistency between Federal and state requirements.

Finally, some RLECs challenge the proposed NG911 rules on the grounds that the rules will impose substantial costs that effectively would compel RLECs or their regulators to raise subscribers' rates for intrastate services. There is no basis for this contention. As an initial matter, the RLECs ignore (or decline to dispute) the fact that they have full recourse to address such concerns at the state level, because state PUCs retain full authority to increase, decrease, or allow changes to regulated carriers' rates. More importantly, the RLECs have failed to establish that they will incur higher costs due to these rule changes or that such costs would lead to higher rates. The record in this proceeding gives us no basis for

existing authority to review 911-related interconnection disputes under applicable state law. As noted above in this document and in the Order, these default rules do not preclude alternative arrangements between 911 Authorities and OSPs that may be subject to state PUC authority.

³⁷⁸ See, *e.g.*, 47 U.S.C. 214(e)(1) ("A common carrier designated as an eligible telecommunications carrier . . . shall, throughout the service area for which the designation is received[,] (A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title."); 47 CFR 54.101(a) ("Eligible voice telephony services must provide . . . access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911.").

predicting with any confidence whether, and to what extent, NG911 implementation would "affect monthly or annual charges to subscribers" and whether "there [is] a range or specific dollar amount that would be newly reflected on customers' monthly bills" ³⁷⁹ across the board. This is due in part to the very different ways RLECs are regulated (or deregulated) in various jurisdictions across the country: different state PUCs apply different statutes, regulations, and procedures that affect rate levels, and even in any individual state, various categories of carriers may be subject to different pricing requirements or policies. Moreover, our NG911 rules will affect different carriers' rates differently depending on the factual circumstances. For some carriers, any increased costs to implement one aspect of the NG911 rules may be offset by cost savings due to some other impact of these rules. Other carriers' costs may not change at all, or change only minimally, because they have already implemented the network upgrades or other changes needed to comply with 911 Authorities' valid requests and are already transporting 911 traffic to locations outside their service areas. Finally, we believe it is unlikely that any entity's rates would increase substantially as a result of the rules because, as discussed in the cost/benefit analysis below, we

³⁷⁹ NG911 Notice, 38 FCC Rcd at 6223, para. 38. Commenters that speculated on how the NG911 rules would affect RLECs' rates presumed that we would adopt rules as proposed in the NG911 Notice, but the in-state NG911 Delivery Point rule substantially reduces any cost increases that RLECs might incur. For example, Kansas RLECs state that customer billing increases for its members, assuming \$5,000 in monthly transport costs, will range between 53 cents per month for its largest RLEC to \$38.76 per month for its smallest member RLEC. Kansas RLECs NG911 Notice Comments at 4 (rec. Aug. 9, 2023) (Kansas RLECs NG911 Notice Comments). However, these estimates were based on Kansas' proposal to "rehom[e] Kansas 911 traffic to two of four disparate points outside of the state[s] plan," including NG911 Delivery Points in California and Texas. *Id.* at 2–3. In addition, we find that other assumptions underlying these commenters' estimates do not reflect foreseeable conditions in the real world, and we thus do not find them to be credible. See, *e.g.*, South Carolina RLECs NG911 Notice Comments at 10 & n.17 (arguing that landline carriers cannot recover 911 costs from customers); Kansas RLECs NG911 Notice Comments at 3–5; Letter from Colleen R. Jamison, Jamison Law LLC, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 21–479, at 2 (filed July 3, 2024) (arguing that RLECs cannot recover costs and that the Kansas in-state USF is currently capped by legislation at \$30 million for all entities receiving support). While carriers may be prohibited from imposing separate per-call or per-minute charges for 911 calls, the cost of providing 911 service is part of the total cost they incur to provide local exchange service to their subscribers. In addition, the rules provide 911 Authorities and OSPs flexibility to reach alternative arrangements.

expect that any cost increase is likely to be minimal.

In any event, the Commission is under no obligation to protect carriers from each and every policy change that might have a collateral impact on subscribers' rates.³⁸⁰ As discussed below, any adverse cost impacts of our rules are likely to be far outweighed by their substantial benefits to the public. Depending on the circumstances, the same conclusion that we reach for the country as a whole may also apply to specific geographic areas served by any given RLEC. Telecommunications consumers in rural areas ought to receive the same benefits of a modernized 911 system as consumers in other parts of the country.

4. Other Challenges to the Commission's Authority Are Unsound

Sections 201 and 202. We reject the argument that our NG911 rules would burden RLECs with unjust and unreasonable transport costs in violation of sections 201(b) and 202(a) of the Act.³⁸¹ The provisions in those sections regarding unjust and unreasonable rates and terms³⁸² pertain only to common carriers' interstate services, not intrastate 911 transmission services that OSPs will provide to their subscribers under these rules. There is thus no need for us to conduct a

³⁸⁰ See *U.S. Cellular Corp. v. FCC*, 254 F.3d 78, 84–85 (D.C. Cir. 2001) (holding that, where "it is the Commission's Order that requires wireless carriers to provide E911 services in the public interest," the Commission "has no obligation to compensate carriers for their costs" and "it is ludicrous to suggest that government cannot pass these costs along to regulated entities.").

³⁸¹ See, *e.g.*, RTCC NG911 Notice Comments at 15 ("No showing has been made that the *NPRM*'s default cost recovery framework that would assign NG911-related transport costs to the RLECs, results in 'just and reasonable' charges as required by 47 U.S.C. 201(b)."); NTCA NG911 Notice Reply Comments at 14; South Carolina RLECs NG911 Notice Comments at 8.

³⁸² 47 U.S.C. 201(b) ("All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable."); 47 U.S.C. 202(a) ("It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service."); see also 47 U.S.C. 152(b) (restricting Commission's authority over rates and terms for carriers' intrastate communications services). The Supreme Court has made clear that, while the "unjust and unreasonable" restrictions in the first proviso of section 201(b) apply only to the rates, terms and conditions of carriers' interstate services, not their intrastate services, the final proviso in section 201(b) authorizes the Commission to "prescribe such rules and regulations as may be necessary in the public interest" to carry out *any* of the provisions of the Act, including those pertaining to intrastate services (such as the provisions that pertain to the intrastate 911 traffic at issue here). See *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 377–81 (1999); 47 U.S.C. 201(b).

supplemental “Section 201–202 analysis” before enacting the rules.³⁸³

Cost responsibility. We disagree with the argument made by the RLEC Coalition and the Pennsylvania Telephone Association that we have no authority to cause RLECs to bear costs associated with providing NG911 service. These commenters overlook the CVAA’s authorization for us to enact “any . . . regulations” needed to “achieve reliable, interoperable communication that ensures access by individuals with disabilities to an internet protocol-enabled emergency network, where achievable and technically feasible.”³⁸⁴ The regulations to advance the nationwide transition to NG911 will significantly enable vital 911 access for people with disabilities, including through internet-based TRS and other service types. Thus, the Commission has clear statutory authority to adopt these NG911 regulations. Moreover, rural wireless carriers presented essentially the same arguments to challenge the Commission’s E911 rules, and those arguments were squarely rejected. The D.C. Circuit held that the Commission was not required to ensure that states maintained a funding mechanism to support rural wireless carriers’ provision of E911 and observed that it was “ludicrous to suggest that government cannot pass these costs along to regulated entities.”³⁸⁵

Takings. We disagree with the assertion of some commenters that the NG911 rules constitute a taking of property in violation of the Fifth Amendment.³⁸⁶ First, our rules do not represent a physical or per se taking because they do not appropriate property owned by OSPs or deny them all economically beneficial use of their property.³⁸⁷ They also do not represent

a regulatory taking. The principal factors that courts review in determining whether a governmental regulation effects a taking are: (1) the character of the governmental action; (2) the economic impact of the regulation on the claimant; and (3) the extent to which the regulation has interfered with distinct investment-backed expectations.³⁸⁸ Regarding the first factor, as noted above, the rules adopted in the Order do not appropriate any property for government use, but instead promote a significant common good by promoting life and safety and enhancing the capabilities and reliability of the nation’s 911 system.³⁸⁹ With respect to the second factor, a “mere diminution in the value of property, however serious, is insufficient to demonstrate a taking.”³⁹⁰ Nor will our rules interfere with reasonable investment-backed expectations under the third factor. OSPs’ networks have long been subject to Commission 911-related regulations, including analogous requirements to transmit 911 calls in specified formats to locations designated by 911 Authorities.³⁹¹ The Supreme Court has recognized that, for property that has “long been subject to federal regulation,” there is no “reasonable basis to expect” that the regulatory regime will not change,³⁹² and the D.C.

if he “has been called upon to sacrifice all economically beneficial uses in the name of the common good, that is, to leave his property economically idle”) (emphasis omitted).

³⁸⁸ *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 124–25 (1978).

³⁸⁹ *Penn Cent. Transp. Co.*, 438 U.S. at 124 (stating that, as to the first factor, a taking “may more readily be found when the interference with property can be characterized as a physical invasion by government . . . than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good”) (citation omitted).

³⁹⁰ *Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Tr. for S. Cal.*, 508 U.S. 602, 645 (1993); see also *A&D Auto Sales, Inc. v. United States*, 748 F.3d 1142, 1157 (Fed. Cir. 2014) (“In order to establish a regulatory taking, a plaintiff must show that his property suffered a diminution in value or a deprivation of economically beneficial use. . . . [I]f the regulatory action is not shown to have had a negative economic impact on the [plaintiff’s] property, there is no regulatory taking.”) (quoting *Hendler v. United States*, 175 F.3d 1374, 1385 (Fed. Cir. 1999)).

³⁹¹ See, e.g., 47 CFR 9.10(i)(2)(ii)(G), 9.11, 9.14 (E911 provisions requiring transmission of the caller’s location and phone number); *id.* §§ 9.4, 9.5 (requiring all telecommunications carriers to “transmit all 911 calls to a PSAP, to a designated statewide default answering point, or to an appropriate local emergency authority as set forth in § 9.5”).

³⁹² *Concrete Pipe & Prods.*, 508 U.S. at 645–46 (discussing degree of interference with “reasonable investment-backed expectations” and noting that “those who do business in the regulated field cannot object if the legislative scheme is buttressed by subsequent amendments to achieve the

Circuit has held that the Commission may properly require OSPs to incur the costs of providing 911 service without ensuring them compensation.³⁹³ Particularly in light of “the heavy burden placed upon one alleging a regulatory taking,” we find no basis to find a regulatory taking on the record here.³⁹⁴

Liability. We disagree with some commenters’ claims that the NG911 rules will unreasonably expose RLECs to significantly greater liability risks, and hence unjustified costs. RLEC commenters express concern that they will face increased liability costs for 911 call failures occurring within the networks of the third-party transport services they will retain to deliver 911 calls beyond their service areas, “particularly to distant, out-of-state interconnection points.”³⁹⁵ As discussed above, the home-state qualification addresses the concern that RLECs could face liability under out-of-state tort law. More fundamentally, RLECs have failed to provide any record support for their purported tort liability concerns. State statutes generally grant liability protections to parties involved in transmitting and responding to 911 calls, including not only OSPs but also their third-party vendors, and Federal law guarantees parity in liability protection within the state for all OSPs.³⁹⁶ To illustrate, the South Carolina RLECs characterize their state’s statute as providing “broad immunity from liability,” and indicate the statute’s protections extend to the “officers, employees, assigns, [and] agents” of an OSP.³⁹⁷ Against this backdrop, no commenter has identified any instance of a state court judgment in which an OSP has been held liable under tort law for failing to deliver 911 calls.

legislative end” (quoting *FHA v. Darlington, Inc.*, 358 U.S. 84, 91 (1958)).

³⁹³ *U.S. Cellular Corp.*, 254 F.3d at 85.

³⁹⁴ *Keystone Bituminous Coal Ass’n v. DeBenedictis*, 480 U.S. 470, 493 (1987).

³⁹⁵ South Carolina RLECs NG911 Notice Comments at 14–16; see also, e.g., NTCA NG911 Notice Comments at 4–8 (IP 911 call delivery poses risks for OSP call delivery by too widely expanding the use of third-party networks); Windstream NG911 Notice Reply at 2–3; Home Telephone NG911 Notice Comments at 16–18; RLEC Coalition Mar. 6, 2024 *Ex Parte* at 7; South Carolina RLECs June 20, 2024 *Ex Parte* at 5–6.

³⁹⁶ 47 U.S.C. 615a(a).

³⁹⁷ South Carolina RLECs NG911 Notice comments at 14–16 (discussing S.C. Code Ann. sec. 23–47–70(A)). We do not offer our own legal interpretation of the South Carolina statute, nor will we state that liability for a third party’s actions or inactions can never lead to liability, as some commenters request. We note, however, that no commenter explains why an OSP’s transport services provider, as the OSP’s agent, would not be covered by such liability protection provisions.

³⁸³ NTCA NG911 Notice Reply at 14 (quoting RTCC NG911 Notice Comments at 14–15); RLEC Coalition July 5, 2024 *Ex Parte* at 2 (acknowledging that “the calls at issue are indeed intrastate in nature”) (emphasis omitted). If an OSP believes it is being subjected to unjust or unreasonable rates or terms for its intrastate communications services, the PUC for its state or another 911 Authority has the legal authority to address the issue.

³⁸⁴ 47 U.S.C. 615c(g).

³⁸⁵ *U.S. Cellular Corp.*, 254 F.3d at 80, 85.

³⁸⁶ Home Telephone NG911 Notice Comments at 21–22 (claiming the NG911 rules would “arbitrarily ‘take’ from RLECs” and “force RLECs to purchase services that it [sic] is then required to provide for free to a governmental entity”). The Takings Clause states: “nor shall private property be taken for public use, without just compensation.” U.S. Const. amend. V.

³⁸⁷ See, e.g., *Horne v. Dep’t. of Agric.*, 576 U.S. 350, 352, 359–61 (2015) (stating that per se takings implicated when the government appropriates real or personal property for its own use); *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1019 (1992) (stating that a real property owner “has suffered a taking”

Even assuming there is some increased risk of liability, RLECs may mitigate that risk by more closely monitoring their vendors' network performance or by increasing their insurance coverage, as one commenter suggests. Commenters do not provide estimates of the costs of these mitigation measures, however, much less demonstrate that these costs would be significant. And as discussed above, if an RLEC faces increased exposure to liability for dropped 911 calls, it may seek authorization from its state PUC to recover these costs in the same manner as other incremental cost increases resulting from its implementation of NG911.

Most importantly, the implementation of NG911 is far more likely to reduce the risk of dropped 911 calls than to increase it. OSPs that make the necessary changes to fully implement NG911 will be able to leverage improvements to 911 security and reliability, including the ability to reroute 911 calls in response to network congestion or outages. Indeed, OSPs may face greater exposure to liability due to the risk of dropped 911 calls if they fail to implement NG911 in a timely and prudent manner as the NG911 rules require. Finally, certain commenters suggest that we should apply 911 network reliability and PSAP outage notification requirements to additional categories of service providers in an NG911 environment.³⁹⁸ We defer consideration of such issues to a future proceeding.

F. Other Proposals

Several commenters raised additional issues or proposals in response to the NG911 Notice. We discuss each of these issues or proposals in turn below.

Interoperability. Some commenters suggest that we take additional action in this proceeding with respect to NG911 interoperability. APCO proposes that in addition to focusing on the delivery of 911 traffic by OSPs, the Commission should take the "next step toward achieving public safety's vision for NG9-1-1" by initiating a further notice of proposed rulemaking to address "interoperability requirements for 9-1-1 service providers and other elements of the emergency communications chain."³⁹⁹ Texas 9-1-1 Entities propose

that "separate from this NPRM, the Commission should consider a notice of inquiry regarding interoperability between NG911 service providers, with emphasis on 911 call transfers between ESInets and within ESInets." Google and NENA urge us to consider the implementation of new interoperable messaging protocols. Because these proposals are beyond the scope of this proceeding, we decline to address them here. However, we agree with these commenters that facilitating interoperability between 911 service providers and in all portions of the NG911 emergency communications chain are important goals that warrant further scrutiny. We therefore encourage 911 Authorities, NG911 service providers, and OSPs to support conformance and compliance testing, functional testing of network connections between NG911 systems, appropriate business and policy implementation, and continued standards development.

Cybersecurity and Privacy. In its comments to the NG911 Notice, the Electronic Privacy Information Center (EPIC) suggests that the Commission adopt additional cybersecurity and privacy measures in this proceeding.⁴⁰⁰ We believe it is premature to consider additional measures at this time, but we will continue to monitor the implementation of cybersecurity measures in NG911 networks. We also note that the Commission has previously adopted privacy protections for personal information used to support 911, and that these protections will continue to protect the privacy of such information in the NG911 environment.⁴⁰¹ We encourage 911 Authorities, NG911 service providers, and OSPs to take steps that support the security, and specifically the cybersecurity, of these systems during the transition to NG911. In particular, we encourage OSPs and 911 Authorities to implement the cybersecurity recommendations and best practices put forward by TFOPA and CSRIC VII. Both

interoperability between OSPs and NG911 service providers as part of the current proceeding. APCO NG911 Notice Comments at 2-4. However, in its latest ex parte, APCO expresses support for moving forward with the OSP requirements that the Commission proposed in the NG911 Notice. APCO Apr. 18, 2024 *Ex Parte* at 1.

⁴⁰⁰ EPIC NG911 Notice Comments at 3 (stating that the Commission "should require improved cybersecurity practices, assessed as part of a readiness determination," and provide guidelines for the collection and use of NG911 data).

⁴⁰¹ LBR Order at *35, para. 102; *Wireless E911 Location Accuracy Requirements*, PS Docket No. 07-114, Fifth Report and Order and Fifth Further Notice of Proposed Rulemaking, 34 FCC Rcd 11592, 11614-16, paras. 49-52 (2019), corrected by Erratum (PSHSB Jan. 15, 2020).

TFOPA and CSRIC VII recommended adherence to the recognized and widely adopted approach to cyber defense detailed in the National Institute of Standards and Technology (NIST) Cybersecurity Framework (NCF).⁴⁰² CSRIC VII also recommended that 911 Authorities implement specific cybersecurity mitigation techniques, including: continuous cyber monitoring, regular vulnerability assessments, minimum backups, a written cyber response plan, cyber-hygiene training, and other techniques.⁴⁰³ Finally, we encourage 911 Authorities, NG911 service providers, and OSPs to leverage resources made available by other Federal agencies, most notably CISA, to foster and enhance public safety cybersecurity.⁴⁰⁴

Over-the-Top Services. NENA asks the Commission to consider extending some requirements for NG911 to over-the-top messaging services, which "provide robust multimedia capabilities and would enhance NG9-1-1 availability to individuals regardless of their underlying telecommunications/internet provider."⁴⁰⁵ Because the Commission only considered requirements for OSPs in the NG911 Notice, the role of providers of over-the-top services is outside the scope of this proceeding, as NENA acknowledges,⁴⁰⁶ and we therefore decline to consider this request at this time.

Additional Accessibility Proposals. Several parties urge the Commission to expand this proceeding to consider NG911 accessibility issues beyond the scope of the proposals in the NG911 Notice. CEA encourages the Commission to seek further comment on

⁴⁰² TFOPA WG 1 Report at 23-24; CSRIC VII, Report on Security Risks and Best Practices for Mitigation in 9-1-1 in Legacy, Transitional, and NG 9-1-1 Implementations, sec. 6.2 (Sept. 16, 2020), https://www.fcc.gov/sites/default/files/csric7_report_securityrisk-bestpracticesmitigation-legacytransitionalng911.pdf (CSRIC VII Report on 911 Security Risks and Best Practices for Mitigation).

⁴⁰³ CSRIC VII, Report Measuring Risk Magnitude and Remediation Costs in 9-1-1 and Next Generation 9-1-1 (NG911) Networks, sec. 5.2.1 (Mar. 10, 2021), <https://www.fcc.gov/file/20607/download> (CSRIC VII 911 Risk and Remediation Report).

⁴⁰⁴ See, e.g., Cybersecurity & Infrastructure Security Agency, *911 Cybersecurity Resource Hub*, <https://www.cisa.gov/911-cybersecurity-resource-hub> (last visited Apr. 11, 2024).

⁴⁰⁵ NENA NG911 Notice Comments at 6; see also APCO Oct. 31, 2023 *Ex Parte* at 3 ("[W]e discussed the value of engaging with companies that provide over-the-top solutions that enable the receipt, processing, and sharing of 'Next Generation' data such as multimedia communications from 9-1-1 callers to ECCs.")

⁴⁰⁶ NENA NG911 Notice Comments at 6 (acknowledging that the request is "far afield of the Commission's current scope under this proceeding").

³⁹⁸ See, e.g., Windstream NG911 Notice Reply at 2-3 (NG911 traffic aggregators should be subject to the Commission's rules relating to disruption notification requirements, which currently apply to OSPs); Home Telephone NG911 Notice Comments at iii, 13 & n.6; see also NTCA NG911 Notice Reply at 7-8.

³⁹⁹ APCO Apr. 18, 2024 *Ex Parte* at 2. APCO previously urged the Commission to require

requiring that “NG911 systems be capable of handling text, data, and video communications that are accessible to members of the Deaf, Deaf Disabled, DeafBlind, Hard of Hearing, and Late-Deafened communities.” Hamilton Relay requests that the Commission adopt a 2019 proposal that would require IP CTS providers transmitting 911 calls to provide a call-back telephone number while also ensuring that the user receives captions on the callback.⁴⁰⁷ Richard Ray requests that the FCC collaborate with the Federal Emergency Management Agency, the U.S. Department of Transportation’s National 911 Program, and the U.S. Department of Justice to implement Next Generation 911 features that will “ensure effective communication with individuals with disabilities in NG9–1–1 environments.”⁴⁰⁸ Because these proposals are beyond the scope of this proceeding, we decline to address them here. However, consistent with our authority under the CVAA, we will continue to monitor the development of NG911 systems and technologies and are prepared to take steps as necessary to ensure that NG911 is fully accessible to all.

G. Benefits and Costs

We find that the benefits of the rules will overwhelmingly exceed the costs. As discussed below, we have extensive evidence that supports this conclusion,

⁴⁰⁷ Hamilton Relay NG911 Notice Comments at 2–3 n.4; see also *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13–24 and 03–123, Report and Order (84 FR 8457 (Mar. 8, 2019)), Further Notice of Proposed Rulemaking (84 FR 9276 (Mar. 14, 2019)), and Order, 34 FCC Rcd 691, 710, para. 38 (2019) (setting forth the 2019 Commission proposal referenced by Hamilton Relay).

⁴⁰⁸ Filing from Richard Ray, PS Docket No. 21–479, at 3, 7–8 (Sept. 15, 2023) (Richard Ray Sept. 15, 2023 *Ex Parte*). These recommendations include, for example, that the Department of Justice update its Americans with Disabilities Act regulations to require public entities, including 911 services, to communicate with persons with disabilities using direct Synchronous Communication and equally effective Telecommunication Technologies. *Id.* at 3. Richard Ray also notes that in 2011, the Commission established the Emergency Access Advisory Committee (EAAC) as required by the CVAA, which recommended that Media Communication Line Services (MCLS) become a nationally recognized certified standard service in NG911 environments. *Id.* at 7–8 (“MCLS is a translation service for people with disabilities and telecommunicators using video, voice, text, and data during NG9–1–1 calls.”); see also FCC, Emergency Access Advisory Committee (EAAC) Working Group 3 Recommendations on Current 9–1–1 and Next Generation 9–1–1: Media Communication Line Services Used to Ensure Effective Communication with Callers with Disabilities at 4–5, 12 (2013), <https://docs.fcc.gov/public/attachments/DOC-319394A1.pdf>.

and we reject parties’ unsupported arguments to the contrary. We estimate that the rules will generate substantial improvements in the efficiency and reliability of the 911 public safety response system that will likely result in a reduction of mortality risk equivalent to saving over 16,800 lives per year after the end of the fifth year following the effective date of the Order.⁴⁰⁹ As a result, we estimate that the rules will save more than 84,000 lives within a ten-year period after the effective date of the rules, conservatively estimating that most benefits will begin to accrue at the end of the fifth year.⁴¹⁰ In addition, these improvements will likely reduce nonfatal injuries and property damage by even larger amounts that we have not attempted to quantify.

By contrast, applying conservative assumptions, we estimate that OSPs will incur total costs of no more than \$321 million over the same ten-year period to implement the rules. These expenditures would be fully justified even if they resulted in reducing mortality risks equivalent to preventing the loss of only 26 lives. This cost estimate at the nationwide aggregate level is based on an assessment that the

⁴⁰⁹ These benefits are based on an extremely conservative assumption that the benefits resulting from the Order will not begin to accrue until the end of the fifth year after the effective date, even though benefits actually will likely start to accrue sooner. We estimate that, nationwide, both NG911 transition phases will be complete within five years, due in significant part to the provisions of the Order that remove obstacles to completion of the transition, but this estimate is quite conservative because the full transition will likely be completed sooner in many states and regions. Consistently, several 911 Authorities indicate that they have already completed all or parts of the necessary NG911 technology acquisition on their end for Phase 1 readiness or beyond; the six-month and one-year deadlines that we adopt for OSPs to satisfy these entities’ valid requests will enable these entities (as well as the OSPs and PSAPs that serve their citizens) to complete the NG911 transition significantly more quickly than the five-year benchmark on which we base our estimates of the benefits resulting from the Order. Minnesota DPS–ECN NG911 Notice Comments at 2; Livingston Parish NG911 Notice Comments at 1–2; Letter from Susan C. Ornstein, Senior Director, Legal & Regulatory Affairs, Comtech, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 21–479, Attach. at 2 (filed Mar. 25, 2024) (Comtech Mar. 25, 2024 *Ex Parte*); see also Intrado Mar. 26, 2024 *Ex Parte* at 3 (estimating that the NG911 transition could be completed within three to five years).

⁴¹⁰ We estimate the ten-year benefit of reducing the mortality risk to be around \$617 billion (including \$616 billion from faster emergency medical responses and \$840 million from reduction in call failures) using a 7% discount rate, or \$834 billion using a 3% discount rate for 10 years following past orders. See, e.g., *Implementation of the National Suicide Hotline Improvement Act of 2018*, WC Docket No. 18–336, Report and Order, 35 FCC Rcd 7373, 7416–17, para. 75 & n.332 (2020), 85 FR 57767 (Sept. 16, 2020) (estimating the present value of benefits over 10 years using a 7% discount rate).

cost to OSPs of implementing Phase 1 will be approximately \$4.4 million in total one-time non-recurring costs and no more than \$5.5 million in annual recurring costs, and that OSPs will incur non-recurring one-time costs of approximately \$24 million and approximately \$50 million per year to implement Phase 2 requirements, for a total net present value of \$321 million over a ten-year period to implement the rules required for both phases. Taking into account these estimated benefits and costs, it is evident that the benefits far exceed the costs. We discuss each of these findings below.

1. Benefits

Evidence in the record strongly supports our tentative conclusion in the NG911 Notice that the benefits of accelerating the overall NG911 transition will include real-time call routing flexibility, faster call delivery, and improved service reliability.⁴¹¹ For example, data from Indiana confirm that 911 calls have been delivered substantially more quickly following Indiana’s initial deployment of NG911.⁴¹² Further, we find APCO’s observation that NG911 implementation will greatly improve neighboring PSAPs’ ability to transfer calls to one another and improve interoperability to be highly credible.⁴¹³ Likewise, NENA,

⁴¹¹ See, e.g., NG911 Notice, 38 FCC Rcd at 6234–35, para. 65; Comtech NG911 Public Notice Reply at 4 (rec. Feb. 3, 2022) (stating the “incredible benefits” of NG911 systems include “real-time call routing flexibility, faster call delivery, additional data for improved situational awareness, capabilities such as integrated text messages (and other multi-media messages soon), and significantly improved service reliability”); BRETSA NG911 Public Notice Reply at 4–7 (rec. Feb. 3, 2022) (detailing benefits including conferencing-in telephone or video relay and language interpretation services during 911 call setup, interstate 911 call transfer and CAD incident data transfer, geospatial routing, and transfer of CAD data with call transfer); NTCA NG911 Public Notice Comments at 2 (rec. Jan. 19, 2022) (indicating that NG911 will provide increased situational awareness to first responders, which will benefit rural consumers).

⁴¹² National 911 Program, *NG911 for Fire Service Leaders* at 9 (undated), https://www.911.gov/assets/National_911_Program_NG911_Guide_for_Fire_Service_Leaders.pdf (NG911 for Fire Service Leaders) (“The year before Indiana began the transition to NG911, a citizen dialing 911 waited 23 to 27 seconds for the call to be routed to a 911 operator. With NG911, that’s now less than three seconds.”).

⁴¹³ APCO, *APCO International’s Definitive Guide to Next Generation 9–1–1* at 33–34 (2022), https://www.apcointl.org/ext/pages/APCOng911Guide/APCO_NG911_Report_Final.pdf (APCO NG911 Guide) (“NG9–1–1 technology will make marked improvements in the ability and ease of transferring information between ECCs and responders in the field. . . . Not only will ECCs be capable of transferring CAD and 9–1–1 information to other ECCs, but they will also be capable of sending that

Continued

APCO, and Peninsula Fiber Network demonstrate that legacy PSAP call transfers are slow and cumbersome and that the improvements to this process resulting from NG911 will be significant.⁴¹⁴ The use of NG911 features to transfer and share incident information seamlessly and in real time will not only reduce response times, but it also will improve the quality of response by ensuring that the right assets are dispatched as quickly as possible once the need for them is identified. Currently, emergency responses are typically “upgraded” (*i.e.*, public safety resources are added or the level of priority is increased) only after the first unit arrives on the scene. If an incident requires action by multiple PSAPs and/or emergency response agencies, then all the information (including caller and incident specifics) must be coordinated among these PSAPs and emergency responders by telephone, radio, and/or mobile data terminals. The ability to use NG911 features to share that information more quickly and accurately through immediate transfers, rather than through a chain of intermediate communications methods, will substantially improve response quality and outcomes. No commenter argues that the NG911 transition will not result in substantial overall benefits.

These benefits are confirmed by numerous commenting parties. For example, Rally Networks states that “[r]ural communities will receive significant benefits from the transition” because, “[i]n a rural community, it takes longer for emergency responders to arrive on scene and evaluate and request the additional emergency response resources that may be required,” and “NG911 provides an

information to multiple agencies, regardless of jurisdictional boundaries.”).

⁴¹⁴ NENA LBR Public Notice Comments at 4, 11 (rec. July 11, 2022) (NENA LBR Public Notice Comments) (saying “the general anecdotal consensus was that a call transfer typically takes ‘about a minute,’” and NG911 Policy Routing Functions avoid the need for a transfer because they “evaluate[] various conditions and may make a Policy Routing decision that supplements or overrides an LBR query [] [depending on conditions and Policy Routing rules]”) (emphasis omitted); APCO LBR Public Notice Comments at 2–3 (rec. July 11, 2022) (transfers take “a minute or longer,” and “NG9–1–1 needs to mean the ability of ECCs to . . . share incident data in a fully interoperable manner”); Peninsula Fiber Network LBR Public Notice Comments at 1 (rec. July 8, 2022) (“Each transfer takes between 15 to 90 seconds to set up and complete.”); *see also* NG911 for Fire Service Leaders at 7 (“NG911 will improve response times when calls are transferred from other referring agencies, because a caller’s location is automatically matched to the appropriate 911 call center, or public safety answering point (PSAP), serving that area—limiting delays and misdirected calls.”).

opportunity for resources to be more appropriately dispatched before first responders arrive on scene and evaluate the need.” Comtech agrees that the enormous technology benefits of NG911 will “dramatically improve emergency response.”⁴¹⁵ Brian Rosen states that interconnected ESInets enable call transfers beyond local areas, and allow the transfer of “much richer data” than in a legacy environment.

We estimate the public safety benefits based on three types of impacts of the accelerated NG911 implementation that likely will result from the rules: (1) increased network reliability and resiliency, which will reduce the number of dropped 911 calls; (2) more efficient routing and delivery of 911 calls as a result of introducing new policy routing capabilities; and (3) improvements in the delivery of location information with 911 calls. We also note that additional benefits (or avoided costs) will be realized by 911 Authorities, PSAPs, and some OSPs due to retiring legacy 911 network facilities that are costly to operate.

Network Reliability and Resiliency. The record confirms our tentative conclusion in the NG911 Notice that the NG911 transition will improve the reliability of the 911 system, and thus improve public safety. Accelerating the implementation of NG911 will reduce the likelihood of 911 service outages because it will facilitate deployment of new facilities to replace the aging and failure-prone infrastructure used to operate the legacy 911 system.⁴¹⁶ NASNA reports that a recent study of California 911 calls showed that “[i]n 2017[,] the average number of minutes of outage was 17,000 minutes per month, but in 2022 the average increased to over 59,000 outage minutes per month.”⁴¹⁷ NASNA states that legacy 911 call routing and network infrastructure “is beyond end-of-life and has an increasing failure rate.”⁴¹⁸ Intrado confirms that establishing direct OSP connectivity via SIP to ESInets “will materially reduce the number of 911 outages through improved network reliability and availability.”⁴¹⁹ Comtech

⁴¹⁵ Comtech NG911 Notice Comments at 1 (quoting Press Release, FCC, FCC Chairwoman Proposes Plan for Next Gen 911, 2022 WL 565819 (Feb. 22, 2022), <https://docs.fcc.gov/public/attachments/DOC-380566A1.pdf>).

⁴¹⁶ *See, e.g.*, NG911 Notice, 38 FCC Rcd at 6236, para. 67.

⁴¹⁷ NASNA LBR Notice Comments at 7–8 (Feb. 16, 2023) (NASNA LBR Notice Comments); NG911 Notice, 38 FCC Rcd at 6236, para. 67 (noting the California data cited by NASNA).

⁴¹⁸ NASNA LBR Notice Comments at 7; NG911 Notice, 38 FCC Rcd at 6236, para. 67.

⁴¹⁹ Intrado Oct. 24, 2023 *Ex Parte* at 1; *see also* Intrado Mar. 26, 2024 *Ex Parte* at 1 (“NG911

agrees that full implementation of NG911 will eliminate the need for maintaining both legacy and IP-based systems for the delivery of 911 traffic, which involves significant costs and creates “increased vulnerability and risk of 911 outages.”⁴²⁰

The Commission has previously observed that an aging legacy 911 system is prone to increasing failures.⁴²¹ The rules will accelerate the full retirement of the legacy TDM-based 911 system and facilitate use of an NG911 architecture that uses newer and less failure-prone facilities. Selective routers will be replaced with NGCS IP routing at the ESInet, ALI/ANI databases will be replaced with IP-based systems with more precise location information, TDM trunks will be replaced with IP transmission to provide faster connections, and traffic will be routed to more reliable and efficient IP-based NG911 Delivery Points. Migrating 911 call traffic from aging legacy infrastructure to newer IP infrastructure creates a reliability benefit of traffic delivery by newer and more recently built facilities.⁴²² Furthermore, the more

materially reduces the number of 911 outages by improving network availability and reliability as IP allows for greater redundancy. It provides greater geodiversity for PSAPs—no longer will there be a single point of failure at a selective router. It also increases the speed of delivery for location information because location information is part of Emergency Services IP Network (ESInet) design and adds the ability for secure VPN, encryption, and certification.”); iCERT NG911 Notice Comments at 1 (confirming that the transition to NG911 will provide greater 911 system resilience).

⁴²⁰ Comtech NG911 Notice Reply at 4 (quoting MSCI NG911 Notice Comments at 2 and NG911 Notice, 38 FCC Rcd at 6205, para. 1).

⁴²¹ *See, e.g.*, Improving 911 Reliability Order, 28 FCC Rcd at 17477, para. 2 (stating “the unanticipated ‘derecho’ storm in June 2012,” which left millions of Americans without 911 service, “reveal[ed] significant, but avoidable, vulnerabilities in 911 network architecture, maintenance, and operation”); *see also* NASNA LBR Notice Comments at 7 (“The transition to NG911 is no longer a choice; legacy 911 call routing and legacy network infrastructure is beyond end-of-life and has an increasing failure rate.”); Minnesota DPS–ECN NG911 Public Notice Comments at 1 (stating that “the LSRs [legacy selective routers] are end-of-service, end-of-life and starting to fail”); Texas 9–1–1 Entities NG911 Public Notice Reply at 4 (rec. Feb. 3, 2022). *See generally* NG911 Notice, 38 FCC Rcd at 6236, para. 67 (“The proposed actions will move 911 calls off of the aging legacy 911 system that commenters indicate is increasingly unreliable, thus improving public safety.”).

⁴²² *See, e.g.*, APCO, *Broadband Implications for the PSAP: Analyzing the Future of Emergency Communications* at 52 (2017), <https://www.apcointl.org/-/documents/report/p43-report-broadband-implications-for-the-psap?layout=default> (APCO Broadband Implications for the PSAP) (“In a next generation environment, PSAPs can transition premises-based call handling to distributed systems using ESInet connectivity to establish a robust and unified system among numerous PSAPs. This configuration enables a higher level of reliability by placing core systems at redundant hosted locations to protect

extensive use of IP routing in the Phase 2 architecture is inherently more reliable than legacy TDM selective routing because of the greater capability of IP traffic to be dynamically rerouted among various available paths.⁴²³

NG911 IP Policy Routing Capabilities. The implementation of NG911 will facilitate greater use of policy routing—*i.e.*, systems that enable calls to be diverted automatically from their default routing paths to alternative paths for dynamic reasons, such as congestion or call volume surges.⁴²⁴ In the 911 context, policy routing can also be used to implement failover plans so that calls can be directed to alternative PSAPs in instances when temporary surges in call volumes exceed the capability of 911 telecommunicators at the default PSAPs.⁴²⁵ Policy routing thus can be used to enable the best situated PSAPs to receive calls and direct emergency responses.⁴²⁶

We find that the improved policy routing that NG911 makes possible will result in substantial improvements over legacy TDM selective routers, which will reduce 911 call failures and save lives. NG911 architecture provides far more routing options than legacy TDM because IP traffic is not constrained by the location of the caller or the PSAP that serves the caller.⁴²⁷ In legacy 911 networks, selective routers must be relatively close to the PSAPs they serve, whereas in NG911, traffic can be easily

rerouted to servers and locations outside the affected area, providing more resiliency and redundancy in disaster situations.⁴²⁸ APCO has observed that IP-based NG911 systems' policy routing functions will significantly improve local authorities' emergency response capabilities.⁴²⁹ Mission Critical Partners states that Phase 2 NG911 will improve the reliability of 911 call routing, further facilitating interoperability between ESInets and allowing for the retirement of legacy network elements. First, NG911 facilitates more precise routing than legacy selective routers using ALI/ANI location information because NG911 systems can implement "geospatial routing" and update GIS data more frequently than legacy location databases.⁴³⁰

Furthermore, as NENA explains, NG911 policy routing rules facilitate automated "mutual aid agreements" between PSAPs that allow intelligent call diversion processes for 911 calls to be re-directed or redistributed among PSAPs based on outages, maintenance, or other emergencies.⁴³¹ NG911 policy routing also "provides more options to a PSAP to institute consideration of multiple conditions (*e.g.*, policies), with greater flexibility, and to adjust the call diversion policies on a near real-time basis . . . to address a wide range of operational situations to ensure 9–1–1 calls are delivered to a PSAP that can

provide assistance consistent with established mutual aid agreements."⁴³² NG911 thus will "help jurisdictions realize . . . enhanced policy routing functions," which "flexibly route[] calls to PSAPs based on variables such as call volume, available telecommunicator resources, or the need for specialized response to particular emergencies."⁴³³ Those "specialized responses" could include advanced automatic policy routing directives to send certain 911 calls straight to call handlers with American Sign Language expertise, foreign language skills, or real-time text capabilities, which would dramatically reduce the response times to many 911 calls.⁴³⁴

Improved Delivery of Caller Location Information. In NG911 systems, the legacy ALI/ANI caller location technology will be replaced with IP-based LVF and LIS for the verification of customer records and delivery of caller location information to PSAPs. This will facilitate full use of the functional elements of NG911, which can deliver higher-quality actionable information to PSAPs than legacy ALI/ANI databases, even after CMRS providers finish implementing location-based routing under existing rules.⁴³⁵ Mission Critical Partners states that full NG911 will reduce location delivery

operational continuity from local outages to large-scale disasters.").

⁴²³ *Improving 911 Reliability; Reliability and Continuity of Communications Networks, Including Broadband Technologies*, PS Docket Nos. 13–75 and 11–60, Order on Reconsideration, 30 FCC Rcd 8650, 8656, para. 15 (2015), 80 FR 60548 (Oct. 7, 2015).

⁴²⁴ NENA, NENA NG9–1–1 Policy Routing Rules Operations Guide (NENA-INF-011.2–2020) at 9–10 (2020), https://cdn.ymaws.com/www.nena.org/resource/resmgr/standards/nena-inf-011.2-2020_ng_prr_o.pdf (NENA NG911 Policy Routing Guide); Comtech LBR Public Notice Comments at 9–10 (rec. July 11, 2022) (Comtech LBR Public Notice Comments) ("NG911 systems have flexible policies with granular control for delivering 911 calls to a PSAP (*i.e.*, alternate routing).").

⁴²⁵ NENA NG911 Policy Routing Guide at 2 (PSAP call diversion can ensure 911 calls are answered during "significant spikes for incoming 9–1–1 calls due to a large-scale disaster.").

⁴²⁶ *Id.* (Policy routing allows calls to be automatically rerouted to different PSAPs based on, *e.g.*, "when a PSAP needs to be evacuated for an environmental building issue (*e.g.*, odor of smoke in the building) The legacy method of diverting calls is a less flexible capability than what is envisioned in NG9–1–1. The ability to enable a multi-layered call treatment policy for call diversion within NG9–1–1 using Policy Routing Rules (PRRs) provides more options to a PSAP to institute consideration of multiple conditions (*e.g.*, policies), with greater flexibility, and to adjust the call diversion policies on a near real-time basis when needed.").

⁴²⁷ NG911 NOI, 25 FCC Rcd at 17879–81, paras. 26, 29.

⁴²⁸ *Id.*

⁴²⁹ See, *e.g.*, APCO NG911 Guide at 11 ("NG9–1–1 will facilitate the dynamic routing of emergency service requests to alternate ECCs based on a variety of factors. For example, ECCs could establish an overflow condition in which a maximum capacity of requests has been reached, a wait time threshold for answer or hold has been met, or during an outage or damage to an ECC's operational capability."); APCO Broadband Implications for the PSAP at 51 ("In an IP environment, however, calls can be rerouted quickly and easily based upon established call handling system capabilities in conjunction with policies that are designed to distribute call loads efficiently and effectively across numerous PSAPs as desired by the 9–1–1 authority.").

⁴³⁰ LBR Notice, 37 FCC Rcd at 15202, para. 48 & n.130 (citing Comtech LBR Public Notice Comments at 9).

⁴³¹ NENA Policy Routing Guide at 2 ("PSAPs sometimes establish mutual aid agreements (or Inter-Agency agreements) with other jurisdictions to take calls under certain conditions when the PSAP is unable to take calls. These mutual aid agreements vary in nature but often cover pre-planned conditions (*e.g.*, scheduled equipment maintenance windows, or after-hours coverage for a smaller PSAP where normal staffing levels are reduced). Many outage conditions, however, are unscheduled and are due to unforeseen equipment breakdowns and network outages, significant spikes for incoming 9–1–1 calls due to a large-scale disaster, or when a PSAP needs to be evacuated for an environmental building issue (*e.g.*, odor of smoke in the building). When the calls originally meant for one PSAP need to be sent to another PSAP, Call Diversion is the generally adopted term for this conditional situation.").

⁴³² *Id.* at 2–3. Even during transitional NG911 phases, Legacy PSAP Gateways will be able to automatically notify the NGCS Policy Routing Function if the PSAP becomes unavailable, allowing for instant rerouting of 911 calls and texts to avoid network disruptions. *Id.* at 25–26 ("In the transition period, a legacy PSAP would be connected to the NGCS/ESInet via a Legacy PSAP Gateway (LPG). The LPG would, by definition, provide 'State' to the PRF [Policy Routing Function] of the NGCS and thus could implement some basic PRRs [Policy Routing Rules]. One of the PRRs a PRF could implement for a legacy PSAP would be to know the availability of a PSAP (by using SIP OPTIONS message to determine if a PSAP was reachable). Knowing if a PSAP is reachable would allow the PRF to make a routing decision on whether to send Calls to the legacy PSAP.").

⁴³³ LBR Notice, 37 FCC Rcd at 15202, para. 48 & n.130–31 (citing Comtech LBR Public Notice Comments at 9–10); NENA LBR Public Notice Comments at 11–12.

⁴³⁴ NENA LBR Public Notice Comments at 11–12 ("For example, the Policy Routing Function could determine that the call only supports American Sign Language over video, and based on this information the system can make an informed routing decision that better accommodates the caller. This could drastically reduce the time involved in handling calls from the deaf and hard of hearing. Policy Routing decisions could be made based on other factors. Calls can be routed to a telecommunicator who understands the caller's native language; a call may signal that the speaker prefers Spanish, but understands English, and make a routing decision based on that. RTT calls may be routed to a call queue dedicated to RTT, reducing call handling time.").

⁴³⁵ See Mission Critical NG911 Notice Comments at 6; MSCI LBR Notice Reply at 2; see generally LBR Order.

failures because it is more reliable than the current legacy system dependent on ALI data.⁴³⁶ MSCI argues that the NG911 IP caller location delivery systems will standardize location information delivery, improving PSAP use of caller location data over the legacy ALI/ANI system.⁴³⁷

Additionally, the location data transmitted via IP features such as LIS databases will enable PSAPs and other public safety agencies to utilize GIS technology more extensively to give emergency responders the capacity to visually map caller locations for more precise and accurate emergency responses.⁴³⁸ Upgrading 911 location technology from ALI/ANI servers to LIS or comparable IP databases will also enable the implementation of PIDF-LO technology. PIDF-LO embeds location information into IP-based NG911 calls, allowing “instant, accurate location provisioning as a caller moves around a campus or high-rise environment”⁴³⁹ for hyper-targeted emergency response from public safety agencies.

Calculation of Public Safety Benefits. We conclude, based on the available evidence, that the expeditious implementation of NG911 will yield enormous public safety benefits. We estimate these benefits by assessing the likely number of lives saved in 911 emergency responses due to the more efficient and reliable delivery of actionable information with 911 calls due to the factors described above—i.e., the greater reliability and resilience of 911 facilities, the increased use of

policy routing, and possibly the delivery of higher-quality location information. As noted above, a study in Indiana showed that “[t]he year before Indiana began the transition to NG911, a citizen dialing 911 waited 23 to 27 seconds for the call to be routed to a 911 operator. With NG911, that’s now less than three seconds.”⁴⁴⁰ These improvements to the 911 systems will reduce the 911 routing time by an appreciable amount and thus will enable 911 call responders to dispatch ambulances more rapidly in response to 911 callers’ requests for emergency medical assistance.

The Commission has previously relied on a study examining 73,706 emergency incidents in the Salt Lake City area that found that, on average, a one-minute decrease in ambulance response times would reduce the total number of post-incident deaths from 4,386 deaths to 3,640 deaths within 90 days after the incident (746 lives saved), representing a 17% reduction in mortality.⁴⁴¹ If reducing the response time by one minute results in reducing mortality rates by 17%, then we can estimate that reducing the response time by one-third of a minute (20 seconds) could lead to a reduction in mortality by one-third of 17%—i.e., 5.67% per year—because the regression in the Salt Lake City Study is linear.

According to the National Association of State Emergency Medical Services Officials (NASEMSO), local Emergency Medical Services (EMS) agencies respond to nearly 28.5 million 911 dispatches each year.⁴⁴² In the LBR Order, we relied on calculations set forth in the LBR Notice that assumed 80% or more of the total calls to 911

annually are from wireless devices.⁴⁴³ Since the LBR Order already accounts for some benefits accrued from faster emergency medical service responses to wireless 911 calls with improved location information, we conservatively consider the impact to wireline and VoIP calls only to estimate the benefits of improved 911 responses due to the NG911 rules. According to calculations based on the data in the Fifteenth Annual 911 Fee Report, approximately 17.5% (or 5 million) of all EMS dispatches are associated with wireline and VoIP 911 calls.⁴⁴⁴ While we do not know when the transition to NG911 will be completed, we estimate that, if approximately 6% of emergency medical dispatches would have resulted in a death, a 5.67% reduction in mortality is equivalent to saving at least 16,868 lives per year as a result of the NG911 rules.⁴⁴⁵ This implies a total of 84,340 lives saved over the entire ten-year period following the effective date of the rules.⁴⁴⁶

⁴⁴³ See LBR Order at *40, para. 119 & n.388 (“Assuming that 80% of these calls are from wireless devices . . .”).

⁴⁴⁴ The Commission, in its Fifteenth Annual 911 Fee Report, reported that at least 21,194,035 and 12,262,577 voice calls made to 911 in 2022 originated from wireline and VoIP phones, respectively. Fifteenth Annual 911 Fee Report at 16, tbl.3. These figures likely understate the actual numbers of wireline and VoIP calls, because they do not include counts from Delaware, Georgia, Tennessee, and the U.S. Virgin Islands, which did not break down service categories separately. *Id.* at 13. This is equivalent to approximately 17.5% of all 911 voice calls when divided by the total number of wireline, wireless, and VoIP 911 calls from states which reported break out service categories ((21,194,035 wireline calls + 12,262,577 VoIP calls)/(21,194,035 wireline calls + 157,999,298 wireless calls + 12,262,577 VoIP calls) = 17.474% ≈ 17.5%). See Fifteenth Annual 911 Fee Report at 16, tbl.3—Total 911 Calls by Service Type and 911 Texts. We assume that the share of the 28.5 million EMS dispatches each year that can be attributed to wireline and VoIP is the same as the share of all 911 calls attributed to wireline and VoIP, i.e., 17.5%, or 5 million (28,500,000 × 17.5% = 4,987,500 ≈ 5 million dispatches).

⁴⁴⁵ We calculate the reduction in deaths as follows: 5 million dispatches × 5.95% (90 day mortality in Salt Lake City Study) × 5.67% (mortality reduction) = 16,868 lives saved. In order to arrive at an even more conservative estimate of the benefits, we also estimate the reduction in deaths for a one-second decrease in ambulance response time. If reducing the response time by one minute results in reducing mortality by 17%, then we can estimate that reducing the response time by one second could lead to a reduction in mortality by one-sixtieth of 17%, i.e., 0.28% per year. We find that a one-second reduction in ambulance response time is equivalent to saving approximately 833 lives (5 million dispatches × 5.95% (90 day mortality in Salt Lake City Study) × 0.28% (mortality reduction) = 833 lives saved).

⁴⁴⁶ Although we believe the benefit due to the improvements in public safety would start accruing in the first year after the effective date of the rules (“year 1”), as some states are more advanced in migrating to NG911, we conservatively assume that all life-saving benefits would only accrue starting in

⁴³⁶ Mission Critical Partners NG911 Notice Comments at 6 (“Currently, MCP has observed most ESInet to ESInet transfers are using transitional methods which require both systems to maintain duplicate legacy ALI records. The use of legacy methods along with interim, transitional, and/or proprietary interface protocols can create uncertainty When the solution is migrated to full NG911 using SIP with routing and location information, it is more reliable than the present workaround . . . and it eliminates the need to maintain legacy ALI records.”).

⁴³⁷ MSCI LBR Notice Reply at 2 (“Requiring delivery of 911 calls in IP-based format . . . standardizes delivery of location information, and promotes interoperability.”).

⁴³⁸ See Next Generation Advanced (NGA), *NG911 GIS: The Role of Geographic Information Systems in Next Generation 911* (July 17, 2023), <https://nga911.com/blogs/post/ng911-gis-role-geographic-information-systems-next-generation-911> (“GIS is a powerful tool that can be used to provide accurate and precise location data for emergency services. By combining GIS with NG9-1-1, the public safety industry has a system capable of accurately pinpointing a caller’s location and providing responders with vital information about the surrounding area, such as the location of fire hydrants or the fastest route to someone in need”).

⁴³⁹ See RFC 4119 and 5962; Bandwidth, *Presence Information Data Format Location Object (PIDF-LO)* (Jan. 23, 2024), <https://www.bandwidth.com/glossary/presence-information-data-format-location-object-pidf-lo/>.

⁴⁴⁰ NG911 for Fire Service Leaders at 9.

⁴⁴¹ See Elizabeth Ty Wilde, *Do Emergency Medical System Response Times Matter for Health Outcomes?*, 22(7) *Health Econ.* 790–806 (2013), <http://www.ncbi.nlm.nih.gov/pubmed/22700368> (Salt Lake City Study). The study examined 73,706 emergency incidents during 2001 in the Salt Lake City area. *Id.* at 794. The study found that the one-minute increase in response time caused mortality to increase 17% at 90 days past the initial incidence, i.e., an increase of 746 deaths, from a mean of 4,386 deaths to 5,132 deaths. *Id.* at 795. Because the regression is linear, this result implies that a one-minute reduction in response time also saves 746 lives, i.e., a 17% reduction from a mean of 4,386 deaths to 3,640 deaths. LBR Notice, 37 FCC Rcd at 15206–07, para. 61 & n.159 (“The Salt Lake City Study shows a one-minute decrease in ambulance response times reduced the likelihood of 90-day mortality from approximately 6% to 5%, representing a 17% reduction in the total number of deaths.”).

⁴⁴² EMS1 (Laura French), *National Association of State EMS Officials releases stats on local agencies, 911 Calls* (Apr. 10, 2020), <https://www.ems1.com/ambulance-service/articles/national-association-of-state-ems-officials-releases-stats-on-local-agencies-911-calls-LPQTHrK20lpxuR1/>.

The improvements to the 911 system associated with implementation of NG911 also will reduce 911 call failures and outages. We estimate that, from 2019 through 2023, an average of 4.1 billion user-hours of telecommunication voice service outages per year were reported to the Commission.⁴⁴⁷ If these 4.1 billion user-hours of outages were distributed evenly across the total U.S. population (approximately 335 million people),⁴⁴⁸ this is equivalent to each person in the country experiencing an average of 12 hours of voice telecommunications service outages per year.⁴⁴⁹ Hence, we estimate that on average, consumers experience telecommunications outages 0.14% of the time per year.⁴⁵⁰ As noted above, available evidence shows that 911 calls resulted in 28.5 million EMS dispatches per year during the most recent year

year six through year ten. With 16,868 lives saved per year, we estimate that the total lives saved during years 6 through 10 would be 84,340 lives (16,868 lives per year $\times$ 5 years = 84,340 lives). While we do not attempt to place a value on human life, we note that the amount consumers are willing to pay to reduce mortality risk is approximately \$12.5 million, using a methodology developed by the U.S. Department of Transportation (DOT) that we have relied on in past orders. See, e.g., LBR Order at *39, para. 118 & n.384 (citing the value of \$12.5 million in 2022 based on U.S. Department of Transportation, *Departmental Guidance on Valuation of a Statistical Life in Economic Analysis* (May 7, 2024), <https://www.transportation.gov/office-policy/transportation-policy/valuedepartmental-guidance-on-valuation-of-a-statistical-life-in-economic-analysis>). This implies a present value of the reduction of mortality risk of approximately \$616 billion, a figure calculated using a 7% discount rate, consistent with Office of Management and Budget (OMB) guidance. See OMB, Circular A-4, *Regulatory Analysis*, sec. E, Discount Rates, Real Discount Rates of 3 Percent and 7 Percent (Sept. 17, 2003), https://obama.whitehouse.archives.gov/omb/circulars_a004_a-4/ (“As a default position, . . . a real discount rate of 7 percent should be used as a base-case for regulatory analysis.”).

⁴⁴⁷ We estimate the average time consumers were affected by outages was approximately 4.1 billion user-hours per year based on data from the Commission’s Network Outage Reporting System (NORS) between 2019 and 2023. Staff calculation. FCC, *Network Outage Reporting System (NORS)* (Nov. 30, 2023), <https://www.fcc.gov/network-outage-reporting-system-nors>.

⁴⁴⁸ See U.S. Census Bureau, *National Population Totals and Components of Change: 2020–2023* (Dec. 18, 2023), <https://www.census.gov/data/tables/time-series/demo/popest/2020s-national-total.html> (Census Population Estimates) (referring to Annual Estimates of the Resident Population for the United States, Regions, States, District of Columbia and Puerto Rico: April 1, 2020 to July 1, 2023 (NST-EST2023-POP) on the page, which estimates U.S. population around 334,914,895 as of July 1, 2023).

⁴⁴⁹ We calculate the average outages a U.S. resident experience as follows: 4.1 billion user-hours/335 million residents = 12.24 hours per resident, which we round to 12 hours.

⁴⁵⁰ We estimate the average percentage of time U.S. consumers experience telecommunication network outages as follows: average 12.24 hours of outages/(24 hours per day $\times$ 365 days per year) = 0.14% outage per year.

when data was available. If service outages prevent 0.14% of these 911 calls from going through, that means 39,900 potentially life-saving emergency 911 calls would be dropped per year as a result of legacy 911 system failures.⁴⁵¹ If we conservatively estimate that our rules speeding the NG911 transition result in improved 911 emergency system reliability and thus reduce the number of 911 outages and call failures by just 1%, this would translate to an additional reduction in mortality risks associated with emergency medical situations for which ambulances were dispatched in response to 911 calls roughly equivalent to 23 lives saved per year (i.e., up to 115 lives saved over a five-year period).⁴⁵² Moreover, these benefits will continue to accrue beyond the completion of the transition of both phases.

We believe that our calculations above are likely a significant underestimate of the benefit of the rules and that the actual life-saving rate from improved emergency responses will likely be higher than that used in our calculations. Whereas our analysis is based on saved lives in the context of emergency medical response, it does not account for lives saved due to more expeditious dispatch of police, firefighters, and other first responders in response to 911 emergency calls.⁴⁵³ Also, our estimate of the life-saving benefits of more expeditious and accurate completion of 911 calls (discussed above) excludes benefits from improvements to wireless 911 calls. The improved NG911 systems also

⁴⁵¹ We estimate the life-threatening emergency 911 calls that would be dropped due to call failures or system outages as: 28.5 million EMS dispatches $\times$ 0.14% outages = 39,900 potentially life-saving emergency 911 calls dropped per year.

⁴⁵² A 1% reduction in call failures results in 23 lives saved (39,900 dropped calls per year $\times$ 1% reduction in call failures $\times$ 5.95% (90 day mortality in Salt Lake City Study) = 23.74, rounded down to 23). Note that this calculation conservatively equates a dropped call with an approximately 3.5-second savings in response time based in the Salt Lake City Study. The study finds that the one-minute increase in response time caused mortality to increase 17% at 90 days past the initial incidence, meaning that a 3.5-second increase in response time would cause a 1% (roughly 3.5/60 $\times$ 17%) mortality increase. The equivalent present value of the reduction in mortality risk is \$840 million, calculated as follows: (23 lives $\times$ \$12.5 million)/(1+7%)⁶ + (23 lives $\times$ \$12.5 million)/(1+7%)⁷ + . . . + (23 lives $\times$ \$12.5 million)/(1+7%)¹⁰ = \$840 million. This uses the 7% discount rate. If we instead discount the life-saving benefit using a 3% discount rate, the estimated benefit would be \$1.14 billion.

⁴⁵³ See, e.g., Gregory DeAngelo, Marina Toger, & Sarit Weisburd, *Police Response Time and Injury Outcomes*, 133 *The Economic Journal* 2147 (2023); Brandon del Pozo, *Reducing the Latrogenesis of Police Overdose Response: Time Is of the Essence*, 112(9) *American Journal of Public Health* 1236 (2022).

are likely to yield benefits that go beyond the lives saved due to improved emergency medical responses (the primary basis for the benefit estimates discussed above); the analysis does not account for injuries prevented, other improved public health outcomes, and averted property damage due to quicker response to 911 calls associated with non-life-threatening events. Finally, our estimate includes 911 voice calls only and does not include text-to-911.

911 Authorities’ Cost Savings from Retiring Legacy 911 Network Components. Several commenting parties submit information indicating that our rules will enable 911 Authorities to realize cost savings by more rapidly decommissioning expensive legacy 911 network elements and replacing them with more cost-efficient IP networks. For instance, South Carolina RFA estimates that, when the NG911 transition is complete, enabling it to transmit all 911 traffic over its ESInet, it will no longer need to pay for the legacy selective routers, circuits, and trunks to provide TDM connectivity, which currently costs the state approximately \$1.4 million per year. Minnesota DPS–ECN estimates the proposed rules will save the state over \$1.1 million per year by avoiding paying for legacy 911 facilities that will become unnecessary when the NG911 transition is complete.⁴⁵⁴ The Ad Hoc NG911 Service Providers Coalition estimates that Florida will be able to avoid paying \$1.6 million annually for selective routers and ANI/ALI databases supplied by the state’s largest carrier once the NG911 transition is complete. Extrapolating these figures from commenters, we estimate the total cost saving nationwide would be between \$24 million to \$87 million per year.⁴⁵⁵

⁴⁵⁴ Minnesota DPS–ECN NG911 Notice Comments at 3 (stating that Minnesota spent \$2.2 million on both legacy (LNG/LSR) and next generation (POIs) network components in 2022, with over 50% of the cost coming from supporting the legacy components).

⁴⁵⁵ We calculate the range of cost savings by extrapolating from the figures reported by commenters. We divide each commenter’s state level estimates by its state population to estimate the cost saving per person and multiply it by the U.S. population to get the nationwide cost-saving estimate. The upper bound of the range is calculated by dividing South Carolina RFA’s cost saving estimate by its population: (\$1,400,000/5,373,555 South Carolina population) $\times$ 334,914,895 U.S. population = \$87,257,105, rounded to \$87 million. See South Carolina RFA NG911 Notice Comments at 4 (estimating the cost saving to be around \$1.4 million per year); see also Census Population Estimates (estimating South Carolina population around 5,373,555 and the U.S. population around 334,914,895 as of July 1, 2023). The lower bound of the range is calculated by dividing NG911 Service Providers Coalitions cost saving estimate for Florida by its population:

Continued

Assuming these cost savings will not materialize until end of the fifth year following the effective date of the rules, we estimate that the present value of this cost-saving benefit over 10 years, using a 7% discount rate, is approximately \$69 million to \$255 million.⁴⁵⁶

2. Costs

We sought comment on the costs that the 2,327 OSPs in the country would incur to comply with our proposed rules,⁴⁵⁷ and multiple parties submitted information in response. Based on information in the record and from other public sources, as well as data in service providers' most recent Form 477 filings,⁴⁵⁸ we conservatively estimate that, at the nationwide level, affected OSPs will likely incur approximately \$4.4 million in one-time costs and \$5.5 million in annual recurring costs to implement Phase 1, and \$24 million in one-time costs and \$50 million in annual recurring costs to implement

(\$1,600,000/22,610,726 Florida population) × 334,914,895 U.S. population = \$23,699,541, rounded to \$24 million. See Ad Hoc NG911 Service Providers Coalition NG911 Notice Comments at 11–12 (estimating a cost saving of \$1.6 million per year); see also Census Population Estimates (estimating Florida population around 22,610,726 persons and the U.S. population around 334,914,895 persons as of July 1, 2023).

⁴⁵⁶ To be conservative with the benefits estimates, we assume no accrual of benefits up to the end of year five, i.e., benefits only accrue from year six through year ten. The present value of the upper bound of total cost savings, using a 7% discount rate, is calculated as: $\$87,257,105 / ((1+7\%)^6 + \$87,257,105 / ((1+7\%)^7) + \dots + \$87,257,105 / ((1+7\%)^{10}) = \$255,086,034 \approx \$255$ million. The lower bound of the range is calculated using Florida's cost saving estimated by the Ad Hoc NG911 Service Providers Coalition: $\$23,699,541 / ((1+7\%)^6 + \$23,699,541 / ((1+7\%)^7) + \dots + \$23,699,541 / ((1+7\%)^{10}) = \$69,282,861 \approx \$69$ million. See Ad Hoc NG911 Service Providers Coalition NG911 Notice Comments at 11–12. Using a 3% discount rate, the present value over 10 years is approximately \$94 million to \$345 million.

⁴⁵⁷ NG911 Notice, 38 FCC Rcd at 6237–40, paras. 69–74.

⁴⁵⁸ Based on FCC Form 477 data as of June 2023, there are a total of 2,287 OSPs, including 1,996 small/medium OSPs that serve up to 10,000 subscribers each and 291 large OSPs that serve more than 10,000 subscribers each. The 1,996 small/medium OSPs include 16 wireline OSPs that do not offer any form of IP services (e.g., broadband or VoIP services), 394 wireline OSPs that also provide broadband services, 14 internet-based TRS OSPs, 1,554 VoIP OSPs, and 18 wireless OSPs. Among the 291 large OSPs, there are 2 wireline OSPs that do not offer any form of IP services (e.g., broadband or VoIP services), 20 wireline OSPs that also provide broadband services, 232 VoIP OSPs, and 37 wireless OSPs. Staff Calculation. FCC Form 477 Data as of June 2023. See also FCC, *Internet-Based TRS Providers* (June 12, 2024), <https://www.fcc.gov/general/internet-based-trs-providers> (the 14 certified internet-based TRS providers are: CaptionCall, CaptionMate, ClearCaptions, Global Caption, Hamilton Relay, InnoCaption, Nagish, NexTalk, Rogervoice, T-Mobile USA, Convo Communications, Sorenson Communications, Tive, and ZP Better Together).

Phase 2 following adoption of our rules.⁴⁵⁹ Using a 7% discount rate, we estimate the present value of the total cumulative costs over the next 10 years to be approximately \$321 million.⁴⁶⁰ These expenditures would be fully justified even if they resulted in reducing mortality risks equivalent to preventing the loss of only 26 lives.⁴⁶¹ Considering the substantial benefits to the improvement in public safety attributable to the rules, we conclude that the total benefits significantly outweigh the total costs.⁴⁶²

Significantly, we believe that all of the quantitative cost estimates below are likely to be overstated, for several reasons. First, they do not take into account the fact that 911 calls make up only a very small portion of the overall number of voice calls that these OSPs will transmit using some of the same infrastructure. Second, they are based

⁴⁵⁹ We note that our cost estimates do not account for the fact that a number of OSPs have already complied with Phase 1 and/or Phase 2. To the extent that some OSPs have complied, there would be a reduction in estimated costs.

⁴⁶⁰ We assume that it takes two years to complete Phase 1 and three years to complete Phase 2. To be conservative with the cost estimates, we assume all the costs of Phase 1 occur by the end of year one and the costs of Phase 2 occur by the end of year 3 instead of spreading it out through the remaining years during each phase. We calculate the present value of the total costs over a ten-year period using a 7% discount rate as follows: Phase 1 one-time cost $\$4,408,583 / ((1+7\%)^1) = \$4,120,171$; Phase 1 annual costs $\$5,544,000 / ((1+7\%)^1) + \$5,544,000 / ((1+7\%)^2) + \dots + \$5,544,000 / ((1+7\%)^{10}) = \$38,938,736$; Phase 2 one-time cost $\$23,590,000 / ((1+7\%)^3) = \$19,256,467$; and Phase 2 annual costs $\$49,539,000 / ((1+7\%)^3) + \dots + \$49,539,000 / ((1+7\%)^{10}) = \$258,373,794$. The present value of total costs over the 10 years is approximately \$321 million ($\$4,120,171 + \$38,938,736 + \$19,256,467 + \$258,373,794 = \$320,689,168$, rounded to \$321 million). If we instead discount the costs by 3%, the present value of the total costs over the next 10 years is \$401 million.

⁴⁶¹ We estimate that an expenditure of \$321 million would justify the reduction of mortality risk by over 26 lives ($\$321 \text{ million} / \$12.5 \text{ million} = 25.68$, rounded up to 26). If we calculate the total costs using a 3% discount rate, the present value of total costs increases to \$401 million, which requires reducing mortality risks by 33 lives ($\$401 \text{ million} / \$12.5 \text{ million} = 32.08$, rounded up to 33) to justify the adoption of the rules. We note that, using a 3% discount rate, the corresponding increase in benefits is even greater than the increase in costs.

⁴⁶² Our analysis does not include costs that 911 Authorities and other entities that have overwhelmingly supported the Proposals in the NG911 Notice have or would need to incur to effectuate the transition to NG911, including installing and placing into operation infrastructure needed to receive 911 traffic in an IP-based SIP format (Phase 1) and in an IP-based SIP format that complies with NG911 commonly accepted standards (Phase 2). We emphasize that the rules encourage 911 Authorities to effectuate the transition, but do not impose any requirements on 911 Authorities. As such, we do not include these additional costs in our analysis. Moreover, the rules are contingent on the transition to NG911 by 911 Authorities and the benefits and costs that we calculate cannot occur without said transition.

on estimated expenditures that cannot reasonably be attributed entirely to our NG911 rules because most OSPs are already on the path of transitioning to full modern IP networks for other reasons. Third, the assumed incremental expenditures for IP conversion may not materialize because many of the OSPs that have not yet completed IP network upgrades are likely to complete them before the deadlines for complying with any 911 Authorities' valid requests.

Phase 1 Recurring Costs: Transport for IP Delivery Costs. OSPs will be required to transmit 911 calls to designated NG911 Delivery Points in IP format over SIP trunks within a specified period of time after 911 Authorities issue valid Phase 1 requests. Because CMRS providers, interconnected VoIP providers, internet-based TRS providers, and non-RLEC wireline providers are already delivering most calls in IP format, typically transported through SIP trunks,⁴⁶³ we believe that the Phase 1 IP transport requirement would not

⁴⁶³ Based on FCC Form 477 data as of June 2023, there are a total of 2,287 OSPs, including 1,996 small/medium OSPs that serve up to 10,000 subscribers each and 291 large OSPs that serve more than 10,000 subscribers each. The 1,996 small/medium OSPs include 16 wireline OSPs that do not offer any form of IP services (e.g., broadband or VoIP services), 394 wireline OSPs that also provide broadband services, 14 internet-based TRS OSPs, 1,554 VoIP OSPs, and 18 wireless OSPs. Among the 291 large OSPs, there are 2 wireline OSPs that do not offer any form of IP services (e.g., broadband or VoIP services), 20 wireline OSPs that also provide broadband services, 232 VoIP OSPs, and 37 wireless OSPs. Staff Calculation. FCC Form 477 Data as of June 2023. TelecomTrainer, *What is VoLTE, and how does it enable voice communication in 4G networks?* (Jan. 8, 2024), <https://www.telecomtrainer.com/what-is-volte-and-how-does-it-enable-voice-communication-in-4g-networks/> ("Voice over Long-Term Evolution (VoLTE) is a technology standard that allows voice calls to be transmitted over 4G LTE (Long-Term Evolution) networks, which are primarily designed for high-speed data transmission. VoLTE replaces the traditional circuit-switched voice calls used in older 2G and 3G networks with packet-switched data to enable voice communication over LTE networks. . . . VoLTE relies on an IP (Internet Protocol) network to transmit voice data."); TechTarget, *What is 4G (fourth-generation wireless)?*, <https://www.techtarget.com/search/mobilecomputing/definition/4G> ("4G is also an all-IP (internet protocol)-based standard for both voice and data, different from 3G, which only uses IP for data, while enabling voice with a circuit-switched network.") (visited June 18, 2024); Jessica Dine and Joe Kane, *The State of US Broadband in 2022: Reassessing the Whole Picture*, *Information Technology & Innovation Foundation* (Dec. 5, 2022), <https://itif.org/publications/2022/12/05/state-of-us-broadband-in-2022-reassessing-the-whole-picture/> ("U.S. mobile coverage is ubiquitous. 4G covers almost 100 percent of the population."); CTIA, *What to Know About the Sunset of 2G/3G Networks in Preparation for 5G*, <https://www.ctia.org/what-to-know-about-the-sunset-of-2g-3g-networks-in-preparation-for-5g> (last visited June 18, 2024) ("Today, fewer than 9% of U.S. wireless connections are 2G or 3G subscriptions.").

impose material incremental costs on these OSPs.

Nonetheless, we recognize that some OSPs—primarily RLECs—will incur some incremental recurring cost of IP transport via SIP trunks, even if those RLECs already have IP switches, can convert TDM to IP on their own networks, and can provide broadband service using their own IP switching facilities. As some parties point out, these RLECs might incur some SIP call transport costs if they do not have settlement-free peering agreements and cannot hand off IP voice traffic to existing interconnection partners. We estimate that the total of these costs will be below \$5.5 million per year. This estimate is based on assumptions that the transport cost would be \$2,000 per month for the 16 OSPs that currently only offer TDM-based voice services (*i.e.*, they do not offer broadband or VoIP services) and serve fewer than 10,000 subscribers, and 50% more (*i.e.*, \$3,000 per month) for the two OSPs that provide no broadband or VoIP but serve more than 10,000 subscribers.⁴⁶⁴ We further assume that the 414 OSPs that offer both voice and broadband services—including the 394 that serve fewer than 10,000 subscribers and the

20 that serve 10,000 or more subscribers—would incur 50% of the transport cost because they are already delivering a portion of their regular calls in IP format via SIP trunks.⁴⁶⁵

We conclude that most of the RLECs' and other commenting parties' estimates of the recurring costs of IP transport⁴⁶⁶ to NG911 Delivery Points are unduly high. Almost all of these cost estimates for 911 IP transport are premised on assumptions that OSPs will be required to transmit 911 calls over long distances across multiple states to faraway NG911 Delivery Points.⁴⁶⁷ These assumptions are unfounded in light of the rules, which require OSPs to transport 911 calls only to in-state NG911 Delivery Points designated by 911 Authorities.

⁴⁶⁵ The figures on the number of OSPs that do not offer any form of IP services (*e.g.*, broadband or VoIP services), and the numbers of subscribers that these and other OSPs serve are based on FCC Form 477 data as of June 2023. We calculate the recurring cost as follows: (\$2,000 per month × 12 months × 16 small/medium telephone voice only wireline OSPs) + (\$3,000 per month × 12 months × 2 large telephone voice only wireline OSPs) + (\$2,000 per month × 12 months × (50% partial transport) × 394 small/medium telephone voice and broadband wireline OSPs) + (\$3,000 per month × 12 months × (50% partial transport) × 20 large telephone voice and broadband wireline OSPs) = \$5,544,000, rounded to \$5.5 million.

⁴⁶⁴ Comtech estimates that the transport cost per IP POI would be between \$678.39 and \$977.84 per month and the total interconnection cost would be \$19,672.51 for 12 RLECs (\$19,672.51/12 ~ \$1,639.38 per RLEC), and MSCI estimates the IP transport cost per POI is \$400 per month. *See* Letter from Susan C. Ornstein, Senior Director, Legal & Regulatory Affairs, Comtech, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 21–479, Attach. at 11 (filed Mar. 8, 2024) (estimating the IP-based connectivity cost per LEC POI site is between \$678.39 and \$977.84); Comtech Mar. 25, 2024 *Ex Parte*, Attach. at 22 (estimating a total cost, including NRC, MRC #1, and MRC #2, of 12 RLEC interconnections to be \$19,672.51); Letter from Bennett L. Ross, Counsel on behalf of MSCI, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 21–479, Attach. at 6 (filed Apr. 17, 2024) (MSCI Apr. 17, 2024 *Ex Parte*); MSCI May 28, 2024 *Ex Parte*. We find the cost estimates submitted by Comtech and MSCI credible. To be conservative, we assume the SIP transport cost to be \$2,000 per month for each small/medium OSP that serves no more than 10,000 subscribers, and \$3,000 per month for a large OSP that serve more than 10,000 subscribers. These estimates are consistent with those proposed by the majority of commenters. *See* Kansas RLECs NG911 Notice Comments at 2, 4 (rec. Aug. 9, 2023) (Kansas RLECs NG911 Notice Comments) (estimating between \$1,200 and \$5,000 per month in IP transport costs for its members); Home Telephone NG911 Notice Comments at 10 n.4 (estimating third-party IP transport of \$1,500 to \$3,000 per month); NTCA NG911 Notice Comments at 3 (stating the estimated cost is \$1,400 for an RLEC in rural Kansas to deliver IP formatted 911 traffic to delivery points in California or Texas); South Dakota Telecommunications Association NG911 Notice Comments at 11–12 (IP transport costs per RLEC could be between \$1,000 and \$13,000 per month per connection depending on distance); RTCC NG911 Notice Comments at 25 (Nebraska RLECs would each have to pay approximately \$1,350 per month for reliable SIP transport to connect to the IP delivery points in Colorado and Illinois).

⁴⁶⁶ *See, e.g.*, Kansas RLECs NG911 Notice Comments at 2, 4 (estimating between \$1,200 and \$5,000 per month in IP transport costs for its members); Home Telephone NG911 Notice Comments at 10 n.4 (estimating third-party IP transport of \$1,500 to \$3,000 per month); Letter from John Kuykendall, JSI Regulatory Advisor on behalf of the South Carolina Telephone Coalition, and Margaret M. Fox, Counsel to South Carolina Telephone Coalition, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 21–479, at 1–2 (filed Nov. 17, 2023) (asserting that South Carolina RLEC Sandhill Telephone Cooperative received estimates of approximately \$2,700 per month and \$3,500 per month for third-party IP transport).

⁴⁶⁷ Five Area Telephone NG911 Notice Comments at 9, 11 (estimating almost \$3,000 per month for transport to ESNet points “hundreds of miles away in other states” which would cost OSPs collectively over \$83 million annually nationwide); NTCA NG911 Notice Comments at 3 (stating an RLEC in rural Kansas has been ordered by the 911 authority to deliver IP formatted 911 traffic to delivery points in California or Texas, which would cost \$1,400 per month); South Dakota Telecommunications Association NG911 Notice Comments at 11–12 (stating that IP transport costs per RLEC could be between \$1,000 and \$13,000 per month per connection depending on distance, and that cost could increase at least 30% for out-of-state connections); USTelecom NG911 Notice Comments at 4 (indicating that distance impacts IP transport prices, and one carrier is paying \$750,000 in annual cost (or equivalent to \$62,500 per month) to deliver 911 traffic to the state-designated delivery point hundreds of miles away); RTCC NG911 Notice Comments at 25 (stating that Nebraska RLECs would each have to pay approximately \$1,350 per month for reliable SIP transport to connect to the IP delivery points in Colorado and Illinois, with an aggregate cost of \$360,000 per year for the 24 RLECs); WTA NG911 Notice Comments at 6 (stating that it is not possible to fairly estimate transport costs without knowing where the delivery points are located and at what distance from RLECs).

Moreover, most of these cost estimates assume that the cost of IP transport is distance-sensitive. This assumption is clearly incorrect. Indeed, given the ample evidence showing that IP transport costs are significantly lower than TDM transport costs, we believe that the rules might actually reduce the overall transport costs for OSPs. For example, South Carolina RFA submits data indicating that IP transport of 911 traffic is generally 27% cheaper than TDM call delivery, regardless of where the calls are delivered.⁴⁶⁸ iCERT points out that, to avoid the higher cost of transporting TDM calls, RLECs could convert their traffic from TDM to IP format prior to transporting them.⁴⁶⁹ Five Area Telephone also points out that OSPs could significantly lower the overall costs of transmitting 911 calls to ESInets by taking advantage of third-party aggregators' services.

Phase 1 Non-Recurring Costs: Reconfiguring Network Facilities for IP Delivery. We estimate Phase 1 non-recurring costs based on an assumption that some OSPs will incur some material and labor costs prior to initiating IP transport. We estimate a total of \$4.4 million in one-time material and labor costs, including approximately \$4 million to convert TDM calls to IP format and \$343,000 to configure the delivery to new NG911 Delivery Points. Because the majority of OSPs are capable of transmitting calls in IP format, we estimate that only a subset of OSPs that do not offer full IP-related services would need to incur the cost of facilities needed to convert TDM calls to IP format; other OSPs that already originate traffic in IP format would incur no up-front IP conversion costs. We conservatively estimate an upper bound of the IP conversion cost to be no more than \$17,600 for voice-only OSPs with no more than 10,000

⁴⁶⁸ South Carolina RFA NG911 Notice Comments at 4–5 (stating that the network transport costs for ILECs in its state to deliver TDM traffic to two delivery points inside South Carolina are approximately \$236,000 per year, while its analysis of the transport costs for the same South Carolina ILECs to deliver SIP traffic even further to two delivery points in Dallas, Texas and Raleigh, North Carolina are less—\$172,000 per year, resulting in a 27% cost saving utilizing SIP). Comtech similarly estimates that transport costs for OSPs are likely to be far lower than the estimates provided in the record by RLECs. Comtech Mar. 25, 2024 *Ex Parte*, Attach. at 22.

⁴⁶⁹ iCERT Dec. 13, 2023 Office of Commissioner Gomez *Ex Parte* at 2; *see also* Mission Critical Partners NG911 Notice Comments at 5; MSCI Apr. 17, 2024 *Ex Parte*, Attach. at 5 (estimating the annual transport cost for one POI through TDM is \$42,810, compared to \$4,800 for the transport through IP).

subscribers;⁴⁷⁰ a 50% higher unit cost for voice-only OSPs with more than 10,000 subscribers; and half of these amounts for OSPs that offer broadband as well as voice services and likely have some capability to convert TDM calls to IP format but might need to acquire more. We estimate that the total one-time cost that all OSPs would incur to obtain the facilities needed to convert TDM calls to IP format would be approximately \$4 million, including \$334,400 for the 18 OSPs that do not offer any IP services and \$3.7 million for the 414 OSPs that offer broadband as well as voice services.⁴⁷¹ We believe that our estimate is conservative because it does not take into account the many non-911 calls that these OSPs would transmit using the same equipment.

We use Five Area Telephone's estimate of \$17,600 as the upper bound for the up-front equipment costs for small OSPs to connect to ESInets—an estimate that, according to Five Area Telephone, includes the costs of “establishing network connectivity, procurement of private line circuits, configuration assistance, switching equipment configuration, testing, cutover, and final testing,” equaling over \$40 million if applied to all 2,327 carriers. We believe that this estimate substantially overstates the cost of the network equipment required to convert TDM calls to IP format, because it assumes a major system upgrade would be required, and we reject Five Area Telephone's assertion that the total cost would exceed \$40 million because that erroneously assumes that all 2,327 OSPs would incur the same amount.

⁴⁷⁰ Five Area Telephone asserts that the up-front costs for RLECs to connect to ESInets are \$17,600 each. Five Area Telephone NG911 Notice Comments at 11. We believe this estimate would be an upper bound, as OSPs may, instead of upgrading their systems with new circuits and switching equipment, choose to acquire an LNG gateway at a much lower cost to convert calls from TDM to IP format. Brian Rosen NG911 Notice Reply at 2 (“The RLECs commenting on this proceeding wildly overestimate the cost of the gateway required to convert TDM to SIP. An Audiocodes Mediant 500 gateway, for example, costs approximately \$1,000, and a Mediant 1000, which has much more capability than a smaller carrier requires is approximately \$5,000. There will need to be some software, which could run on a commodity server . . . which would add to the costs, and these carriers may not have enough expertise . . . necessitating a support contract with an appropriate vendor.”).

⁴⁷¹ We calculate the recurring cost as follows: (\$17,600 per OSP × 16 small/medium telephone voice only wireline OSPs) + (\$17,600 per OSP × (1 + 50% for large OSP) × 2 large telephone voice only wireline OSPs) + (\$17,600 per OSP × (50% partial transport) × 394 small/medium telephone voice and broadband wireline OSPs) + (\$17,600 per OSP × (1 + 50% for large OSP) × (50% partial transport) × 20 large telephone voice and broadband wireline OSPs) = \$4,065,600, which we round to \$4 million.

Nonetheless, we apply Five Area Telephone's \$17,600 one-time cost estimate as the basis to calculate the upper bound of our IP conversion cost estimate, because other commenters' estimates are even less credible. Most of them include the non-recurring cost of system upgrades that are not required by the rules; many of them rely on unsupported cost figures for specific OSPs without providing any basis for us to examine whether these costs are typical; and some include no cost figures at all.⁴⁷²

We estimate that the one-time costs of reconfiguring and changing 911 traffic delivery points would require all affected OSPs to incur labor costs totaling \$343,000. This is based on the Bureau of Labor Statistics' estimate that the average wage for telecommunications equipment installers and repairers is \$32.26 per hour,⁴⁷³ as well as an estimate, based on evidence in the record, that OSPs serving fewer than 10,000 subscribers would need to pay for up to three hours of labor and OSPs serving more than 10,000 subscribers would need to pay 50% more in labor costs due to the potentially more complex tasks these entities might need to undertake to

⁴⁷² See, e.g., Kansas RLECs NG911 Notice Comments at 2 (contending that one NG911 service provider (AT&T) has proposed a plan that could require some Kansas RLECs to acquire SIP equipment at a cost of \$50,000); RWA NG911 Notice Comments at 2 (contending that the Commission's estimate ignores the possibility that a small CMRS carrier would first need to obtain and install a session border control gateway for a cost of \$100,000 to allow for the connection from the carrier's IP-cable network to a PSAP that remains only TDM-capable); USTelecom NG911 Notice Comments at 4–5 (asserting that one Northern California carrier, prior to initiating IP transport, would need to expend an “initial cost of \$378,000 to aggregate traffic from multiple exchanges”); Frontier NG911 Notice Reply at 3–4 (stating that central office facilities upgrades plus labor is in the “millions” to begin delivering IP call traffic outside its footprints, and equipment costs for SIP delivery are substantial); Alaska Telecom Assoc. NG911 Notice Comments at 4–5 (identifying costs for “creating a dedicated IP trunk group to the ESInet,” along with wireline network reconfigurations to reroute calls to the carriers' IP switch, updating the routing for subscriber lines, and similar SIP network architecture reconfigurations for wireless carriers).

⁴⁷³ See Bureau of Labor Statistics, *Occupational Employment and Wages*, May 2023 (Apr. 3, 2024), <https://www.bls.gov/oes/current/oes492022.htm>. According to the Bureau of Labor Statistics, as of December 2023, civilian wages and salaries averaged \$31.29/hour and benefits averaged \$14.13/hour. Total compensation therefore averaged \$31.29 + \$14.13 = \$45.42. Press Release, Bureau of Labor Statistics, *Employer Costs for Employee Compensation—December 2023* at 1 (Mar. 13, 2024), https://www.bls.gov/news.release/archives/ecec_03132024.pdf. Using these figures, benefits constitute a markup of \$14.13/\$31.29 = 45%. We therefore mark up wages by 45% to account for benefits. \$32.26 × 1.45 = \$46.78, which we round to \$47.

reconfigure, and change the delivery points for their 911 traffic. We rely on the assertion of RWA that “the number of person-hours required will typically be closer to two or three,”⁴⁷⁴ rather than the one hour estimated in the NG911 Notice,⁴⁷⁵ and we adjust this amount upward by 50% more for OSPs serving more than 10,000 subscribers to account for the greater complexity of the task. Based on these assumptions, we arrive at the total one-time labor cost of \$343,000 for all the OSPs to change the delivery points.⁴⁷⁶

Phase 2 Costs. We estimate that wireline carriers, interconnected VoIP providers, and other OSPs that are not CMRS providers (and thus not subject to the LBR Order) will incur approximately \$24 million in one-time costs and \$50 million in annual recurring costs to comply with 911 Authorities' Phase 2 requests to transmit and maintain accurate location information with 911 calls in IP format using LIS databases. The rules allow OSPs to use “LIS as a service” from a third-party vendor as an option instead of creating their own LIS or equivalent databases. This LIS service may either involve native IP LIS or LIS equivalent database population, or a database conversion of OSPs' existing ALI/ANI/MSAG data to LIS formats. CSRIC explains that LIS as a service is contemplated as an NG911 solution at “minimal expense” to small OSPs, as it relieves OSPs of most costs beyond monthly services, and an LNG and can be provided either by a commercial vendor or the 911 authority.⁴⁷⁷ This is a substantial cost-savings measure,

⁴⁷⁴ RWA NG911 Notice Comments at 2 & n.5; South Carolina RLECs NG911 Notice Comments at 9–10 (arguing that one hour of labor to change delivery points is unrealistic, as this task requires “consulting with the ESInet regarding technical requirements, figuring out how transport will be handled and an appropriate demarcation point, procuring transport circuits to connect, configuring the lines and switching equipment, and then managing cut over of existing 911 traffic and testing to ensure the trunk is operable”). Frontier's assertion that the costs of labor plus facilities upgrades needed to begin delivering IP call traffic outside its network footprint will be “millions” is unfounded and implausible. Frontier NG911 Notice Reply at 3–4.

⁴⁷⁵ NG911 Notice, 38 FCC Rcd at 6237–8, para. 71.

⁴⁷⁶ We calculate the total one-time IP delivery configuration cost in Phase 1 as follows: (\$47/hour × 3 hours × 1,996 small/medium OSPs serving no more than 10,000 subscribers) + (\$47/hour × 3 hours × (1 + 50%) × 291 large OSPs serving more than 10,000 subscribers) = \$342,982.50, rounding to \$343,000.

⁴⁷⁷ CSRIC NG911 Transition Report at secs. 5.1.1.2.2.3, 5.1.2.1 (“LIS or equivalent elements may be operated directly by originating service providers, by their chosen vendors, or possibly by a 9–1–1 Authority, a set of 9–1–1 Authorities, or their vendors as a service to carriers.”).

especially for smaller OSPs with TDM networks, who may not be ready to decommission older legacy equipment and modernize their networks for IP/VoIP.⁴⁷⁸

We conservatively base these figures on Five Area Telephone's estimates that, to comply with location-based routing-type requirements to insert location information into call paths, wireline and VoIP providers would need to incur non-recurring costs of approximately \$10,000 and monthly recurring costs of \$1,750. Extrapolating these statistics and increasing the costs by 50% for larger OSPs serving more than 10,000 subscribers, we estimate that compliance with the Phase 2 rules would require non-CMRS OSPs to incur a total of \$24 million in one-time costs and \$50 million in annual recurring costs.⁴⁷⁹ We conclude that the location information requirement does not result in any additional costs for CMRS providers because they will have already implemented such upgrades.⁴⁸⁰

We reject AT&T's cost estimate submitted in the record. AT&T alleges that "requiring the introduction of a Location Information Server ('LIS') would be extremely expensive and inefficient" for carriers with legacy TDM switching facilities and "could cost several billion dollars on an industry-wide basis." AT&T, in its role as the lead NGCS and ESInet contractor

in Virginia,⁴⁸¹ has already provided a solution that allows legacy OSP wireline ALI and MSAG location data to be used for NG911-compliant LIS as a service,⁴⁸² which eliminates TDM OSPs' needs to upgrade their networks to IP. We therefore find AT&T's record assertion was based on an assumption of an IP origination requirement, which we decline to impose.

Our Phase 2 cost estimate does not include the costs of originating traffic in IP format. WTA claims that "obtaining the full benefits of NG911 service will not be possible unless 911 calls originate in IP format," and that converting networks from TDM to IP carries "not only significant network and customer equipment changes and reconfigurations, but also substantial customer service and education costs." Although we agree that converting TDM networks to IP networks can be costly, we reject the contention that such system upgrade costs should be attributed to the requirements in these rules. The transition from TDM to IP technology has been ongoing for over a decade as the subscriptions to voice-only local exchange telephone service (switched access lines) has fallen from nearly 141 million lines in December 2008 to 27 million in June 2022.⁴⁸³ A

linear model predicts that switched access lines will be fully phased out in the near future.⁴⁸⁴ Therefore, since we can reasonably expect that these system upgrades will occur organically as part of the natural technological evolution, regardless of whether OSPs are required to comply with Phase 2 requests, the cost of the upgrades cannot be attributed to these requirements. Instead, they should be considered baseline costs of operating telecommunications business. Furthermore, even if a handful of RLECs delayed their system upgrades for idiosyncratic reasons, the 6- to 12-month timeline to comply with the requirements for each of the two phases would be sufficient for RLECs to move away from the legacy systems that are beyond end of their life.

We emphasize that the rules do not require OSPs to originate 911 calls in IP format, and hence OSPs can choose other alternative solutions to send 911 calls in the format that can be interoperable with the industry standards in Phase 2. Moreover, our rules do not preclude OSPs from negotiating with 911 Authorities for alternative arrangements. If the costs of upgrading network systems are as high as some OSPs claim, those entities could offer 911 Authorities alternative, less costly arrangements, such as offering to pay the 911 Authorities to

⁴⁷⁸ See, e.g., Brian Rosen NG911 Notice Reply at 17 ("The LNG contains the Location Database (LIS) which is analogous to the ALI in that there is a record per subscriber (for wireline subscribers) typically indexed by telephone number. The TDM signaling contains all the information needed for the LNG to retrieve the location from its database and insert it in the SIP signaling towards the ESInet. As above, there are data format and provisioning changes wireline OSPs will need to make, but there are many ESInets with functioning LNGs that handle RLECs well. And, as above, wireline OSPs will continue to use street address (civic) location formats, albeit those formats are different than the current MSAG based standards.").

⁴⁷⁹ We calculate the one-time cost as follows: (\$10,000 per OSP $\times$ 1,978 small/medium wireline and VoIP OSPs) + (\$10,000 $\times$ (1 + 50%) $\times$ 254 large wireline and VoIP OSPs) = \$23,590,000. Staff Calculation, FCC Form 477 Data as of June 2023. We calculate the annual cost following the same approach: (\$1,750 per month $\times$ 12 months $\times$ 1,978 small/medium wireline and VoIP OSPs) + (\$1,750 per month $\times$ 12 months $\times$ (1 + 50%) $\times$ 254 large wireline and VoIP OSPs) = \$49,539,000, rounding to \$50 million.

⁴⁸⁰ LBR Notice, 37 FCC Rcd at 15210, para. 70 n.176 ("AT&T's implementation of location-based routing uses Intrado's 'Locate Before Route' feature and 'implemented several timer changes in the GMLC housing AT&T [Location Information Server (LIS)]," citing AT&T LBR Public Notice Comments at 2, 5 (rec. July 11, 2022)); T-Mobile July 26, 2023 *Ex Parte*, Exh. B (asking if the PSAP requesting NG911 service is served by an ESInet/NGCS capable of supporting standards based NG911 connectivity to T-Mobile's LIS).

⁴⁸¹ Virginia Department of Emergency Management, *NG9-1-1 Deployment-Summary of the project*, <https://ngs.vdem.virginia.gov/pages/ng9-1-1-deployment> (last visited June 21, 2024) ("The project contractor, AT&T, tracks status for 19 project items, such as AVPN ordered and trunk complete."); see also Virginia Department of Emergency Management (VDEM) 9-1-1 and Geospatial Services Bureau (NGS), [no title] (Aug. 29, 2022), https://gismaps.vdem.virginia.gov/websites/ngs/ng9-1-1%20Deployment/documents/FFXVBComp_NGS.pdf (summarizing "high level information about the Fairfax County and VA Beach Next Generation 9-1-1 (NG9-1-1) contracts").

⁴⁸² Virginia Department of Emergency Management, *MSAG and ALI Maintenance After Next Generation 9-1-1 Go-Live* at 1 (Nov. 2022), <https://gismaps.vdem.virginia.gov/websites/PSC/RegionalAdvisoryCommittee/Documents/20221117MSAGALIMaint.pdf> ("Wireline phone providers require the MSAG and ALI information until they upgrade their systems to the NG9-1-1 end state environment. Therefore, after NG9-1-1 go live, Virginia localities must continue to maintain MSAG and ALI databases, now in the AT&T and Intrado environment"); *id.* at 3 (describing solution for "when a PSAP is live on NG9-1-1 and their legacy 9-1-1 provider still requires a legacy ALI database").

⁴⁸³ See FCC, *Voice Telephone Services Report*, (Aug. 18, 2023), <https://www.fcc.gov/voice-telephone-services-report> (linking to *Nationwide and State-Level Data for 2008-Present* (Zip)), https://www.fcc.gov/sites/default/files/vts_june_22_hist.zip (containing "VTS_subscriptions_hist.csv"; Reference row 13 "Local exchange telephone service (Switched Access Lines)" shows that there were 140,958,000 subscriptions in December 2008 which declined steadily year-over-year to 27,207,000 subscriptions in June 2022)). Relatedly, the RLEC Coalition states that "current discussions suggest" that purchasing LIS services from a third party could cost as much as 1 dollar per month per

telephone location for RLEC subscriber lines. RLEC Coalition July 5, 2024 *Ex Parte* at 8 (stating that the cost would be approximately \$0.50 to \$1.00 per telephone number location per month). However the RLEC Coalition provides no support for this estimate beyond unnamed "discussions" with parties unknown. *Id.* Accordingly, we continue to find Five Area Telecom's detailed breakout and analysis of LIS cost elements reliable. Five Area Telecom NG911 Notice Comments at 5-6. Furthermore, even if LIS costs were near the RLEC Coalition's figure, we observe that these costs will decline rapidly because OSPs migrating to IP and retiring their TDM facilities can also retire the LNGs they need to use LIS with ALI/ANI/MSAG data. See Brian Rosen NG911 Notice Reply at 17; Virginia Department of Emergency Management, *MSAG and ALI Maintenance After Next Generation 9-1-1 Go-Live* at 3 (Nov. 2022), <https://gismaps.vdem.virginia.gov/websites/PSC/RegionalAdvisoryCommittee/Documents/20221117MSAGALIMaint.pdf>.

⁴⁸⁴ A linear model estimates Expected Subscriptions = 17,117,250.6 - 8,455.4 Year, which implies the Expected Subscriptions = 0 when Year = 2024.4 (or May in 2024 because 0.4 $\times$ 12 months = 4.8 months). The linear model fits the data well with a $R^2 = 0.97$, meaning 97% of the data variation is explained by the linear model. A linear model predicts the switched access lines would have been fully phased out in May 2024. Therefore, if the system upgrades would have happened organically as part of the natural technological evolution, they should be considered costs of operating telecommunications business. Furthermore, even if a handful of RLECs delayed their system upgrades for idiosyncratic reasons, the 6- to 12-month timeline to comply with the requirements for each of the two phases would be sufficient for RLECs to move away from the legacy systems that are beyond end of their life.

maintain the costly legacy conversion components for these OSPs to use in order to fulfill the requirements. Nonetheless, in light of the ample record evidence that most 911 Authorities are eager to decommission these legacy facilities due to the high cost of maintaining them (as well as the limitations on these facilities' functionality), we believe it is highly unlikely that any OSP would find such an arrangement to be cost-effective, especially when compared with the cost of upgrading their own networks—upgrades that they almost certainly will need to implement within the applicable time frame for reasons that have nothing to do with these NG911 rules.

H. Implementation, Monitoring, and Compliance

In the NG911 Notice, the Commission sought comment on whether the Commission should implement any new data collections to assist in monitoring compliance with our proposed rules for NG911.⁴⁸⁵ The Commission tentatively concluded that public safety entities and members of the public seeking to report non-compliance with the proposed rules would be able to file complaints via the Public Safety and Homeland Security Bureau's Public Safety Support Center or through the Commission's Consumer Complaint Center.⁴⁸⁶ The Commission did not propose any rule for monitoring the transition to NG911 or addressing compliance with the new requirements.

We believe the existing complaint mechanisms should be sufficient and that the Commission would be able to address complaints in a timely manner. A handful of commenters state that existing mechanisms of oversight should be sufficient.⁴⁸⁷ AT&T and

Hamilton Relay agree that the Commission should decline to adopt any new data collections. Colorado PUC states that the Commission "should be prepared to engage with complaints in a timely manner."⁴⁸⁸ WTA, on the other hand, requests that the Commission "establish one or more mechanisms that will encourage and enable the negotiation of and dispute resolution for more efficient and equitable ESInet location arrangements and/or more equitable distribution of or compensation for the additional costs of the ultimate NG911 configuration."⁴⁸⁹ As we discuss above, we establish a procedure in which an OSP, within 60 days of the receipt of a Phase 1 or Phase 2 valid request, may submit a petition to PSHSB asserting that the 911 Authority has failed to meet the requirements of a Phase 1 or 2 valid request. In cases where OSPs and 911 Authorities negotiate alternative arrangements, we require that OSPs notify the Commission of any alternative agreement and the pertinent terms of that agreement. This requirement ensures the Commission maintains proper oversight of the nationwide NG911 transition and awareness of any technical implementation issues that may arise. Furthermore, in addition to the OSP petition procedure we adopt, we believe that the existing avenues within the Commission, as well as the rules, are sufficient for monitoring the transition and compliance, and for addressing disputes.

Finally, Comtech "urges the Commission to place formal complaints regarding OSP noncompliance on the Commission's Accelerated Docket,"⁴⁹⁰ which is a complaint mechanism that is available for selected formal complaints.⁴⁹¹ Proceedings on the

Accelerated Docket must be concluded within 60 days, and are therefore subject to shorter pleading deadlines and other modifications to the procedural rules that govern formal complaint proceedings.⁴⁹² Given that our rules afford Commission staff the discretion to decide whether a complaint, or portion of a complaint, is suitable for inclusion on the Accelerated Docket,⁴⁹³ we decline Comtech's suggestion to default to the Accelerated Docket for complaints regarding OSP noncompliance.

I. Promoting Digital Equity and Inclusion

As noted in the NG911 Notice, the Commission is engaged in a continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality.⁴⁹⁴ The NG911 Notice invited comment on equity-related considerations and benefits, if any, that may be associated with the proposals and issues under consideration.⁴⁹⁵ Specifically, the Commission sought comment on how its proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility.⁴⁹⁶

Several parties submitted comments indicating that the transition to NG911 would promote digital equity and inclusion. Richard Ray "support[s] the implementation and deployment of NG9-1-1 to provide direct, equal, and meaningful access to emergency services for everyone, including individuals with disabilities, using all four elements: voice, video, text, and data."⁴⁹⁷ CEA concurs with a previous Commission statement that adding video, text, and image capabilities to the 911 system will "make the system more accessible to the public," including "for people with disabilities."⁴⁹⁸ NENA

public-safety-enforcement (last visited June 6, 2024); see 47 CFR 1.736.

⁴⁹² 47 CFR 1.736(a).

⁴⁹³ 47 CFR 1.736(d).

⁴⁹⁴ NG911 Notice, 38 FCC Rcd at 6234, para. 63.

⁴⁹⁵ *Id.*

⁴⁹⁶ *Id.*

⁴⁹⁷ Richard Ray Sept. 15, 2023 *Ex Parte* at 3; *id.* at 8 ("When NG9-1-1 is deployed, it will give individuals who are deaf, deafblind, late-deafened, hard of hearing, or who have speech disabilities the opportunity to call a PSAP directly rather than via internet-based relay services such as Video Relay Service and Internet Protocol Relay Service.").

⁴⁹⁸ CEA NG911 Notice Comments at 10 (quoting *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications, Framework for Next Generation 911 Deployment*, PS Docket Nos. 11-153 and 10-255, Notice of

⁴⁸⁵ NG911 Notice, 38 FCC Rcd at 6231, para. 57.

⁴⁸⁶ *Id.* at 6232, para. 58. The Public Safety Support Center is a web-based portal that enables PSAPs and other public safety entities to request support or information from the Public Safety and Homeland Security Bureau and to notify it of problems or issues impacting the provision of emergency services. *Public Safety and Homeland Security Bureau Announces Opening of Public Safety Support Center*, Public Notice, 30 FCC Rcd 10639 (PSHSB 2015); FCC, Public Safety Support Center, <https://www.fcc.gov/general/public-safety-support-center> (last visited June 6, 2024). The Consumer Complaint Center handles consumer inquiries and complaints, including consumer complaints about access to 911 emergency services. See FCC, Consumer Complaint Center, <https://consumercomplaints.fcc.gov/hc/en-us> (last visited June 6, 2024).

⁴⁸⁷ Maine PUC NG911 Notice Comments at 3 ("[E]xisting mechanisms of oversight should be sufficient."); NASNA NG911 Notice Comments at 11 ("NASNA agrees that existing mechanisms of oversight should be sufficient. However, in the event actual implementation of the States' NG911

deployments are delayed and existing mechanisms are found to be ineffective, NASNA will urge the Commission's reconsideration."); see AT&T NG911 Notice Comments at 11 (indicating that additional compliance reporting is not required).

⁴⁸⁸ Colorado PUC NG911 Notice Reply at 11 (stating that "COPUC believes that states and jurisdictions are in the best position to monitor compliance and inform the Commission if there are providers who refuse to comply").

⁴⁸⁹ WTA NG911 Notice Comments at 7 (suggesting that the Commission "could establish a process whereby a state's voice service providers could request and obtain Commission oversight and mediation of negotiations regarding proposed revisions to a state or regional ESInet location plan").

⁴⁹⁰ Comtech NG911 Notice Comments at 11 ("Specifically, Comtech encourages the Commission to establish an expedited process when formal complaints are filed related to disputes in order to minimize extensive delays in the deployment of NG911 services.").

⁴⁹¹ FCC, A Guide to Public Safety Enforcement, <https://www.fcc.gov/reports-research/guides/guide->

states that NG911 introduces a variety of capabilities to support persons with disabilities and marginalized groups.⁴⁹⁹ NASNA states that it “believes in providing equal access to 911 services to all citizens through local NG911 systems.” These regulations to advance the nationwide transition to NG911 will significantly promote and enable vital 911 access for individuals with disabilities, including through internet-based TRS and video/data capabilities.

Certain RLEC commenters contend that the NG911 rules will have adverse effects on one particular group included in the Commission’s initiative to promote digital equity and inclusion: persons who live in rural areas. South Carolina Telephone Coalition argues that imposing additional costs on RLECs without simultaneously changing high-cost universal service support would result in “a system that disproportionately benefits wireless callers through enhanced texting and video capabilities makes no sense and will ultimately hurt rural Americans.” South Dakota Telecommunications Association states that requiring “transport to out-of-state points of interconnection (POIs) will add cost, which will need to be recovered from either the Universal Service Fund (USF) or the end-user’s customers.” As we discuss above, we are tempering costs to RLECs and other OSPs by requiring 911 Authorities to designate NG911 Delivery Points within their own states. Moreover, the rules we adopt do not require RLECs and other OSPs to extend their physical networks, and RLECs and other OSPs may retain other entities to transmit 911 traffic to the NG911 Delivery Points specified by the 911 Authorities. Accordingly, we expect that RLECs’ increased NG911-related costs are likely to be relatively modest, thus limiting the cost increases to be passed on to rural subscribers.

On the other hand, Rally Networks argues that, especially in rural communities, “NG911 provides an opportunity for resources to be more appropriately dispatched before first responders arrive on scene and evaluate the need.” We agree. As we discuss above, NG911 implementation will yield substantial benefits to consumers, including rural subscribers, due to the improved functionalities it supports, its capacity to deliver a greater range of information from 911 callers to PSAPs and first responders, the increased

security, reliability, and interoperability of NG911 networks, and the likelihood that 911 calls will be delivered to first responders more rapidly and accurately, thus saving lives. We conclude that our NG911 rules would advance digital equity for all, including for persons who live in rural areas.

In sum, we acknowledge the importance of the continuing effort to advance digital equity for all. We believe that the rules, requiring OSPs to take actions to start the transition to NG911 in coordination with 911 Authorities, will help to advance those goals.

IV. Procedural Matters

Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980, as amended (RFA),⁵⁰⁰ requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”⁵⁰¹ Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this document and the Order on small entities. The FRFA is set forth in Appendix B of the Order.

Paperwork Reduction Act of 1995 Analysis. This document and the Order contain new information collection requirements in § 9.31(a), (b), and (c), and § 9.34(a) and (b), that are subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. These rules will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA.⁵⁰² OMB, the general public, and other Federal agencies will be invited to comment on the new information collection requirements contained in this proceeding. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002,⁵⁰³ we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. We received a few such comments. South Carolina states that “a simple certification by providers that they are in compliance with requirements for delivery of calls

in IP format to the designated demarcation points is sufficient rather than creating additional burdens on the providers for reporting requirements.” As we indicate above, we are not imposing requirements to report compliance with the rules. We received a comment relevant to our new information collection requirement for OSPs and 911 Authorities that enter into agreements, which requires the OSP to notify the Commission. Alaska Telecom Assoc. “agrees” that providing OSPs and 911 Authorities “the flexibility to negotiate an alternative time frame” is “a significant step to minimize the economic impact for small entities.”⁵⁰⁴ The Commission does not believe that the new information collection requirements in § 9.31(a), (b), and (c), and § 9.34(a) and (b), will be unduly burdensome on small businesses. We describe impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the FRFA in Appendix B of the Order.

V. Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in NG911 Notice adopted in June 2023. The Commission sought written public comment on the proposals in the NG911 Notice, including comments on the IRFA. One comment was filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Final Rules

In the NG911 Notice, the Commission proposed a framework to advance the nationwide transition to NG911. Like communications networks generally, dedicated 911 networks are evolving from TDM-based architectures to IP-based architectures. With the transition to NG911, 911 Authorities (*i.e.*, a State, territorial, regional, Tribal, or local governmental entity that operates or has administrative authority over all or any aspect of a communications network for the receipt of 911 traffic at NG911 Delivery Points and for the transmission of such traffic from that point to the PSAPs) will replace the circuit-switched architecture of legacy 911 networks with IP-based technologies and applications, which provide new capabilities and improved interoperability and system

Proposed Rulemaking, 26 FCC Rcd 13615, 13616, para. 1 (2011), 76 FR 63257 (Oct. 12, 2011)).

⁴⁹⁹ NENA NG911 Notice Comments at 14–15 (discussing an NG911 capability that allows callers to directly connect with a caller that supports their language and media).

⁵⁰⁰ See 5 U.S.C. 604. The RFA, 5 U.S.C. 601–612. The RFA was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

⁵⁰¹ 5 U.S.C. 605(b).

⁵⁰² 44 U.S.C. 3507(d).

⁵⁰³ Public Law 107–198, 116 Stat. 729 (2002) (codified at 44 U.S.C. 3506(c)(4)).

⁵⁰⁴ Alaska Telecom Assoc. NG911 Notice Comments at 9 (also stating that even if the FCC provides such flexibility, “the FCC should still adopt longer implementation timeframes than proposed in the NPRM” for smaller providers”).

resilience. Most States have invested significantly in NG911, but some report that they are experiencing delays in providers connecting to these IP-based networks. As a result of these delays, the transition to NG911 is being delayed, and State and local 911 authorities incur prolonged costs because of the need to maintain both legacy and IP networks during the transition. Managing 911 traffic on both legacy and IP networks also results in increased vulnerability and risk of 911 outages.

In the Order, the Commission adopted rules and procedures to expedite the NG911 transition that will apply to all wireline, Commercial Mobile Radio Service (CMRS), covered text, interconnected Voice over Internet Protocol (VoIP), and internet-based Telecommunications Relay Service (TRS) providers (collectively, Originating Service Providers or OSPs for purposes of this proceeding) as 911 Authorities transition to IP-based networks and develop the capability to support NG911 elements and functions. Specifically, we require OSPs to complete necessary network upgrades to complete the transition to NG911 in two phases, triggered at each phase by separate valid requests of 911 Authorities who have completed their required NG911 technology upgrade readiness for that phase. At Phase 1, OSPs must deliver 911 traffic in IP format to NG911 Delivery Points designated by 911 Authorities, such as an Emergency Services IP network (ESInet) or similar designated point. All Phase 1 requirements must be completed in order to progress to Phase 2. At Phase 2, OSPs must deliver traffic in fully compliant NG911 format to include information that enables routing to the correct Public Safety Answering Point (PSAP), as well as caller location information, in the IP Session Initiation Protocol (SIP) header of the IP-delivered 911 call.

Smaller wireline providers (such as Rural Incumbent Local Exchange Carriers (RLECs)), non-nationwide CMRS providers, and internet-based TRS providers will have one year following a 911 Authority request to comply with each phase of the transition. Larger wireline providers, nationwide CMRS providers, covered text providers, and interconnected-VoIP providers will have six months to comply with a valid request with each phase of the transition. For all OSPs, the initial compliance date will be extended based on the effective date of the rules—*i.e.* no OSP must comply with a 911 Authority Phase 1 request sooner than one year after the effective date of these

rules, regardless of the timing of the 911 Authority's request. This timing rule is similar to the requirements adopted for CMRS and covered text providers in our recent proceeding on wireless location-based routing.

The Commission's two-phased approach allows OSPs and states or localities to negotiate alternate agreements on cost recovery terms. However, in the absence of alternate agreements by states or localities, OSPs must cover the costs of transmitting 911 calls to the NG911 Delivery Points designated by a 911 Authority starting in Phase 1. OSPs bear responsibility for any costs associated with completing the TDM-to-IP translation necessary to deliver such calls and associated routing and location information in the requested IP-based format. Thus, the NG911 Delivery Point becomes the network demarcation point for allocating all 911 network costs between the OSP portions of the network and the state and local government portions of the network. States and localities can establish alternative cost allocation arrangements with OSPs. However, OSPs are presumptively responsible for all the costs associated with delivering traffic to the NG911 Delivery Point identified by the appropriate 911 Authority in the absence of any such alternative arrangements.

Expediting the NG911 transition will help ensure that the nation's 911 system functions effectively and reliably, and with the most advanced capabilities available. In the Order, the Commission's actions also respond to the petition filed in 2021 by the National Association of State 911 Administrators (NASNA), urging the Commission to resolve uncertainty and disputes between OSPs and state 911 Authorities regarding the NG911 transition. With the rules we adopt, the Commission creates a consistent framework for ensuring that OSPs take the necessary steps to implement the transition to NG911 capability in coordination with state and local 911 Authorities. The rules also align the NG911 transition requirements for all OSPs with similar Commission requirements adopted for CMRS in the LBR Order, thereby promoting consistency across service platforms. Finally, the demarcation point and cost allocation rules the Commission adopted in the Order address "the critical component, and biggest regulatory roadblock, to transitioning to NG911 services."

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

One commenter, RTCC, raises significant issues in response to the IRFA. RTCC states that the Commission's initial estimate in the NG911 Notice that only 8.5% of RLECs would incur 911 IP call transport costs "lack[s] a factual foundation" and therefore "call[s] into question the reliability and sustainab[ility]" of the IRFA. We disagree. Further, while not raised in response to the IRFA, comments filed by RLECs also raise cost-related concerns associated with the IP transport rule proposed in the NG911 Notice. Following the Commission's review of comments from multiple parties associated with our cost estimates in the NG911 Notice, including comments submitted in the record by RLECs, the Order adjusted the cost estimates to implement the requirements to advance the nationwide transition to Next Generation 911. In response to comments, the Order also modified the proposed rules to substantially minimize any significant cost impacts on small businesses. We discuss RTCC and RLECs concerns in Section E of the FRFA, as well as modifications adopted in the Order in Section F of the FRFA. Accordingly, the Commission concludes that the IRFA included in the NG911 Notice was sound and has fulfilled its purposes in satisfaction of the requirements of the RFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted in the Order. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental

jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.” A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

Small Businesses, Small Organizations, Small Governmental Jurisdictions. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.

Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2022 Census of Governments indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,845 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts) with enrollment populations of less than 50,000. Accordingly, based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 entities fall

into the category of “small governmental jurisdictions.”

All Other Telecommunications. This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (e.g. dial-up ISPs) or Voice over internet Protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of \$40 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than \$25 million. Based on this data, the Commission estimates that the majority of “All Other Telecommunications” firms can be considered small.

Advanced Wireless Services (AWS)—(1710–1755 MHz and 2110–2155 MHz bands (AWS–1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS–2); 2155–2175 MHz band (AWS–3); 2000–2020 MHz and 2180–2200 MHz (AWS–4)). Spectrum is made available and licensed in these bands for the provision of various wireless communications services. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

According to Commission data as of December 2021, there were approximately 4,472 active AWS licenses. The Commission’s small business size standards with respect to AWS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of AWS licenses, the Commission defined a “small business”

as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a “very small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million. Pursuant to these definitions, 57 winning bidders claiming status as small or very small businesses won 215 of 1,087 licenses. In the most recent auction of AWS licenses 15 of 37 bidders qualifying for status as small or very small businesses won licenses.

In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA’s small business size standard.

Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.

Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.

The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on

Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

Local Exchange Carriers (LECs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were fixed local exchange service providers. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

Competitive Local Exchange Carriers (LECs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were

competitive local service providers. Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

Incumbent Local Exchange Carriers (Incumbent LECs). Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers. Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

Interexchange Carriers (IXCs). Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 127 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 109 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

Local Resellers. Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with an SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 207 providers that reported they were engaged in the provision of local resale services. Of these providers, the Commission estimates that 202 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

Broadband Personal Communications Service. The broadband personal communications services (PCS) spectrum encompasses services in the 1850–1910 and 1930–1990 MHz bands. The closest industry with an SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (except Satellite). The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

Based on Commission data as of November 2021, there were approximately 5,060 active licenses in the Broadband PCS service. The Commission's small business size standards with respect to Broadband PCS involve eligibility for bidding

credits and installment payments in the auction of licenses for these services. In auctions for these licenses, the Commission defined “small business” as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$40 million for the preceding three years, and a “very small business” as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding \$15 million for the preceding three years. Winning bidders claiming small business credits won Broadband PCS licenses in C, D, E, and F Blocks.

In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA’s small business size standard.

Narrowband Personal

Communications Services. Narrowband Personal Communications Services (Narrowband PCS) are PCS services operating in the 901–902 MHz, 930–931 MHz, and 940–941 MHz bands. PCS services are radio communications that encompass mobile and ancillary fixed communication that provide services to individuals and businesses and can be integrated with a variety of competing networks. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

According to Commission data as of December 2021, there were approximately 4,211 active Narrowband PCS licenses. The Commission’s small business size standards with respect to Narrowband PCS involve eligibility for

bidding credits and installment payments in the auction of licenses for these services. For the auction of these licenses, the Commission defined a “small business” as an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A “very small business” is defined as an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. Pursuant to these definitions, 7 winning bidders claiming small and very small bidding credits won approximately 359 licenses. One of the winning bidders claiming a small business status classification in these Narrowband PCS license auctions had an active license as of December 2021.

In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA’s small business size standard.

Offshore Radiotelephone Service. This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to this service. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small. Additionally, based on Commission data, as of December 2021, there was one licensee with an active license in this service. However, since the Commission does not collect data on the number of employees for this service, at this time we are not able to estimate the

number of licensees that would qualify as small under the SBA’s small business size standard.

Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small. U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year. Of this number, 624 firms had fewer than 250 employees. Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

Rural Radiotelephone Service. Neither the Commission nor the SBA have developed a small business size standard specifically for small businesses providing Rural Radiotelephone Service. Rural Radiotelephone Service is radio service in which licensees are authorized to offer and provide radio telecommunication services for hire to subscribers in areas where it is not feasible to provide communication services by wire or other means. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). Wireless Telecommunications Carriers (except Satellite), is the closest applicable industry with an SBA small business size standard. The SBA small business size standard for Wireless Telecommunications Carriers (except Satellite) classifies firms having 1,500 or fewer employees as small. For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year. Of this total, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that the majority of Rural Radiotelephone Services firm are small entities. Based on Commission data as of December 27, 2021, there were approximately 119 active licenses in the Rural Radiotelephone Service. The Commission does not collect employment data from these entities holding these licenses and therefore we cannot estimate how many of these

entities meet the SBA small business size standard.

Wireless Communications Services. Wireless Communications Services (WCS) can be used for a variety of fixed, mobile, radiolocation, and digital audio broadcasting satellite services. Wireless spectrum is made available and licensed for the provision of wireless communications services in several frequency bands subject to Part 27 of the Commission's rules. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

The Commission's small business size standards with respect to WCS involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in WCS. When bidding credits are adopted for the auction of licenses in WCS frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in the designated entities section in part 27 of the Commission's rules for the specific WCS frequency bands.

In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

Wireless Telecommunications Carriers (except Satellite). This industry comprises establishments engaged in operating and maintaining switching

and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

Wireless Telephony. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite). The size standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 331 providers that reported they were engaged in the provision of cellular, personal communications services, and specialized mobile radio services. Of these providers, the Commission estimates that 255 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

700 MHz Guard Band Licensees. The 700 MHz Guard Band encompasses spectrum in 746–747/776–777 MHz and 762–764/792–794 MHz frequency bands. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.

U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

According to Commission data as of December 2021, there were approximately 224 active 700 MHz Guard Band licenses. The Commission's small business size standards with respect to 700 MHz Guard Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, the Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years, and a "very small business" an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. Pursuant to these definitions, five winning bidders claiming one of the small business status classifications won 26 licenses, and one winning bidder claiming small business won two licenses. None of the winning bidders claiming a small business status classification in these 700 MHz Guard Band license auctions had an active license as of December 2021.

In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

Lower 700 MHz Band Licenses. The lower 700 MHz band encompasses spectrum in the 698–746 MHz frequency bands. Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for

private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

According to Commission data as of December 2021, there were approximately 2,824 active Lower 700 MHz Band licenses. The Commission's small business size standards with respect to Lower 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For auctions of Lower 700 MHz Band licenses the Commission adopted criteria for three groups of small businesses. A very small business was defined as an entity that, together with its affiliates and controlling interests, has average annual gross revenues not exceeding \$15 million for the preceding three years, a small business was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$40 million for the preceding three years, and an entrepreneur was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$3 million for the preceding three years. In auctions for Lower 700 MHz Band licenses seventy-two winning bidders claiming a small business classification won 329 licenses, twenty-six winning bidders claiming a small business classification won 214 licenses, and three winning bidders claiming a small business classification won all five auctioned licenses.

In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of

employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

Upper 700 MHz Band Licenses. The upper 700 MHz band encompasses spectrum in the 746–806 MHz bands. Upper 700 MHz D Block licenses are nationwide licenses associated with the 758–763 MHz and 788–793 MHz bands. Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to licensees providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

According to Commission data as of December 2021, there were approximately 152 active Upper 700 MHz Band licenses. The Commission's small business size standards with respect to Upper 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, the Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years, and a "very small business" an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. Pursuant to these definitions, three winning bidders claiming very small business status won five of the twelve available licenses.

In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses

currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

Wireless Resellers. Neither the Commission nor the SBA have developed a small business size standard specifically for Wireless Resellers. The closest industry with an SBA small business size standard is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications and they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under the SBA size standard for this industry, a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services during that year. Of that number, 1,375 firms operated with fewer than 250 employees. Thus, for this industry under the SBA small business size standard, the majority of providers can be considered small entities.

Semiconductor and Related Device Manufacturing. Semiconductor and Related Device Manufacturing. This industry comprises establishments primarily engaged in manufacturing semiconductors and related solid state devices. Examples of products made by these establishments are integrated circuits, memory chips, microprocessors, diodes, transistors, solar cells and other optoelectronic devices. The SBA small business size standard for this industry classifies entities having 1,250 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 729 firms in this industry that operated for the entire year. Of this total, 673 firms operated with fewer than 250 employees. Thus under the SBA size standard, the majority of firms in this industry can be considered small.

Telecommunications Relay Service (TRS) Providers. Telecommunications

relay services enable individuals who are deaf, hard of hearing, deaf-blind, or who have a speech disability to communicate by telephone in a manner that is functionally equivalent to using voice communication services. Internet-based TRS (iTRS) connects an individual with a hearing or a speech disability to a TRS communications assistant using an Internet Protocol-enabled device via the internet, rather than the public switched telephone network. Video Relay Service (VRS) one form of iTRS, enables people with hearing or speech disabilities who use sign language to communicate with voice telephone users over a broadband connection using a video communication device. Internet Protocol Captioned Telephone Service (IP CTS) another form of iTRS, permits a person with hearing loss to have a telephone conversation while reading captions of what the other party is saying on an internet-connected device. Providers must be certified by the Commission to provide VRS and IP CTS and to receive compensation from the TRS Fund for TRS provided in accordance with applicable rules.

Neither the Commission nor the SBA have developed a small business size standard specifically for TRS Providers. All Other Telecommunications is the closest industry with an SBA small business size standard. Internet Service Providers (ISPs) and Voice over internet Protocol (VoIP) services, via client-supplied telecommunications connections are included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of \$40 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than \$25 million. Based on Commission data there are ten certified iTRS providers. The Commission however does not compile financial information for these providers. Nevertheless, based on available information, the Commission estimates that most providers in this industry are small entities.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

The rules adopted in the Order will impose new or additional reporting, recordkeeping, and/or other compliance obligations on small entities. Some of our requirements contain written notification and certification requirements that will be applicable to small entities, and other requirements impose compliance obligations on small

entities that may require small entities to hire professionals to implement and comply.

Reporting and Recordkeeping. The Commission adopted the reporting and recordkeeping requirements proposed in the NG911 Notice, with minor adjustments. First, in each phase of the NG911 transition, the Commission allows OSPs and 911 Authorities the flexibility to agree to alternate time frames or cost allocation arrangements, but the OSPs must notify the Commission of the alternate arrangements, including the pertinent terms of that agreement, within 30 days of the agreement. We note that the notice of the alternative agreement must specifically identify which requirements from the rules are impacted, and what are the mutually agreed upon new requirements (e.g., compliance time frames, dates). In contrast, the rules proposed in the NG911 Notice limited OSPs and 911 Authorities to entering into mutual agreements to establish alternative time frames for meeting the requirements to deliver 911 calls and texts in the requested IP-based format. Second, to ensure OSPs receive valid requests from a technologically-ready 911 Authority to initiate each phase, we require the requesting local or state entity to certify its technology readiness suitable to the appropriate phase with a formal notice that must be transmitted in writing to the OSPs or made available to them via a Commission public registry.

Other Compliance Requirements. Several comments filed in response to the NG911 Notice discussed various categories of potential expenses to comply with NG911 transition requirements, with many asserting that there would be a greater burden on smaller RLECs. Our initial estimate of the upper bound of these costs for all 2,327 OSPs industry-wide in the NG911 Notice was approximately \$103,000 in one-time costs and \$11.6 million in recurring annual costs for new annual IP 911 call delivery transport charges for the 81 of those OSPs that currently provide only TDM telephony. As discussed below, in this document and the Order the Commission adjusted our cost estimates to account for industry-submitted data and further Commission analysis.

Assessment of Costs of Compliance Requirements. We update our cost calculation for a total of 2,287 OSPs based on newer Form 477 data, and we estimate that OSPs will incur approximately \$4.4 million in total one-time non-recurring costs and no more than \$5.5 million in annual recurring costs to implement Phase 1

requirements, and additionally approximately \$24 million in non-recurring costs and approximately \$50 million per year to implement Phase 2 requirements.

Phase 1 Compliance Costs. The new IP transport costs due to the rules are non-negligible. We respond to RTCC's comment that our initial estimate of IP transport costs for only 8.5% of RLECs was in error by reassessing that wireline OSPs may incur some transport costs regardless of whether they already have IP switches and can convert TDM to IP on their own networks or not, particularly assuming SIP trunking is used. We recognize that some smaller OSPs—primarily RLECs—will incur incremental recurring cost of IP transport via SIP trunks, even if those RLECs already have IP switches, can convert TDM to IP on their own networks, and can provide broadband service using their own IP switching facilities. As some parties point out, these RLECs might incur some SIP call transport costs if they do not have settlement-free peering agreements and cannot hand off IP voice traffic to existing interconnection partners. We estimate that the total of these costs will be below \$5.5 million per year. This estimate is based on assumptions that the transport cost would be \$2,000 per month for the 16 OSPs that currently only offer TDM-based voice services (i.e., they do not offer broadband or VoIP services) and serve fewer than 10,000 subscribers, and 50% more (i.e., \$3,000 per month) for the two OSPs that provide no broadband or VoIP but serve more than 10,000 subscribers.

The Commission concludes that most of the RLECs' and other commenting parties' estimates of the recurring costs of IP transport to NG911 Delivery Points are unduly high. Almost all of these cost estimates for 911 IP transport are premised on assumptions that OSPs will be required to transmit 911 calls over long distances across multiple states to faraway NG911 Delivery Points. These assumptions are unfounded in light of the rules, which require OSPs to transport 911 calls only to in-state NG911 Delivery Points designated by 911 Authorities. Given the ample evidence showing that IP transport costs are significantly lower than TDM transport costs, we believe that the rules might actually reduce the overall transport costs for OSPs. For example, South Carolina RFA submits data indicating that IP transport of 911 traffic is generally 27% cheaper than TDM call delivery, regardless of where the calls are delivered. iCERT points out that, to avoid the higher cost of transporting TDM calls, RLECs could convert their

traffic from TDM to IP format prior to transporting them. Five Area Telephone also points out that OSPs could significantly lower the overall costs of transmitting 911 calls to ESInets by taking advantage of third-party aggregators' services.

We further assess small and other OSPs will incur additional non-recurring Phase 1 material and labor costs in order to comply with the IP transport requirement. The Commission estimates a total of \$4.4 million in one-time material and labor costs, including approximately \$4 million to convert TDM calls to IP format and \$343,000 to configure the delivery to new NG911 Delivery Points. Because the majority of OSPs are capable of transmitting calls in IP format, we estimate that only a subset of OSPs that do not offer full IP-related services would need to incur the cost of facilities needed to convert TDM calls to IP format; other OSPs that already originate traffic in IP format would incur no up-front IP conversion costs. For the smallest entities, we conservatively estimate an upper bound of the one-time IP conversion cost to be no more than \$17,600 for the voice-only OSPs with no more than 10,000 subscribers.

We use Five Area Telephone's estimate of \$17,600 as the upper bound for the up-front equipment costs for small OSPs to connect to ESInets—an estimate that, according to Five Area Telephone, includes the costs of “establishing network connectivity, procurement of private line circuits, configuration assistance, switching equipment configuration, testing, cutover, and final testing,” equaling over \$40 million if applied to all 2,327 carriers. The Commission believes this estimate substantially overstates the cost of the network equipment required to convert TDM calls to IP format, because it assumes a major system upgrade would be required, and we reject Five Area Telephone's assertion that the total cost would exceed \$40 million because that erroneously assumes that all 2,327 OSPs would incur the same amount. Nonetheless, we apply Five Area Telephone's \$17,600 one-time cost estimate as the basis to calculate the upper bound of our IP conversion cost estimate, because other commenters' estimates are even less credible. Most of them include the non-recurring cost of system upgrades that are not required by the rules; many of them rely on unsupported cost figures for specific OSPs without providing any basis for us to examine whether these costs are typical; and some include no cost figures at all.

Including larger entities, we estimate that the total one-time cost that OSPs would incur to obtain the facilities needed to convert TDM calls to IP format would be approximately \$4 million, including \$334,400 for the 18 that do not offer any IP services and \$3.7 million for the 414 that offer broadband as well as voice services. We believe our estimate is conservative because it does not take into account the many non-911 calls that these OSPs would transmit using the same equipment.

The Commission also estimates that the one-time costs of reconfiguring and changing 911 traffic delivery points would require all affected OSPs to incur labor costs totaling \$343,000. This is based on the Bureau of Labor Statistics' estimate that the average wage for telecommunications equipment installers and repairers is \$32.26 per hour, as well as an estimate, based on evidence in the record, that OSPs serving fewer than 10,000 subscribers would need to pay for up to three hours of labor and OSPs serving more than 10,000 subscribers would need to pay 50% more in labor costs due to the potentially more complex tasks these entities might need to undertake to reconfigure and change the delivery points for their 911 traffic. We rely on RWA's assertion that “the number of person-hours required will typically be closer to two or three,” rather than the one hour estimated in the NG911 Notice, and adjust this amount upward by 50% more for OSPs serving more than 10,000 subscribers to account for the greater complexity of the task. Based on these assumptions, we arrive at the total one-time labor cost of \$343,000 for all the OSPs to change the delivery points.

Phase 2 Compliance Costs. We estimate that wireline carriers, interconnected VoIP providers, and other OSPs that are not CMRS providers (and thus not subject to the LBR Order) will incur approximately \$24 million in one-time costs and \$50 million in annual recurring costs to comply with 911 Authorities' Phase 2 requests to transmit and maintain accurate location information with 911 calls in IP format using LIS databases and the LVF function (or their equivalent). The rules allow OSPs to use “LIS as a service” from a third-party vendor as an option instead of creating their own LIS or equivalent databases. This LIS service may either involve native IP LIS or LIS equivalent database population, or a database conversion of OSPs' existing ALI/ANI/MSAG data to LIS formats. CSRIC explains that LIS as a service is contemplated as an NG911 solution at

“minimal expense” to small OSPs, as it relieves OSPs of most costs beyond monthly services, and an LNG and can be provided either by a commercial vendor or the 911 authority. This is a substantial cost-savings measure especially for smaller OSPs with TDM networks, who may not be ready to decommission older legacy equipment and modernize their networks for IP/VoIP.

We conservatively base these figures on Five Area Telephone's estimates that, to comply with location-based routing-type requirements to insert location information into call paths, wireline and VoIP providers would need to incur non-recurring costs of approximately \$10,000 and monthly recurring costs of \$1,750. Extrapolating these statistics and increasing the costs by 50% for larger OSPs serving more than 10,000 subscribers, we estimate that compliance with the Phase 2 rules would require non-CMRS OSPs to incur a total of \$24 million in one-time costs and \$50 million in annual recurring costs. The Commission concludes that the location information requirement does not result in any additional costs for CMRS providers because they will have already implemented such upgrades.

We reject AT&T's cost estimate submitted in the record. AT&T alleges that “requiring the introduction of a Location Information Server (‘LIS’) would be extremely expensive and inefficient” for carriers with legacy TDM switching facilities and “could cost several billion dollars on an industry-wide basis.” AT&T, in its role as the lead NGCS and ESInet contractor in Virginia, has already provided a solution that allows legacy OSP wireline ALI and MSAG location data to be used for NG911-compliant LIS as a service, which eliminates TDM OSPs' needs to upgrade their networks to IP. The Commission therefore finds AT&T's record assertion, which could have been relevant to small carriers with legacy TDM switching facilities, was based on an assumption of an IP origination requirement, which we do not impose.

The Commission emphasizes that these Phase 2 rules do not require OSPs to originate 911 calls in IP format. Our Phase 2 cost estimate does not include the costs of originating traffic in IP format. However, we nevertheless consider WTA's claims that “obtaining the full benefits of NG911 service will not be possible unless 911 calls originate in IP format,” and that converting networks from TDM to IP carries “not only significant network and customer equipment changes and reconfigurations, but also substantial

customer service and education costs.” Although we agree that converting TDM networks to IP networks can be costly, we reject the contention that such system upgrade costs should be attributed to the requirements in these rules. The transition from TDM to IP technology has been ongoing for over a decade as the subscriptions to voice-only local exchange telephone service (switched access lines) has fallen from nearly 141 million lines in December 2008 to 27 million in June 2022. A linear model predicts that switched access lines will be fully phased out in the near future. Therefore, since we can reasonably expect that these system upgrades will occur organically as part of the natural technological evolution, regardless of whether OSPs are required to comply with Phase 2 requests, the upgrades cannot be attributed to these requirements. Instead, they should be considered baseline costs of operating telecommunications business. Furthermore, even if a handful of RLECs delayed their system upgrades for idiosyncratic reasons, the 6- to 12-month timeline to comply with the requirements for each of the two phases would be sufficient for RLECs to move away from the legacy systems that are beyond end of their life.

Finally, our Phase 2 rules do not preclude small and other OSPs from negotiating with 911 authorities for alternative arrangements. If the costs of upgrading network systems are as high as some OSPs claim, those entities could offer 911 Authorities alternative, less costly arrangements, such as offering to pay the 911 Authorities to maintain the costly legacy conversion components for these OSPs to use in order to fulfill the requirements. Nonetheless, in light of the ample record evidence that most 911 Authorities are eager to decommission these legacy facilities due to the high cost of maintaining them (as well as the limitations on these facilities’ functionality), we believe it is highly unlikely that any OSP would find such an arrangement to be cost-effective, especially when compared with the cost of upgrading their own networks—upgrades that they almost certainly will need to implement within the applicable time frame for reasons that have nothing to do with these NG911 rules.

OSP Implementation Timeframes. In the Order the Commission also adjusted the compliance timeframes for small and rural OSPs. RLECs, non-nationwide CMRS providers, and internet-based TRS providers are required to comply with a 911 Authority’s valid request at each phase of the NG911 transition

within 12 months after receiving a valid request or within 12 months after the effective date of the rules adopted in the Order, whichever is later. The Commission granted these OSPs a longer time to comply than nationwide CMRS providers, interconnected VoIP providers, and non-RLEC wireline providers who are required to comply within six months after receiving a valid request at each phase of the NG911 transition or within six months after the effective date of the rules adopted in the Order.

The important life-saving public safety benefits that will result from the rules the Commission adopted in the Order are conservatively estimated at over one trillion dollars annually. The rule changes to implement NG911 will save lives by improving the reliability of the 911 network and decrease outages and call failures, improving routing to PSAPs to ensure each 911 call goes to the most appropriate PSAP that can most quickly answer and respond with the most suitable emergency assistance, and improving the standardized format and reliability of caller location data delivered to PSAPs to ensure faster public safety response times. Accordingly, these rule changes serve the public interest.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to provide “a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.”

In this document and the Order the Commission describes the significant public safety benefits to be achieved from requiring all OSPs to acquire and implement NG911 technology. We also discuss that based on the record in this proceeding, the Commission finds it is technologically feasible for all OSPs to do so. While all OSPs are capable of complying with the NG911 transition requirements, the rules the Commission adopted in the Order are intended to be cost effective and minimally burdensome for small and other entities impacted by the rules. For example, the Commission did not propose, and declined to adopt any rules for monitoring the transition to NG911 or addressing compliance with the new

requirements as supported by a small iTRS provider Hamilton Relay. Additionally, the adopted rules pertaining to Phase 2 SIP location and LIS costs only require OSPs to use “LIS as a service” from a third-party vendor instead of creating their own LIS databases. Using LIS as a service often involves simple database conversion of OSPs’ existing ALI/ANI/MSAG data to LIS formats. As discussed by CSRIC, LIS as a service is envisioned as an NG911 solution at “minimal expense” to small OSPs, which absolves OSPs of most costs beyond monthly services and a Legacy Network Gateway (LNG), and the service can be provided either by a commercial vendor, or the 911 Authority. LIS as a service is a substantial cost-savings measure especially for smaller OSPs, who may not be ready to decommission older legacy equipment and modernize their networks for NG911 end-state architecture. Below we discuss other steps the Commission has taken to minimize costs and reduce the economic impact for small entities, as well as some alternatives considered.

In-State NG911 Delivery Points. In response to RLEC comments and concerns that they might be required to incur unreasonably high transport costs if 911 Authorities had unlimited discretion to designate interconnection points anywhere in the country, and about the high costs they might incur where 911 Authorities “have delegated the operation of an ESInet to a third-party provider [that designates a] connection point far outside of state boundaries,” the Commission modified the proposed default rule to require OSPs to deliver NG911 traffic to NG911 Delivery Points designated by a 911 Authority only if those points are located within the 911 Authority’s home state. Moreover, although the Commission believes the obligation to transmit 911 calls to NG911 Delivery Points will have little, if any impact on RLECs’ exposure to liability under state tort law, the home-state qualification may make it easier for RLECs to anticipate and manage those de minimis risks by avoiding exposing them to multiple states’ differing tort law standards. In addition, RLECs’ concerns that an obligation to deliver calls to faraway states would compel them to retain third-party long distance transmission vendors, and they could be held liable for violations of the Commission’s 911 reliability rules committed by these vendors, should be addressed by the home-state qualification requirement. The home-state qualification should also reduce

the need for RLECs to retain third-party vendors, and make it easier for them to monitor the performance of both their own networks and those of the third-party vendors.

No IP 911 Call Origination Requirement/LNG Gateway Solution. The rules decline to require IP origination of 911 calls for OSPs at Phase 2, marking a substantial cost saving flexibility for small and other OSPs that still originate calls in TDM. In the Notice, the Commission sought comment about such a requirement, but we decline to impose it. Permitting these OSPs to maintain their legacy TDM facilities instead of moving to VoIP for NG911 Phase 2 will reduce the burdens on smaller entities. Specifically, our rules do not prevent OSPs from meeting the Phase 2 requirements by using a LIS gateway solution, which converts OSPs' existing legacy ALI/ANI location data into IP format for delivery in the SIP header code to ESInets and PSAPs. This allows the smallest OSPs to continue to operate legacy TDM networks and their ALI/ANI facilities without having to immediately convert their networks to VoIP.

Time to Comply for Smaller Entities. The additional six months for small and rural OSPs to comply with each Phase of the NG911 transition is also a significant step to reduce burdens by the Commission in the Order. In the previous section we discuss the implementation timeframes for small and rural OSPs—RLECs, non-nationwide CMRS providers, and internet-based TRS providers—which require these providers to comply with a 911 Authority's valid request at each phase of the NG911 transition within 12 months after receiving a valid request or within 12 months after the effective date of the rules in this document and the Order, instead of the six month compliance timeframe for OSPs that do not fall into any of these classifications. The extended timeframe recognizes the concerns of RLEC commenters' about the challenges that they may face when transitioning to NG911. The Commission considered but declined RWA's request that non-nationwide providers have 30 months from a valid PSAP request to implement NG911. We also considered but declined to adopt an alternative sought by the Alaska Telecom Assoc. for, (1) "an implementation extension or exemption for non-IP networks, or portions of networks" and "longer implementation timelines as well as an opportunity for waivers of timing requirements;" and (2) NG911 rules that provide carriers in Alaska with a presumptive waiver of

mandated IP-delivery deadlines, provided such a carrier can demonstrate that it is working in good faith with the PSAP to complete the request a carrier can demonstrate that it is working in good faith with the PSAP to complete their request, recommending that OSPs and 911 Authorities negotiate alternative agreement timelines where reasonable.

Reporting and Recordkeeping Requirements. The Order minimizes the burden of reporting requirements on businesses and governmental jurisdictions identified as small by the SBA. First, in response to comments, we adopt use of a Commission-owned registry for valid 911 authority readiness requests as the most efficient and least burdensome method of communication between 911 authorities and OSPs. Furthermore, we considered but declined to implement any additional and new data collections for monitoring performance and compliance with the NG911 rules the Commission adopts. Thus, the Commission does not impose any added costs in addition to those discussed in the NG911 Notice. As discussed in this document and in section E of the Order the rules adopted in the Order gives small and other OSPs more flexibility than proposed in the NG911 Notice by the allowing OSPs and 911 Authorities to agree to alternate timeframes or cost allocation arrangements instead of those the Commission adopts but imposes notification requirements OSPs must make to the Commission regarding any alternate arrangements.

Impact on Universal Service. Small entities could potentially incur an economic impact if requiring the NG911 technology transitions adversely affects universal service in a way that deprives smaller entities of cost recovery mechanisms. However, given that under the adopted rules states remain free to implement cost recovery mechanisms as they deem necessary, the Commission concludes that the rules we adopt will not adversely impact universal service. Moreover, some parties argue the rules in the NG911 Notice are contrary to universal service principles because RLECs will bear disproportionate costs of the NG911 transition. This is incorrect. To the extent RLECs' higher-cost service areas require them to spend more than urban and suburban OSPs for NG911 transition costs, those costs can be recovered from intra-state universal service funds. South Carolina RFA notes that its intra-state Universal Service Fund already provides generous subsidies to high-cost RLECs. Further, the Kansas RLECs indicate that the Kansas Universal Service Fund

disbursements can be increased by the Kansas Corporation Commission (KCC) upon petition, which the KCC takes approximately 8 months to address. State regulatory agencies are better positioned than the Commission to assess the needs of their rural businesses and establish appropriate universal service policies for intra-state call traffic (such as 911) which best serve the interests of their state and local populations, both now and during the NG911 transition.

G. Report to Congress

The Commission will send a copy of the Order, including the FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Order, including the FRFA, to the Chief Counsel for Advocacy of the SBA.

VI. Ordering Clauses

Accordingly, *it is ordered*, pursuant to sections 1, 2, 4(i), 201, 214, 222, 225, 251(e), 301, 303, 316, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201, 214, 222, 225, 251(e), 301, 303, 316, 332; the Wireless Communications and Public Safety Act of 1999, Public Law 106–81, as amended, 47 U.S.C. 615 note, 615, 615a, 615a–1, 615b; and section 106 of the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 47 U.S.C. 615c, that the Report and Order *is adopted*.

It is further ordered that the amendments to part 9 of the Commission's rules, as set forth in Appendix A of the Report and Order, *are adopted*, effective sixty (60) days after publication in the **Federal Register**. Compliance will not be required for paragraphs (a), (b), and (c) of § 9.31 and paragraphs (a) and (b) of § 9.34 until after any review by the Office of Management and Budget that the Public Safety and Homeland Security Bureau deems necessary. The Commission delegates authority to the Public Safety and Homeland Security Bureau to publish a document in the **Federal Register** announcing that compliance date and revising paragraph (d) of § 9.31 and paragraph (c) of § 9.34.

It is further ordered that the Commission's Office of the Secretary, Reference Information Center, *shall send* a copy of the Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

It is further ordered that the Office of the Managing Director, Performance Program Management, *shall send* a copy

of the Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 9

Communications, Communications common carriers, Communications equipment, internet, Radio, Reporting and recordkeeping requirements, Security measures, Telecommunications, Telephone.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 9 as follows:

PART 9—911 REQUIREMENTS

- 1. The authority citation for part 9 continues to read as follows:

Authority: 47 U.S.C. 151–154, 152(a), 155(c), 157, 160, 201, 202, 208, 210, 214, 218, 219, 222, 225, 251(e), 255, 301, 302, 303, 307, 308, 309, 310, 316, 319, 332, 403, 405, 605, 610, 615, 615 note, 615a, 615b, 615c, 615a–1, 616, 620, 621, 623, 623 note, 721, and 1471, and Section 902 of Title IX, Division FF, Pub. L. 116–260, 134 Stat. 1182, unless otherwise noted.

- 2. Revise § 9.1 to read as follows:

§ 9.1 Purpose.

The purpose of this part is to set forth the 911, E911, and Next Generation 911 service requirements and conditions applicable to telecommunications carriers (subpart B); commercial mobile radio service (CMRS) providers (subpart C); interconnected Voice over internet Protocol (VoIP) providers (subpart D); internet-based providers of telecommunications relay services (TRS) for persons with disabilities (subpart E); multi-line telephone systems (MLTS) (subpart F); and Mobile-Satellite Service (MSS) providers (subpart G). The rules in this part also include requirements to help ensure the resiliency, redundancy, and reliability of 911 communications systems (subpart H), acceptable obligations and expenditures of 911 fees (subpart I), and Next Generation 911 obligations (subpart J).

- 3. Add subpart J, consisting of §§ 9.27 through 9.34, to read as follows:

Subpart J—Next Generation 911

Sec.

9.27 Applicability, scope, and purpose.

9.28 Definitions.

9.29 Next Generation 911 transition requirements.

9.30 Next Generation 911 implementation deadlines.

9.31 Valid requests for delivery of 911 traffic in Internet Protocol-based formats.

9.32 Designation of NG911 Delivery Points.

9.33 Cost responsibilities.

9.34 Modification of NG911 requirements by mutual agreement.

§ 9.27 Applicability, scope, and purpose.

(a) The purpose of this subpart is to set forth requirements and conditions in order to facilitate the transition to Next Generation 911 (NG911), and to assist with creating an NG911 architecture that is secure, interoperable, and based on commonly accepted standards.

(b) The rules in this subpart apply to “originating service providers” as defined in § 9.28.

(c) An originating service provider subject to the rules in this subpart shall be considered to have delivered 911 traffic to a public safety answering point (PSAP) if the originating service provider’s 911 traffic is delivered to the 911 Authority pursuant to § 9.32 and the other requirements in this subpart are satisfied.

§ 9.28 Definitions.

For purposes of this subpart, the terms in this section have the following meanings:

911 Authority. A State, territorial, regional, Tribal, or local governmental entity that operates or has administrative authority over all or any aspect of a communications network for the receipt of 911 traffic at NG911 Delivery Points and for the transmission of such traffic from that point to PSAPs.

911 traffic. Transmissions consisting of all 911 calls (as defined in §§ 9.3, 9.11(b)(2)(ii)(A), 9.14(d)(2)(iii)(A), and 9.14(e)(2)(ii)(A)) and/or 911 text messages (as defined in § 9.10(q)(9)), as well as information about calling parties’ locations and originating telephone numbers and routing information transmitted with the calls and/or text messages.

Commonly accepted standards. The technical standards followed by the communications industry for network, device, and Internet Protocol connectivity that—

- (1) Enable interoperability; and
- (2) Are—

(i) Developed and approved by a standards development organization that is accredited by a United States standards body (such as the American National Standards Institute) or an equivalent international standards body in a process that—

(A) Is open to the public, including open for participation by any person; and

(B) Provides for a conflict resolution process;

(ii) Subject to an open comment and input process before being finalized by the standards development organization;

(iii) Consensus-based; and

(iv) Made publicly available once approved.

Covered text provider. The term “covered text provider” has the meaning given such term under § 9.10(q)(1).

Emergency Services Internet Protocol Network (ESInet). An Internet Protocol (IP)-based network that is managed or operated by a 911 Authority or its agents or vendors and that is used for emergency services communications, including Next Generation 911.

Functional element. A set of software features that may be combined with hardware interfaces and operations on those interfaces to accomplish a defined task.

Location Information Server (LIS). A functional element that provides locations of endpoints. A LIS can provide Location-by-Reference or Location-by-Value, and, if the latter, in geodetic or civic forms. A LIS can be queried by an endpoint for its own location, or by another entity for the location of an endpoint.

Location Validation Function (LVF). A functional element in NG911 Core Services (NGCS) consisting of a server where civic location information is validated against the authoritative Geographic Information System (GIS) database information. A civic address is considered valid if it can be located within the database uniquely, is suitable to provide an accurate route for an emergency call, and is adequate and specific enough to direct responders to the right location.

Nationwide CMRS provider. The term “nationwide CMRS provider” has the meaning given such term under § 9.10(i)(1)(iv).

Next Generation 911 (NG911). An Internet Protocol-based system that—

- (1) Ensures interoperability;
- (2) Is secure;
- (3) Employs commonly accepted standards;
- (4) Enables emergency communications centers to receive, process, and analyze all types of 911 requests for emergency assistance;
- (5) Acquires and integrates additional information useful to handling 911 requests for emergency assistance; and
- (6) Supports sharing information related to 911 requests for emergency assistance among emergency communications centers and emergency response providers.

NG911 Delivery Point. A geographic location, facility, or demarcation point designated by a 911 Authority where an originating service provider shall transmit and deliver 911 traffic in an IP format to ESInets or other NG911 network facilities.

Non-nationwide CMRS provider. The term “non-nationwide CMRS provider” has the meaning given such term under § 9.10(i)(1)(v).

Non-rural wireline provider. A wireline provider that is not a rural incumbent local exchange carrier (as defined in § 54.5 of this chapter).

Originating service providers. Providers that originate 911 traffic, specifically wireline providers; commercial mobile radio service (CMRS) providers, excluding mobile satellite service (MSS) operators to the same extent as set forth in § 9.10(a); covered text providers, as defined in § 9.10(q)(1); interconnected Voice over Internet Protocol (VoIP) providers, including all entities subject to subpart D of this part; and internet-based Telecommunications Relay Service (TRS) providers that are directly involved with routing 911 traffic, pursuant to subpart E of this part.

Rural incumbent local exchange carrier (RLEC). The term “rural incumbent local exchange carrier” or “RLEC” has the meaning given such term under § 54.5 of this chapter.

Session Initiation Protocol (SIP). A signaling protocol used for initiating, maintaining, modifying, and terminating communications sessions between Internet Protocol (IP) devices. SIP enables voice, messaging, video, and other communications services between two or more endpoints on IP networks.

Wireline provider. A local exchange carrier (as defined in 47 U.S.C. 153(32)) that provides service using wire communication (as defined in 47 U.S.C. 153(59)).

§ 9.29 Next Generation 911 transition requirements.

(a) *Phase 1.* Upon receipt of a 911 Authority’s valid request, an originating service provider that is subject to the rules in this subpart shall, by the relevant deadline specified in § 9.30(a)(1) or (b)(1)—

(1) Deliver all 911 traffic bound for the relevant PSAPs in the IP-based SIP format requested by the 911 Authority;

(2) Obtain and deliver 911 traffic to enable the ESInet and other NG911 network facilities to transmit all 911 traffic to the destination PSAP;

(3) Deliver all such 911 traffic to NG911 Delivery Points designated by the 911 Authority pursuant to § 9.32; and

(4) Complete connectivity testing to confirm that the 911 Authority receives 911 traffic in the IP-based SIP format requested by the 911 Authority.

(b) *Phase 2.* Upon receipt of a 911 Authority’s valid request, an originating service provider that is subject to the rules in this subpart shall, by the relevant deadline specified in § 9.30(a)(2) or (b)(2)—

(1) Comply with all Phase 1 requirements set forth in paragraph (a) of this section;

(2) Deliver all 911 traffic bound for the relevant PSAPs to NG911 Delivery Points designated by the 911 Authority pursuant to § 9.32 in the IP-based SIP format that complies with NG911 commonly accepted standards identified by the 911 Authority, including having location information embedded in the call signaling using Presence Information Data Format—Location Object (PIDF-LO) or the functional equivalent;

(3) Install and put into operation all equipment, software applications, and other infrastructure, or acquire all services, necessary to use a Location Information Server (LIS) or its functional equivalent for the verification of its customer location information and records; and

(4) Complete connectivity testing to confirm that the 911 Authority receives 911 traffic in the IP-based SIP format that complies with the identified NG911 commonly accepted standards.

§ 9.30 Next Generation 911 implementation deadlines.

(a) Non-rural wireline providers, nationwide CMRS providers, covered text providers, and interconnected VoIP providers shall—

(1) Comply with the Phase 1 requirements set forth in § 9.29(a) by six months after receiving a Phase 1 valid request from a 911 Authority, as set forth in § 9.31(a); and

(2) Comply with the Phase 2 requirements set forth in § 9.29(b) by:

(i) Six months after receiving a Phase 2 valid request from a 911 Authority, as set forth in § 9.31(b); or

(ii) If the 911 Authority’s Phase 2 valid request is made before the originating service provider is compliant with the Phase 1 requirements or is made before the Phase 1 implementation deadline, six months after the earlier of:

(A) The date when the originating service provider is compliant with the Phase 1 requirements set forth in § 9.29(a); or

(B) The implementation deadline set forth in paragraph (a)(1) of this section.

(b) RLECs, non-nationwide CMRS providers, and internet-based TRS providers shall—

(1) Comply with the Phase 1 requirements set forth in § 9.29(a) by 12 months after receiving a Phase 1 valid request from a 911 Authority, as set forth in § 9.31(a); and

(2) Comply with the Phase 2 requirements set forth in § 9.29(b) by:

(i) 12 months after receiving a Phase 2 valid request from a 911 Authority, as set forth in § 9.31(b); or

(ii) If the 911 Authority’s Phase 2 valid request is made before the originating service provider is compliant with the Phase 1 requirements or is made before the Phase 1 implementation deadline, 12 months after the earlier of:

(A) The date when the originating service provider is compliant with the Phase 1 requirements set forth in § 9.29(a); or

(B) The implementation deadline set forth in paragraph (b)(1) of this section.

§ 9.31 Valid requests for delivery of 911 traffic in Internet Protocol-based formats.

(a) *Phase 1 valid request.* A 911 Authority’s request for delivery of 911 traffic in the manner specified in § 9.29(a) is a Phase 1 valid request if the requesting 911 Authority—

(1) Certifies that it has installed and placed into operation all of the infrastructure needed to receive 911 traffic in an IP-based SIP format and transmit such traffic to the PSAP(s) connected to it;

(2) Certifies that it has obtained commitments from any ESInet provider, Next Generation 911 Core Services provider, and/or call handling equipment provider needed to facilitate and complete connectivity testing within the compliance timeframe applicable to the originating service provider;

(3) Certifies that it is authorized to submit a valid request for the NG911 network to receive 911 traffic in an IP-based SIP format;

(4) Identifies the NG911 Delivery Point(s) designated pursuant to § 9.32; and

(5) Provides notification to the originating service provider that includes the information and certifications set forth in paragraphs (a)(1) through (4) of this section. Notification by the 911 Authority via a registry made available by the Commission in accordance with requirements established in connection therewith, or any other written notification reasonably acceptable to the originating service provider, shall constitute sufficient notification for purposes of this paragraph.

(b) *Phase 2 valid request.* A 911 Authority's request for delivery of 911 traffic in the manner specified in § 9.29(b) is a Phase 2 valid request if the requesting 911 Authority—

(1) Certifies that it has installed and placed into operation all of the infrastructure needed to receive 911 traffic in an IP-based SIP format that complies with NG911 commonly accepted standards and transmit such traffic to the PSAP(s) connected to it;

(2) Certifies that its ESInet is connected to a fully functioning Next Generation 911 Core Services network that can provide access to a Location Validation Function and interface with a Location Information Server or its functional equivalent provided by the originating service provider;

(3) Certifies that it has obtained commitments from any ESInet provider, Next Generation 911 Core Services provider, and/or call handling equipment provider needed to facilitate and complete connectivity testing within the compliance timeframe applicable to the originating service provider;

(4) Certifies that it is authorized to submit a valid request for the NG911 network to receive 911 traffic in an IP-based SIP format that complies with NG911 commonly accepted standards;

(5) Identifies the NG911 Delivery Point(s) designated pursuant to § 9.32; and

(6) Provides notification to the originating service provider that includes the information and certifications set forth in paragraphs (b)(1) through (5) of this section. Notification by the 911 Authority via a registry made available by the Commission in accordance with requirements established in connection therewith, or any other written notification reasonably acceptable to the originating service provider, shall constitute sufficient notification for purposes of this paragraph.

(c) *Originating service providers' petitions challenging 911 Authorities' requests.* Within 60 days of the receipt of a Phase 1 or 2 request from a 911 Authority, an originating service provider may submit a petition to the Public Safety and Homeland Security Bureau asserting that the 911 Authority's request does not satisfy a condition set forth in paragraph (a) or (b) of this section for a Phase 1 or Phase 2 valid request. The Public Safety and Homeland Security Bureau may review the petition and determine whether to pause the implementation deadline for that originating service provider, affirm the request of the 911 Authority as valid, or take other action as necessary.

(1) The petition process shall be subject to the procedural requirements set forth in §§ 1.41, 1.45, and 1.47 of this chapter.

(2) The petition must be in the form of an affidavit signed by a director or officer of the originating service provider, documenting:

(i) The basis for the originating service provider's assertion that the 911 Authority's request does not satisfy one or more of the conditions set forth in paragraph (a) or (b) of this section for a Phase 1 or Phase 2 valid request.

(ii) Each of the specific steps the originating service provider has taken to implement the Phase 1 requirements set forth in § 9.29(a) or the Phase 2 requirements set forth in § 9.29(b).

(iii) The basis for the originating service provider's assertion that it cannot make further implementation efforts until the 911 Authority satisfies the conditions set forth in paragraph (a) or (b) of this section for a Phase 1 or Phase 2 valid request.

(iv) The specific steps that remain to be completed by the originating service provider and, to the extent known, the 911 Authority or other parties before the originating service provider can implement the Phase 1 requirements set forth in § 9.29(a) or the Phase 2 requirements set forth in § 9.29(b).

(3) All affidavits must be correct. The originating service provider's director or officer who signs the affidavit has the duty to personally determine that the affidavit is correct. If the affidavit is incorrect, he or she, as well as the originating service provider, may be subject to enforcement action.

(4) An originating service provider may not file an inadequate or incomplete petition. If an originating service provider's petition is inadequate and/or incomplete and the originating service provider has not met its obligations as set forth in § 9.29(a) or (b) at the time of the relevant deadline, the originating service provider may be considered noncompliant with the applicable rules as if the petition had not been filed.

(5) An originating service provider that challenges a 911 Authority's valid request must describe all steps taken toward implementing the Phase 1 requirements set forth in § 9.29(a) or the Phase 2 requirements set forth in § 9.29(b) that are not dependent on the readiness of the 911 Authority.

(6) The 911 Authority may file an opposition to the originating service provider's petition and the originating service provider may file a reply to the opposition in accordance with § 1.45 of this chapter. A copy of the document (petition, opposition, or reply) must be

served on the other party (911 Authority or originating service provider) at the time of the filing in accordance with § 1.47 of this chapter.

(d) Paragraphs (a), (b), and (c) of this section may contain information collection and recordkeeping requirements that require review by the Office of Management and Budget. Compliance with those paragraphs will not be required until this paragraph (d) is removed or contains a compliance date.

§ 9.32 Designation of NG911 Delivery Points.

A 911 Authority may designate one or more NG911 Delivery Points where originating service providers must deliver 911 traffic to the ESInet pursuant to § 9.29, provided that—

(a) Each NG911 Delivery Point is located in the same State or territory as the PSAPs connected to the ESInet; and

(b) The 911 Authority or the ESInet provides facilities at the input to the NG911 Delivery Point to receive 911 traffic in accordance with the applicable phase.

§ 9.33 Cost responsibilities.

(a) Originating service providers are responsible for the costs of complying with the applicable Phase 1 and Phase 2 requirements assigned to them under § 9.29, including the costs of—

(1) Transmitting 911 traffic to NG911 Delivery Points;

(2) Delivering 911 traffic in the required IP-based SIP format at each phase, including the cost of IP conversion using a Legacy Network Gateway or the functional equivalent, if necessary; and

(3) Obtaining and delivering location and routing information using ALI/ANI databases, selective routers, or other means at Phase 1, and using LIS functionalities or other equivalent means at Phase 2.

(b) Originating service providers are not responsible for the costs of furnishing, maintaining, or upgrading NG911 Delivery Points, ESInets, Next Generation 911 Core Services networks, or PSAPs.

§ 9.34 Modification of NG911 requirements by mutual agreement.

(a) Nothing in this subpart shall prevent 911 Authorities and originating service providers from establishing, by mutual consent, terms different from the requirements set forth in §§ 9.29 through 9.33.

(b) If a 911 Authority and an originating service provider enter into an agreement pursuant to paragraph (a) of this section, within 30 days of the

date when any such agreement is executed, the originating service provider must notify the Commission of the agreement. The notification must identify with specificity each requirement in the rules that is impacted by the agreement and must state with specificity how the terms of

the agreement differ from each impacted rule. The same notification is required if the 911 Authority and originating service provider amend, modify, or terminate the agreement.

(c) Paragraphs (a) and (b) of this section may contain information collection and recordkeeping

requirements that require review by the Office of Management and Budget. Compliance with those paragraphs will not be required until this paragraph (c) is removed or contains a compliance date.

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Critical Habitat

Designations for Florida Manatee and Antillean Manatee; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R4-ES-2024-0073;
FXES1111090FEDR-245-FF09E21000]

RIN 1018-BH47

**Endangered and Threatened Wildlife
and Plants; Critical Habitat
Designations for Florida Manatee and
Antillean Manatee**

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to revise the critical habitat designation for the Florida manatee (*Trichechus manatus latirostris*) and to designate critical habitat for the Antillean manatee (*T. m. manatus*), under the Endangered Species Act of 1973, as amended (Act). In 1976, we designated critical habitat of approximately 965,394 acres (ac) (390,681 hectares (ha)) in Florida for the Florida manatee based on where large concentrations of manatees were known to occur at the time, but no critical habitat was ever designated for the Antillean manatee subspecies. After a review of the best scientific data available, we propose to revise the existing designated critical habitat for the Florida manatee and designate critical habitat for the Antillean manatee based on the physical or biological features essential to the conservation of each subspecies. The total proposed designation for Florida manatee is 1,904,191 ac (770,599 ha) and 78,121 ac (31,614 ha) for the Antillean manatee subspecies. We also announce the availability of an economic analysis of the proposed revised designation of critical habitat for the Florida manatee and proposed designation for the Antillean manatee.

DATES: We will accept comments received or postmarked on or before November 25, 2024. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by November 8, 2024.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS-R4-ES-2024-0073, which is

the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on “Comment.”

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS-R4-ES-2024-0073, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We request that you send comments only by the methods described above. We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Availability of supporting materials: Supporting materials for the proposed critical habitat designations in this document are included in the decision file for this rulemaking and are available at <https://www.regulations.gov> at Docket No. FWS-R4-ES-2024-0073.

FOR FURTHER INFORMATION CONTACT:

Nikki Colangelo, Acting Classification and Recovery Division Manager, U.S. Fish and Wildlife Service, Florida Ecological Services Field Office, 777 37th Street, Suite D-101, Vero Beach, Florida 32960; telephone 772-226-8138. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay Services. Individuals outside the United States should use the relay Services offered within their country to make international calls to the point-of-contact in the United States. Please see Docket No. FWS-R4-ES-2024-0073 on <https://www.regulations.gov> for a document that summarizes this proposed rule.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under section 4(a)(3) of the Act, if we determine that a species is an endangered or threatened species, we must designate critical habitat to the maximum extent prudent and determinable. Revisions and designations of critical habitat designation can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. This document proposes to revise the

existing critical habitat designation for the Florida manatee and, for the reason described below, to add a critical habitat designation for the Antillean manatee. This proposed rule would remove 259,842 ac (105,154 ha) from the current Florida manatee critical habitat designation because the areas either do not meet the definition of critical habitat or they qualify for an exemption under the Act and would add 1,198,639 ac (485,072 ha) in Florida to that critical habitat designation because they meet the definition of critical habitat for the subspecies. The total proposed designation for Florida manatee is 1,904,191 ac (770,599 ha). In addition, this proposed rule would designate 78,121 ac (31,614 ha) in Puerto Rico that meet the definition of critical habitat for the Antillean manatee subspecies.

The basis for our action. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat.

The current critical habitat designation for the Florida manatee was described before critical habitat regulations were developed; it did not identify specific physical or biological features that are essential to the conservation of the subspecies. Instead, it described specific waterways that were known to be important concentration areas for Florida manatees at that time. The geographic areas originally designated as critical habitat for the Florida manatee have been reevaluated based on recent scientific studies of the subspecies' distribution, habitat use, and habitat needs. We are proposing a revised critical habitat designation for the Florida manatee based on that reevaluation. We are also proposing a critical habitat designation for the Antillean manatee because we are reassessing the listing status of the West Indian manatee (*Trichechus manatus*), and, based on the reassessment, we may propose to

reclassify the species or revise the listed entity. The West Indian manatee includes two recognized subspecies, the Antillean manatee, *Trichechus manatus manatus*, and the Florida manatee, *Trichechus manatus latirostris* (Rice 1998, p. 129). Each subspecies has distinctive morphological features and occurs in discrete areas with rare overlap between ranges (Hatt 1934, p. 538; Domning and Hayek 1986, p. 136; and Alvarez-Alemán et al. 2010, p. 148). Therefore, for the purposes of this proposed rule, we have used the subspecies to differentiate between the proposed critical habitat areas.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments or information concerning:

(1) The amount and distribution of Florida manatee and Antillean manatee habitat.

(2) Any additional areas occurring within the range of either subspecies that are within the jurisdiction of the United States (the Gulf and Atlantic Coasts of the United States for the Florida manatee, and Puerto Rico and the U.S. Virgin Islands for the Antillean manatee) that should be included in the designation because they (i) were occupied at the time of listing and contain the physical or biological features that are essential to the conservation of the subspecies and that may require special management considerations or protection, or (ii) were unoccupied at the time of listing and are essential for the conservation of the subspecies.

(3) The criteria used to identify critical habitat, including the boundaries of specific areas.

(4) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change.

(5) Whether areas not occupied at the time of listing qualify as habitat for the species and are essential for the conservation of the species.

(6) Land use designations and current or planned activities in the areas proposed for designation and their possible impacts on proposed critical habitat.

(7) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the related benefits of including or excluding specific areas.

(8) Information on the extent to which the description of probable economic impacts in the economic analysis is a reasonable estimate of the likely economic impacts and any additional information regarding probable economic impacts that we should consider. This may include information on changes in activities or behaviors due to the designation of critical habitat. Such activities might occur outside occupied areas that can affect critical habitat, such as upstream projects that may affect critical habitat through effects on the physical or biological features. The Service also requests comment on whether and how consultations and project modifications may change with the revised designation in Florida or new designation in Puerto Rico.

(9) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act due to economic, national security, or other relevant impacts, and whether the benefits of potentially excluding any such area outweigh the benefits of including that area, in particular for those based on a conservation program or plan, and why. These may include Tribal, State/Territory/Commonwealth, county, local, or private lands with permitted conservation plans covering the subspecies in the area such as habitat conservation plans, safe harbor agreements, conservation easements, or non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. If you think we should exclude any additional areas, please provide information supporting a benefit of exclusion.

(10) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide substantial information necessary to

support a determination. Section 4(b)(2) of the Act directs that the Secretary shall designate critical habitat on the basis of the best scientific data available.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via <https://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <https://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <https://www.regulations.gov>.

Our final determinations may differ from this proposal because we will consider all comments we receive during the comment period, as well as any information that may become available after this proposal. Based on new information we may receive (and, if relevant, any comments on that new information), we may modify the proposed critical habitat. Our final designations may not include all areas proposed, may include some additional areas that meet the definition of critical habitat, or may exclude some areas if we find the benefits of exclusion outweigh the benefits of inclusion and exclusion will not result in the extinction of the species. In our final rule, we will clearly explain our rationale and the basis for our final decision, including why we made changes, if any, that differ from this proposal.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. We may hold the public hearing in person or virtually via webinar. We will announce any public hearing on our website, in addition to the **Federal**

Register. The use of virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Previous Federal Actions

The Florida manatee was listed as endangered in 1967 (32 FR 4001, March 11, 1967) under the Endangered Species Preservation Act of 1966 (Pub. L. 89–669; 80 Stat. 926). After adoption of the Endangered Species Conservation Act of 1969 (Pub. L. 91–135; 83 Stat. 275), the Florida manatee listing was amended in 1970 to include the West Indian manatee (*Trichechus manatus*) throughout its range, including in northern South America (35 FR 8491, June 2, 1970). A December 2, 1970, amendment then added the Caribbean Sea to the “Where found” information in the listing entry for the West Indian (Florida) manatee, which added the Antillean manatee to the listing (35 FR 18319). The West Indian manatee was subsequently grandfathered into the List of Endangered and Threatened Wildlife under the Act in 1973 (16 U.S.C. 1531 *et seq.*). In 2017, the West Indian manatee, including both subspecies, was reclassified from endangered to threatened (82 FR 16668, April 5, 2017). We are currently reassessing the listing status of the West Indian manatee. The status determination for this species will be based on the best available information as of the time of publication. Based on the reassessment, we may propose to reclassify the species or to revise the listed entity.

Critical habitat for the Florida manatee was designated in 1976 (see 41 FR 41914, September 24, 1976, and 42 FR 47840, September 22, 1977). On December 19, 2008, we received a petition from Wildlife Advocacy Project, Save the Manatee Club, Center for Biological Diversity, and Defenders of Wildlife requesting that critical habitat be revised for the Florida manatee under the Act and the Administrative Procedure Act. On January 12, 2010, we published in the **Federal Register** a 12-month finding on the petition to revise the Florida manatee critical habitat designation stating that revisions were warranted (75 FR 1574). On February 1, 2022, we received a complaint filed by the Center for Biological Diversity, Defenders of Wildlife, and Save the Manatee Club for failure to take action on the December 19, 2008, petition. On June 1, 2022, we entered into a stipulated settlement agreement resolving the litigation. Under the terms of the agreement, the Service agreed to submit a proposed rule to revise the critical habitat designation for the Florida manatee to the Office of the Federal Register on or before September

12, 2024. The timing of this proposed rule meets the stipulations of the settlement agreement.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing and recovery actions under the Act (<https://www.fws.gov/sites/default/files/documents/peer-review-policy-directors-memo-2016-08-22.pdf>), we are soliciting independent scientific review of this proposed rule to ensure that our proposals are based on scientifically sound data and analysis. We have invited peer reviewers to comment on our specific assumptions, methodology, and science used in these critical habitat proposals during the public comment period for this proposed rule (see **DATES**, above). We will consider any comments we receive, as appropriate, before making a final agency determination.

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species. On April 5, 2024, jointly with the National Marine Fisheries Service, we issued a final rule that revised the regulations in 50 CFR part 424 regarding how we add, remove, and reclassify endangered and threatened species and what criteria we apply when designating listed species’ critical habitat (89 FR 24300). That final rule is now in effect and is incorporated into the current regulations. Our analysis for this proposed rule applied our current regulations.

Background

Species Information

A thorough review of the taxonomy, life history, and ecology of each subspecies of the West Indian manatee (Florida and Antillean) is presented in the associated species status assessment (SSA) reports (Service 2024a, entire; Service 2024b, entire).

West Indian manatees are large, elongated marine mammals with short, paired flippers and a distinct paddle-shaped tail. The species includes two recognized subspecies, the Florida manatee and the Antillean manatee (Hatt 1934, p. 538; Rice 1998, p. 129),

that appear similar, share most common morphological characteristics, and can typically only be distinguished through skeletal measurements or genetic analysis (Hatt 1934, p. 538; Domning and Hayek 1986, p. 136; Alvarez-Alemán et al. 2010, p. 148). The two subspecies can differ in size, with the Florida manatee often larger and heavier than the Antillean manatee; however, there is overlap with the sizes (Converse et al. 1994, p. 427; Wong et al. 2012, p. 5; Castelblanco-Martínez et al. 2021, p. 7). Florida manatees may be larger as an adaptation for producing and retaining body heat, as they inhabit the northern limits (*i.e.*, coldest temperatures) of the species’ range (Johnson 2019, pp. 10–14).

The West Indian manatee’s range extends from southeastern North America to northern South America; their distribution is linked to the availability of foraging habitat and fresh water (and, for Florida manatees, warm water during the winter). The range of the Florida manatee includes the U.S. Atlantic and Gulf of Mexico coasts, as well as northern portions of the Caribbean, from the Bahamas and Cuba to Turks and Caicos (Alvarez-Alemán et al. 2010, p. 148; Melillo-Sweeting et al. 2011, p. 505; Alvarez-Alemán et al. 2018, entire; Rood et al. 2020, entire; Morales-Vela et al. 2021, entire). The Antillean manatee is found in portions of the Caribbean, including Cuba, Hispaniola, Puerto Rico, Virgin Islands, Cayman Islands, and Jamaica; in Central America from Mexico’s southeast Caribbean coast to the Caribbean coast of Panama; Trinidad and Tobago; and south to Brazil’s Atlantic coastline (United Nations Environment Programme (UNEP) 2010, entire; 81 FR 1000, January 8, 2016).

Within the United States, the Florida manatee occurs throughout the southeastern United States (*i.e.*, the northern portion of the West Indian manatee’s range). The Florida manatee’s distribution varies greatly between the warmer and colder months. In winter, because they are endothermic and cannot tolerate colder temperatures, they typically concentrate around natural warm-water springs (primarily located in northwest Florida and the St. Johns River) and artificial warm-water industrial sites, mostly power plants (currently four on the Atlantic coast and six on the Gulf coast; Irvine 1983, p. 316; Valade et al. 2020, pp. 2–3). During the warmer months (generally March through November), some Florida manatees disperse great distances and can be occasionally found as far west as Texas and as far north as Massachusetts while most remain in Florida year-

round (Deutsch et al. 2003a, pp. 20, 43; Fertl et al. 2005, entire; Deutsch et al. 2008, unpaginated; Cummings et al. 2014, entire; Cloyed et al. 2019, entire). Seasonal temperature changes are a major factor in the timing of migratory movements (Deutsch et al. 2003a, entire). While Florida manatees have a wider summer range within the United States, summer sightings outside of Florida are most common between Georgia and the Carolinas, and between coastal Alabama and Louisiana (Pabody et al. 2009, pp. 52–61; Hieb et al. 2017, pp. 321–332).

For management purposes, the Florida manatee is divided into four, relatively distinct, regional management units: an Atlantic Coast unit that occupies the east coast of Florida, including the Florida Keys and the Lower St. Johns River north of Palatka; an Upper St. Johns River unit that occurs in the river south of Palatka; a Northwest unit that occupies the Florida Panhandle south to Hernando County; and a Southwest unit that occurs from Pasco County south to Whitewater Bay in Monroe County (Service 2001, pp. 3, 12; Service 2023a, pp. 2–3; Service 2024a, p. 22). Manatees in each of these management units tend to return to the same warm-water sites each winter and have similar non-winter distribution patterns. The exchange of individuals between these units is generally limited during the winter months, but in the non-winter months, movements commonly occur between the Northwest and Southwest units and between the Upper St. Johns River and Atlantic Coast units (Deutsch et al. 2003a, entire). Movements between the East Coast and Gulf Coast of Florida are uncommon but have occurred in recent years (Service 2023a, p. 3; Service 2024a, p. 22). Throughout the rest of the document, these management units are referred to as Manatee Management Units so as not to be confused with the proposed revised critical habitat units.

Within the U.S. Caribbean territories, Antillean manatees occur in Puerto Rico and the U.S. Virgin Islands (USVI). However, Antillean manatees in the USVI are considered extremely rare and transient from Puerto Rico, with only a handful of sightings and no resident populations (Service 2023b, p. 1). Antillean manatees have been documented along the entire coast of Puerto Rico, but are detected less often along the northern coast, where seagrass beds are not as extensive (Powell et al. 1981, p. 642; Collazo et al. 2019, pp. 1345–1346). Their distribution is dependent on available resources and habitat such as fresh water, seagrass, and areas that provide shelter and

protection from strong waves (UNEP 2010, p. 69; Drew et al. 2012, p. 19; Service 2023b, p. 1). In general, Antillean manatees in Puerto Rico occur island-wide, but with relatively higher concentrations in several areas: Ceiba on the east coast, Jobos Bay area between Guayama and Salinas on the southeast coast, Guayanilla and Guánica Bay area on the southwest coast, and between Cabo Rojo and Mayagüez (Guanajibo River mouth) on the west coast (Powell et al. 1981, pp. 644–645; Rathbun et al. 1985, p. 9; Freeman and Quintero 1990, p. 15; Mignucci-Giannoni et al. 2004, p. 5; Service 2007, p. 27; Drew et al. 2012, p. 12; Collazo et al. 2019, p. 1345).

West Indian manatees use both freshwater and saltwater habitats throughout their range for survival and life-history needs, including feeding and drinking, traveling, resting, thermoregulation (*i.e.*, maintaining steady internal body temperature), mating, and nursing (Husar 1977, p. 9; 81 FR 1000 at 1004, January 8, 2016). They are commonly found in a variety of habitats including estuaries, rivers, streams, and lagoons. In some parts of Florida, manatees exclusively or primarily inhabit freshwater habitats, while Antillean manatees in Puerto Rico are primarily within coastal marine habitats and river mouths. As herbivores, manatees feed on a large variety of aquatic vegetation, generally preferring submerged, floating, and emergent vegetation in that order (Hartman 1979, p. 44). In Puerto Rico, seagrass is the main component of the Antillean manatee's diet, but they may also occasionally ingest green algae, mangrove fragments, or emergent grasses (Mignucci-Giannoni and Beck 1998, pp. 394, 396; Alves–Stanley et al. 2010, p. 265).

Where West Indian manatees use estuarine or marine habitats, they require fresh water for drinking and often seek out freshwater sources including stormwater outfalls, riverine discharges, spring systems, and other areas where they can obtain fresh water. Although they are considered good osmoregulators (*i.e.*, organisms that actively regulate the salt and water balance (osmotic balance) across membranes within the body's fluids) regardless of the environment (Ortiz et al. 1998, pp. 453–456), manatees still require fresh water to avoid dehydration. West Indian manatees seem to possess a cognitive map of a network of available freshwater sites for consumption (Flamm et al. 2005, p. 1423) that they access approximately every 3 to 16 days (Slone et al. 2018, p. 75). Since freshwater sources are less abundant in Puerto Rico than in Florida,

the distribution of the Antillean manatee may be more affected by known freshwater sites and seasonal patterns of rainfall (Lefebvre et al. 2001, p. 430; Ross et al. 2020, p. 12).

West Indian manatees tend to travel along the edges of foraging habitat (*e.g.*, seagrass beds), along shoreline differential depth changes, and in and near channels (81 FR 1000 at 1004, January 8, 2016). They use sheltered areas including bays, boat basins, and canals to rest and feed, and for mothers to give birth and nurse their offspring (Reid et al. 1995, pp. 183, 188; Deutsch et al. 2003a, p. 52; Drew et al. 2012, p. 24).

Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.*, range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.*, migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that each Federal action

agency ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of designated critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation also does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Rather, designation requires that, where a landowner requests Federal agency funding or authorization for an action that may affect an area designated as critical habitat, the Federal agency consult with the Service under section 7(a)(2) of the Act. If the action may affect the listed species itself (such as for occupied critical habitat), the Federal agency would have already been required to consult with the Service even absent the designation because of the requirement to ensure that the action is not likely to jeopardize the continued existence of the species. Even if the Service were to conclude after consultation that the proposed activity is likely to result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement “reasonable and prudent alternatives” to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act’s definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat).

Under the second prong of the Act’s definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts’ opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in section 9 of the Act. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas

may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of the species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of those planning efforts calls for a different outcome.

Physical or Biological Features Essential to the Conservation of the Subspecies

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species, and which may require special management considerations or protection. The regulations at 50 CFR 424.02 define “physical or biological features essential to the conservation of the species” as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkaline soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or absence of a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, we may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

Basic habitat needs of both subspecies of West Indian manatee include forage, fresh water, shelter, travel corridors, and warm water (Husar 1977, p. 9; Drew et al. 2012, p. 19; 81 FR 1000 at 1004, January 8, 2016). However, the two subspecies of West Indian manatee inhabit different portions of the species' broader range and experience different habitat conditions; therefore, we have determined they require different physical or biological features for their conservation.

Since the Florida manatee inhabits the northern portion of the species' range and the species is cold-intolerant, the most significant habitat features for the conservation of the subspecies are warm water and winter forage availability (81 FR 1000 at 1011, January 8, 2016), specifically the proximity of forage material to warm-water sites (Packard 1984, entire; Deutsch et al. 2003b, p. 3; Deutsch et al. 2006, p. 21; Provancha et al. 2012, p. 4; Deutsch and Barlas 2016, p. 7; Haase et al. 2020, entire). The Antillean manatee inhabits the warmer southern portion of the species' range and does not face the same cold-stress risk as the Florida manatee. However, in Puerto Rico, freshwater sources and sheltered areas are less common than in Florida due to its island nature. Therefore, the key habitat features necessary for Antillean manatee conservation are seagrass, shelter, and fresh water, also within proximity of each other (Powell et al. 1981, p. 641; Drew et al. 2012, pp. 8, 19).

Florida Manatee

Florida manatees require stable, long-term sources of warm water, such as natural springs, during colder months to survive. An ambient water temperature of 68 degrees Fahrenheit (°F) (20 degrees Celsius (°C)) has been identified as a temperature threshold when many Florida manatees begin to migrate south or seek out warm-water refuges, such as natural springs, industrial outflows, and

passive thermal basins (areas such as natural deep holes, canals, and basins, where thermoclines, inverted haloclines, and other physical conditions slow the localized water column cooling processes and temporarily retain pockets of relatively warm water (Hartman 1979, pp. 17, 23; Deutsch et al. 2003a, pp. 22–25; Laist and Reynolds 2005, p. 280; Stith et al. 2006, entire; Valade et al. 2020, pp. 3, 33)). These warm-water sites act as a buffer to the lethal effects of cold temperatures.

In the two southernmost Florida Manatee Management Units (Southwest and Atlantic Coast), Florida manatees depend most heavily on industrial warm-water outfalls, primarily power plant cooling systems; in the two northernmost management units (Upper St. Johns River and Northwest), Florida manatees rely almost exclusively on natural springs (Laist et al. 2013, p. 4). Passive thermal basins are more commonly used by larger aggregations in the south and central part of Florida since these thermal basins can cool during intense or long periods of cold weather (Valade et al. 2020, p. 3). Statewide, from 1999–2011, 48.5 percent of all Florida manatees observed during winter counts were counted at power plant outfalls, 17.5 percent were at natural springs, and 11.7 percent were at passive thermal basins, leaving only 22.3 percent that were at other locations with no known warm-water feature (Laist et al. 2013, p. 4). During extreme cold weather in 2010, the percentage of the manatee population using power plant outfalls and natural springs increased to 63.2 and 18.3 percent, respectively (Laist et al. 2013, p. 4). The potential future reduction of warm water output at both natural and industrial sites is one of the leading threats the Florida manatee faces in the future and is discussed in detail in the Florida Manatee Warm-Water Habitat Action Plan (WWHAP; Valade et al. 2020, pp. 7–9) and our SSA report (Service 2024a, pp. 40–45).

Florida manatees show strong site fidelity, often returning to the same warm-water refuge(s) each winter (Rathbun et al. 1990, pp. 11, 23; Reid et al. 1991, p. 185; Deutsch et al. 2003a, pp. 33–36). Most manatees are familiar with the location of multiple warm-water sites, mostly within single Manatee Management Units or smaller areas (e.g., northern Indian River Lagoon; Reid et al. 1991, p. 185; Langtimm et al. 1998, p. 984; Deutsch et al. 2003a, pp. 37–38, 47). Power plants, which provide winter refuges for approximately one-half to two-thirds of the Florida manatee population (Laist et

al. 2013, p. 4), are not permanent reliable sources of warm water. In the past, some industrial sources of warm water have been eliminated due to plant obsolescence, environmental permitting requirements, economic pressures, and other factors (Deutsch et al. 2003a, p. 66; 81 FR 1000 at 1015, January 8, 2016). During temporary power plant shutdowns, manatees have been observed to use less preferred nearby sites (Packard et al. 1989, entire). However, in other cases where thermal discharges have been eliminated, manatees have died due to site fidelity and lack of other nearby significant warm-water sites (Deutsch et al. 1999, entire). Therefore, in response to potential future reductions of industrial warm-water outfalls, the WWHAP outlines management strategies and actions to establish a network of warm-water sources to meet Florida manatee conservation goals and reduce their dependence on industrial warm-water discharges (Valade et al. 2020, pp. 14–23). Likewise, enhancing existing natural refuges and investigating alternate warm-water sources at or near important industrial warm-water refuges are actions identified in the Florida Manatee Recovery Plan (Service 2001, pp. 84–87).

The WWHAP (Valade et al. 2020, entire) provides an inventory and classification system for all known warm-water sources in Florida. It identifies 75 warm-water sites throughout the State and classifies them as either primary, secondary, or potential warm-water refuges based on thermal quality and manatee use (Valade et al. 2020, pp. 25–32). Thermal quality is defined in the WWHAP as either high, medium, low, or unknown (Valade et al. 2020, p. 32). Refuges are considered to have high thermal quality if water temperatures stay at or above 72 °F (22 °C) during mild, cold, or severe cold weather. Refuges have medium thermal quality if water temperatures stay at or above 72 °F (22 °C) during mild weather, 68 °F (20 °C) during cold weather, and 64 °F (18 °C) during severe cold weather. Refuges have low thermal quality if water temperatures are at or above 68 °F (20 °C) during mild weather, are at or above 61 °F (16 °C) during cold weather and are unreliable during severe cold weather. If temperature data have not been collected or are insufficient for a site, then that site is considered a refuge with unknown thermal quality. Manatee use is also defined in the WWHAP as either established, unpredictable, or unknown (Valade et al. 2020, p. 31). Refuges with established manatee use have consistent

or predictable manatee use throughout the winter and are regionally important. Unpredictable manatee use means that their use of the refuge is inconsistent, and unknown use means that the site has been reported to have some current or historical manatee use but there is little or no documentation.

Twenty warm-water sites (9 springs, 5 passive thermal basins, and 6 power plants) are classified as primary refuges, which indicates that they have reliable thermal quality throughout the winter (*i.e.*, high or medium thermal quality) and most have established manatee use in all winter conditions (Valade et al. 2020, pp. 25–30). Forty-six warm-water sites (13 springs, 29 passive thermal basins, and 4 power plants) are classified as secondary refuges, meaning they typically have medium or low thermal quality and established or unpredictable manatee use (Valade et al. 2020, pp. 25–30). Six warm-water sites (4 springs, 1 passive thermal basin, and 1 power plant) are classified as potential warm-water refuges due to little, no, or unknown current manatee use; unknown thermal attributes; limited or no access; or discontinued discharges, in the case of the power plant. For each of these six warm-water sites, there may be historical records of manatee use or the site's thermal attributes are known and suggest the site has potential as a warm-water refuge (Valade et al. 2020, pp. 25–30).

Because Florida manatees require reliable sources of warm water with ambient water temperature above 68 °F (20 °C), we determined all natural warm-water sites classified as primary refuges in the WWHAP (Valade et al. 2020, pp. 25–30) are essential to the conservation of the Florida manatee. We also determined that natural warm-water sites classified as secondary refuges with either reliable (high or medium) thermal quality or established manatee use in the WWHAP (Valade et al. 2020, pp. 25–30) are essential to the conservation of the Florida manatee.

During the winter months, hundreds of manatees can gather at some warm-water sites and limit their movements until water temperatures begin to rise. They become central-place foragers using warm-water sites as their starting points to make feeding trips, generally within 18.6 miles (mi) (30 kilometers (km)) (Packard 1984, entire; Deutsch et al. 2003b, p. 3; Deutsch et al. 2006, p. 21; Provancha et al. 2012, p. 4; Deutsch and Barlas 2016, p. 7; Haase et al. 2020, entire). As water temperatures decrease below about 68 °F (20 °C), time spent foraging away from warm-water refuges decreases (Deutsch et al. 2006, p. 26; Deutsch and Barlas 2016, pp. 30–52, 92;

Haase et al. 2020, p. 275). As water temperatures warm, the distance Florida manatees travel to forage increases.

As herbivores, Florida manatees forage on a large variety of aquatic vegetation in freshwater, estuarine, and marine systems, including submerged, floating, and emergent vegetation (Hartman 1979, p. 44). In freshwater systems, manatees commonly forage on submerged aquatic vegetation such as the native eel grass (*Vallisneria americana*; also known as wild celery or tape grass), coontail (*Ceratophyllum demersum*), and widgeongrass (*Ruppia maritima*); nonnative, invasive submerged species such as hydrilla (*Hydrilla verticillata*; also known as waterhyme) and Eurasian watermilfoil (*Myriophyllum spicatum*); and the nonnative, invasive floating common water hyacinth (*Eichhornia crassipes*) (Best 1981, pp. 8–9). In marine and estuarine systems, Florida manatees forage on all seven species of seagrasses, with manatee grass (*Syringodium filiforme*), shoal grass (*Halodule wrightii*), turtle grass (*Thalassia testudinum*), and widgeongrass being common forage species (Hartman 1979, p. 46; Reich and Worthy 2006, p. 306). With the exception of widgeongrass, seagrasses are largely absent in northeast Florida, and the emergent species smooth cordgrass (*Sporobolus alterniflorus*; previously *Spartina alterniflora*) is the primary forage (Baugh et al. 1989, entire).

The depth at which manatees feed is reliant upon tides and depth of vegetation. In Florida, manatees predominantly feed on seagrass in near-shore, shallow waters averaging 3.3 to 9.8 feet (ft) (1 to 3 meters (m)) in depth (Smith 1993, p. 12). Although some areas have seen some increases or stability in forage for manatees, the total acreage of seagrass in Florida today is less than what it was in the 1950s (Yarbro and Carlson 2016, p. 3). The loss of foraging habitat, especially in the Indian River Lagoon on Florida's east coast, is a significant threat to the Florida manatee and is discussed in more detail in the Florida Manatee Stock Assessment Report and our SSA report (Service 2023a, pp. 16–17; Service 2024a, pp. 38–40).

Therefore, based on the information above, we identify natural warm-water refuges with either reliable thermal quality throughout the winter or established manatee use each year as a physical or biological feature essential to the conservation of the Florida manatee. We also identify foraging areas (*i.e.*, areas that support submerged, emergent, or floating aquatic vegetation) within 18.6 mi (30 km) of the above

identified natural warm-water refuges as a physical or biological feature essential to the conservation of the subspecies. Since Florida manatees have a strong site fidelity to warm-water refuges (Rathbun et al. 1990, pp. 11, 23; Reid et al. 1991, p. 185; Deutsch et al. 2003a, pp. 33–36), approximately one-half to two-thirds of all manatees observed during winter counts were aggregated at power plant outfalls (Laist et al. 2013, p. 4), and forage availability near winter manatee aggregations is essential (Packard 1984, entire; Deutsch et al. 2003b, p. 3; Deutsch et al. 2006, p. 21; Provancha et al. 2012, p. 4; Deutsch and Barlas 2016, p. 7; Haase et al. 2020, entire), we also identify foraging areas within 18.6 mi (30 km) of other established winter manatee aggregations areas (*i.e.*, power plants with established manatee use) as a physical or biological feature essential to the conservation of the Florida manatee.

Antillean Manatee

To address actions in the recovery plan for the Puerto Rico population of the Antillean manatee (Service 1986, pp. 13, 17) and 5-year status review (Service 2007, p. 37), the Service identified potential manatee protection areas in the “Science Summary in Support of Manatee Protection Area Design in Puerto Rico” (Drew et al. 2012, entire). Even though these areas were not designated as manatee protection areas, the habitat models and methodology used to identify areas of importance to the survival of the subspecies (Drew et al. 2012, entire) provide significant insight into the physical or biological features essential to the conservation of the subspecies in Puerto Rico.

Since fresh water is a limiting factor for manatees in Puerto Rico, local movement patterns are defined by freshwater resources. More than 85 percent of manatees detected during aerial and telemetry surveys in Puerto Rico were within 3 mi (5 km) of natural or artificial freshwater sources (Powell et al. 1981, p. 642; Slone et al. 2006, pp. 2, 8; Drew et al. 2012, p. 8). Manatees have been documented using a variety of freshwater sources in Puerto Rico, including mouths of streams and rivers, coastal groundwater springs, industrial wastewater (*e.g.*, wastewater treatment plants, hydroelectric power plants), storm sewer outflows, natural intermittent drainages through coastal forests, and watering stations set out on boats or docks by locals and tourists (Powell et al. 1981, pp. 642, 644; Rathbun et al. 1985, pp. 19–20; Drew et al. 2012, pp. 23–24). Watering stations at boats or docks are not static or

reliable sources of fresh water and are therefore difficult to model spatially. Groundwater discharge, though it has not been confirmed, may be a significant source of fresh water for manatees, but is also difficult to model spatially as it is likely not a point source discharge (Drew et al. 2012, p. 56).

Seagrass is the main component of the Antillean manatee's diet in Puerto Rico (Mignucci-Giannoni and Beck 1998, pp. 394, 396; Alves-Stanley et al. 2010, p. 265). Of the four species of seagrass found in Puerto Rico, only three were found to be common forage (turtle grass, shoal grass, and manatee grass; Mignucci-Giannoni and Beck 1998, p. 396), as star grass (*Halophila decipiens*) predominantly occurs in deeper water (33–98 ft (10–30 m); Drew et al. 2012, p. 20). Although manatees in Puerto Rico regularly travel through deep water when moving between local resources, they typically do not feed or rest in waters deeper than 43 ft (13 m) and spend most of their time in waters less than 16 ft (5 m) deep (Drew et al. 2012, p. 19).

Due to its island nature, Puerto Rico's coastline has limited areas that provide shelter and calm waters for manatees to feed, rest, calve, and provide parental care. Sheltered water in Puerto Rico has been identified as shallow bays and coves (less than 9.8 ft (3 m) deep) with low wave energy (less than 0.98 ft (0.3 m) wave height) (Drew et al. 2012, p. 8). Wave energy was modeled based on a function of prevailing wind speed and direction in relation to coastal landforms (Drew et al. 2012, p. 8).

Available tracking data in Puerto Rico confirmed that manatees may have both restricted movement patterns (*i.e.*, movement within a single bay area) and move longer distances as well throughout several coastal municipalities (Slone et al. 2006, p. 3). For example, manatees were documented moving from the east coast of Puerto Rico in Naguabo to Vieques Island (approximately 8.7 mi (14 km)) and from Guanajibo on the west coast to Guánica on the southwest and back, a distance greater than 37.3 mi (60 km) one way (Slone et al. 2006, p. 3). More localized movement patterns were typically movements between freshwater and seagrass resources (Slone et al. 2006, p. 3). In addition, 85.8 percent of manatees detected during aerial surveys in Puerto Rico were within 3 mi (5 km) of a natural or artificial freshwater resource (Powell et al. 1981, p. 642). Based on that information, a 3-mi (5-km) radius was used to identify the potential manatee protection areas in Puerto Rico (Drew et al. 2012, p. 8). This value was confirmed

as reasonable based on preliminary telemetry data of manatees along the Puerto Rican coastline (Slone et al. 2006, entire) and expert elicitation (Drew et al. 2012, p. 8).

Using the available geospatial modeling (Drew et al. 2012, entire) with the addition of updated manatee observations (Atkins Caribe, LLP 2012, 2013, 2014a, and 2014b, entire; Mignucci-Giannoni 2021, entire) and seagrass data (National Oceanic and Atmospheric Administration (NOAA) 2022, entire), we identified that manatees along the Puerto Rican coastline aggregate in areas that contain at least two of the three resources discussed (fresh water, seagrass, and shelter). While the shelter model should still be accurate, we recognize that not all freshwater sources are represented in the freshwater resources model due to the difficulty in spatial modelling (*e.g.*, groundwater seepage, intermittent stream discharges, etc.) and potential changes in freshwater output locations or flows (Drew et al. 2012, entire). We also recognize that the seagrass data layers could also be slightly inaccurate due to potential misidentification of benthic signatures from aerial imagery (*e.g.*, misidentifying coral or rocky bottom as seagrass or vice versa) and fluctuations in seagrass coverage over time.

Therefore, based on the information above, we identify as the physical or biological feature essential to the conservation of the Puerto Rican population of the Antillean manatee nearshore marine waters with at least two of the following resources within a 3-mi (5-km) radius: seagrass in waters less than 43 ft (13 m) deep; freshwater sources; and calm waters, such as shallow bays and coves, with water depths less than 9.8 ft (3 m) and wave heights less than 0.98 ft (0.3 m).

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of Florida manatee and Antillean manatee from studies of the subspecies' habitat, ecology, and life history as described below. Additional information can be found in the WWHAP (Valade et al. 2020, entire), "Science Summary in Support of Manatee Protection Area Design in Puerto Rico" (Drew et al. 2012, entire), and the SSA reports (Service 2024a, pp. 17–33; Service 2024b, pp. 15–34). Since the two subspecies of West Indian manatee live in different areas of the species' range and experience different habitat conditions, we have determined they require different physical or

biological features for their conservation. We have determined that the following physical or biological features are essential to the conservation of Florida manatee:

- (1) Areas of water warmed by natural processes (*e.g.*, spring discharges, passive thermal basins) that have either:
 - (a) Reliable thermal quality throughout the winter (*i.e.*, having at least a medium thermal quality as defined by the Florida Manatee WWHAP (Valade et al. 2020, pp. 25–32)), which consists of water temperatures that stay at or above:
 - (i) 72 degrees Fahrenheit (°F) (22 degrees Celsius (°C)) during mild weather,
 - (ii) 68 °F (20 °C) during cold weather, and
 - (iii) 64 °F (18 °C) during severe cold weather; or
 - (b) Established manatee use throughout the winter each year (see the Florida Manatee WWHAP (Valade et al. 2020, pp. 25–32)).
- (2) Areas supporting submerged, emergent, or floating aquatic vegetation within 18.6 miles (30 kilometers) of:
 - (a) The natural warm-water sources described in paragraph (1), above; or
 - (b) Other established winter manatee aggregation areas (*i.e.*, power plants with established manatee use).

We have determined that the following physical or biological feature essential to the conservation of Antillean manatee is nearshore marine waters with at least two of the following resources within a 3-mile (5-kilometer) radius:

- (1) Freshwater sources, such as streams and wastewater outfalls;
- (2) Seagrass in waters less than 43 ft (13 m) deep; and
- (3) Calm waters, such as shallow bays and coves, with water depths less than 9.8 ft (3 m) and wave heights less than 0.98 ft (0.3 m).

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of manatees may require special management considerations or protection. Threats to Florida and Antillean manatees are described in detail in the SSA reports (Service 2024a, pp. 33–65; Service 2024b, pp. 35–47). The threats and associated special management considerations or protection addressed in this document are specific to the physical or biological features essential to the conservation of the subspecies. For Florida and Antillean manatee habitat, we grouped primary threats into the following six

threat categories. Each of these threats and associated special management considerations or protection are summarized below.

(1) *Warm-water habitat loss.* Florida's natural springs have had substantial declines in flows and water quality, and many springs have been altered (dammed, silted in, and otherwise obstructed) to the point that they are no longer accessible to manatees (Laist and Reynolds 2005, p. 287; Taylor 2006, pp. 5–6; Florida Fish and Wildlife Conservation Commission (FWC) 2007, p. 10). Threats to passive thermal basins and other warm-water features used by manatees in winter include the loss of thermal capacity due to human activities such as development and restoration activities and changes to physical or hydrological features integral to individual thermal basins (Valade et al. 2020, p. 10). Examples of special management considerations or protection that could reduce the threat of warm-water habitat loss may include (but not be limited to): establishing and maintaining minimum flows and levels for springs, lakes, and rivers; conducting spring run restoration projects (e.g., remove excess sediment, stabilize creek banks) and removing or modifying dams and locks to improve access; and enhancing existing warm-water refuges or creating alternate warm-water refuges.

(2) *Habitat loss, modification, and degradation other than warm-water habitat loss.* Human activities that can result in the loss of aquatic vegetation as food resources include dredging, filling, boating, anchoring, eutrophication, siltation, coastal development, and invasive or nuisance aquatic vegetation treatments (Zieman and Zieman 1989, pp. 88–96; Duarte 2002, p. 194; Orth et al. 2006, p. 991; Puerto Rico Department of Natural and Environmental Resources (PRDNER) 2008, entire; PRDNER 2012, entire). Harbor deepening and other dredging projects can also impact areas used as shelter habitat. Examples of special management considerations or protection that could reduce the threat of foraging and other habitat loss, modification, or degradation may include (but not be limited to): improving water quality through reductions in nutrient inputs from stormwater, septic tanks, and fertilizers; restoring aquatic vegetation, living shorelines, and filter feeders to prevent and mitigate habitat loss and improve water quality; coordinating with the Service prior to treatments of invasive or nuisance aquatic vegetation and limiting treatments that could reduce vegetation availability during the cold

season; establishing and enforcing boat speed zones, marked navigation channels, and exclusion areas; and developing or revising and implementing standardized construction conditions for in-water construction projects such as marinas, boat ramps, or dredging to avoid or minimize direct impacts to vegetation and indirect effects such as from shading by structures.

(3) *Algal blooms.* Persistent and repeated green and brown algal blooms have resulted in significant losses of seagrasses on the east-central coast of Florida due to decreased water clarity and quality (St. Johns River Water Management District (WMD) 2012, pp. 2–3; Service 2023a, p. 16). Red tide events, caused by blooms of the toxic microalgae *Karenia brevis*, most frequently occur on the Gulf Coast of Florida. These blooms are typically associated with direct mortality of manatees due to the ingestion of neurotoxins released by *K. brevis* that accumulate in seagrass (Landsberg et al. 2009, p. 600; Steidinger 2009, p. 555); however, large and prolonged events have the potential to cause seagrass loss due to light reduction (Lee et al. 2007, entire; Kim et al. 2015, entire). Examples of special management considerations or protection that could reduce the threat of algal blooms may include (but not be limited to): improving water quality through reductions in nutrient inputs from stormwater, septic tanks, and fertilizers; restoring aquatic vegetation and filter feeders to improve water quality; and removing nutrient-laden sediments from inshore waters.

(4) *Climate change, including water temperature increases, sea level rise, and changes in amount and seasonality of rainfall.* Potential impacts of climate change to manatee habitat include loss and degradation of foraging habitat and changes in warm-water and freshwater availability. Increasing water temperatures will likely affect estuarine and freshwater systems and the seagrass and other forage plant communities by influencing photosynthetic rates and biomass, changing plant communities and growth of competitors, changing aspects of life history, and/or shifting the distribution if physiological tolerances are exceeded (Short and Neckles 1999, pp. 172–175; Björk et al. 2008, pp. 21–23). Sea level rise may influence the flow of coastal springs, the springs' salinity, and nearby forage (Edwards 2013, pp. 731–734; Marsh et al. 2017, pp. 337). Examples of special management considerations or protection that could reduce the threat of climate change may include (but not

be limited to): establishing and maintaining minimum flows and levels for springs, lakes, and rivers; and restoring submerged and emergent aquatic vegetation and living shorelines to prevent and mitigate habitat loss.

(5) *Contaminants.* Direct and indirect exposure to contaminants in aquatic and benthic habitats is another factor that may have adverse effects on manatees and their habitat (Bonde et al. 2004, p. 258). Contaminants generated from agriculture, human wastewater, oil and gas production or spills, and general urban runoff are among those discharged into waterways and sediments. Examples of special management considerations or protection that could reduce the threat of contaminants may include (but not be limited to): improving water quality through reductions in nutrient inputs from stormwater, septic tanks, and fertilizers; and developing or revising and implementing oil spill response with manatee and aquatic vegetation considerations.

(6) *Tropical storms and hurricanes.* Aquatic vegetation can be impacted by scouring and sedimentation from waves, storm surge, and/or vessels or other debris during tropical storms and hurricanes (NOAA 2007, pp. 94–96). Post-storm effects include increased freshwater runoff and nutrient loading that in some cases contribute to algal blooms that can limit light to submerged aquatic vegetation and in turn diminish seagrasses (NOAA 2007, pp. 94–96). Debris from storms or erosion from nearby areas also can limit or completely block access to foraging and warm-water sites. Examples of special management considerations or protection that could reduce the threat of tropical storms and hurricanes may include (but not be limited to): restoring submerged and emergent aquatic vegetation and living shorelines to mitigate and prevent habitat loss; and developing or revising and implementing marine debris removal guidance with manatee and aquatic vegetation considerations.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the subspecies and identify specific areas within the geographical area occupied by the subspecies at the time of listing and any specific areas outside the geographical

area occupied by the subspecies to be considered for designation as critical habitat. We are not currently proposing to designate any areas outside the geographical area occupied by the subspecies because we have not identified any unoccupied areas that meet the definition of critical habitat. No unoccupied areas were determined to be essential to the conservation of either subspecies.

As stated above under Physical or Biological Features Essential to the Conservation of the Subspecies, since the two subspecies of West Indian manatee live in different portions of the species' range and experience different habitat conditions, we have determined they require different physical or biological features for their conservation. Therefore, we also used different criteria and methods for identifying critical habitat for each subspecies, as described below.

Florida Manatee

In general, for areas within the geographical area occupied by the Florida manatee subspecies at the time of listing (*i.e.*, currently occupied), we delineated critical habitat boundaries within the accessible waters where manatees have consistently aggregated around warm-water refuges during the colder months, and foraging habitat near the warm-water refuges. Data sources included the West Indian Manatee One Range Map Geographical Information System (GIS) layer (Service 2022, *entire*); the WWHAP refuge classifications, attributes, and GIS location data (Valade et al. 2020, *entire*); seagrass data from 1970 to 2022 (South Florida WMD 1970, *entire*; South Florida WMD 2004, *entire*; Suwannee River WMD 2004, *entire*; South Florida WMD 2007, *entire*; St. Johns River WMD 2017, *entire*; FWC 2022, *entire*; NOAA 2022, *entire*); floating and emergent aquatic vegetation coverage from the Florida Cooperative Land Cover Map version 3.5 (FWC and Florida Natural Areas Inventory (FNAI) 2021, *entire*); salt marsh data from FWC (FWC 2015, *entire*); FWC and other sources for manatee aerial survey, telemetry, and FWC mortality data from 1984 to 2022 (FWC 1984–2022, unpublished data); and bathymetry data (General Bathymetric Chart of the Oceans (GEBCO) 2023, *entire*) and Environmental Systems Research Institute's (Esri) ArcGIS online basemap aerial imagery from 2021. For the Florida manatee, we delineated critical habitat boundaries using the following criteria:

(1) We reviewed the WWHAP (Valade et al. 2020, *entire*) to determine which

natural warm-water sites (*i.e.*, springs, passive thermal basins) have reliable (medium or high) thermal quality throughout the winter or established manatee use throughout the winter each year. All natural warm-water sites classified as primary refuges in the WWHAP meet this criterion. Some of the natural warm-water sites classified as secondary refuges also meet this criterion but others do not (*i.e.*, because they do not have medium or high thermal quality or established manatee use).

(2) We reviewed the WWHAP (Valade et al. 2020, *entire*) to determine which industrial warm-water sites (*i.e.*, power plants) contain the physical or biological feature of supporting established winter manatee aggregation areas. Areas supporting aquatic vegetation within 18.6 mi (30 km) of power plants meet this criterion only if they have established manatee use (Valade et al. 2020, pp. 25–32).

(3) We delineated all accessible waters within 18.6 mi (30 km) of the natural warm-water sites and power plants meeting criteria 1 and 2. The 18.6-mi (30-km) distance is based on the typical distance manatees travel from warm-water sites to forage in the winter (Packard 1984, *entire*; Deutsch et al. 2003b, p. 3; Deutsch et al. 2006, p. 21; Provanca et al. 2012, p. 4; Deutsch and Barlas 2016, p. 7; Haase et al. 2020, *entire*). This distance was delineated using stream or waterway miles instead of a straight-line radius from the site to represent the path manatees would travel. Waters accessible to manatees were determined when developing the West Indian Manatee One Range Map, which uses the U.S. Geological Survey's (USGS) National Hydrography Dataset, expert knowledge on access, and Florida manatee telemetry, sightings, and mortality datasets (Endries and Moskwik 2023, pers. comm.).

(4) We evaluated the 1970 to 2022 seagrass (South Florida WMD 1970, *entire*; South Florida WMD 2004, *entire*; Suwannee River WMD 2004, *entire*; South Florida WMD 2007, *entire*; St. Johns River WMD 2017, *entire*; FWC 2022, *entire*; NOAA 2022, *entire*) and aquatic vegetation, including salt marsh, coverage data (FWC 2015, *entire*; FWC and FNAI 2021, *entire*) to ensure that the areas delineated under criterion 3 have the ability to support forage material for manatees.

(5) When the critical habitat unit extended into the open waters of the Gulf of Mexico or Atlantic Ocean, we brought the offshore boundary in from the 18.6-mi (30-km) distance from the warm-water site or power plant to the 9.8-ft (3-m) bathymetry line, as Florida

manatees typically feed in waters 3.3 to 9.8 ft (1 to 3 m) in depth (Smith 1993, p. 12).

(6) In areas where the outer boundaries of the critical habitat unit were located in the middle of a bay, lagoon, river, canal, or other inland waterbody, we either extended the unit boundary beyond the 18.6-mi (30-km) distance to include the entire waterbody (if it is less than a 6-mi (10-km) extension and the area has contiguous forage or high manatee use during the winter) or brought the unit boundary in to the nearest landmark such as a bridge, lock, dam, or canal entrance.

Antillean Manatee

In general, for areas within the geographical area occupied by the Antillean manatee subspecies at the time of listing (*i.e.*, currently occupied), we delineated critical habitat boundaries under U.S. jurisdiction within accessible waters where manatees have consistently aggregated around freshwater, forage, and shelter habitat. Data sources included the West Indian Manatee One Range Map GIS layer (Service 2022, *entire*); manatee aerial survey data from 1976 to 2021 (Powell et al. 1981, *entire*; Rathbun et al. 1985, *entire*; Mignucci-Giannoni et al. 2004, *entire*; Mignucci-Giannoni 2006, *entire*; Service 1984–2011, unpublished data; Atkins Caribe, LLP 2012, 2013, 2014a, and 2014b, *entire*; Mignucci-Giannoni 2021, *entire*); freshwater, seagrass, and shelter GIS raster data and models from the "Science Summary in Support of Manatee Protection Area Design in Puerto Rico" (NOAA 2001, *entire*; USGS and U.S. Environmental Protection Agency 2005, *entire*; Drew et al. 2012, *entire*); updated seagrass coverage GIS layers (NOAA 2022, *entire*); bathymetry data (GEBCO 2023, *entire*); and Esri's ArcGIS online basemap aerial imagery from 2021. We followed the methodology used to design potential manatee protection areas (Drew et al. 2012, *entire*), but did not include the watercraft threat data and added updated seagrass data (NOAA 2022, *entire*) and manatee aerial survey data (Atkins Caribe, LLP 2012, 2013, 2014a, and 2014b, *entire*; Mignucci-Giannoni 2021, *entire*). We delineated critical habitat boundaries for the Antillean manatee using the following criteria:

(1) After calculating the geometric mean of the available or updated seagrass, freshwater, and shelter model (Drew et al. 2012, *entire*), we selected all habitat areas from this model that fell within the upper 50th percentile (the median value or higher) for seagrass, freshwater, and shelter. We then

overlapped these habitat areas with those areas that have a high frequency of observed manatees (Drew et al. 2012, p. 36).

(2) Then, we selected and added habitat areas that scored below the 50th percentile of the seagrass, freshwater, and shelter model if those areas had at least two of the three resources (seagrass, fresh water, or shelter) and also had a high frequency of observed manatees (*i.e.*, were in the upper 50th percentile for number of manatees observed) (Drew et al. 2012, p. 36).

(3) Within the areas selected in criteria 1 and 2, we delineated all accessible waters within 3 mi (5 km) of the documented freshwater sources (if present). This distance captures the local movements of most manatees during telemetry studies (Slone et al. 2006, entire). Additionally, most (86 percent) of the manatees detected during aerial surveys were within 3 mi (5 km) of a freshwater source (Powell et al. 1981, p. 642). Waters accessible to manatees were determined when developing the West Indian Manatee One Range Map, which used the USGS National Hydrography Dataset, expert knowledge on access, and Antillean manatee telemetry, sightings, and mortality datasets (Endries and Moskwik 2023, pers. comm.). If documented freshwater sources are not present within the area, we selected:

- Accessible waters within the entire bay or lagoon, or
- Waters encompassing the highest densities of manatee observations and seagrass, or
- Waters that provide shelter as described in the shelter model (Drew et al. 2012, pp. 24–25).

(4) Offshore unit boundaries were constrained to the distance or feature closest to shore of the following: approximately 820 ft (250 m) beyond the outer edge of seagrass beds (to account for mapping errors and changes in coverage overtime); 1,640 ft (500 m) from shore if no seagrass was mapped (to allow manatees access to freshwater sources or shelter along the shoreline); the 49-ft (15-m) bathymetry line (since manatees spend most of their time in waters less than 43 ft (13 m) deep, and the 49-ft (15-m) bathymetry line is the closest line to that depth); or 3 mi (5

km) from the freshwater sources (since most (86 percent) of manatees were found within 3 mi (5 km) of freshwater sources (Powell et al. 1981, p. 642) and this distance captures the local movements of most manatees during telemetry studies (Slone et al. 2006, entire)). One exception to this rule was in Vieques, where we used the 26-ft (8-m) bathymetry line along the northern shore, then switched to 820 ft (250 m) beyond the outer edge of seagrass beds on the western shore. This was because the seagrass coverage and 49-ft (15-m) bathymetry line on the northern coast are much farther offshore than where the highest densities of manatee observations occur, but the outer edge of the seagrass coverage is closer to shore on the western coast of the island (Service 2023c, p. 4).

The areas proposed as critical habitat only include waters up to the ordinary high-water line. There are no developed areas included within the proposed critical habitat boundaries except for transportation crossings, docks, or other features extending from shore over the water, which do not remove the suitability of these areas for either subspecies. When determining proposed critical habitat boundaries, we made every effort to avoid including areas of dry land such as small islands or rock outcrops. In addition, federally maintained navigational channels are excluded by text in the proposed rule and are not proposed for critical habitat designation. Federally maintained navigational channels, for the purposes of this proposed rule, are specific areas where the substrate has been persistently disturbed by planned management and maintenance dredging activities authorized by the U.S. Army Corps of Engineers at the time of critical habitat designation, and expectations are that the areas will continue to be periodically disturbed by such management activities. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such areas and these features can shift over time. Any such areas inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule

and are not proposed for designation as critical habitat. Therefore, if the critical habitat designations are finalized as proposed, a Federal action involving these areas would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We propose to designate areas as critical habitat that we have determined were occupied at the time of listing (*i.e.*, currently occupied) and that contain one or more of the physical or biological features that are essential to the conservation of the subspecies.

Twelve units are proposed for designation based on one or more of the physical or biological features being present to support the Florida manatee's life-history processes. Thirteen units are proposed for designation based on the physical or biological feature being present to support the Antillean manatee's life-history processes. Some units contain all of the identified physical or biological features and support multiple life-history processes. Some units contain one or more of the physical or biological features necessary to support the subspecies' particular use of that habitat.

The Proposed Critical Habitat Designations Are Defined by the Maps, as Modified by Any Accompanying Regulatory Text, Presented at the End of This Document Under Proposed Regulation Promulgation

Proposed Critical Habitat Designation for the Florida Manatee

We are proposing 12 units in Florida as revised critical habitat for the Florida manatee, totaling approximately 1,904,191 ac (770,599 ha). The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the Florida manatee. All of these areas are occupied, and we are not proposing any unoccupied areas. Table 1 shows the proposed revised critical habitat units, including unit names, land ownership, and approximate area of each unit.

TABLE 1—PROPOSED CRITICAL HABITAT UNITS FOR THE FLORIDA MANATEE

[Area estimates reflect all land within critical habitat unit boundaries and do not include lands that are exempt under the Act's section 4(a)(3)(B)(i) in Units FL-04, FL-10, and FL-11.]

Critical habitat unit	Federal ownership in acres (hectares)	State ownership in acres (hectares)	Local ownership in acres (hectares)	Private ownership in acres (hectares)	Size of unit in acres (hectares)
FL-01: Wakulla Springs	936 (379)	21,598 (8,740)	1 (<1)	58 (23)	22,593 (9,143)
FL-02: Manatee and Fanning Springs	224 (91)	4,157 (1,682)	12 (5)	59 (24)	4,452 (1,802)
FL-03: Withlacoochee Bay to Anclote River	21,131 (8,551)	335,064 (135,596)	1,670 (676)	6,716 (2,719)	364,584 (147,542)

TABLE 1—PROPOSED CRITICAL HABITAT UNITS FOR THE FLORIDA MANATEE—Continued

[Area estimates reflect all land within critical habitat unit boundaries and do not include lands that are exempt under the Act's section 4(a)(3)(B)(i) in Units FL-04, FL-10, and FL-11.]

Critical habitat unit	Federal ownership in acres (hectares)	State ownership in acres (hectares)	Local ownership in acres (hectares)	Private ownership in acres (hectares)	Size of unit in acres (hectares)
FL-04: Tampa Bay	682 (276)	68,347 (27,659)	108,805 (44,032)	3,181 (1,287)	181,015 (73,254)
FL-05: Venice to Estero Bay	2,048 (829)	191,975 (77,690)	16,821 (6,807)	8,373 (3,388)	219,217 (88,714)
FL-06: Rookery Bay to Florida Bay West	343,626 (139,061)	105,559 (42,718)	18 (7)	849 (344)	450,052 (182,130)
FL-07: Upper Florida Keys	161,201 (65,236)	76,635 (31,013)	2,762 (1,118)	3,656 (1,480)	244,254 (98,846)
FL-08: Biscayne Bay to Deerfield Beach	91,404 (36,990)	46,768 (18,926)	5,525 (2,236)	3,028 (1,225)	146,725 (59,378)
FL-09: Boynton Beach to Fort Pierce	203 (82)	35,967 (14,555)	533 (216)	1,126 (456)	37,829 (15,309)
FL-10: Vero Beach to Northern Indian River Lagoon	33,077 (13,386)	117,318 (47,477)	1,782 (721)	1,410 (571)	153,588 (62,155)
FL-11: Upper St. Johns River	1,815 (735)	76,984 (31,154)	150 (61)	495 (200)	79,444 (32,150)
FL-12: Silver Springs	6 (2)	417 (169)	0 (0)	15 (6)	438 (177)
Total	656,356 (265,617)	1,080,797 (437,380)	138,080 (55,879)	28,969 (11,723)	1,904,191 (770,599)
Ownership Percentage	34	57	7	2	.....

Note: Area sizes and percentages may not sum due to rounding.

We present brief descriptions of all proposed revised units and reasons why they meet the definition of critical habitat for the Florida manatee, below.

Unit FL-01: Wakulla Springs

Unit FL-01 consists of 22,593 ac (9,143 ha) of springs, rivers, and open water along the Gulf of Mexico in Wakulla County, Florida. The unit extends from Wakulla Springs in Edward Ball Wakulla Springs State Park down the Wakulla River out to the Gulf of Mexico where it fans out to approximately 5 mi (8 km) east and west. The unit also extends up the St. Marks River approximately 9 river mi (14.5 km) from the confluence of the Wakulla and St. Marks Rivers. The unit includes all inshore, manatee-accessible waters below the mean high water (MHW) line (Service 2022, entire) within approximately 18.6 mi (30 km) from the warm-water site of Wakulla Springs. Offshore, the unit extends to either 18.6 mi (30 km) from Wakulla Springs or the outer extent of seagrass beds in the Gulf of Mexico, whichever is closest to shore.

Areas within this unit include approximately 936 ac (379 ha; 4 percent) in Federal ownership, 21,598 ac (8,740 ha; 96 percent) in State ownership, 1 ac (less than 1 ha; less than 1 percent) in local government ownership, and 58 ac (23 ha; less than 1 percent) in private/other ownership. Federally owned lands in this unit include St. Marks National Wildlife Refuge (NWR), and State-owned lands include Edward Ball Wakulla Springs and San Marcos de Apalache Historic State Parks, as well as State-owned submerged lands. General land use within this unit includes parks, natural resource conservation, wildlife management, and recreational and commercial activities (e.g., swimming,

fishing, and boating). Small areas of the unit also adjoin areas of residential and commercial development.

Unit FL-01 is occupied by the subspecies and contains all of the physical or biological features essential to the conservation of the subspecies. This unit has one primary warm-water refuge, Wakulla Springs, that supports established manatee use and has medium thermal quality (Valade et al. 2020, p. 29). The unit also provides forage material within the Wakulla and St. Marks Rivers, as well as in the Gulf of Mexico. In addition, this unit provides the northernmost and westernmost primary warm-water refuge in the Florida manatee's range, thereby supporting expansion and refuge for manatees from other units or a stopover location for manatees migrating back to Florida for the winter, ensuring good spatial representation for the Northwest Manatee Management Unit.

Approximately 18,940 ac (7,665 ha; 84 percent) of the unit overlap with proposed critical habitat for the threatened rufa red knot (*Calidris canutus rufa*) (see 88 FR 22530, April 13, 2023) and the North Atlantic distinct population segment (DPS) of the green sea turtle (*Chelonia mydas*) (see 88 FR 46572, July 19, 2023).

Threats to the physical or biological features identified within Unit FL-01 include foraging and other habitat loss, modification, and degradation; warm-water habitat loss; algal blooms; climate change; contaminants; and tropical storms and hurricanes. Special management considerations or protection measures to reduce or alleviate threats may include improving water quality; establishing and maintaining minimum flows and levels; restoring aquatic vegetation, living shorelines, and filter feeders; conducting spring run restoration and

improving access; enhancing existing or creating alternate warm-water refuges; establishing and enforcing boat speed zones, marked navigation channels, and exclusion areas; developing or revising and implementing standardized construction conditions for in-water construction; and developing or revising and implementing oil spill response and marine debris removal guidance with manatee and aquatic vegetation considerations.

Unit FL-02: Manatee and Fanning Springs

Unit FL-02 consists of 4,452 ac (1,802 ha) of springs and river in the Big Bend of the Gulf Coast in Dixie, Levy, and Gilchrist Counties, Florida. The unit extends from approximately 18.6 mi (30 km) north of Fanning Springs near Log Landing Conservation Area downstream to the mouth of the Suwannee River at the Gulf of Mexico. The unit includes manatee-accessible waters below the MHW line (Service 2022, entire) within approximately 18.6 mi (30 km) from the warm-water sites of Fanning and Manatee Springs.

Areas within this unit include approximately 224 ac (91 ha; 5 percent) in Federal ownership, 4,157 ac (1,682 ha; 93 percent) in State ownership, 12 ac (5 ha; less than 1 percent) in local government ownership, and 59 ac (24 ha; 1 percent) in private/other ownership. Federally owned lands in this unit include Lower Suwannee NWR, and State-owned lands include Manatee Springs and Fanning Springs State Parks, Suwannee River WMD conservation areas, and State-owned submerged lands. General land use within this unit includes parks, natural resource conservation, wildlife management, and recreational and commercial activities (e.g., swimming, fishing, and boating). Small areas of the

unit also adjoin areas of residential and commercial development.

Unit FL-02 is occupied by the subspecies and contains one or more of the physical or biological features essential to the conservation of the subspecies. This unit has two secondary warm-water refuges, Manatee Springs and Fanning Springs, that support established manatee use with high and medium thermal quality, respectively (Valade et al. 2020, p. 28). This unit also provides forage material within the Suwannee River. In addition, this unit provides the two northernmost secondary warm-water refuges on the west coast of Florida, thereby supporting refuge and an area for expansion for manatees from other units or a stopover location for manatees migrating back to Florida for the winter, ensuring good spatial representation for the Northwest Manatee Management Unit.

Approximately 4,045 ac (1,637 ha; 91 percent) of the unit overlap with designated critical habitat for the threatened Atlantic sturgeon (Gulf subspecies) (*Acipenser oxyrinchus desotoi*) (see 68 FR 13370, March 19, 2003) and Suwannee moccasinshell (*Medionidus walker*) (see 86 FR 34979, July 1, 2021) and proposed critical habitat for the threatened North Atlantic DPS of the green sea turtle (see 88 FR 46572, July 19, 2023).

Threats to the physical or biological features identified within Unit FL-02 include foraging and other habitat loss, modification, and degradation; warm-water habitat loss; algal blooms; climate change; contaminants; and tropical storms and hurricanes. Special management considerations or protection measures to reduce or alleviate threats may include improving water quality; establishing and maintaining minimum flows and levels; restoring aquatic vegetation, living shorelines, and filter feeders; conducting spring run restoration and improving access; enhancing existing or creating alternate warm-water refuges; establishing and enforcing boat speed zones, marked navigation channels, and exclusion areas; developing or revising and implementing standardized construction conditions for in-water construction; and developing or revising and implementing oil spill response and marine debris removal guidance with manatee and aquatic vegetation considerations.

Unit FL-03: Withlacoochee Bay to Anclote River

Unit FL-03 consists of 364,584 ac (147,542 ha) of springs, rivers, and open water along the Gulf of Mexico in Levy,

Citrus, Hernando, Pasco, and Pinellas Counties, Florida. The unit extends from approximately 6 mi (9.7 km) north of the mouth of the Withlacoochee River to Howard Beach Park, which is approximately 1.5 mi (2.4 km) south of the mouth of the Anclote River. The unit includes all inshore, manatee-accessible waters below the MHW line (Service 2022, entire) within approximately 18.6 mi (30 km) from the warm-water sites of the Crystal River Springs Complex, Homosassa Springs, the Chassahowitzka Springs Group, the Weeki Wachee Spring Complex, and Cow Creek Spring. Offshore, the unit extends to either 18.6 mi (30 km) from the warm-water sites or the outer extent of seagrass beds in the Gulf of Mexico, whichever is closest to shore.

Areas within this unit include approximately 21,131 ac (8,551 ha; 6 percent) in Federal ownership, 335,064 ac (135,596 ha; 92 percent) in State ownership, 1,670 ac (676 ha; less than 1 percent) in local government ownership, and 6,716 ac (2,719 ha; 2 percent) in private/other ownership. Federally owned lands in this unit include Crystal River and Chassahowitzka NWRs; State-owned lands include Anclote Key Preserve State Park, Marjorie Harris Carr Cross Florida Greenway State Recreation and Conservation Area, Withlacoochee State Forest, and State-owned submerged lands; and local government-owned lands include several county-owned parks and preserves. General land use within this unit includes parks, natural resource conservation, wildlife management, and recreational and commercial activities (e.g., swimming, fishing, and boating), and power generation. Some areas of the unit also adjoin areas of residential and commercial development.

Unit FL-03 is occupied by the subspecies and contains one or more of the physical or biological features essential to the conservation of the subspecies. This unit has three primary warm-water refuges, the Crystal River Springs Complex, Homosassa Springs, and the Weeki Wachee Spring Complex, that support established manatee use and have high thermal quality and two secondary refuges, the Chassahowitzka Springs Group and Cow Creek Spring, that have unpredictable manatee use with medium thermal quality (Valade et al. 2020, pp. 28–29). This unit also provides forage material within the Withlacoochee, Crystal, Homosassa, Chassahowitzka, Weeki Wachee, Pithlachascotee and Anclote Rivers and tributaries, as well as in the Gulf of Mexico. In addition, this unit supports an important wintering area (Crystal

River Springs Complex) for many of the manatees that travel west of Florida during the warmer months, ensuring good representation within the Northwest Manatee Management Unit and a connection to the Southwest Manatee Management Unit through its extension to the Anclote River.

Approximately 326,379 ac (132,081 ha; 90 percent) of the unit overlap with the current critical habitat designation for the West Indian manatee (see 41 FR 41914, September 24, 1976, and 42 FR 47840, September 22, 1977) and proposed critical habitat for the threatened North Atlantic DPS of the green sea turtle (see 88 FR 46572, July 19, 2023).

Threats to the physical or biological features identified within Unit FL-03 include foraging and other habitat loss, modification, and degradation; warm-water habitat loss; algal blooms; climate change; contaminants; and tropical storms and hurricanes. Special management considerations or protection measures to reduce or alleviate threats may include improving water quality; establishing and maintaining minimum flows and levels; restoring aquatic vegetation, living shorelines, and filter feeders; removing nutrient-laden sediments; coordinating with the Service prior to treatments of invasive or nuisance aquatic vegetation and limiting invasive or nuisance aquatic vegetation treatments that could reduce vegetation availability during the cold season; conducting spring run restoration and improving access; enhancing existing or creating alternate warm-water refuges; establishing and enforcing boat speed zones, marked navigation channels, and exclusion areas; developing or revising and implementing standardized construction conditions for in-water construction; and developing or revising and implementing oil spill response and marine debris removal guidance with manatee and aquatic vegetation considerations.

Unit FL-04: Tampa Bay

Unit FL-04 consists of 181,015 ac (73,254 ha) of Tampa Bay and the springs, rivers, and canals surrounding the bay in Pinellas, Hillsborough, and Manatee Counties, Florida. The unit includes all inshore waters of Tampa Bay east of the Skyway Bridge on Interstate 275 and inshore waters from Fort De Soto Park to the Pinellas Bayway (State Road 682). The unit includes manatee-accessible waters below the MHW line (Service 2022, entire) within approximately 18.6 mi (30 km) from the established winter manatee aggregation areas near Duke

Energy's Bartow Power Plant, Tampa Electric Company's Bayside Power Plant, and Tampa Electric Company's Big Bend Station.

Areas within this unit include approximately 682 ac (276 ha; less than 1 percent) in Federal ownership, 68,347 ac (27,659 ha; 38 percent) in State ownership, 108,805 ac (44,032 ha; 60 percent) in local government ownership, and 3,181 ac (1,287 ha; 2 percent) in private/other ownership.

Under section 4(a)(3)(B)(i) of the Act, we are exempting 4,415 ac (1,787 ha) of MacDill Air Force Base lands within this unit from the critical habitat designation because the U.S. Department of Defense (DoD) has an approved integrated natural resources management plan (INRMP) for this area that provides benefits to the manatee and its habitat (see Exemptions, below).

Federally owned lands in this unit include Pinellas NWR. State-owned lands in this unit include State Parks (Cockroach Bay Preserve, Terra Ceia Preserve, Little Manatee River, and Skyway Fishing Pier), Southwest Florida WMD restoration areas, and State-owned submerged lands. Local government-owned lands in this unit include several county-owned parks and preserves. General land use within this unit includes parks, natural resource conservation, wildlife management, recreational and commercial activities (e.g., swimming, fishing, and boating), power generation, military activities, and cargo and cruise port activities. Most of the unit also adjoins areas of residential and commercial development.

Unit FL-04 is occupied by the subspecies and contains one or more of the physical or biological features essential to the conservation of the subspecies. This unit provides forage material within 18.6 mi (30 km) of three established winter manatee aggregation areas: Duke Energy's Bartow Power Plant, Tampa Electric Company's Bayside Power Plant, and Tampa Electric Company's Big Bend Station (Valade et al. 2020, pp. 29–30). In addition, this unit supports expansion and recovery of the regional warm-water network in the Southwest Manatee Management Unit due to several lower quality springs and other natural refuges or areas available to create new refuges within the unit.

Approximately 168,976 ac (68,382 ha; 93 percent) of the unit overlap with the current critical habitat designation for the West Indian manatee (see 41 FR 41914, September 24, 1976, and 42 FR 47840, September 22, 1977); designated critical habitat for the wintering population of the endangered piping

plover (*Charadrius melodus*) (see 66 FR 36038, July 10, 2001); and proposed critical habitat for the threatened rufous red knot (see 88 FR 22530, April 13, 2023) and the North Atlantic DPS of the green sea turtle (see 88 FR 46572, July 19, 2023).

Threats to the physical or biological features identified within Unit FL-04 include foraging and other habitat loss, modification, and degradation; algal blooms; climate change; contaminants; and tropical storms and hurricanes. Special management considerations or protection measures to reduce or alleviate threats may include improving water quality; restoring aquatic vegetation, living shorelines, and filter feeders; removing nutrient-laden sediments; enhancing existing or creating alternate warm-water refuges; establishing and enforcing boat speed zones, marked navigation channels, and exclusion areas; developing or revising and implementing standardized construction conditions for in-water construction; and developing or revising and implementing oil spill response and marine debris removal guidance with manatee and aquatic vegetation considerations.

Unit FL-05: Venice to Estero Bay

Unit FL-05 consists of 219,217 ac (88,714 ha) of Charlotte Harbor, Gasparilla Sound, Matlacha Pass, and Estero Bay, as well as the rivers, canals, and springs surrounding them, in Sarasota, Charlotte, Lee, Hendry, and Collier Counties, Florida. The unit includes inshore waters from the Boca Grande Causeway south to Vanderbilt Beach Road. From Charlotte Harbor, the unit extends up the Myakka River, then down Curry Creek to the Venice Inlet. The unit does not include the Peace River east of the Barron Collier Bridge on State Road 41. The Caloosahatchee River is included from its mouth near Cape Coral to near the Caloosahatchee and C-43 Basin Storage Reservoir. The unit includes manatee-accessible waters below the MHW line (Service 2022, entire) within approximately 18.6 mi (30 km) from the warm-water sites of Warm Mineral Springs, Matlacha Isles, North Cape Coral Canal, and Ten Mile Canal Borrow Pit; and the established winter manatee aggregation area near Florida Power and Light's Fort Myers Power Plant.

Areas within this unit include approximately 2,048 ac (829 ha; 1 percent) in Federal ownership, 191,975 ac (77,690 ha; 88 percent) in State ownership, 16,821 ac (6,807 ha; 8 percent) in local government ownership, and 8,373 ac (3,388 ha; 4 percent) in private/other ownership. Federally

owned lands in this unit include Caloosahatchee, Matlacha Pass, Pine Island, Island Bay, and J.N. Ding Darling NWRs. State-owned lands in this unit include State Parks (Lovers Key, Charlotte Harbor Preserve, Estero Bay Preserve, Delnor-Wiggins Pass, and Cayo Costa), Myakka State Forest, Southwest Florida WMD's Deer Prairie Creek Preserve, South Florida WMD's C-43 Basin Storage Reservoir, and State-owned submerged lands. In this unit, local government-owned lands include several county-owned parks and preserves, and privately-owned preserves include the Calusa Land Trust and Nature Preserve of Pine Island and Sanibel-Captiva Conservation Foundation conservation lands. General land use within this unit includes parks, natural resource conservation, wildlife management, recreational and commercial activities (e.g., swimming, fishing, and boating), and power generation. Some areas of the unit also adjoin areas of residential and commercial development.

Unit FL-05 is occupied by the subspecies and contains one or more of the physical or biological features essential to the conservation of the subspecies. This unit has one primary warm-water refuge, Warm Mineral Spring Creek/Salt Creek, that supports established manatee use and has high thermal quality and three secondary refuges, Matlacha Isles, North Cape Coral Canals (Ceitus Lake), and Ten Mile Canal-Borrow Pit, that have established manatee use with medium or low thermal quality (Valade et al. 2020, p. 30). In addition, this unit provides forage material within 18.6 mi (30 km) of the established winter manatee aggregation area near Florida Power and Light's Fort Myers Power Plant within the Caloosahatchee River (Valade et al. 2020, p. 30), as well as within Roberts Bay, Curry Creek, Myakka River, Charlotte Harbor, Gasparilla Sound, Matlacha Pass, and Estero Bay. This unit also supports expansion and recovery of the regional warm-water network in the Southwest Manatee Management Unit due to several lower quality springs and other natural refuges or areas available to create new refuges within the unit.

Approximately 215,477 ac (87,201 ha; 98 percent) of the unit overlap with the current critical habitat designation for the West Indian manatee (see 41 FR 41914, September 24, 1976, and 42 FR 47840, September 22, 1977); designated critical habitat for the wintering population of the endangered piping plover (see 66 FR 36038, July 10, 2001), U.S. DPS of the smalltooth sawfish (*Pristis pectinata*) (see 74 FR 45353,

September 2, 2009), and Northwest Atlantic Ocean DPS of the loggerhead sea turtle (*Caretta caretta*) (see 79 FR 39856, July 10, 2014); and proposed critical habitat for the threatened rufa red knot (see 88 FR 22530, April 13, 2023) and the North Atlantic DPS of the green sea turtle (see 88 FR 46572, July 19, 2023).

Threats to the physical or biological features identified within Unit FL-05 include foraging and other habitat loss, modification, and degradation; warm-water habitat loss; algal blooms; climate change; contaminants; and tropical storms and hurricanes. Special management considerations or protection measures to reduce or alleviate threats may include improving water quality; establishing and maintaining minimum flows and levels; restoring aquatic vegetation, living shorelines, and filter feeders; removing nutrient-laden sediments; conducting spring run restoration and improving access; enhancing existing or creating alternate warm-water refuges; establishing and enforcing boat speed zones, marked navigation channels, and exclusion areas; developing or revising and implementing standardized construction conditions for in-water construction; and developing or revising and implementing oil spill response and marine debris removal guidance with manatee and aquatic vegetation considerations.

Unit FL-06: Rookery Bay to Florida Bay West

Unit FL-06 consists of 450,052 ac (182,130 ha) of inshore and coastal waters from Naples Bay to the western half of Florida Bay in Collier, Monroe, and Miami-Dade Counties, Florida. The unit includes inshore waters of Naples from the Golden Gate Parkway (County Road 886) bridge over Gordon River to Marco Island. From Ten Thousand Island to Florida Bay, the unit includes inshore waters and offshore waters ranging from 1 to 13 mi (1.6 to 21 km) offshore. The unit includes manatee-accessible waters below the MHW line (Service 2022, entire) within approximately 18.6 mi (30 km) from the warm-water sites of Henderson Creek, Marco Island Canals, Port of the Islands Canals, Port of the Islands Mitigation Site, Wooten's Pond, Big Cypress Preserve Canal, Mud Bay, and the Everglades Complex.

Areas within this unit include approximately 343,626 ac (139,061 ha; 76 percent) in Federal ownership, 105,559 ac (42,718 ha; 23 percent) in State ownership, 18 ac (7 ha; less than 1 percent) in local government ownership, and 849 ac (344 ha; less than

1 percent) in private/other ownership. Federally owned lands in this unit include Ten Thousand Island NWR, Everglades National Park, and Big Cypress National Preserve; State-owned lands include Collier-Seminole and Fakahatchee Strand Preserve State Parks, Rookery Bay National Estuarine Research Reserve (NERR), and State-owned submerged lands. General land use within this unit includes parks, natural resource conservation, wildlife management, and recreational and commercial activities (e.g., swimming, fishing, and boating). Small areas of the unit also adjoin areas of residential and commercial development.

Unit FL-06 is occupied by the subspecies and contains one or more of the physical or biological features essential to the conservation of the subspecies. This unit has two primary warm-water refuges, Port of the Islands Canals and Port of the Islands Mitigation Site, that have medium thermal quality with established manatee use (canals) and unpredictable manatee use (mitigation site) and six secondary refuges, Henderson Creek, Marco Island Canals, Wooten's Pond, Big Cypress Preserve Canal, Mud Bay, and the Everglades Complex, that have established manatee use with medium, low, or unknown thermal quality (Valade et al. 2020, pp. 29–30). In addition, this unit provides forage material within Naples Bay, Rookery Bay, Gullivan Bay, Florida Bay, the Gulf of Mexico, and the many small bays and creeks along the coast.

This unit provides a connection between the Southwest and Atlantic Coast Manatee Management Units as it extends into both units, thereby supporting expansion and movements between the Gulf and Atlantic Coasts. Additionally, this unit supports the largest and most stable foraging area within the Atlantic Coast Manatee Management Unit, Florida Bay (Yarbro and Carlson 2016, entire).

Approximately 448,908 ac (181,667 ha; 100 percent) of the unit overlap with the current critical habitat designation for the West Indian manatee (see 41 FR 41914, September 24, 1976, and 42 FR 47840, September 22, 1977); designated critical habitat for the threatened Florida DPS of the American crocodile (*Crocodylus acutus*) (see 41 FR 41914, September 24, 1976, and 42 FR 47840, September 22, 1977), and for the endangered Everglade snail kite (*Rostrhamus sociabilis plumbeus*) (see 42 FR 40685, August 11, 1977), wintering population of the piping plover (see 66 FR 36038, July 10, 2001), U.S. DPS of the smalltooth sawfish (*Pristis pectinata*) (see 74 FR 45353,

September 2, 2009), and Northwest Atlantic Ocean DPS of the loggerhead sea turtle (see 79 FR 39856, July 10, 2014); and proposed critical habitat for the threatened rufa red knot (see 88 FR 22530, April 13, 2023) and the North Atlantic DPS of the green sea turtle (see 88 FR 46572, July 19, 2023).

Threats to the physical or biological features identified within Unit FL-06 include foraging and other habitat loss, modification, and degradation; warm-water habitat loss; algal blooms; climate change; contaminants; and tropical storms and hurricanes. Special management considerations or protection measures to reduce or alleviate threats may include improving water quality; establishing and maintaining minimum flows and levels; restoring aquatic vegetation, living shorelines, and filter feeders; removing nutrient-laden sediments; enhancing existing or creating alternate warm-water refuges; establishing and enforcing boat speed zones, marked navigation channels, and exclusion areas; developing or revising and implementing standardized construction conditions for in-water construction; and developing or revising and implementing oil spill response and marine debris removal guidance with manatee and aquatic vegetation considerations.

Unit FL-07: Upper Florida Keys

Unit FL-07 consists of 244,254 ac (98,846 ha) of inshore and coastal waters of the Upper Florida Keys, from Islamorada north to Old Rhodes Key in Monroe and Miami-Dade Counties, Florida. The unit includes waters of Eastern Florida Bay to approximately 13 mi (21 km) offshore, inshore waters and canals of the Keys, and waters of the Atlantic Ocean approximately 0.5 to 1.5 mi (0.8 to 2.4 km) offshore. The unit also extends inland into the Glades Canal approximately 11 mi (17.7 km) and into the Florida Power and Light Everglades Mitigation Bank Canals approximately 7 mi (11 km). The unit includes manatee-accessible waters below the MHW line (Service 2022, entire) within approximately 18.6 mi (30 km) from the warm-water sites of the Upper Keys Canals and Brown Street Canal.

Areas within this unit include approximately 161,201 ac (65,236 ha; 66 percent) in Federal ownership, 76,635 ac (31,013 ha; 31 percent) in State ownership, 2,762 ac (1,118 ha; 1 percent) in local government ownership, and 3,656 ac (1,480 ha; 1 percent) in private/other ownership. Federally owned lands in this unit include Crocodile Lake NWR, Everglades

National Park, and Biscayne National Park. State-owned lands in this unit include Lignumvitae Key Botanical, John Pennkamp Coral Reef, Windley Key Fossil Reef Geological, and Dagny Johnson Key Largo Hammock Botanical State Parks; South Florida WMD's Model Lands Basin; Florida Keys Wildlife and Environmental Area; and State-owned submerged lands. General land use within this unit includes parks, natural resource conservation, wildlife management, and recreational and commercial activities (e.g., swimming, fishing, and boating). Some areas of the unit also adjoin areas of residential and commercial development.

Unit FL-07 is occupied by the subspecies and contains one or more of the physical or biological features essential to the conservation of the subspecies. This unit has two secondary warm-water refuges, Brown Street Canal and the Upper Keys Canals, that have established manatee use with medium and unknown thermal quality, respectively (Valade et al. 2020, pp. 26–27). In addition, this unit provides forage material within Florida Bay, the Atlantic Ocean, Card Sound, Barnes Sound, Manatee Bay, Blackwater Sound, Buttonwood Sound, and the many smaller bays, sounds, and basins of the Upper Florida Keys and the southeastern coast of Florida's mainland. This unit supports the largest and most stable foraging areas within the Atlantic Coast Manatee Management Unit, Florida Bay, and the Florida Keys (Yarbro and Carlson 2016, entire), contributing to the resiliency of the unit.

Approximately 244,247 ac (98,843 ha; 100 percent) of the unit overlap with the current critical habitat designation for the West Indian manatee (see 41 FR 41914, September 24, 1976, and 42 FR 47840, September 22, 1977); designated critical habitat for the endangered U.S. DPS of the smalltooth sawfish (see 74 FR 45353, September 2, 2009), threatened Florida DPS of the American crocodile (see 41 FR 41914, September 24, 1976, and 42 FR 47840, September 22, 1977), elkhorn (*Acropora palmata*) and staghorn (*A. cervicornis*) corals (see 73 FR 72210, November 26, 2008), Nassau grouper (*Epinephelus striatus*) (see 89 FR 126, January 2, 2024), and five threatened Caribbean coral species (*Orbicella annularis*, *O. faveolata*, *O. franksi*, *Dendrogyra cylindrus*, and *Mycetophyllia ferox*) (see 88 FR 54026, August 9, 2023, and 89 FR 19511, March 19, 2024); and proposed critical habitat for the threatened North Atlantic DPS of the green sea turtle (see 88 FR 46572, July 19, 2023).

Threats to the physical or biological features identified within Unit FL-07

include foraging and other habitat loss, modification, and degradation; warm-water habitat loss; algal blooms; climate change; contaminants; and tropical storms and hurricanes. Special management considerations or protection measures to reduce or alleviate threats may include improving water quality; establishing and maintaining minimum flows and levels; restoring aquatic vegetation, living shorelines, and filter feeders; enhancing existing or creating alternate warm-water refuges; establishing and enforcing boat speed zones, marked navigation channels, and exclusion areas; developing or revising and implementing standardized construction conditions for in-water construction; and developing or revising and implementing oil spill response and marine debris removal guidance with manatee and aquatic vegetation considerations.

Unit FL-08: Biscayne Bay to Deerfield Beach

Unit FL-08 consists of 146,725 ac (59,378 ha) of inshore waters from Biscayne Bay to Deerfield Beach in Miami-Dade, Broward, and Palm Beach Counties, Florida. The unit includes inshore waters of Biscayne Bay and the intracoastal waterways, rivers, and canals (up to 24 mi (38.6 km) inland in some locations) along the southeastern Florida coast from the southern end of Biscayne National Park to Deerfield Beach. The unit includes manatee-accessible waters below the MHW line (Service 2022, entire) within approximately 18.6 mi (30 km) from the warm-water sites of the Coral Gables Waterway, Palmer Lake, and the Little River–S-27 structure; and the established winter manatee aggregation areas near Florida Power and Light's Dania Beach and Port Everglades Energy Centers.

Areas within this unit include approximately 91,404 ac (36,990 ha; 62 percent) in Federal ownership, 46,768 ac (18,926 ha; 32 percent) in State ownership, 5,525 ac (2,236 ha; 4 percent) in local government ownership, and 3,028 ac (1,225 ha; 2 percent) in private/other ownership. Federally owned lands in this unit include Biscayne National Park. State-owned lands in this unit include State Parks (Oleta River, Bill Baggs Cape Florida, and Dr. Von D. Mizell-Eula Johnson), South Florida WMD's Biscayne Coastal Wetlands, Everglades and Francis S. Taylor Wildlife Management Area, and State-owned submerged lands. Local government-owned lands in this unit include several county-owned parks and preserves. General land use within this

unit includes parks, natural resource conservation, wildlife management, recreational and commercial activities (e.g., swimming, fishing, and boating), power generation, and cargo and cruise port activities. Most of the unit also adjoins areas of residential and commercial development.

Unit FL-08 is occupied by the subspecies and contains one or more of the physical or biological features essential to the conservation of the subspecies. This unit has one primary warm-water refuge, the Coral Gables Waterway, with established manatee use and high thermal quality and two secondary warm-water refuges: Palmer Lake, with unpredictable manatee use and medium thermal quality; and Little River–S-27 structure, with established manatee use and low thermal quality (Valade et al. 2020, pp. 26–27). In addition, this unit provides forage material within 18.6 mi (30 km) of the established winter manatee aggregation area near Florida Power and Light's Dania Beach and Port Everglades Energy Centers (Valade et al. 2020, p. 30), as well as within Biscayne Bay, the Miami River, Little River, Intracoastal Waterway, Stranahan River, New River, Middle River, and the many canals, lakes, and bays along the southeast coast of Florida. This unit also supports expansion and recovery of the regional warm-water network in the Atlantic Coast Manatee Management Unit due to several lower quality natural refuges or areas available to create new refuges within the unit.

Approximately 139,942 ac (56,632 ha; 95 percent) of the unit overlap with the current critical habitat designation for the West Indian manatee (see 41 FR 41914, September 24, 1976, and 42 FR 47840, September 22, 1977); designated critical habitat for the endangered Everglade snail kite (see 42 FR 40685, August 11, 1977) and Florida bonneted bat (*Eumops floridanus*) (see 89 FR 16624, March 7, 2024); designated critical habitat for the threatened Florida DPS of the American crocodile (see 41 FR 41914, September 24, 1976, and 42 FR 47840, September 22, 1977), elkhorn and staghorn corals (see 73 FR 72210, November 26, 2008), Nassau grouper (see 89 FR 126, January 2, 2024), and five threatened Caribbean coral species (*Orbicella annularis*, *O. faveolata*, *O. franksi*, *Dendrogyra cylindrus*, and *Mycetophyllia ferox*) (see 88 FR 54026, August 9, 2023, and 89 FR 19511, March 19, 2024); and proposed critical habitat for the threatened North Atlantic DPS of the green sea turtle (see 88 FR 46572, July 19, 2023).

Threats to the physical or biological features identified within Unit FL-08

include foraging and other habitat loss, modification, and degradation; warm-water habitat loss; algal blooms; climate change; contaminants; and tropical storms and hurricanes. Special management considerations or protection measures to reduce or alleviate threats may include improving water quality; establishing and maintaining minimum flows and levels; restoring aquatic vegetation, living shorelines, and filter feeders; removing nutrient-laden sediments; enhancing existing or creating alternate warm-water refuges; establishing and enforcing boat speed zones, marked navigation channels, and exclusion areas; developing or revising and implementing standardized construction conditions for in-water construction; and developing or revising and implementing oil spill response and marine debris removal guidance with manatee and aquatic vegetation considerations.

Unit FL-09: Boynton Beach to Fort Pierce

Unit FL-09 consists of 37,829 ac (15,309 ha) of inshore waters from approximately 1.3 mi (2 km) south of the Boynton Inlet to approximately 4.7 mi (7.6 km) south of the Fort Pierce Inlet in Palm Beach, Martin, and St. Lucie Counties, Florida. The unit includes inshore waters (up to 18 mi (29 km) inland) of the intracoastal waterways, rivers, and canals along the eastern Florida coast even with Lake Okeechobee. The unit includes manatee-accessible waters below the MHW line (Service 2022, entire) within approximately 18.6 mi (30 km) from the warm-water site of Willoughby Creek and the established winter manatee aggregation area near Florida Power and Light's Riviera Beach Energy Center.

Areas within this unit include approximately 203 ac (82 ha; 1 percent) in Federal ownership, 35,967 ac (14,555 ha; 95 percent) in State ownership, 533 ac (216 ha; 1 percent) in local government ownership, and 1,126 ac (456 ha; 3 percent) in private/other ownership. The majority of this unit consists of State-owned submerged lands. General land use within this unit includes parks, natural resource conservation, wildlife management, recreational and commercial activities (e.g., swimming, fishing, and boating), power generation, and cargo and cruise port activities. Most of the unit also adjoins areas of residential and commercial development.

Unit FL-09 is occupied by the subspecies and contains one or more of the physical or biological features essential to the conservation of the

subspecies. This unit has one secondary warm-water refuge, Willoughby Creek, with established manatee use and low thermal quality (Valade et al. 2020, p. 27). In addition, this unit provides forage material within 18.6 mi (30 km) of the established winter manatee aggregation area near Florida Power and Light's Riviera Beach Energy Center (Valade et al. 2020, p. 26), as well as within Lake Worth Lagoon, the North Palm Beach Waterway, Loxahatchee River, Indian River Lagoon, St. Lucie River, and the many canals and basins connected to them. This unit also supports expansion and recovery of the regional warm-water network in the Atlantic Coast Manatee Management Unit due to several lower quality natural refuges or areas available to create new refuges within the unit.

Approximately 32,389 ac (13,107 ha; 86 percent) of the unit overlap with the current critical habitat designation for the West Indian manatee (see 41 FR 41914, September 24, 1976, and 42 FR 47840, September 22, 1977); designated critical habitat for the endangered wintering population of the piping plover (see 66 FR 36038, July 10, 2001) and Northwest Atlantic Ocean DPS of the loggerhead sea turtle (see 79 FR 39856, July 10, 2014); and proposed critical habitat for the threatened North Atlantic DPS of the green sea turtle (see 88 FR 46572, July 19, 2023).

Threats to the physical or biological features identified within Unit FL-09 include foraging and other habitat loss, modification, and degradation; warm-water habitat loss; algal blooms; climate change; contaminants; and tropical storms and hurricanes. Special management considerations or protection measures to reduce or alleviate threats may include improving water quality; establishing and maintaining minimum flows and levels; restoring aquatic vegetation, living shorelines, and filter feeders; removing nutrient-laden sediments; enhancing existing or creating alternate warm-water refuges; establishing and enforcing boat speed zones, marked navigation channels, and exclusion areas; developing or revising and implementing standardized construction conditions for in-water construction; and developing or revising and implementing oil spill response and marine debris removal guidance with manatee and aquatic vegetation considerations.

Unit FL-10: Vero Beach to Northern Indian River Lagoon

Unit FL-10 consists of 153,588 ac (62,155 ha) of inshore waters from the Merrill P. Barber Bridge (on State Road

60) in Vero Beach to the northern tip of the Indian River Lagoon in Indian River, Brevard, and Volusia Counties, Florida. The unit includes rivers and canals along the Indian River Lagoon and Banana River on the central east coast of Florida. The unit includes manatee-accessible waters below the MHW line (Service 2022, entire) within approximately 18.6 mi (30 km) from the warm-water sites of the Sebastian River (C-54 Canal), DeSoto Canal, Berkeley Canal, and the Banana River Marine Service Marina, as well as the established winter manatee aggregation area near Florida Power and Light's Port Canaveral Energy Center. The unit does not extend all the way through the Haulover Canal or include Mosquito Lagoon because those areas are farther than 18.6 mi (30 km) from the nearest primary or secondary warm-water refuge or established winter manatee aggregation area.

Areas within this unit include approximately 33,077 ac (13,386 ha; 22 percent) in Federal ownership, 117,318 ac (47,477 ha; 76 percent) in State ownership, 1,782 ac (721 ha; 1 percent) in local government ownership, and 1,410 ac (571 ha; 1 percent) in private/other ownership. Under section 4(a)(3)(B)(i) of the Act, we are exempting 278 ac (112 ha) of DoD lands (216 ac (87 ha) of Cape Canaveral Space Force Station lands and 62 ac (25 ha) of Patrick Space Force Base lands) within this unit from the critical habitat designation because the DoD has an approved INRMP for these areas that provides benefits to the manatee and its habitat (see Exemptions, below).

Federally owned lands in this unit include Merritt Island, Pelican Island, and Archie Carr NWRs. State-owned lands in this unit include State Parks (Indian River Lagoon Preserve, St. Sebastian River Preserve, and Sebastian Inlet) and State-owned submerged lands. Local government-owned lands in this unit include several county- and city-owned parks and preserves. General land use within this unit includes parks, natural resource conservation, wildlife management, recreational and commercial activities (e.g., swimming, fishing, and boating), power generation, military activities, cargo and cruise port activities, and space research and launch activities. Most of the unit also adjoins areas of residential and commercial development.

Unit FL-10 is occupied by the subspecies and contains one or more of the physical or biological features essential to the conservation of the subspecies. This unit has one primary warm-water refuge, DeSoto Canal, with established manatee use and medium

thermal quality, and three secondary warm-water refuges, Sebastian River (C-54 Canal), Berkely Canal, and Banana River Marine Service Marina, with established manatee use and low to medium thermal quality (Valade et al. 2020, pp. 25–27). In addition, this unit provides forage material within 18.6 mi (30 km) of the established winter manatee aggregation area near Florida Power and Light's Cape Canaveral Energy Center (Valade et al. 2020, p. 26), as well as within the Indian River Lagoon, St. Sebastian River, Turkey Creek, Crane Creek, Eau Gallie River, Sykes Creek, Banana River, and the many canals connected to them. This unit also supports expansion and recovery of the regional warm-water network in the Atlantic Coast Manatee Management Unit due to several lower quality natural refuges or areas available to create new refuges within the unit.

Approximately 151,293 ac (61,226 ha; 99 percent) of the unit overlap with the current critical habitat designation for the West Indian manatee (see 41 FR 41914, September 24, 1976, and 42 FR 47840, September 22, 1977) and proposed critical habitat for the threatened rufa red knot (see 88 FR 22530, April 13, 2023) and the North Atlantic DPS of the green sea turtle (see 88 FR 46572, July 19, 2023).

Threats to the physical or biological features identified within Unit FL–10 include foraging and other habitat loss, modification, and degradation; warm-water habitat loss; algal blooms; climate change; contaminants; and tropical storms and hurricanes. Special management considerations or protection measures to reduce or alleviate threats may include improving water quality; establishing and maintaining minimum flows and levels; restoring aquatic vegetation, living shorelines, and filter feeders; removing nutrient-laden sediments; enhancing existing or creating alternate warm-water refuges; establishing and enforce boat speed zones, marked navigation channels, and exclusion areas; developing or revising and implementing standardized construction conditions for in-water construction; and developing or revising and implementing oil spill response and marine debris removal guidance with manatee and aquatic vegetation considerations.

Unit FL–11: Upper St. Johns River

Unit FL–11 consists of 79,444 ac (32,150 ha) of springs, rivers, and lakes in the Upper St. Johns, Hontoon Dead, Ziegler Dead, Norris Dead, and Ocklawaha Rivers in Lake, Seminole, Volusia, Marion, and Putnam Counties,

Florida. The unit extends from Lake Monroe north to Memorial Bridge (State Road 100) over the St. Johns River, east to the mouth of Dunns Creek at Crescent Lake, and west to the Rodman Reservoir through the Cross Florida Barge Canal. The unit also includes the section of the Ocklawaha River from the St. Johns River to the Rodman Dam. The unit includes manatee-accessible waters below the MHW line (Service 2022, entire) within approximately 18.6 mi (30 km) from the warm-water sites of Blue, Silver Glen, Salt, and Welaka Springs.

Areas within this unit include approximately 1,815 ac (735 ha; 2 percent) in Federal ownership, 76,984 ac (31,154 ha; 97 percent) in State ownership, 150 ac (61 ha; less than 1 percent) in local government ownership, and 495 ac (200 ha; 1 percent) in private/other ownership. Under section 4(a)(3)(B)(i) of the Act, we are exempting 8 ac (3.2 ha) of Rodman Bomb Target, part of the Naval Air Station Jacksonville Complex, within this unit from the critical habitat designation because the DoD has an approved INRMP for these areas that provides benefits to the manatee and its habitat (see Exemptions, below).

Federally owned lands in this unit include Lake Woodruff NWR and Ocala National Forest. State-owned lands in this unit include State Parks (DeLeon Springs, Blue Spring, Hontoon Island, Ravine Gardens, Lower Wekiva River Preserve and Dunns Creek), Marjorie Harris Carr Cross Florida Greenway State Recreation and Conservation Area, Welaka State Forest, Lake George State Forest, and State-owned submerged lands. Local government-owned lands in this unit include several county-owned parks and preserves. General land use within this unit includes parks, natural resource conservation, wildlife management, recreational and commercial activities (e.g., swimming, fishing, and boating), and military activities. Some areas of the unit also adjoin areas of residential and commercial development.

Unit FL–11 is occupied by the subspecies and contains one or more of the physical or biological features essential to the conservation of the subspecies. This unit has three primary warm-water refuges, Blue Springs, Silver Glen Springs, and Salt Springs, with established manatee use and high thermal quality and one secondary warm-water refuge, Welaka Springs, with established manatee use and low thermal quality (Valade et al. 2020, p. 25). In addition, this unit provides forage material within the main stems and tributaries of the St. Johns, Hontoon

Dead, Ziegler Dead, Norris Dead, and Ocklawaha Rivers, as well as within Lake Monroe, Lake Beresford, Lake Woodruff, Spring Garden Lake, Lake Dexter, Lake George, the Rodman Reservoir, and the many smaller lakes, rivers, and creeks connecting them. This unit also provides some of the farthest inland primary warm-water refuges in the Florida manatee's range and supports expansion and recovery of the regional warm-water network in the Upper St. Johns River Manatee Management Unit due to several lower quality natural refuges or areas available to create new refuges within the unit, thereby supporting expansion and refuge for manatees, and ensuring good spatial representation for the St. Johns River Manatee Management Unit.

Approximately 65,961 ac (26,693 ha; 83 percent) of the unit overlap with the current critical habitat designation for the West Indian manatee (see 41 FR 41914, September 24, 1976, and 42 FR 47840, September 22, 1977).

Threats to the physical or biological features identified within Unit FL–11 include foraging and other habitat loss, modification, and degradation; warm-water habitat loss; algal blooms; climate change; contaminants; and tropical storms and hurricanes. Special management considerations or protection measures to reduce or alleviate threats may include improving water quality; establishing and maintaining minimum flows and levels; restoring aquatic vegetation, living shorelines, and filter feeders; removing nutrient-laden sediments; coordinating with the Service prior to treatments of invasive or nuisance aquatic vegetation and limiting invasive or nuisance aquatic vegetation treatments that could reduce vegetation availability during the cold season; conducting spring run restoration and improving access; enhancing existing or creating alternate warm-water refuges; establishing and enforcing boat speed zones, marked navigation channels, and exclusion areas; developing or revising and implementing standardized construction conditions for in-water construction; and developing or revising and implementing oil spill response and marine debris removal guidance with manatee and aquatic vegetation considerations.

Unit FL–12: Silver Springs

Unit FL–12 consists of 438 ac (177 ha) of springs and rivers in Marion County, Florida. The unit extends from Silver Springs down Silver River, then north and south into the Ocklawaha River approximately 13 mi (21 km) to Cedar Creek to the north and Southeast

Highway 464C to the south. The unit includes manatee-accessible waters below the MHW line (Service 2022, entire) within approximately 18.6 mi (30 km) from the warm-water site of Silver Springs.

Areas within this unit include approximately 6 ac (2 ha; 1 percent) in Federal ownership, 417 ac (169 ha; 95 percent) in State ownership, and 15 ac (6 ha; 3 percent) in private/other ownership.

Federally owned lands in this unit include the Ocala National Forest, and State-owned lands in this unit include Silver Springs State Park, Marjorie Harris Carr Cross Florida Greenway State Recreation and Conservation Area, St. Johns River WMD's Ocklawaha Prairie Restoration Area, and State-owned submerged lands. General land use within this unit includes parks, natural resource conservation, wildlife management, and recreational and commercial activities (e.g., swimming, fishing, and boating). Small areas of the unit also adjoin areas of residential and commercial development.

Unit FL-12 is occupied by the subspecies and contains one or more of the physical or biological features essential to the conservation of the subspecies. This unit has one primary warm-water refuge, Silver Springs, with high thermal quality and unpredictable manatee use (Valade et al. 2020, p. 25),

although recent studies have documented increased and consistent use of the spring and nearby waters (Ross et al. 2023, p. 2). In addition, this unit provides forage material within the Silver and Ocklawaha Rivers. This unit also provides the farthest inland primary warm-water refuge in the Florida manatee's range and supports expansion and recovery of the regional warm-water network in the Upper St. Johns River Manatee Management Unit due to several lower quality natural refuges or areas available to create new refuges within the unit, thereby supporting expansion and refuge for manatees, and ensuring good spatial representation for the St. Johns River Manatee Management Unit.

Threats to the physical or biological features identified within Unit FL-12 include foraging and other habitat loss, modification, and degradation; warm-water habitat loss; algal blooms; climate change; contaminants; and tropical storms and hurricanes. Special management considerations or protection measures to reduce or alleviate threats may include improving water quality; establishing and maintaining minimum flows and levels; restoring aquatic vegetation, living shorelines, and filter feeders; coordinating with the Service prior to treatments of invasive or nuisance aquatic vegetation and limiting invasive

or nuisance aquatic vegetation treatments that could reduce vegetation availability during the cold season; conducting spring run restoration and improving access; enhancing existing or creating alternate warm-water refuges; establishing and enforcing boat speed zones, marked navigation channels, and exclusion areas; developing or revising and implementing standardized construction conditions for in-water construction; and developing or revising and implementing oil spill response and marine debris removal guidance with manatee and aquatic vegetation considerations.

Proposed Critical Habitat Designation for the Antillean Manatee

We are proposing 13 units in the Commonwealth of Puerto Rico as critical habitat for the Antillean manatee, totaling approximately 78,121 ac (31,614 ha). The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the Antillean manatee. All of these areas are occupied, and we are not proposing any unoccupied areas. All of these areas are also Commonwealth-owned. Table 2 shows the proposed critical habitat units, including unit names, land ownership, and approximate area of each unit.

TABLE 2—PROPOSED CRITICAL HABITAT UNITS FOR THE ANTILLEAN MANATEE

[Area estimates reflect all land within critical habitat unit boundaries.]

Critical habitat unit	Commonwealth ownership in acres (hectares)	Size of unit in acres (hectares)
PR-01: Boca Vieja	2,640 (1,068)	2,640 (1,068)
PR-02: Condado Lagoon	91 (37)	91 (37)
PR-03: Río Grande	1,691 (685)	1,691 (685)
PR-04: Fajardo	2,065 (836)	2,065 (836)
PR-05: Ceiba	6,429 (2,602)	6,429 (2,602)
PR-06: Vieques	4,980 (2,015)	4,980 (2,015)
PR-07: Arroyo	15,001 (6,071)	15,001 (6,071)
PR-08: Santa Isabel to Jobos Bay	24,360 (9,858)	24,360 (9,858)
PR-09: Guayanilla	7,404 (2,996)	7,404 (2,996)
PR-10: Guánica	1,798 (728)	1,798 (728)
PR-11: Bahía Sucia	1,732 (697)	1,732 (697)
PR-12: Boquerón	1,989 (805)	1,989 (805)
PR-13: Mayagüez	7,949 (3,217)	7,949 (3,217)
Total	78,121 (31,614)	78,121 (31,614)
Ownership Percentage	100	.....

Note: Area sizes and percentages may not sum due to rounding.

We present brief descriptions of all proposed units and reasons why they meet the definition of critical habitat for the Antillean manatee, below.

Unit PR-01: Boca Vieja

Unit PR-01 consists of 2,640 ac (1,068 ha) of marine waters below the MHW line within the Ensenada Boca Vieja along the coastline of the Municipality of Toa Baja, Puerto Rico. The unit extends from the northernmost point of

Isla de Cabra on the east and approximately 3 mi (5 km) across towards Punta Salinas to the west. The entire unit is within Commonwealth ownership. General land use within this unit includes natural resource conservation, wildlife management, and

recreational and commercial activities (e.g., swimming, fishing, boating). Small areas of this unit also adjoin areas of residential and commercial development.

Unit PR-01 is occupied by the subspecies and provides all three of the resources defined as the physical or biological feature essential to the conservation of the Antillean manatee in Puerto Rico: freshwater sources, seagrass in shallow water, and calm waters for shelter. Unit PR-01 is one of the three units on the north coast, ensuring good spatial representation of critical habitat on the north coast of Puerto Rico. Approximately 2,631 ac (1,065 ha; 99.7 percent) overlap with designated critical habitat for the threatened elkhorn and staghorn corals (see 73 FR 72210, November 26, 2008) and five Caribbean coral species (*Orbicella annularis*, *O. faveolata*, *O. franksi*, *Dendrogyra cylindrus*, and *Mycetophyllia ferox*) (see 88 FR 54026, August 9, 2023, and 89 FR 19511, March 19, 2024); and proposed critical habitat for the threatened North Atlantic DPS of the green sea turtle (see 88 FR 46572, July 19, 2023).

Threats to the physical or biological feature identified within Unit PR-01 include foraging and other habitat loss, modification, and degradation; climate change; contaminants; and tropical storms and hurricanes. Special management considerations or protection measures to reduce or alleviate threats may include improving water quality; restoring aquatic vegetation and living shorelines; establishing and enforcing boat speed zones, marked navigation channels, and exclusion areas; developing or revising and implementing standardized construction conservation measures for in-water constructions; and developing or revising and implementing oil spill response and marine debris removal guidance with manatee and aquatic vegetation considerations.

Unit PR-02: Condado Lagoon

Unit PR-02 consists of 91 ac (37 ha) of marine waters below the MHW line within the Condado Lagoon and El Boquerón along the coastline of the Municipality of San Juan, Puerto Rico. The Condado Lagoon is bounded by the Condado Peninsula to the north, the Baldorioty de Castro Expressway to the south, and the San Antonio and the Dos Hermanos bridges on the west and northwest respectively. This unit also includes the marine waters of El Boquerón that connect with the Condado Lagoon and are geographically separated by the Dos Hermanos Bridge. This unit extends from the Condado

Lagoon to El Boquerón along the eastern coastline towards Playita del Condado, and approximately 705 ft (215 m) across towards the San Jerónimo del Boquerón Fort to the west. The entire unit is within Commonwealth ownership and overlaps with the Condado Lagoon Nature Reserve, co-managed between the PRDNER and the San Juan Bay National Estuary Program through its management plan (PRDNER 2016, entire). General land use within this unit includes natural resource conservation, wildlife management, and recreational and commercial activities (e.g., swimming, kayaking, paddleboarding). Small areas of this unit also adjoin areas of residential and commercial development.

Unit PR-02 is occupied by the subspecies and provides at least two of the three resources defined as the physical or biological feature essential to the conservation of the Antillean manatee in Puerto Rico: seagrass in shallow water and calm waters for shelter. Unit PR-02 is one of the three units on the north coast, ensuring good spatial representation of critical habitat on the north coast of Puerto Rico. Approximately 88 ac (36 ha; 97 percent) overlap with designated critical habitat for the threatened elkhorn and staghorn corals (see 73 FR 72210, November 26, 2008) and five Caribbean coral species (*Orbicella annularis*, *O. faveolata*, *O. franksi*, *Dendrogyra cylindrus*, and *Mycetophyllia ferox*) (see 88 FR 54026, August 9, 2023, and 89 FR 19511, March 19, 2024); and proposed critical habitat for the threatened North Atlantic DPS of the green sea turtle (see 88 FR 46572, July 19, 2023).

Threats to the physical or biological feature identified within Unit PR-02 include foraging and other habitat loss, modification, and degradation; climate change; contaminants; and tropical storms and hurricanes. Special management considerations or protection measures to reduce or alleviate threats may include improving water quality; restoring aquatic vegetation and living shorelines; establishing and enforcing boat speed zones, marked navigation channels, and exclusion areas; developing or revising and implementing standardized construction conservation measures for in-water constructions; and developing or revising and implementing oil spill response and marine debris guidance with manatee and aquatic vegetation considerations.

Unit PR-03: Río Grande

Unit PR-03 consists of 1,691 ac (685 ha) of marine waters below the MHW line along the coastline of the

Municipality of Río Grande and a small portion towards the west along the Municipality of Loíza, Puerto Rico. The unit starts approximately 0.5 mi (0.8 km) west of Punta Percha and extends farther west along Punta Picúa, Punta Miquillo, and Punta San Agustín, and ending approximately 492 ft (150 m) west of the mouth of the Herrera River. The offshore boundary of this unit extends approximately 3 mi (5 km) from the freshwater sources within the unit, 820 ft (250 m) from the outer edge of seagrass beds within the unit, 1,640 ft (500 m) from shore if no seagrass was mapped, or to the 49-ft (15-m) bathymetry line, whichever is closest to shore. The entire unit is within Commonwealth ownership and overlaps with 1,574 ac (626 ha) of the Marine Extent of the Río Espíritu Santo Nature Reserve, managed by the PRDNER. However, there is no management plan in place for this reserve. General land use within this unit includes natural resource conservation, wildlife management, and recreational and commercial activities (e.g., swimming, fishing, boating). Some areas of this unit also adjoin areas of residential and commercial development.

Unit PR-03 is occupied by the subspecies and provides all three of the resources defined as the physical or biological feature essential to the conservation of the Antillean manatee in Puerto Rico: freshwater sources, seagrass in shallow water, and calm waters for shelter. Unit PR-03 is one of the three units on the north coast, ensuring good spatial representation of critical habitat on the north coast of Puerto Rico. Approximately 1,666 ac (674 ha; 98 percent) overlap with designated critical habitat for the threatened elkhorn and staghorn corals (see 73 FR 72210, November 26, 2008) and five Caribbean coral species (*Orbicella annularis*, *O. faveolata*, *O. franksi*, *Dendrogyra cylindrus*, and *Mycetophyllia ferox*) (see 88 FR 54026, August 9, 2023, and 89 FR 19511, March 19, 2024).

Threats to the physical or biological feature identified within Unit PR-03 include foraging and other habitat loss, modification, and degradation; climate change; contaminants; and tropical storms and hurricanes. Special management considerations or protection measures to reduce or alleviate threats may include improving water quality; restoring aquatic vegetation and living shorelines; establishing and enforcing boat speed zones, marked navigation channels, and exclusion areas; developing or revising and implementing standardized construction conservation measures for

in-water constructions; and developing or revising and implementing oil spill response and marine debris guidance with manatee and aquatic vegetation considerations.

Unit PR-04: Fajardo

Unit PR-04 consists of 2,065 ac (836 ha) of marine waters below the MHW line along the coastline of the Municipality of Fajardo and a small portion of the Municipality of Ceiba towards the southern edge of the unit. This unit starts in Punta Fajardo and continues south along the coastline beyond the Fajardo River, Punta Barracas, and Bahía Damajagua, ending on the north side of Punta Figueras. The offshore boundary of this unit extends approximately 820 ft (250 m) from the outer edge of seagrass beds within the unit, 1,640 ft (500 m) from shore if no seagrass was mapped, or to the 49-ft (15-m) bathymetry line, whichever is closest to shore. The entire unit is within Commonwealth ownership. General land use within this unit includes natural resource conservation, wildlife management, and recreational and commercial activities (e.g., swimming, fishing, boating). Some areas of this unit also adjoin areas of residential and commercial development.

Unit PR-04 is occupied by the subspecies and provides all three of the resources defined as the physical or biological feature essential to the conservation of the Antillean manatee in Puerto Rico: freshwater sources, seagrass in shallow water, and calm waters for shelter. Unit PR-04 is one of the two units on the east coast, ensuring good spatial representation of critical habitat on the east coast of Puerto Rico. Approximately 2,040 ac (826 ha; 99 percent) overlap with designated critical habitat for the threatened elkhorn and staghorn corals (see 73 FR 72210, November 26, 2008), Nassau grouper (see 89 FR 126, January 2, 2024), and five Caribbean coral species (*Orbicella annularis*, *O. faveolata*, *O. franksi*, *Dendrogyra cylindrus*, and *Mycetophyllia ferox*) (see 88 FR 54026, August 9, 2023, and 89 FR 19511, March 19, 2024).

Threats to the physical or biological feature identified within Unit PR-04 include foraging and other habitat loss, modification, and degradation; climate change; contaminants; and tropical storms and hurricanes. Special management considerations or protection measures to reduce or alleviate threats may include improving water quality; restoring aquatic vegetation and living shorelines; establishing and enforcing boat speed zones, marked navigation channels, and

exclusion areas; developing or revising and implementing standardized construction conservation measures for in-water constructions; and developing or revising and implementing oil spill response and marine debris guidance with manatee and aquatic vegetation considerations.

Unit PR-05: Ceiba

Unit PR-05 consists of 6,429 ac (2,602 ha) of marine waters below the MHW line along the coastline of the Municipalities of Ceiba and Naguabo. This unit starts just south of Punta Figuera and extends farther south along the coastline beyond Puerto Medio Mundo, Punta Medio Mundo, Pasaje Medio Mundo, Punta Puerca, Isla de Cabras, Ensenada Honda, Punta Algodones, and Bahía Algodones, ending just north of Punta Lima. The offshore boundary of this unit extends approximately 820 ft (250 m) from the outer edge of seagrass beds within the unit, 1,640 ft (500 m) from shore if no seagrass was mapped, or to the 49-ft (15-m) bathymetry line, whichever is closest to shore. The entire unit is within Commonwealth ownership. General land use within this unit includes natural resource conservation, wildlife management, and recreational and commercial activities (e.g., swimming, fishing, boating). Some areas of this unit also adjoin areas of residential and commercial development.

Unit PR-05 is occupied by the subspecies and provides all three of the resources defined as the physical or biological feature essential to the conservation of the Antillean manatee in Puerto Rico: freshwater sources, seagrass in shallow water, and calm waters for shelter. Unit PR-05 is one of the two units on the east coast, ensuring good spatial representation of critical habitat on the east coast of Puerto Rico. Approximately 6,271 ac (2,538 ha; 98 percent) overlap with designated critical habitat for the threatened elkhorn and staghorn corals (see 73 FR 72210, November 26, 2008), Nassau grouper (see 89 FR 126, January 2, 2024), and five Caribbean coral species (*Orbicella annularis*, *O. faveolata*, *O. franksi*, *Dendrogyra cylindrus*, and *Mycetophyllia ferox*) (see 88 FR 54026, August 9, 2023, and 89 FR 19511, March 19, 2024).

Threats to the physical or biological feature identified within Unit PR-05 include foraging and other habitat loss, modification, and degradation; climate change; contaminants; and tropical storms and hurricanes. Special management considerations or protection measures to reduce or alleviate threats may include improving

water quality; restoring aquatic vegetation and living shorelines; establishing and enforcing boat speed zones, marked navigation channels, and exclusion areas; developing or revising and implementing standardized construction conservation measures for in-water constructions; and developing or revising and implementing oil spill response and marine debris guidance with manatee and aquatic vegetation considerations.

Unit PR-06: Vieques

Unit PR-06 consists of 4,980 ac (2,015 ha) of marine waters below the MHW line along the west-northwest coastline of the Municipality of Vieques. This unit starts approximately 1 mile (1.5 km) east of Punta Caballo within Ensenada Claque, continues west beyond the Puerto de la Libertad Davis S. Sanes Rodríguez (Mosquito Pier) and towards Punta Arenas, and ends approximately 1 mi (1.7 km) south of Punta Boca Quebrada along the coastline. The offshore boundary of this unit extends approximately 820 ft (250 m) from the outer edge of seagrass beds within the unit, 1,640 ft (500 m) from shore if no seagrass was mapped, or to the 26-ft (8-m) bathymetry line, whichever is closest to shore. The entire unit is within Commonwealth ownership. The southwestern portion of Unit PR-06 has restricted access due to the potential presence of unexploded ordnances (U.S. Department of the Navy and U.S. Environmental Protection Agency 2022, pp. 4, 15, 18). General land use within this unit includes natural resource conservation, wildlife management, recreational and commercial activities (e.g., swimming, fishing, boating), and unexploded ordnance management. Some areas of this unit also adjoin areas of commercial development and the Vieques NWR.

Unit PR-06 is occupied by the subspecies and provides at least two of the three resources defined as the physical or biological feature essential to the conservation of the Antillean manatee in Puerto Rico: seagrass in shallow water and calm waters for shelter. Unit PR-06 is the only unit in Vieques Island off the southeast coast of Puerto Rico, ensuring good spatial representation of critical habitat in that area. Approximately 4,919 ac (1,991 ha; 99 percent) overlap with designated critical habitat for the threatened elkhorn and staghorn corals (see 73 FR 72210, November 26, 2008), Nassau grouper (see 89 FR 126, January 2, 2024), and five Caribbean coral species (*Orbicella annularis*, *O. faveolata*, *O. franksi*, *Dendrogyra cylindrus*, and *Mycetophyllia ferox*) (see 88 FR 54026,

August 9, 2023, and 89 FR 19511, March 19, 2024).

Threats to the physical or biological feature identified within Unit PR-07 include foraging and other habitat loss, modification, and degradation; climate change; contaminants; and tropical storms and hurricanes. Special management considerations or protection measures to reduce or alleviate threats may include improving water quality; restoring aquatic vegetation and living shorelines; establishing and enforcing boat speed zones, marked navigation channels, and exclusion areas; developing or revising and implementing standardized construction conservation measures for in-water constructions; and developing or revising and implementing oil spill response and marine debris guidance with manatee and aquatic vegetation considerations.

Unit PR-07: Arroyo

Unit PR-07 consists of 15,001 ac (6,071 ha) of marine waters below the MHW line along the coastline of the Municipalities of Patillas, Arroyo, and Guayama. This unit starts approximately 738 ft (225 m) east of the mouth of the Jacoboa River; continues west along the coastline towards Punta Viento, Puerto Patillas, Punta Figuras, and Puerto Arroyo; and ends approximately 0.9 mi (1.5 km) west of Punta Ola Grande. The offshore boundary of this unit extends approximately 820 ft (250 m) from the outer edge of seagrass beds within the unit, 1,640 ft (500 m) from shore if no seagrass was mapped, or to the 49-ft (15-m) bathymetry line, whichever is closest to shore. The entire unit is within Commonwealth ownership and overlaps with approximately 897 ac (363 ha) of the Marine Extent of the Guayama Reef Nature Reserve, managed by the PRDNER. However, there is no management plan in place for this reserve. General land use within this unit includes natural resource conservation, wildlife management, and recreational and commercial activities (e.g., swimming, fishing, boating). Some areas of this unit also adjoin areas of residential and commercial development.

Unit PR-07 is occupied by the subspecies and provides all three of the resources defined as the physical or biological feature essential to the conservation of the Antillean manatee in Puerto Rico: freshwater sources, seagrass in shallow water, and calm waters for shelter. Unit PR-07 is the second largest unit and one of the two units on the southeastern coast, ensuring good spatial representation of

critical habitat on the south coast of Puerto Rico. Approximately 14,974 ac (6,060 ha; almost 100 percent) overlap with designated critical habitat for the threatened elkhorn and staghorn corals (see 73 FR 72210, November 26, 2008), and five Caribbean coral species (*Orbicella annularis*, *O. faveolata*, *O. franksi*, *Dendrogyra cylindrus*, and *Mycetophyllia ferox*) (see 88 FR 54026, August 9, 2023, and 89 FR 19511, March 19, 2024).

Threats to the physical or biological feature identified within Unit PR-07 include foraging and other habitat loss, modification, and degradation; climate change; contaminants; and tropical storms and hurricanes. Special management considerations or protection measures to reduce or alleviate threats may include improving water quality; restoring aquatic vegetation and living shorelines; establishing and enforcing boat speed zones, marked navigation channels, and exclusion areas; developing or revising and implementing standardized construction conservation measures for in-water constructions; and developing or revising and implementing oil spill response and marine debris guidance with manatee and aquatic vegetation considerations.

Unit PR-08: Santa Isabel to Jobos Bay

Unit PR-08 consists of 24,360 ac (9,858 ha) of marine waters below the MHW line along the coastline of the Municipalities of Juana Díaz, Santa Isabel, Salinas, and Guayama. This unit starts approximately 1,213 ft (370 m) west of Descalabrado River and continues east along the coastline towards Punta Cayito, Punta Petrona, Bahía de Rincón, and Punta Arenas, including the waters within Mar Negro and around Bahía de Jobos towards Punta Pozuelo. The offshore boundary of this unit extends approximately 820 ft (250 m) from the outer edge of seagrass beds within the unit, 1,640 ft (500 m) from shore if no seagrass was mapped, or to the 49-ft (15-m) bathymetry line, whichever is closest to shore. The entire unit is within Commonwealth ownership and overlaps with approximately 881 ac (357 ha) of the Jobos Bay NERR, with approximately 4,239 ac (1,715 ha) of the Marine Extent of the Punta Petrona Nature Reserve, and with approximately 1,994 ac (807 ha) of the Marine Extent of Isla Caja de Muertos Nature Reserve, managed by the PRDNER. However, only the Jobos Bay NERR has an active management plan (PRDNER and NOAA 2017, entire). General land use within this unit includes natural resource conservation, wildlife management, and

recreational and commercial activities (e.g., swimming, fishing, boating). Some areas of this unit also adjoin areas of residential and commercial development.

Unit PR-08 is occupied by the subspecies and provides all three of the resources defined as the physical or biological feature essential to the conservation of the Antillean manatee in Puerto Rico: freshwater sources, seagrass in shallow water, and calm waters for shelter. Unit PR-08 is the largest unit and contains one of the greatest aggregations of Antillean manatees in Puerto Rico, ensuring good spatial representation of critical habitat on the south coast of Puerto Rico. Approximately 24,153 ac (9,774 ha; 99 percent) overlap with designated critical habitat for the threatened elkhorn and staghorn corals (see 73 FR 72210, November 26, 2008), and five Caribbean coral species (*Orbicella annularis*, *O. faveolata*, *O. franksi*, *Dendrogyra cylindrus*, and *Mycetophyllia ferox*) (see 88 FR 54026, August 9, 2023, and 89 FR 19511, March 19, 2024); and proposed critical habitat for the threatened North Atlantic DPS of the green sea turtle (see 88 FR 46572, July 19, 2023).

Threats to the physical or biological feature identified within Unit PR-08 include foraging and other habitat loss, modification, and degradation; climate change; contaminants; and tropical storms and hurricanes. Special management considerations or protection measures to reduce or alleviate threats may include improving water quality; restoring aquatic vegetation and living shorelines; establishing and enforcing boat speed zones, marked navigation channels, and exclusion areas; developing or revising and implementing standardized construction conservation measures for in-water constructions; and developing or revising and implementing oil spill response and marine debris guidance with manatee and aquatic vegetation considerations.

Unit PR-09: Guayanilla

Unit PR-09 consists of 7,404 ac (2,996 ha) of marine waters below the MHW line along the coastline of the Municipalities of Peñuelas and Guayanilla. This unit starts along the coastline of Peñon de Ponce; continues west towards the Tallaboa River, Bahía Tallaboa, Punta Guayanilla, and Punta Pepillo, and around Bahía de Guayanilla towards Punta Verraco; and ends approximately 984 ft (300 m) west of Cerro Toro in Punta Ventana beach. The offshore boundary of this unit extends approximately 820 ft (250 m) from the outer edge of seagrass beds within the

unit, 1,640 ft (500 m) from shore if no seagrass was mapped, or to the 49-ft (15-m) bathymetry line, whichever is closest to shore. The entire unit is within Commonwealth ownership. General land use within this unit includes natural resource conservation, wildlife management, and recreational and commercial activities (e.g., swimming, fishing, boating). Some areas of this unit also adjoin areas of residential and commercial development.

Unit PR-09 is occupied by the subspecies and provides all three of the resources defined as the physical or biological feature essential to the conservation of the Antillean manatee in Puerto Rico: freshwater sources, seagrass in shallow water, and calm waters for shelter. Unit PR-09 is one of the three units on the southwestern coast, ensuring good spatial representation of critical habitat on the south coast of Puerto Rico.

Approximately 7,313 ac (2,960 ha; 99 percent) overlap with designated critical habitat for the threatened elkhorn and staghorn corals (see 73 FR 72210, November 26, 2008), and five Caribbean coral species (*Orbicella annularis*, *O. faveolata*, *O. franksi*, *Dendrogyra cylindrus*, and *Mycetophyllia ferox*) (see 88 FR 54026, August 9, 2023, and 89 FR 19511, March 19, 2024).

Threats to the physical or biological feature identified within Unit PR-09 include foraging and other habitat loss, modification, and degradation; climate change; contaminants; and tropical storms and hurricanes. Special management considerations or protection measures to reduce or alleviate threats may include improving water quality; restoring aquatic vegetation and living shorelines; establishing and enforcing boat speed zones, marked navigation channels, and exclusion areas; developing or revising and implementing standardized construction conservation measures for in-water constructions; and developing or revising and implementing oil spill response and marine debris guidance with manatee and aquatic vegetation considerations.

Unit PR-10: Guánica

Unit PR-10 consists of 1,798 ac (728 ha) of marine waters below the MHW line along the coastline of the Municipality of Guánica. This unit starts approximately 1,312 ft (400 m) west of Punta Jacinto along the coastline towards and around Guánica Bay, including Punta Meseta, Punta Pera, Punta Pescadores, and Ensenada Las Pargas, and ending in Punta Brea. The offshore boundary of this unit extends approximately 820 ft (250 m) from the

outer edge of seagrass beds within the unit, 1,640 ft (500 m) from shore if no seagrass was mapped, or to the 49-ft (15-m) bathymetry line, whichever is closest to shore. The entire unit is within Commonwealth ownership and overlaps with approximately 581 ac (235 ha) of the Marine Extent of the Guánica Commonwealth Forest, managed by the PRDNER. However, there is no management plan in place for this forest or the Marine Extent. General land use within this unit includes natural resource conservation, wildlife management, and recreation and commercial activities (e.g., swimming, fishing, boating). Some areas of this unit also adjoin areas of residential and commercial development.

Unit PR-10 is occupied by the subspecies and provides all three of the resources defined as the physical or biological feature essential to the conservation of the Antillean manatee in Puerto Rico: freshwater sources, seagrass in shallow water, and calm waters for shelter. Unit PR-10 is one of the three units on the southwestern coast, ensuring good spatial representation of critical habitat on the south coast of Puerto Rico.

Approximately 1,766 ac (715 ha; 98 percent) overlap with designated critical habitat for the threatened elkhorn and staghorn corals (see 73 FR 72210, November 26, 2008), Nassau grouper (see 89 FR 126, January 2, 2024), and five Caribbean coral species (*Orbicella annularis*, *O. faveolata*, *O. franksi*, *Dendrogyra cylindrus*, and *Mycetophyllia ferox*) (see 88 FR 54026, August 9, 2023, and 89 FR 19511, March 19, 2024).

Threats to the physical or biological feature identified within Unit PR-10 include foraging and other habitat loss, modification, and degradation; climate change; contaminants; and tropical storms and hurricanes. Special management considerations or protection measures to reduce or alleviate threats may include improving water quality; restoring aquatic vegetation and living shorelines; establishing and enforcing boat speed zones, marked navigation channels, and exclusion areas; developing or revising and implementing standardized construction conservation measures for in-water constructions; and developing or revising and implementing oil spill response and marine debris guidance with manatee and aquatic vegetation considerations.

Unit PR-11: Bahía Sucia

Unit PR-11 consists of 1,723 ac (697 ha) of marine waters below the MHW line within Bahía Sucia along the

coastline of the Municipality of Cabo Rojo, Puerto Rico. Bahía Sucia extends from Punta Molino on the east and approximately 2 mi (3 km) across to the southwest towards Cabo Rojo. The entire unit is within Commonwealth ownership and overlaps with the Marine Extent of the Boquerón Commonwealth Forest, managed by the PRDNER. However, there is no management plan in place for this area. General land use within this unit includes natural resource conservation, wildlife management, and recreation activities (e.g., swimming, fishing, boating). Some areas of this unit also adjoin the Cabo Rojo NWR.

Unit PR-11 is occupied by the subspecies and provides at least two of the three resources defined as the physical or biological feature essential to the conservation of the Antillean manatee in Puerto Rico: seagrass in shallow water and calm waters for shelter. Unit PR-11 is the farthest west along the south coast, ensuring good spatial representation of critical habitat on the south coast of Puerto Rico.

Approximately 1,704 ac (690 ha; 99 percent) overlap with designated critical habitat for the threatened elkhorn and staghorn corals (see 73 FR 72210, November 26, 2008), Nassau grouper (see 89 FR 126, January 2, 2024), and five Caribbean coral species (*Orbicella annularis*, *O. faveolata*, *O. franksi*, *Dendrogyra cylindrus*, and *Mycetophyllia ferox*) (see 88 FR 54026, August 9, 2023, and 89 FR 19511, March 19, 2024).

Threats to the physical or biological feature identified within Unit PR-11 include foraging and other habitat loss, modification, and degradation; climate change; contaminants; and tropical storms and hurricanes. Special management considerations or protection measures to reduce or alleviate threats may include improving water quality; restoring aquatic vegetation and living shorelines; establishing and enforcing boat speed zones, marked navigation channels, and exclusion areas; developing or revising and implementing standardized construction conservation measures for in-water constructions; and developing or revising and implementing oil spill response and marine debris guidance with manatee and aquatic vegetation considerations.

Unit PR-12: Boquerón

Unit PR-12 consists of 1,989 ac (805 ha) of marine waters below the MHW line within Bahía de Boquerón along the coastline of the Municipality of Cabo Rojo. This unit extends from approximately 394 ft (120 m) east of

Punta Melones along the coastline of Bahía de Boquerón, including the waters inside Caño Boquerón, and towards Punta Guaniquilla to the north. The offshore boundary of this unit extends approximately 820 ft (250 m) from the outer edge of seagrass beds within the unit, 1,640 ft (500 m) from shore if no seagrass was mapped, or to the 49-ft (15-m) bathymetry line, whichever is closest to shore. The entire unit is within Commonwealth ownership. General land use within this unit includes natural resource conservation, wildlife management, and recreation and commercial activities (e.g., swimming, fishing, boating). Some areas of this unit also adjoin areas of residential and commercial development.

Unit PR-12 is occupied by the subspecies and provides all three of the resources defined as the physical or biological feature essential to the conservation of the Antillean manatee in Puerto Rico: freshwater sources, seagrass in shallow water, and calm waters for shelter. Unit PR-12 is one of the two units on the west coast and the farthest south along the west coast, ensuring good spatial representation of critical habitat on the west coast of Puerto Rico. Approximately 1,784 ac (722 ha; 90 percent) overlap with designated critical habitat for the threatened elkhorn and staghorn corals (see 73 FR 72210, November 26, 2008), Nassau grouper (see 89 FR 126, January 2, 2024), and five Caribbean coral species (*Orbicella annularis*, *O. faveolata*, *O. franksi*, *Dendrogyra cylindrus*, and *Mycetophyllia ferox*) (see 88 FR 54026, August 9, 2023, and 89 FR 19511, March 19, 2024).

Threats to the physical or biological feature identified within Unit PR-12 include foraging and other habitat loss, modification, and degradation; climate change; contaminants; and tropical storms and hurricanes. Special management considerations or protection measures to reduce or alleviate threats may include improving water quality; restoring aquatic vegetation and living shorelines; establishing and enforcing boat speed zones, marked navigation channels, and exclusion areas; developing or revising and implementing standardized construction conservation measures for in-water constructions; and developing or revising and implementing oil spill response and marine debris guidance with manatee and aquatic vegetation considerations.

Unit PR-13: Mayagüez

Unit PR-13 consists of 7,949 ac (3,217 ha) of marine waters below the MHW

line along the coastline of the Municipality of Cabo Rojo and a small portion of the Municipality of Mayagüez. This unit starts approximately 0.9 mi (1.5 km) south of Punta Arenas and continues towards the north along the coastline of Bahía Bramadero, including Punta Guanajibo, to approximately 1,640 ft (500 m) north of the mouth of the Guanajibo River. The offshore boundary of this unit extends approximately 820 ft (250 m) from the outer edge of seagrass beds within the unit, 1,640 ft (500 m) from shore if no seagrass was mapped, or to the 49-ft (15-m) bathymetry line, whichever is closest to shore. The entire unit is within Commonwealth ownership. General land use within this unit includes natural resource conservation, wildlife management, and recreation and commercial activities (e.g., swimming, fishing, boating). Some areas of this unit also adjoin areas of residential and commercial development.

Unit PR-13 is occupied by the subspecies and provides all three of the resources defined as the physical or biological feature essential to the conservation of the Antillean manatee in Puerto Rico: freshwater sources, seagrass in shallow water, and calm waters for shelter. Unit PR-13 is the third largest and one of the two units on the west coast, ensuring good spatial representation of critical habitat on the west coast of Puerto Rico. Approximately 7,944 ac (3,215 ha; almost 100 percent) overlap with designated critical habitat for the threatened elkhorn and staghorn corals (see 73 FR 72210, November 26, 2008), Nassau grouper (see 89 FR 126, January 2, 2024), and five Caribbean coral species (*Orbicella annularis*, *O. faveolata*, *O. franksi*, *Dendrogyra cylindrus*, and *Mycetophyllia ferox*) (see 88 FR 54026, August 9, 2023, and 89 FR 19511, March 19, 2024).

Threats to the physical or biological feature identified within Unit PR-13 include foraging and other habitat loss, modification, and degradation; climate change; contaminants; and tropical storms and hurricanes. Special management considerations or protection measures to reduce or alleviate threats may include improving water quality; restoring aquatic vegetation and living shorelines; establishing and enforcing boat speed zones, marked navigation channels, and exclusion areas; developing or revising and implementing standardized construction conservation measures for in-water constructions; and developing or revising and implementing oil spill response and marine debris guidance

with manatee and aquatic vegetation considerations.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species (50 CFR 402.02).

Compliance with the requirements of section 7(a)(2) is documented through our issuance of:

- (1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or
- (2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define “reasonable and prudent alternatives” (at 50 CFR 402.02) as alternative actions identified during formal consultation that:

- (1) Can be implemented in a manner consistent with the intended purpose of the action,
- (2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,
- (3) Are economically and technologically feasible, and
- (4) Would, in the Service Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a

reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinitiate consultation. Reinitiation of consultation is required and shall be requested by the Federal agency, where discretionary Federal involvement or control over the action has been retained or is authorized by law and: (1) if the amount or extent of taking specified in the incidental take statement is exceeded; (2) if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion or written concurrence; or (4) if a new species is listed or critical habitat designated that may be affected by the identified action. As provided in 50 CFR 402.16, the requirement to reinitiate consultations for new species listings or critical habitat designation does not apply to certain agency actions (e.g., land management plans issued by the Bureau of Land Management in certain circumstances).

Destruction or Adverse Modification of Critical Habitat

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires that our **Federal Register** notices “shall, to the maximum extent practicable also include a brief description and evaluation of those activities (whether public or private) which, in the opinion of the Secretary, if undertaken may adversely modify [critical] habitat, or may be affected by such designation.”

Activities that may be affected by designation of critical habitat for the Florida manatee and Antillean manatee include those that may affect the physical or biological features of the subspecies’ critical habitat (see Physical or Biological Features Essential to the Conservation of the Species).

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an INRMP by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

- (1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- (2) A statement of goals and priorities;
- (3) A detailed description of management actions to be implemented to provide for these ecological needs; and
- (4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that the Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the DoD, or designated for its use, that are subject to an INRMP prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.

We consult with the military on the development and implementation of INRMPs for installations with listed species. We analyzed INRMPs developed by military installations located within the range of the proposed revised critical habitat designation for the Florida manatee to determine if they meet the criteria for exemption from critical habitat under section 4(a)(3) of the Act. There are no DoD lands with a completed INRMP within the proposed critical habitat designation for the Antillean manatee. The following areas are DoD-owned or controlled lands with completed, Service-approved INRMPs within the proposed revised critical habitat designation for the Florida manatee.

Approved INRMPs

MacDill Air Force Base

We have determined that approximately 4,415 ac (1,787 ha) of submerged lands managed by MacDill Air Force Base are essential to the conservation of the Florida manatee. These specific lands are managed according to their INRMP (U.S. Department of the Air Force 2022a, entire; Borchert 2023, pers. comm.). The Florida manatee is a covered species, and the INRMP provides conservation and habitat management measures applicable to the subspecies. The Service has approved these conservation and management measures, and the INRMP has been signed.

Some of the principles and guidelines listed in the MacDill Air Force Base INRMP to achieve the DoD’s ecosystem management goal that benefit the Florida manatee include maintaining and improving sustainability and native diversity of ecosystems, developing coordinated approaches to achieve ecosystem health, and incorporating adaptive management techniques (U.S. Department of the Air Force 2022a, p. 13). Several management goals and objectives listed in the INRMP directly benefit the Florida manatee and its habitat, including to protect and improve recovery of listed species and their habitats, manage invasive species, and manage natural resources (U.S. Department of the Air Force 2022a, pp. 91–95). Ongoing and planned restoration activities at the installation that benefit manatee habitat include improving stormwater runoff to Tampa Bay, constructing living shorelines, experimentally restoring seagrass in tidal ponds, and potentially restoring seagrass in Tampa Bay (U.S. Department of the Air Force 2022a, pp. 65, 82; Borchert 2023, pers. comm.).

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified lands are subject to the MacDill Air Force Base INRMP and that conservation efforts identified in the INRMP provide a benefit to the Florida manatee and its habitat. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including approximately 4,415 ac (1,787 ha) of habitat in Unit FL–04 of this proposed revised critical habitat designation because of this exemption.

U.S. Space Force Space Launch Delta 45

We have determined that approximately 278 ac (112 ha) of submerged lands managed by the U.S.

Space Force Space Launch Delta 45 at Canaveral Space Force Station (216 ac (87 ha)) and Patrick Space Force Base (62 ac (25 ha)) are essential to the conservation of the Florida manatee. These specific lands are managed according to their INRMP (U.S. Department of the Air Force 2022b, entire; Gillikin and Chambers 2023, pers. comm.). The Florida manatee is a covered species, and the INRMP provides conservation and habitat management measures applicable to the subspecies. The Service has approved these conservation and management measures, and the INRMP has been signed.

Some of the elements and principles listed in the Space Launch Delta 45 INRMP to achieve the DoD's ecosystem management goal that benefit the Florida manatee include using an ecosystem approach to management and restoration, adaptively managing natural resources for climate change, fostering sustainability of ecosystem services, and collaborating with regional partners to implement ecosystem management (U.S. Department of the Air Force 2022b, pp. 13–14). Several management goals and objectives listed in the INRMP directly benefit the Florida manatee and its habitat, including to protect listed species and their habitats, manage invasive species, and promote biodiversity and manage natural resources with an ecosystem approach (U.S. Department of the Air Force 2022b, p. 11). Ongoing and planned activities at these installations that benefit manatee habitat include restoring and enhancing wetlands to improve water quality and enhance connections between wetlands and the Banana River, constructing living shorelines, and educating base personnel and rental boat recreationists (U.S. Department of the Air Force 2022a, pp. 160, 813, 818).

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified lands at Cape Canaveral Space Force Station and Patrick Space Force Base are subject to the Space Launch Delta 45 INRMP and that conservation efforts identified in the INRMP provide a benefit to the Florida manatee and its habitat. Therefore, lands within these installations are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including approximately 278 ac (112 ha) of habitat in Unit FL–10 of this proposed revised critical habitat designation because of this exemption.

Naval Air Station Jacksonville Complex

We have determined that approximately 8 ac (3.2 ha) of submerged lands managed by the Naval Air Station Jacksonville Complex at the Rodman Bomb Target property are essential to the conservation of the Florida manatee. These specific lands are managed according to their INRMP (U.S. Department of the Navy 2019, entire; Jackson 2023a, pers. comm.). The Florida manatee is a covered species, and the INRMP provides conservation and habitat management measures applicable to the subspecies. The Service has approved these conservation and management measures, and the INRMP has been signed.

Some of the goals and objectives listed in the Naval Air Station Jacksonville Complex INRMP to achieve the DoD's ecosystem management goal that benefit the Florida manatee include protecting, maintaining, and restoring natural resources, and implementing training, education, and stewardship initiatives for ecosystem management (U.S. Department of the Navy 2019, pp. ES–2–ES–3). Several strategies listed in the INRMP directly benefit the Florida manatee and its habitat, including minimizing pollutant load in stormwater runoff, managing invasive species, protecting and enhancing listed species and their habitats, and educating personnel and citizens in ecosystem management and stewardship (U.S. Department of the Navy 2019, pp. 4–3–4–7, 4–14, 4–21). Ongoing and planned projects at the Rodman Bomb Target that benefit manatee habitat include installing education signs for manatee habitat protection and implementing various water quality protection actions (U.S. Department of the Navy 2019, pp. 5–86; Jackson 2023b, pers. comm.).

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified lands at the Rodman Bomb Target property are subject to the Naval Air Station Jacksonville Complex INRMP and that conservation efforts identified in the INRMP provide a benefit to the Florida manatee and its habitat. Therefore, lands within this property are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including approximately 8 ac (3.2 ha) of habitat in Unit FL–11 of this proposed revised critical habitat designation because of this exemption.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. Exclusion decisions are governed by the regulations at 50 CFR 424.19 and the Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (hereafter, the “2016 Policy”; 81 FR 7226, February 11, 2016), both of which were developed jointly with the National Marine Fisheries Service. We also refer to a 2008 Department of the Interior Solicitor's opinion entitled, “The Secretary's Authority to Exclude Areas from a Critical Habitat Designation under Section 4(b)(2) of the Endangered Species Act” (M–37016).

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise discretion to exclude the area only if such exclusion would not result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor. In our final rules, we explain any decision to exclude areas, as well as decisions not to exclude, to make clear the rational basis for our decision. We describe below the process that we use for taking into consideration each category of impacts and any initial analyses of the relevant impacts.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific

critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both “with critical habitat” and “without critical habitat.”

The “without critical habitat” scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (e.g., under the Federal listing as well as other Federal, State, and local regulations). Therefore, the baseline represents the costs of all efforts attributable to the listing of the species under the Act (i.e., conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The “with critical habitat” scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary section 4(b)(2) exclusion analysis.

Executive Order (E.O.) 14094 supplements and reaffirms E.O. 12866 and E.O. 13563 and directs Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. To determine whether the designation of critical habitat may have an economic effect of \$200 million or more in any given year (which would trigger section 3(f)(1) of E.O. 12866, as amended by E.O. 14094), we used a screening analysis to assess whether a

revised designation of critical habitat for the Florida manatee and a designation of critical habitat for the Antillean manatee are likely to exceed this threshold.

For these particular designations, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from the proposed revised and proposed designations of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the revised designation of critical habitat for the Florida manatee and proposed designation for the Antillean manatee (Industrial Economics, Inc. (IEC) 2024, entire).

We began by conducting a screening analysis of the proposed revised critical habitat designation for the Florida manatee and the proposed critical habitat designation for the Antillean manatee in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out particular geographical areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. In particular, the screening analysis considers baseline costs (i.e., no revision to critical habitat and the existing critical habitat designation remains in place for the Florida manatee and no critical habitat designation for the Antillean manatee) and includes any probable incremental economic impacts where land and water use may already be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation.

The presence of the listed species in occupied areas of critical habitat means that any destruction or adverse modification of those areas is also likely to jeopardize the continued existence of the species. Therefore, designating occupied areas as critical habitat typically causes little if any incremental impacts above and beyond the impacts of listing the species. As a result, we generally focus the screening analysis on areas of unoccupied critical habitat (unoccupied units or unoccupied areas within occupied units).

Overall, the screening analysis assesses whether designation of critical

habitat is likely to result in any additional management or conservation efforts that may incur incremental economic impacts. This screening analysis combined with the information contained in our IEM constitute what we consider to be our economic analysis of the proposed revised critical habitat designation for the Florida manatee and proposed critical habitat designation for the Antillean manatee and is summarized in the narrative below.

As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas that would be likely to be affected by the proposed critical habitat designations. In our evaluation of the probable incremental economic impacts that may result from the proposed designations, first we identified, in the IEM dated September 15, 2023, probable incremental economic impacts associated with the following categories of activities: aquaculture, border protection, conservation, restoration, dredging, flood control, in-water construction, power generation, recreation, shoreline stabilization, transportation, unexploded ordnance management, utilities, and water quality management. We considered each industry or category individually. Additionally, we considered whether these activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. Because the West Indian manatee species (*Trichechus manatus*) is the listed entity, in areas where either Florida or Antillean manatees are present, Federal agencies are required to consult with the Service under section 7 of the Act on activities they authorize, fund, or carry out that may affect the subspecies, regardless of whether we finalize these proposed critical habitat rules. If we finalize these proposed critical habitat designations, Federal agencies would be required to consider the effects of their actions on the designated habitat. If the Service finds that a particular Federal action is likely to result in jeopardy to the species or that the action will destroy or adversely modify the species' critical habitat, the Service will identify reasonable and prudent alternatives to avoid the jeopardy to the species or the destruction or adverse modification of its designated critical habitat.

In our IEM, we attempted to clarify the distinction between the effects that would result from the subspecies being listed and those attributable to the

critical habitat designations (*i.e.*, difference between the jeopardy and adverse modification standards) for each of the subspecies. The following specific circumstances help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites for each of the subspecies, and (2) any actions that would likely adversely affect the essential physical or biological features of occupied critical habitat are also likely to adversely affect each of the subspecies itself. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the revision and designation of critical habitat for these subspecies. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of these proposed designations of critical habitat.

The proposed revised critical habitat designation for the Florida manatee includes 12 units totaling approximately 1,904,191 ac (770,599 ha) and the proposed critical habitat designation for the Antillean manatee includes 13 units totaling approximately 78,121 ac (31,614 ha), all of which were occupied at the time of listing and are occupied now. Additionally, because 705,552 ac (285,527 ha) of the proposed revised critical habitat for the Florida manatee overlap with the existing critical habitat for the Florida manatee and all units in Florida and Puerto Rico are occupied, the economic costs of these designations will most likely be limited to additional administrative effort to consider effects to critical habitat during section 7 consultations only within the 1,198,639 ac (485,072 ha) proposed to be added in Florida and 78,121 ac (31,614 ha) proposed in Puerto Rico. This finding is based on the following (IEC 2024, pp. 3, 26):

(1) All 12 proposed revised units in Florida and the 13 proposed units in Puerto Rico are considered occupied by the subspecies, and occupied units are afforded significant baseline protection under the Act due to the presence of the listed entity;

(2) All projects with a Federal nexus would be subject to section 7 consultation regardless of the designation of critical habitat due to the presence of the listed entity;

(3) Critical habitat is not likely to change the Service's recommendation for project modifications as part of future consultations considering the Florida manatee or Antillean manatee; and

(4) Florida and Antillean manatees receive additional baseline protection from co-occurring listed species and their critical habitats, including existing critical habitat for the Florida manatee. Total overlap with

existing critical habitat (for several species) is 60 percent in Florida, with 1,140,080 ac (458,119 ha) across 10 units; total overlap with existing critical habitat (for elkhorn and staghorn corals, as well as other species) is 95 percent in Puerto Rico, with 74,350 ac (30,088 ha) across 13 units (Service 2023d, pp. 40–41).

Based on the consultation history for the Florida manatee in proposed revised critical habitat areas, the number of future consultation actions is likely to be approximately 216 per year (approximately 129 informal consultations and 87 technical assistance efforts) in Florida (IEC 2024, p. 14–15). Based on the consultation history for the Antillean manatee in proposed critical habitat areas, the number of future consultation actions is likely to be approximately 21 per year (approximately 5 informal consultations and 16 technical assistance efforts) in Puerto Rico (IEC 2024, p. 14–15). We expect formal consultations for each subspecies or their critical habitat to be infrequent due to the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*) prohibiting the authorization of take of marine mammals and due to many other Federal and State regulations that protect manatees and their habitat in both Florida and Puerto Rico (Service 2023d, pp. 48–51, 60–61). The incremental costs of considering effects to critical habitat, based on the number of future consultations multiplied by the cost of effort (\$2,700 for informal consultations and \$430 for technical assistance efforts) are expected to be approximately \$170,000 per year (2023 dollars) for the additional critical habitat areas within the Florida manatee designation and \$20,000 for the Antillean manatee designation (IEC 2024, p. 17). The screening analysis also calculated the incremental cost savings of removing 259,842 ac (105,154 ha) of the existing critical habitat designation in Florida. Based on the expected number of future consultations in those areas having a reduced effort (*i.e.*, no longer considering effects to critical habitat; 34 consultations per year (19 informal consultations and 14 technical assistance efforts)), the cost savings is estimated to be approximately \$57,000 per year (2023 dollars) (IEC 2024, pp. 18–19). Therefore, the expected net effect in the increase of annual administrative costs for the proposed revised critical habitat designation for the Florida manatee is approximately \$110,000, and for the proposed critical habitat designation for the Antillean manatee is approximately \$20,000 (2023 dollars) (IEC 2024, pp. 19–20).

The proposed designations are not expected to trigger additional

requirements under State, Commonwealth, or other local government regulations. Similarly, we do not anticipate the easing of any requirements where the proposed revised critical habitat removes areas previously designated in Florida. However, a new designation may cause developers or landowners to perceive that private lands within the previously undesignated areas would incur lower property values due to the perception that critical habitat will preclude, limit, or slow development, or somehow alter the highest and best use of the property (IEC 2024, p. 23). While perceptual effects on land values are possible, the likelihood and magnitude of such effects are uncertain, and data limitations also prevent the quantification of the possible incremental reduction in property values (IEC 2024, p. 24).

In conclusion, the costs associated with the proposed revised critical habitat designation for the Florida manatee and proposed critical habitat designation for the Antillean manatee would be administrative in nature and are not anticipated to reach \$200 million in any given year based on the anticipated number of consultations and associated consultation costs. Additionally, incremental economic benefits of adding new critical habitat areas and forgone benefits of removing existing critical habitat areas are not anticipated. Therefore, the Office of Management and Budget has determined, based on our screening analysis, that this is not a significant regulatory action under section 3(f)(1) of E.O. 12866, as amended by E.O. 14094.

We are soliciting data and comments from the public on the economic analysis discussed above. During the development of the final designations, we will consider the information presented in the economic analysis and any additional information on economic impacts we receive during the public comment period to determine whether any specific areas should be excluded from the final critical habitat designations under the authority of section 4(b)(2) of the Act, our implementing regulations at 50 CFR 424.19, and the 2016 Policy. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of either subspecies.

Consideration of National Security Impacts

Section 4(a)(3)(B)(i) of the Act may not cover all DoD lands or areas that

pose potential national-security concerns (e.g., a DoD installation that is in the process of revising its INRMP for a newly listed species or a species previously not covered). If a particular area is not covered under section 4(a)(3)(B)(i), then national-security or homeland-security concerns are not a factor in the process of determining what areas meet the definition of “critical habitat.” However, we must still consider impacts on national security, including homeland security, on those lands or areas not covered by section 4(a)(3)(B)(i) because section 4(b)(2) requires us to consider those impacts whenever we designate critical habitat. Accordingly, if DoD, Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an assertion of national-security or homeland-security concerns, or we have otherwise identified national-security or homeland-security impacts from designating particular areas as critical habitat, we generally have reason to consider excluding those areas.

However, we cannot automatically exclude requested areas. When DoD, DHS, or another Federal agency requests exclusion from critical habitat on the basis of national-security or homeland-security impacts, we must conduct an exclusion analysis if the Federal requester provides information, including a reasonably specific justification of an incremental impact on national security that would result from the designation of that specific area as critical habitat. That justification could include demonstration of probable impacts, such as impacts to ongoing border-security patrols and surveillance activities, or a delay in training or facility construction, as a result of compliance with section 7(a)(2) of the Act. If the agency requesting the exclusion does not provide us with a reasonably specific justification, we will contact the agency to recommend that it provide a specific justification or clarification of its concerns relative to the probable incremental impact that could result from the designation. If we conduct an exclusion analysis because the agency provides a reasonably specific justification or because we decide to exercise the discretion to conduct an exclusion analysis, we will defer to the expert judgment of DoD, DHS, or another Federal agency as to: (1) Whether activities on its lands or waters, or its activities on other lands or waters, have national-security or homeland-security implications; (2) the importance of those implications; and (3) the degree to which the cited

implications would be adversely affected in the absence of an exclusion. In that circumstance, in conducting a discretionary section 4(b)(2) exclusion analysis, we will give great weight to national-security and homeland-security concerns in analyzing the benefits of exclusion.

Under section 4(b)(2) of the Act, we also consider whether a national security or homeland security impact might exist on lands owned or managed by DoD or DHS. In preparing this proposal, we have determined that, other than the lands exempted under section 4(a)(3)(B)(i) of the Act based upon the existence of an approved INRMP (see Exemptions, above), the lands within the proposed designations are not owned or managed by DoD or DHS. Therefore, we anticipate no impact on national security or homeland security.

Consideration of Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security discussed above. To identify other relevant impacts that may affect the exclusion analysis, we consider a number of factors, including whether there are permitted conservation plans covering the species in the area—such as safe harbor agreements (SHAs), candidate conservation agreements with assurances (CCAAs), or “conservation benefit agreements” or “conservation agreements” (CBAs) (CBAs are a new type of agreement replacing SHAs and CCAAs in use after April 2024 (89 FR 26070; April 12, 2024) or HCPs, or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at whether Tribal conservation plans or partnerships, Tribal resources, or government-to-government relationships of the United States with Tribal entities may be affected by the designation. We also consider any State, local, social, or other impacts that might occur because of the designation.

Summary of Exclusions Considered Under Section 4(b)(2) of the Act

At this time, we are not considering any exclusions from the proposed designations based on economic impacts, national security impacts, or other relevant impacts—such as partnerships, management, or protection afforded by cooperative management efforts—under section 4(b)(2) of the Act. In preparing these proposed

designations, we have determined that no HCPs, SHAs, or CCAAs currently exist, and the proposed designations do not include any Tribal lands or trust resources or any lands for which designation would have any economic or national security impacts. Most areas within the Florida manatee’s proposed revised designation are included in Federal, State, and local management and conservation plans, as well as many county manatee protection plans, but only a few areas within the Antillean manatee’s proposed designation are included in State marine reserve management plans (Service 2023d, pp. 41–61). These plans do not provide conservation equal to or more than the protections that result from a critical habitat designation and most are nonregulatory. In addition, implementation of these plans is not impacted where they overlap with the current Florida manatee critical habitat designation and is not expected to be impacted where they overlap with the new areas proposed in each subspecies’ designation. Therefore, we are not considering areas covered by these plans for exclusion under section 4(b)(2) of the Act for the proposed critical habitat designations for either subspecies.

However, if through the public comment period we receive information that we determine indicates that there are economic, national security, or other relevant impacts from designating particular areas as critical habitat, then as part of developing the final designations of critical habitat, we will evaluate that information and may conduct a discretionary exclusion analysis to determine whether to exclude those areas under the authority of section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19. If we receive a request for exclusion of a particular area and after evaluation of supporting information we do not exclude, we will fully explain our decision in the final rule for this action. Please see **ADDRESSES**, above, for instructions on how to submit comments.

Required Determinations

Clarity of the Rule

We are required by E.O.s 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Regulatory Planning and Review
(Executive Orders 12866, 13563, and 14094)

Executive Order (E.O.) 14094 amends and reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

E.O. 12866, as reaffirmed by E.O. 13563 and amended and reaffirmed by E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is significant.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; title II of Pub. L. 104–121, March 29, 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a

substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and Service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine whether potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term “significant economic impact” is meant to apply to a typical small business firm’s business operations.

Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, only Federal action agencies would be directly regulated if we adopt the proposed critical habitat designations. The RFA does not require evaluation of the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities.

Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that, if made final as proposed, the proposed critical habitat designations will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designations would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if made final, the proposed critical habitat designations will not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare statements of energy effects “to the extent permitted by law” when undertaking actions identified as significant energy actions (66 FR 28355, May 22, 2001). E.O. 13211 defines a “significant energy action” as an action that (i) is a significant regulatory action under E.O. 12866 or any successor order; and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule is not a significant regulatory action under E.O. 12866 or E.O. 14094 (88 FR 21879, April 11, 2023). Therefore, this action is not a significant energy action, and there is no requirement to prepare a statement of energy effects for this action.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following finding:

(1) This proposed rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both “Federal intergovernmental mandates” and “Federal private sector mandates.” These terms are defined in 2 U.S.C. 658(5)–(7). “Federal intergovernmental mandate” includes a regulation that “would impose an enforceable duty upon State, local, or Tribal governments” with two exceptions. It excludes “a condition of Federal assistance.” It also excludes “a duty arising from participation in a voluntary

Federal program,” unless the regulation “relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,” if the provision would “increase the stringency of conditions of assistance” or “place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding,” and the State, local, or Tribal governments “lack authority” to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.”

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions are not likely to destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments because most (91 percent; see table 1, above) lands within the proposed revised designation for the Florida manatee are within Federal or State ownership, and 100 percent (see table 2, above) of lands within the proposed designation for the Antillean manatee are within State ownership. The small percentage (7 percent; see table 1, above) of local government lands included in the proposed revised

designation for the Florida manatee will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. Therefore, a small government agency plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of revising critical habitat for the Florida manatee and proposing critical habitat for the Antillean manatee in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed for the proposed designations, and it concludes that, if adopted, these designations of critical habitat do not pose significant takings implications for lands within or affected by the proposed designations.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of these proposed critical habitat designations with, appropriate State and Commonwealth resource agencies. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the proposed rule does not have substantial direct effects either on the States, or on the relationship between

the Federal government and the States, or on the distribution of powers and responsibilities among the various levels of government. The proposed designations may have some benefit to these governments because the areas that contain the features essential to the conservation of each subspecies are more clearly defined, and the physical or biological features of the habitat necessary for the conservation of each subspecies are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed revising and designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of each subspecies, this proposed rule identifies the physical or biological features essential to the conservation of each subspecies. The proposed areas of critical habitat are presented on maps, and the proposed rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it

displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

Regulations adopted pursuant to section 4(a) of the Act are exempt from the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and do not require an environmental analysis under NEPA. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This includes listing, delisting, and reclassification rules, as well as critical habitat designations and species-specific protective regulations promulgated concurrently with a decision to list or reclassify a species as threatened. In a line of cases starting with *Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), the courts have upheld this position.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951, May 4, 1994), E.O. 13175 (Consultation and Coordination with Indian Tribal Governments), the President's memorandum of November 30, 2022 (Uniform Standards for Tribal Consultation; 87 FR 74479, December 5, 2022), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes and Alaska Native Corporations (ANCs) on a government-to-government basis. In accordance with Secretary's Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that no Tribal lands fall within the boundaries of the proposed revised critical habitat for the Florida manatee or the proposed critical habitat for the Antillean manatee, so no Tribal lands would be affected by the proposed designations.

References Cited

A complete list of references cited in this rulemaking is available on the internet at <https://www.regulations.gov> and upon request from the Florida Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Florida and Caribbean Ecological Services Field Offices.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Signing Authority

Martha Williams, Director of the U.S. Fish and Wildlife Service, approved this action on August 21, 2024, for publication. On September 12, 2024, Martha Williams authorized the undersigned to sign the document electronically and submit it to the Office of the Federal Register for publication as an official document of the U.S. Fish and Wildlife Service.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.95, amend paragraph (a) by:
 ■ a. Adding an entry for “Antillean Manatee (*Trichechus manatus manatus*)” after the entry for “Canada Lynx (*Lynx canadensis*)”; and
 ■ b. Revising the entry, including the heading, for “Florida Manatee (*Trichechus manatus*)”.

The addition and revision read as follows:

§ 17.95 Critical habitat—fish and wildlife.

(a) *Mammals.*

* * * * *

Antillean Manatee (*Trichechus manatus manatus*)

(1) Critical habitat units are depicted for the Municipalities of Arroyo, Cabo

Rojo, Ceiba, Fajardo, Guánica, Guayama, Guayanilla, Juana Díaz, Loíza, Mayagüez, Naguabo, Patillas, Peñuelas, Río Grande, Salinas, San Juan, Santa Isabel, Toa Baja, and Vieques in the Commonwealth of Puerto Rico on the maps in this entry.

(2) Within these areas, the physical or biological feature essential to the conservation of the Antillean manatee consists of nearshore marine waters with at least two of the following resources within a 3-mile (5-kilometer) radius: (i) Freshwater sources, such as streams and wastewater outfalls;

(ii) Seagrass in waters less than 43 feet (ft) (13 meters (m)) deep; and

(iii) Calm waters, such as shallow bays and coves, with water depths less than 9.8 ft (3 m) and wave heights less than 0.98 ft (0.3 m).

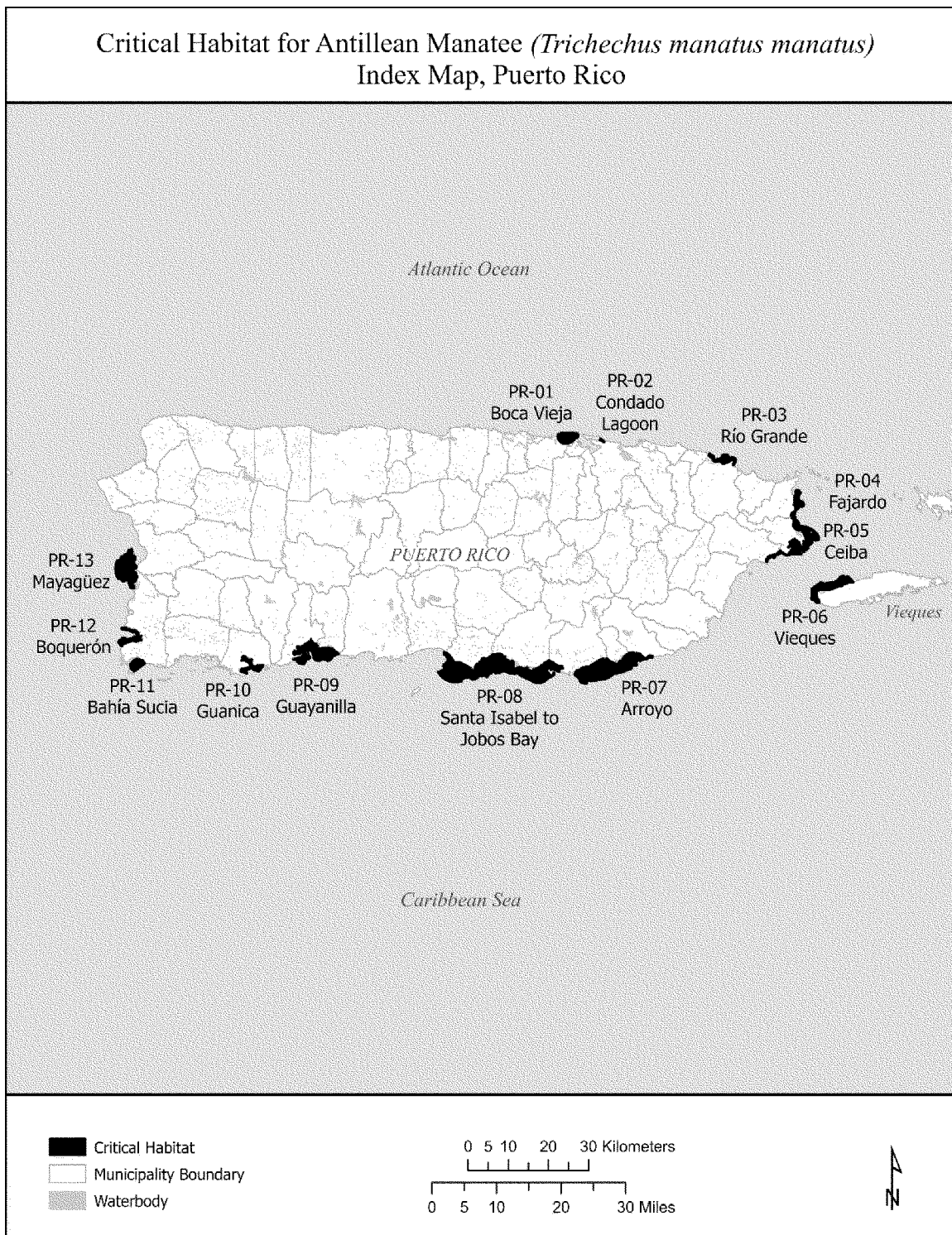
(3) Critical habitat includes waters up to the ordinary high-water line. Critical habitat does not include areas of dry land such as small islands or rock outcrops or federally maintained navigational channels.

(4) Data layers defining map units were created using Esri ArcGIS mapping software along with various spatial data layers provided by multiple local and regional sources as available (*e.g.*, published data, unpublished reports, databases, and data maintained by universities, the Puerto Rico Department of Natural and Environmental Resources, the U.S. Geological Survey, U.S. Environmental Protection Agency, and the National Oceanographic and Atmospheric Administration across the range of the subspecies). The projection used in mapping and calculating distances and locations was Puerto Rico State Plane, North American Datum of 1983. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at <https://www.regulations.gov> at Docket No. FWS–R4–ES–2024–0073 and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map follows:

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Figure 1 to Antillean Manatee (*Trichechus manatus manatus*) paragraph (5)



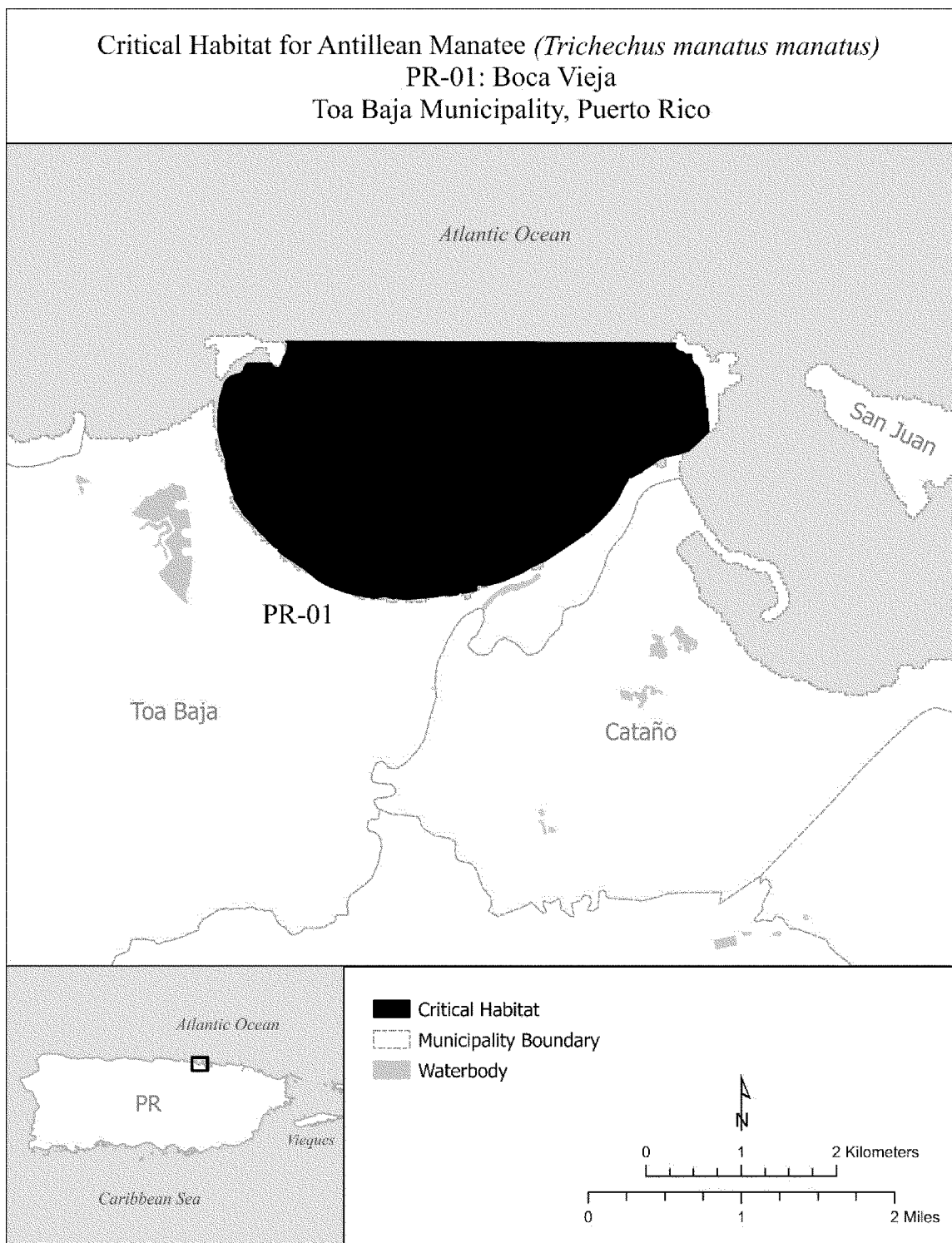
(6) Unit PR-01: Boca Vieja; Toa Baja Municipality, Puerto Rico.

(i) Unit PR-01 consists of 2,640 acres (ac) (1,068 hectares (ha)) of marine waters below the mean high water (MHW) line within the Ensenada Boca

Vieja along the coastline of the Municipality of Toa Baja, Puerto Rico. The unit extends from the northernmost point of Isla de Cabra on the east and approximately 3 miles (mi) (5 kilometers (km)) across towards Punta

Salinas to the west. The entire unit is within Commonwealth ownership.

(ii) Map of PR-01 follows: Figure 2 to Antillean Manatee (*Trichechus manatus manatus*) paragraph (6)(ii)



(7) Unit PR-02: Condado Lagoon; San Juan Municipality, Puerto Rico.

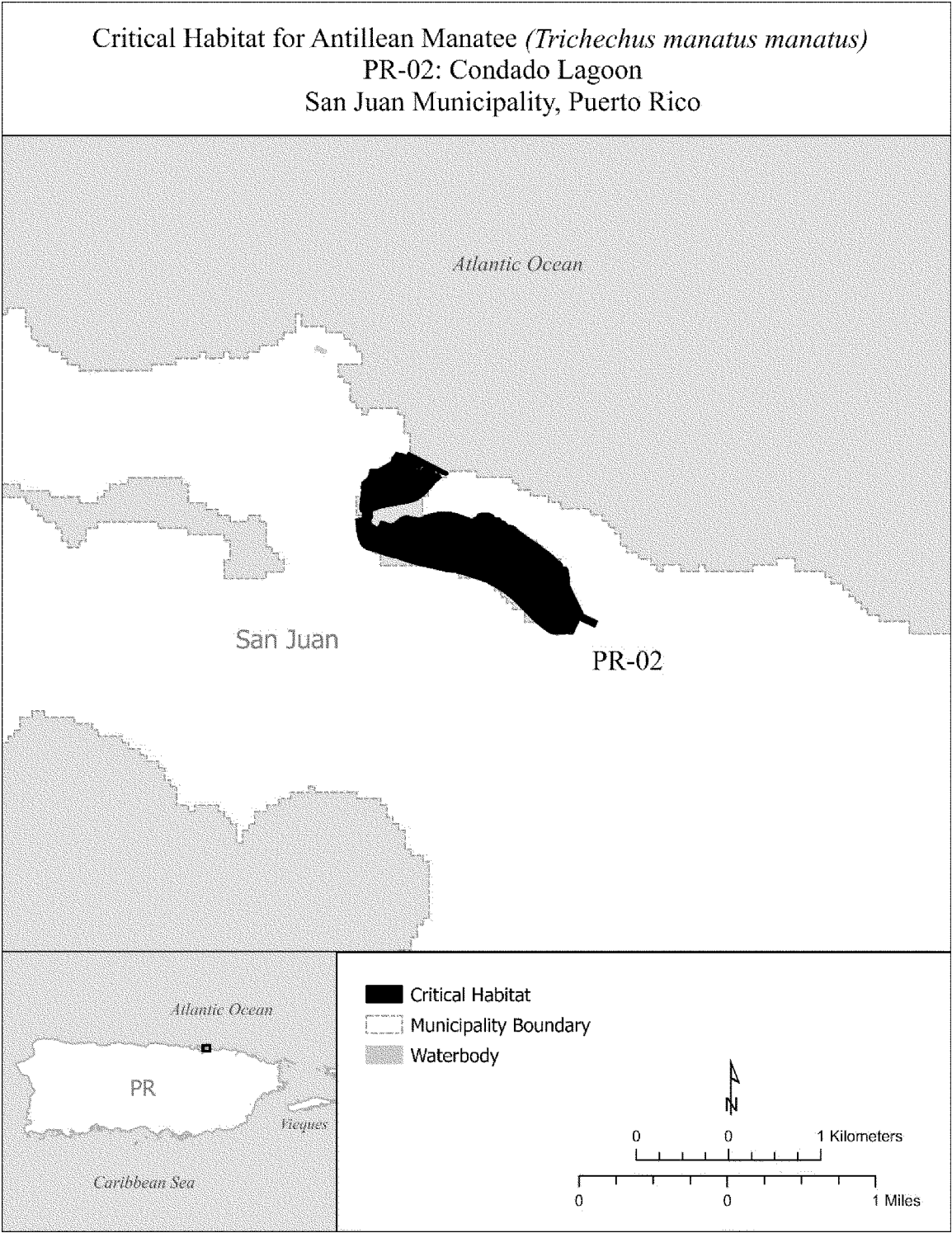
(i) Unit PR-02 consists of 91 ac (37 ha) of marine waters below the MHW line within the Condado Lagoon and El Boquerón along the coastline of the Municipality of San Juan, Puerto Rico. The Condado Lagoon is bounded by the Condado Peninsula to the north, the Baldorioty de Castro Expressway to the

south, and the San Antonio and the Dos Hermanos bridges on the west and northwest respectively. This unit also includes the marine waters of El Boquerón that connect with the Condado Lagoon and are geographically separated by the Dos Hermanos Bridge. This unit extends from the Condado Lagoon to El Boquerón along the eastern coastline towards Playita del Condado,

and approximately 705 feet (ft) (215 meters (m)) across towards the San Jerónimo del Boquerón Fort to the west. The entire unit is within Commonwealth ownership and overlaps with the Condado Lagoon Nature Reserve.

(ii) Map of Unit PR-02 follows:

Figure 3 to Antillean Manatee
(*Trichechus manatus manatus*)
paragraph (7)(ii)



(8) Unit PR-03: Río Grande; Río Grande and Loíza Municipalities, Puerto Rico.

(i) Unit PR-03 consists of 1,691 ac (685 ha) of marine waters below the

MHW line along the coastline of the Municipality of Río Grande and a small portion towards the west along the Municipality of Loíza, Puerto Rico. The unit starts approximately 0.5 miles (mi)

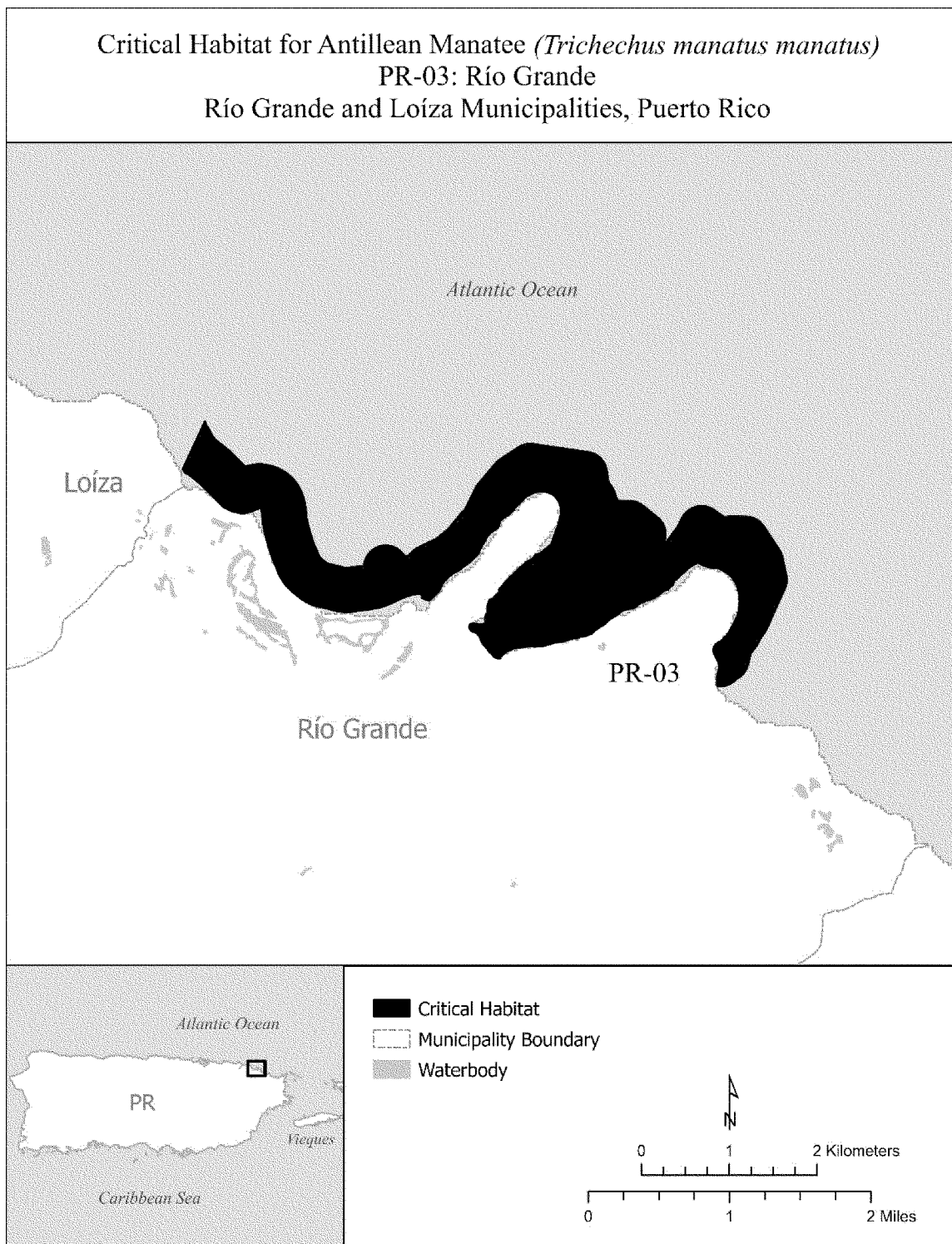
(0.8 kilometers (km)) west of Punta Percha; extends farther west along Punta Picúa, Punta Miquillo, and Punta San Agustín; and ends approximately 492 feet (ft) (150 meters (m)) west of the

mouth of the Herrera River. The offshore boundary of this unit extends approximately 3 mi (5 km) from the freshwater sources within the unit, 820 ft (250 m) from the outer edge of seagrass beds within the unit, 1,640 ft

(500 m) from shore if no seagrass was mapped, or to the 49-ft (15-m) bathymetry line, whichever is closest to shore. The entire unit is within Commonwealth ownership and overlaps

with a portion of the Marine Extent of the Río Espíritu Santo Nature Reserve.

(ii) Map of Unit PR-03 follows: Figure 4 to Antillean Manatee (*Trichechus manatus manatus*) paragraph (8)(ii)



(9) Unit PR-04: Fajardo; Fajardo and Ceiba Municipalities, Puerto Rico.

(i) Unit PR-04 consists of 2,065 ac (836 ha) of marine waters below the

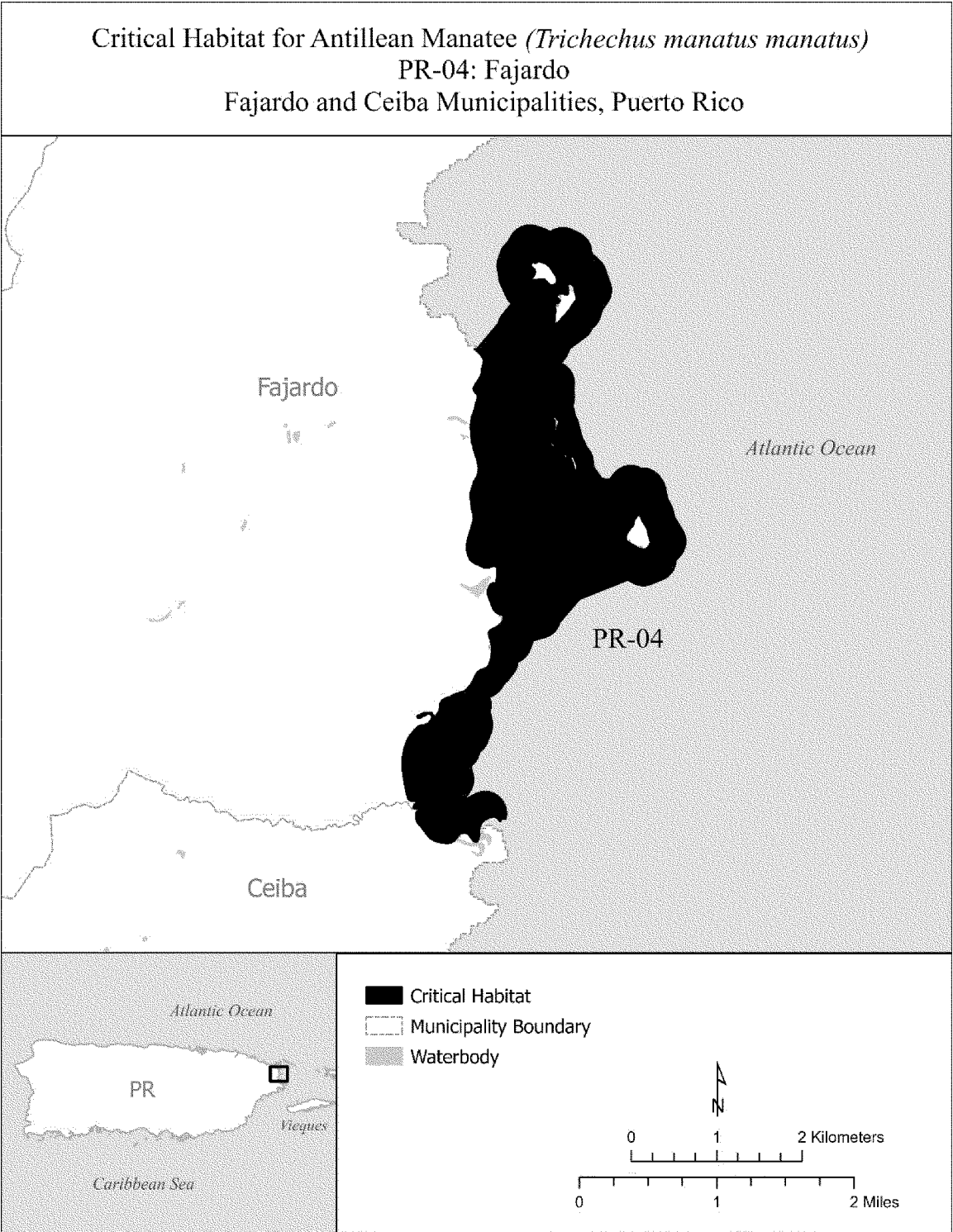
MHW line along the coastline of the Municipality of Fajardo and a small

portion of the Municipality of Ceiba towards the southern edge of the unit. This unit starts in Punta Fajardo; continues south along the coastline by the Fajardo River, Punta Barracas, and Bahía Damajagua; and ends on the north side of Punta Figueras. The offshore

boundary of this unit extends approximately 820 ft (250 m) from the outer edge of seagrass beds within the unit, 1,640 ft (500 m) from shore if no seagrass was mapped, or to the 49-ft (15-m) bathymetry line, whichever is closest

to shore. The entire unit is within Commonwealth ownership.

(ii) Map of Unit PR-04 follows: Figure 5 to Antillean Manatee (*Trichechus manatus manatus*) paragraph (9)(ii)



(10) Unit PR-05: Ceiba; Ceiba and Naguabo Municipalities, Puerto Rico.

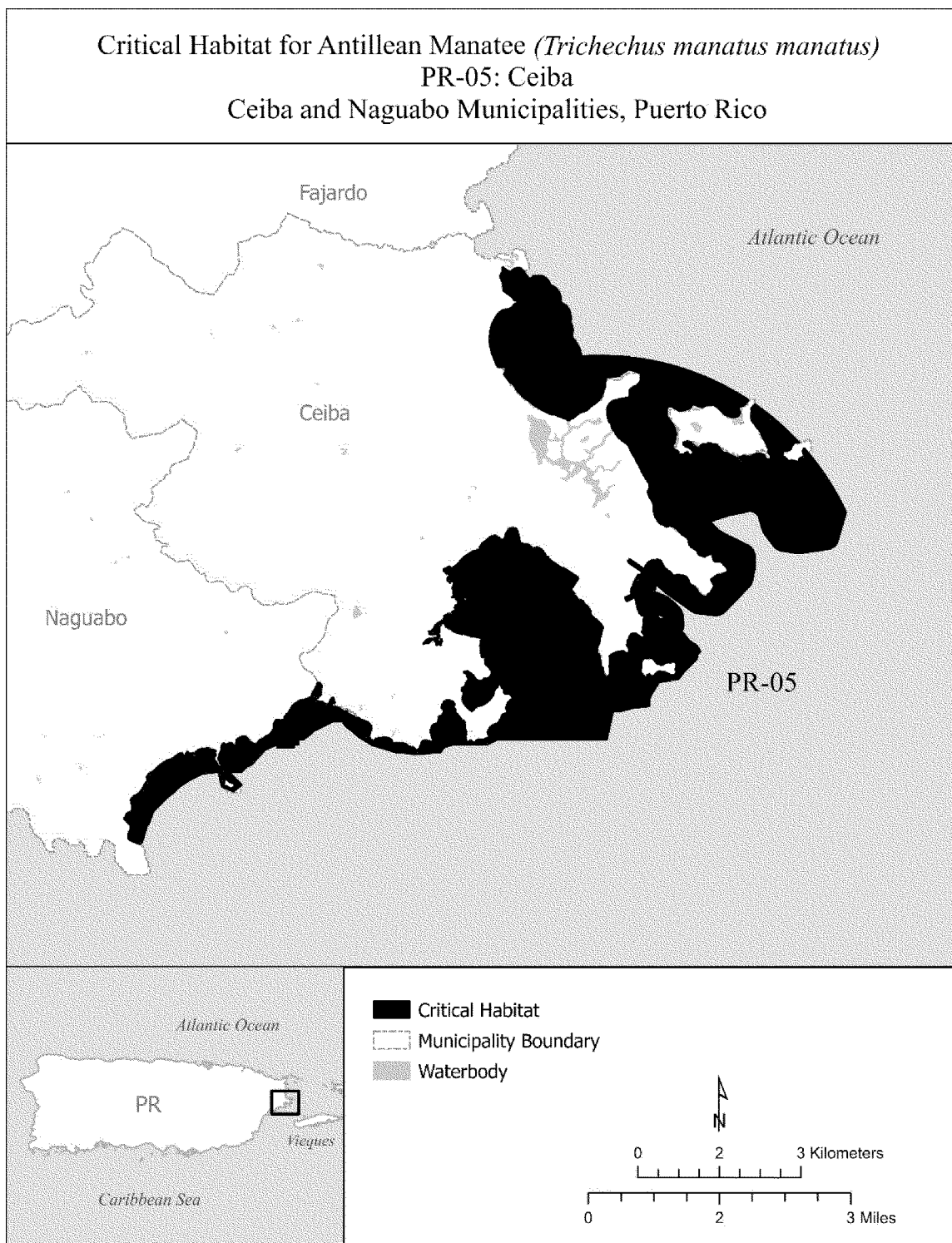
(i) Unit PR-05 consists of 6,429 ac (2,602 ha) of marine waters below the MHW line along the coastline of the Municipalities of Ceiba and Naguabo. This unit starts just south of Punta Figuera; extends farther south along the coastline by Puerto Medio Mundo,

Punta Medio Mundo, Pasaje Medio Mundo, Punta Puerca, Isla de Cabras, Ensenada Honda, Punta Algodones, and Bahía Algodones; and ends just north of Punta Lima. The offshore boundary of this unit extends approximately 820 ft (250 m) from the outer edge of seagrass beds within the unit, 1,640 ft (500 m) from shore if no seagrass was mapped,

or to the 49-ft (15-m) bathymetry line, whichever is closest to shore. The entire unit is within Commonwealth ownership.

(ii) Map of Unit PR-05 follows:

Figure 6 to Antillean Manatee (*Trichechus manatus manatus*) paragraph (10)(ii)



(11) Unit PR-06: Vieques; Vieques Municipality, Puerto Rico.

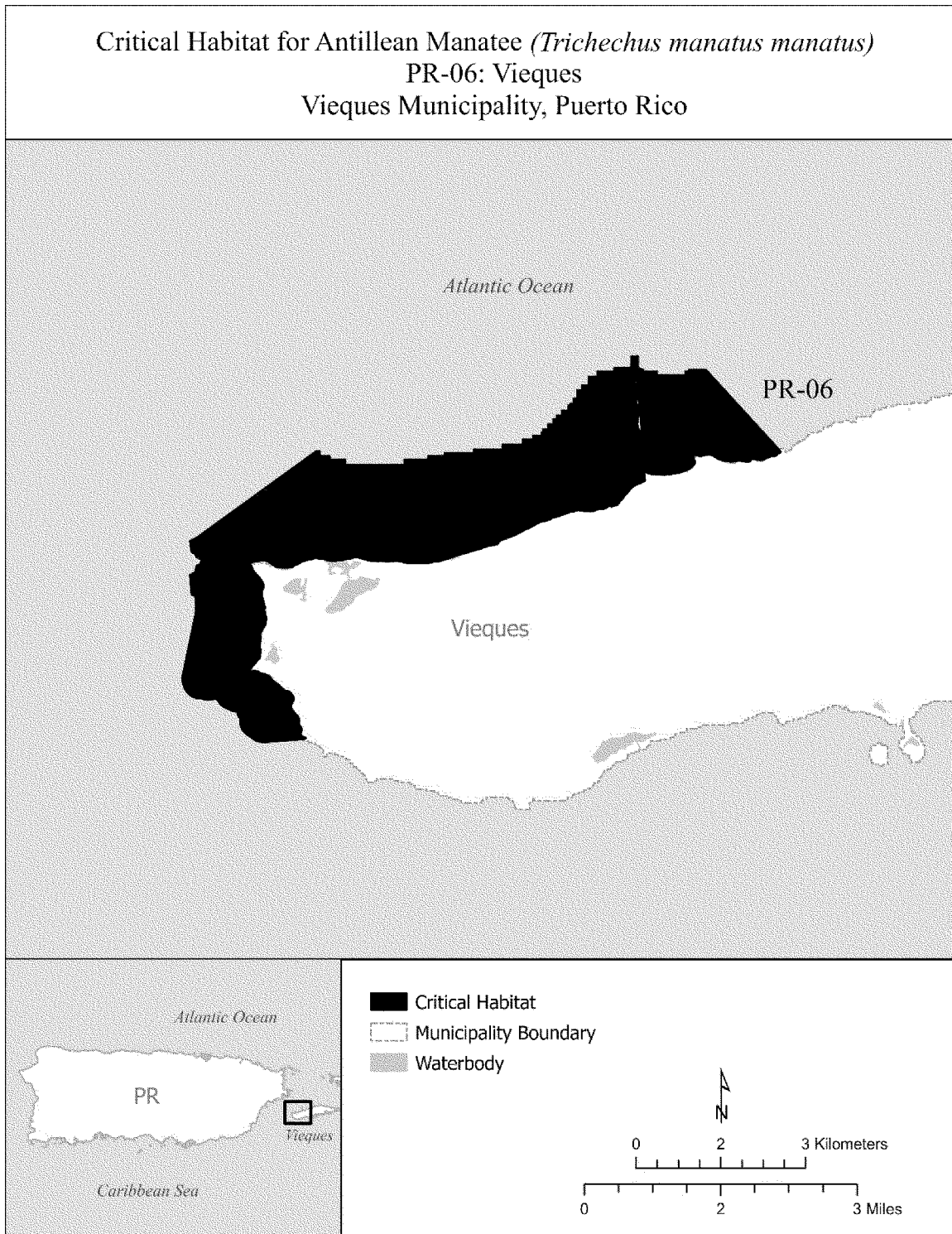
(i) Unit PR-06 consists of 4,980 ac (2,015 ha) of marine waters below the MHW line along the west-northwest coastline of the Municipality of Vieques. This unit starts approximately 1 mile (1.5 km) east of Punta Caballo within Ensenada Claque, continues west by the

Puerto de la Libertad Davis S. Sanes Rodríguez (Mosquito Pier) and towards Punta Arenas, and ends approximately 1 mile (1.7 km) south of Punta Boca Quebrada along the coastline. The offshore boundary of this unit extends approximately 820 ft (250 m) from the outer edge of seagrass beds within the unit, 1,640 ft (500 m) from shore if no

seagrass was mapped, or to the 26-ft (8-m) bathymetry line, whichever is closest to shore. The entire unit is within Commonwealth ownership.

(ii) Map of Unit PR-06 follows:

Figure 7 to Antillean Manatee (*Trichechus manatus manatus*) paragraph (11)(ii)



(12) Unit PR-07: Arroyo; Guayama, Arroyo, and Patillas Municipalities, Puerto Rico.

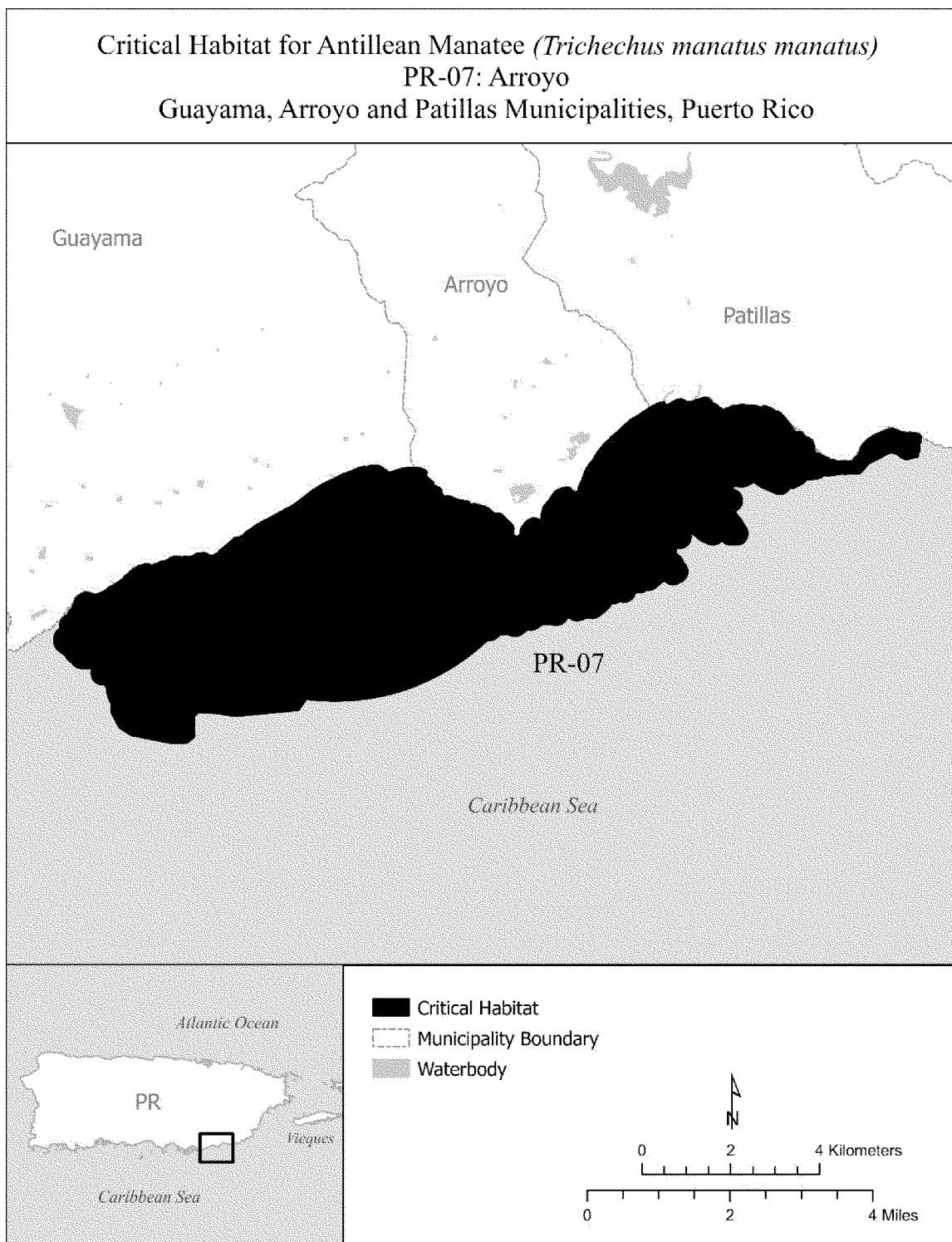
(i) Unit PR-07 consists of 15,001 ac (6,071 ha) of marine waters below the MHW line along the coastline of the Municipalities of Patillas, Arroyo, and Guayama. This unit starts approximately 738 ft (225 m) east of the mouth of the Jacoboa River; continues

west along the coastline towards Punta Viento, Puerto Patillas, Punta Figuras, and Puerto Arroyo; and ends approximately 0.9 mi (1.5 km) west of Punta Ola Grande. The offshore boundary of this unit extends approximately 820 ft (250 m) from the outer edge of seagrass beds within the unit, 1,640 ft (500 m) from shore if no seagrass was mapped, or to the 49-ft (15-

m) bathymetry line, whichever is closest to shore. The entire unit is within Commonwealth ownership and overlaps with a portion of the Marine Extent of the Guayama Reef Nature Reserve.

(ii) Map of Unit PR-07 follows:

Figure 8 to Antillean Manatee (*Trichechus manatus manatus*) paragraph (12)(ii)



(13) Unit PR–08: Santa Isabela to Jobos Bay; Juana Díaz, Santa Isabel, Salinas, and Guayama Municipalities, Puerto Rico.

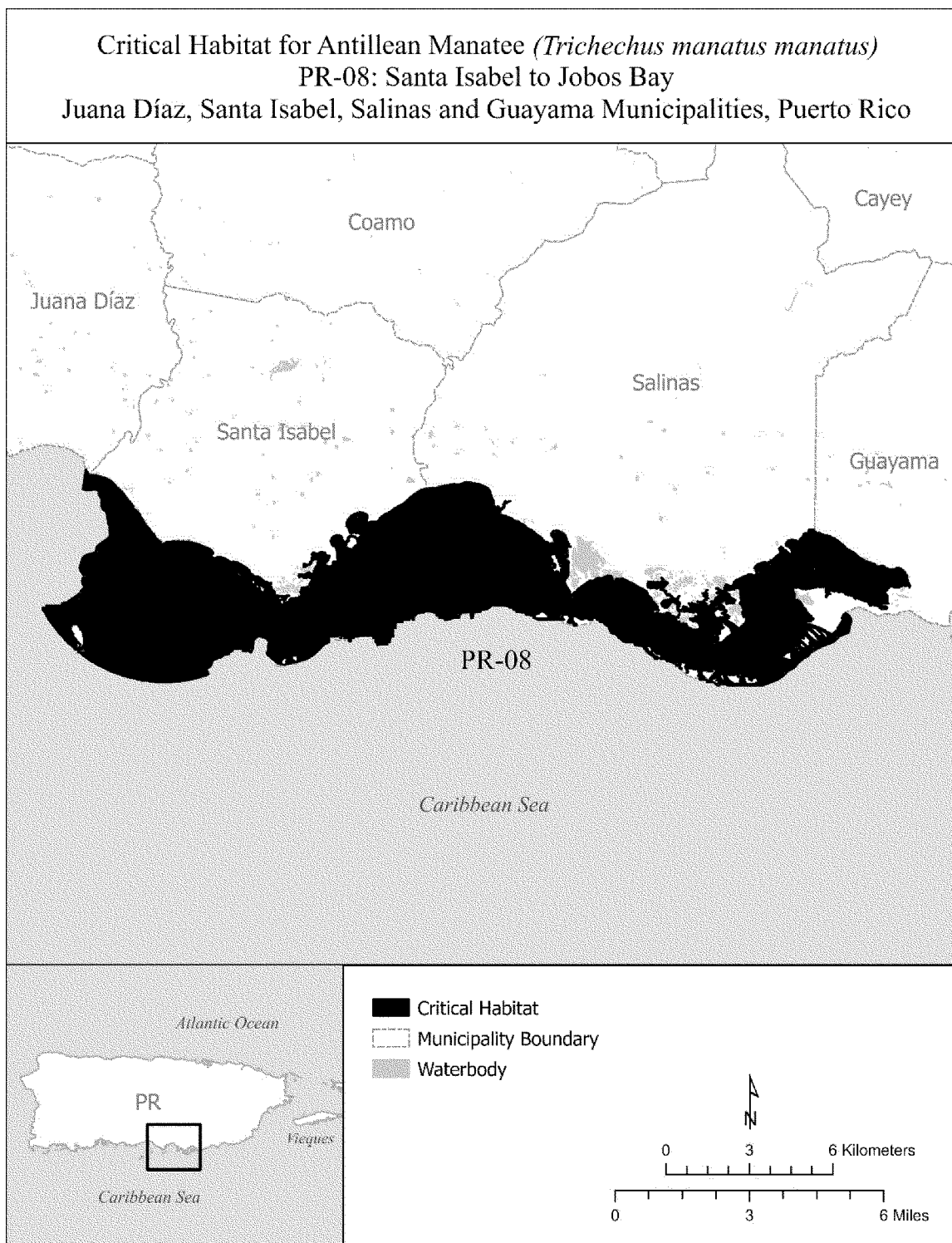
(i) Unit PR–08 consists of 24,360 ac (9,858 ha) of marine waters below the MHW line along the coastline of the Municipalities of Juana Díaz, Santa Isabel, Salinas, and Guayama. This unit starts approximately 1,213 ft (370 m) west of Descalabrado River and continues east along the coastline

towards Punta Cayito, Punta Petrona, Bahía de Rincón, and Punta Arenas, including the waters within Mar Negro and around Bahía de Jobos towards Punta Pozuelo. The offshore boundary of this unit extends approximately 820 ft (250 m) from the outer edge of seagrass beds within the unit, 1,640 ft (500 m) from shore if no seagrass was mapped, or to the 49-ft (15-m) bathymetry line, whichever is closest to

shore. The entire unit is within Commonwealth ownership and overlaps with portions of the Jobos Bay National Estuarine Research Reserve and the Marine Extents of the Punta Petrona Nature Reserve and Isla Caja de Muertos Nature Reserve.

(ii) Map of Unit PR–08 follows:

Figure 9 to Antillean Manatee (*Trichechus manatus manatus*) paragraph (13)(ii)



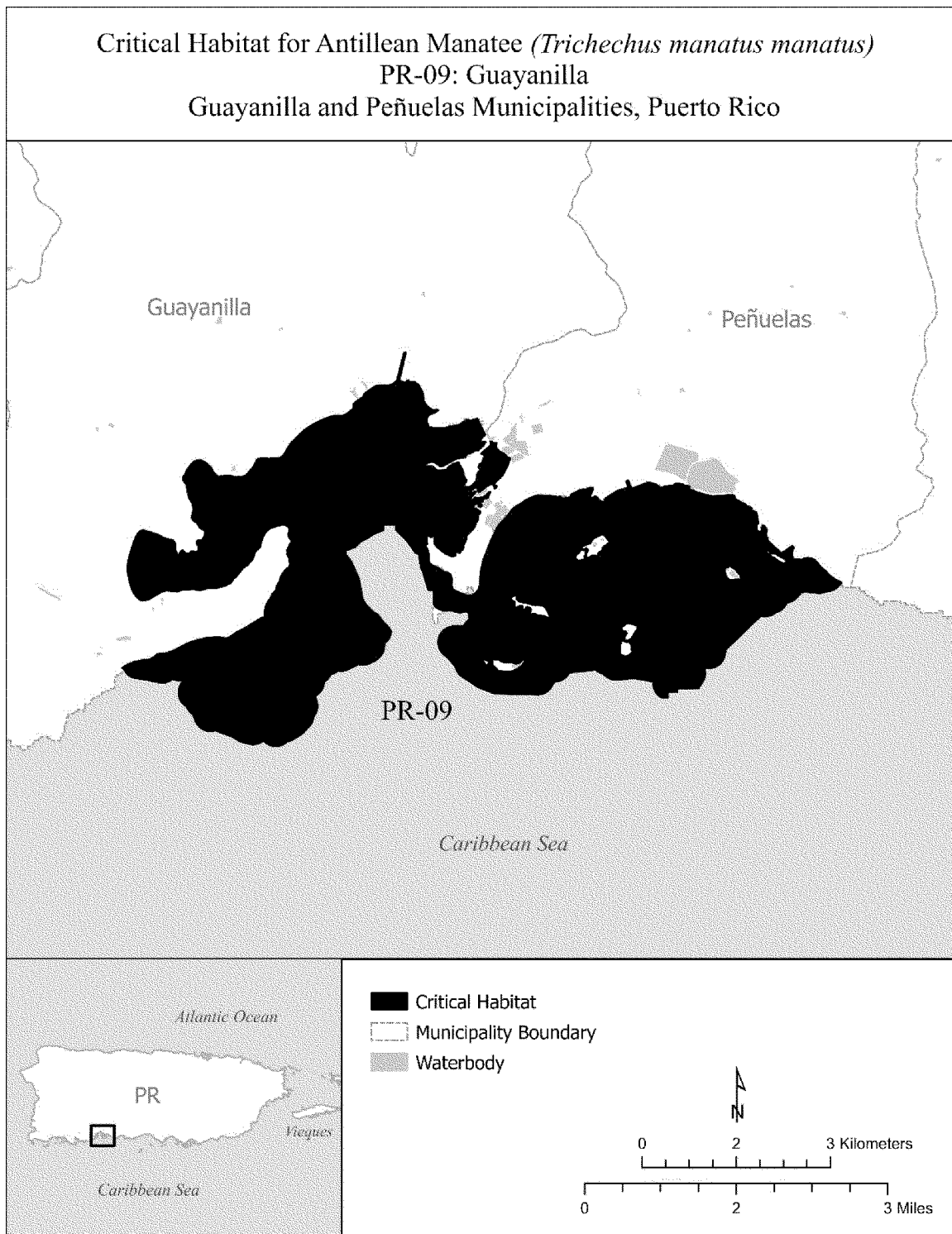
(14) Unit PR-09: Guayanilla; Guayanilla and Peñuelas Municipalities, Puerto Rico.

(i) Unit PR-09 consists of 7,404 ac (2,996 ha) of marine waters below the MHW line along the coastline of the Municipalities of Peñuelas and Guayanilla. This unit starts along the coastline of Peñon de Ponce; continues

west towards the Tallaboa River, Bahía Tallaboa, Punta Guayanilla, and Punta Pepillo, and around Bahía de Guayanilla towards Punta Verraco; and ends approximately 984 ft (300 m) west of Cerro Toro in Punta Ventana beach. The offshore boundary of this unit extends approximately 820 ft (250 m) from the outer edge of seagrass beds within the

unit, 1,640 ft (500 m) from shore if no seagrass was mapped, or to the 49-ft (15-m) bathymetry line, whichever is closest to shore. The entire unit is within Commonwealth ownership.

(ii) Map of Unit PR-09 follows: Figure 10 to Antillean Manatee (*Trichechus manatus manatus*) paragraph (14)(ii)



(15) Unit PR-10: Guánica; Guánica Municipality, Puerto Rico.

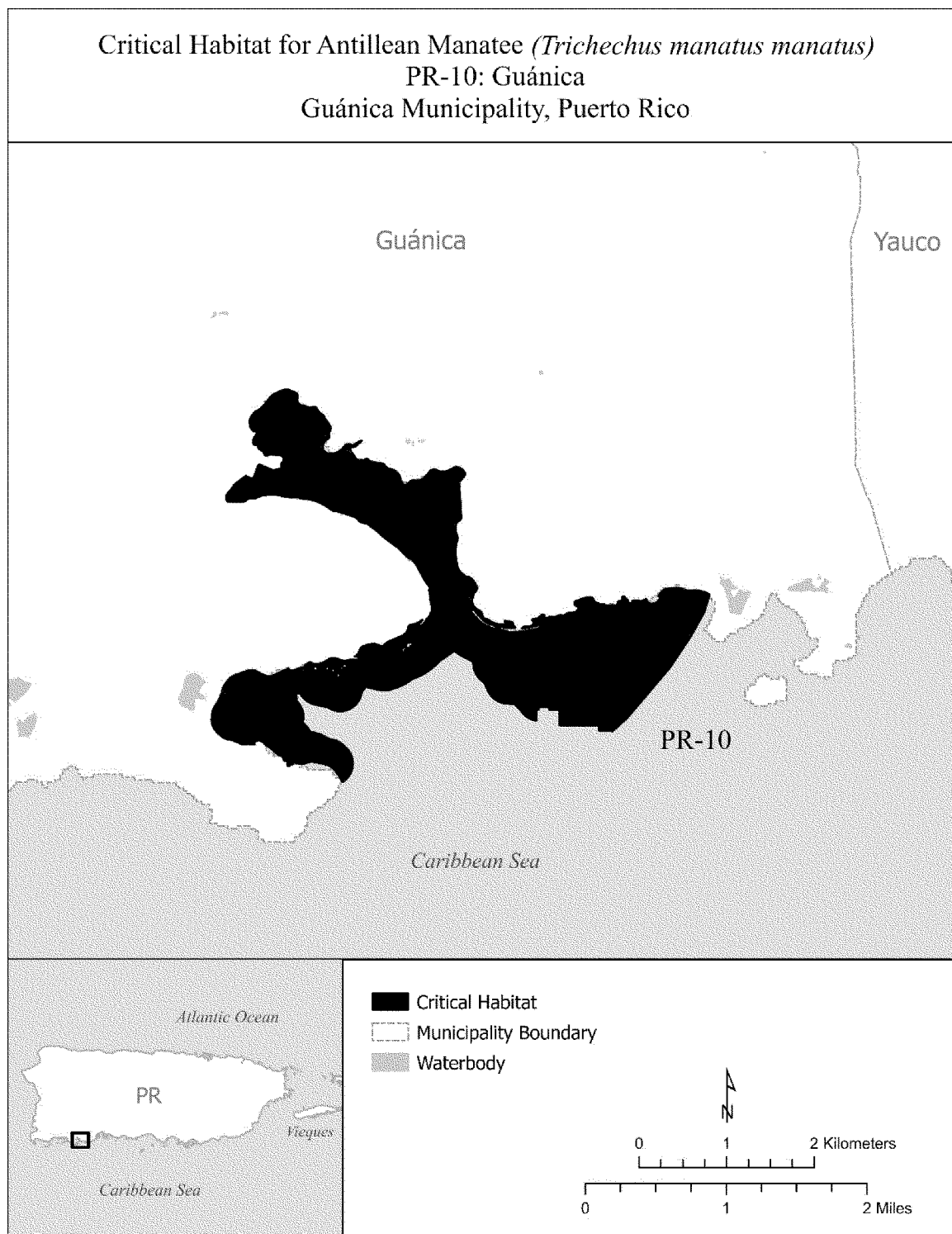
(i) Unit PR-10 consists of 1,798 ac (728 ha) of marine waters below the MHW line along the coastline of the Municipality of Guánica. This unit starts approximately 1,312 ft (400 m) west of Punta Jacinto; continues along the coastline towards and around

Guánica Bay, by Punta Meseta, Punta Pera, Punta Pescadores, and Ensenada Las Pargas; and ends in Punta Brea. The offshore boundary of this unit extends approximately 820 ft (250 m) from the outer edge of seagrass beds within the unit, 1,640 ft (500 m) from shore if no seagrass was mapped, or to the 49-ft (15-m) bathymetry line, whichever is closest

to shore. The entire unit is within Commonwealth ownership and overlaps with a portion of the Marine Extent of the Guánica Commonwealth Forest.

(ii) Map of Unit PR-10 follows:

Figure 11 to Antillean Manatee (*Trichechus manatus manatus*) paragraph (15)(ii)



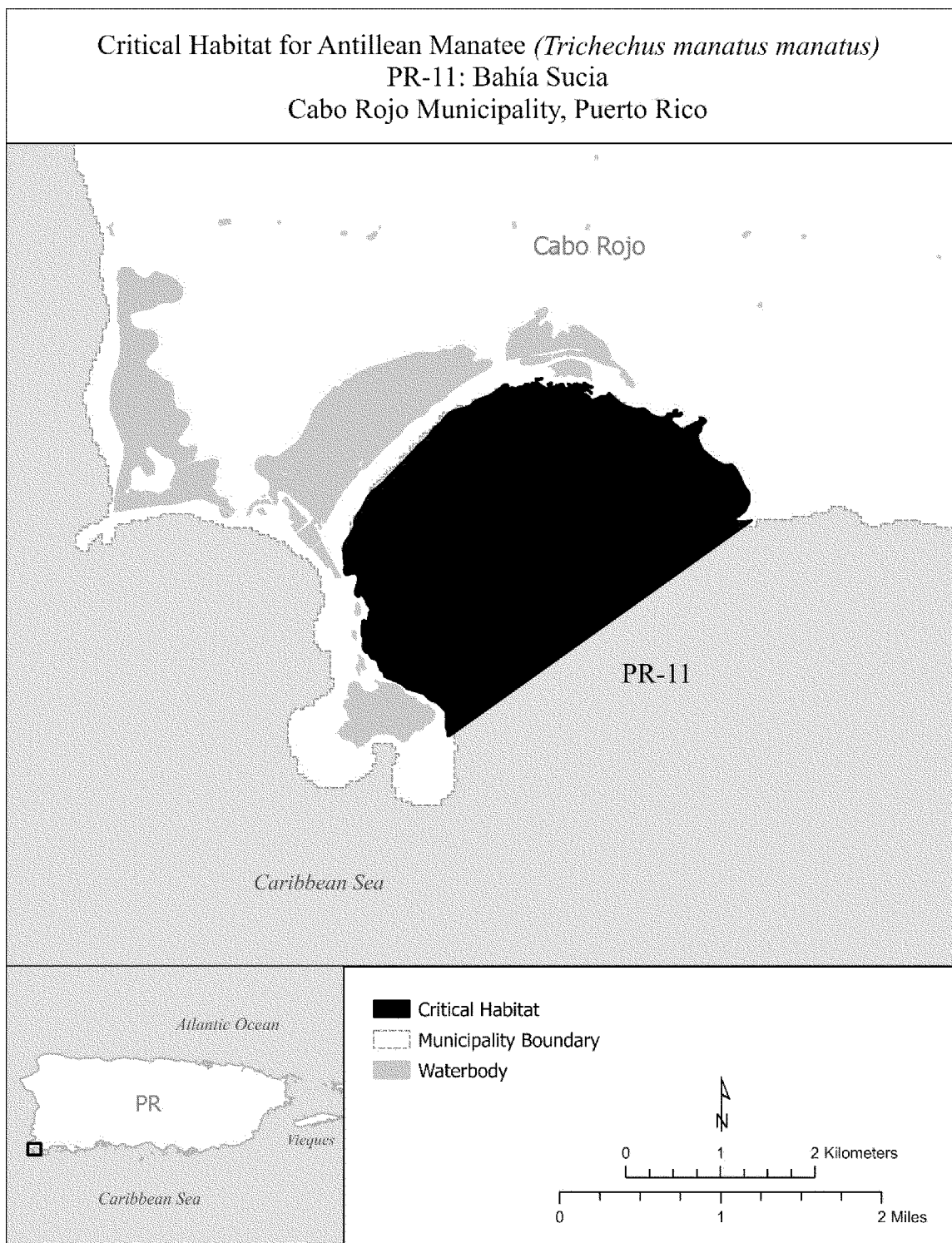
(16) Unit PR-11: Bahía Sucia; Cabo Rojo Municipality, Puerto Rico.

(i) Unit PR-11 consists of 1,732 ac (697 ha) of marine waters below the MHW line within Bahía Sucia along the coastline of the Municipality of Cabo

Rojo, Puerto Rico. Bahía Sucia extends from Punta Molino on the east and approximately 2 mi (3 km) across to the southwest towards Cabo Rojo. The entire unit is within Commonwealth ownership and overlaps with the

Marine Extent of the Boquerón Commonwealth Forest.

(ii) Map of Unit PR-11 follows: Figure 12 to Antillean Manatee (*Trichechus manatus manatus*) paragraph (16)(ii)



(17) Unit PR-12: Boquerón; Cabo Rojo Municipality, Puerto Rico.

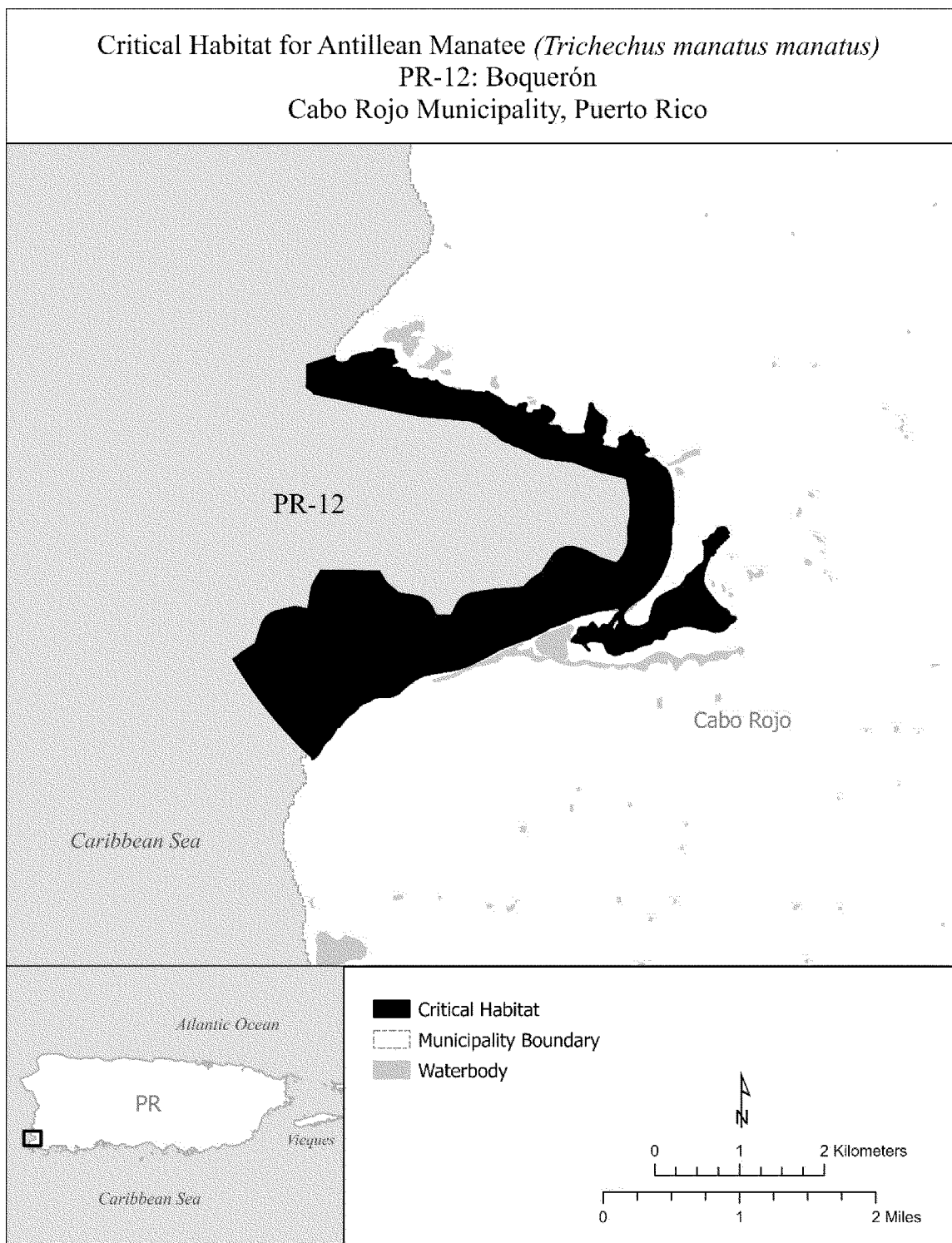
(i) Unit PR-12 consists of 1,989 ac (805 ha) of marine waters below the MHW line within Bahía de Boquerón along the coastline of the Municipality of Cabo Rojo. This unit extends from approximately 394 ft (120 m) east of Punta Melones along the coastline of

Bahía de Boquerón, including the waters inside Caño Boquerón, and towards Punta Guaniquilla to the north. The offshore boundary of this unit extends approximately 820 ft (250 m) from the outer edge of seagrass beds within the unit, 1,640 ft (500 m) from shore if no seagrass was mapped, or to

the 49-ft (15-m) bathymetry line, whichever is closest to shore. The entire unit is within Commonwealth ownership.

(ii) Map of Unit PR-12 follows:

Figure 13 to Antillean Manatee (*Trichechus manatus manatus*) paragraph (17)(ii)



(18) Unit PR-13: Mayagüez; Cabo Rojo and Mayagüez Municipalities, Puerto Rico.

(i) Unit PR-13 consists of 7,949 ac (3,217 ha) of marine waters below the MHW line along the coastline of the Municipality of Cabo Rojo and a small portion of the Municipality of Mayagüez. This unit starts

approximately 0.9 mi (1.5 km) south of Punta Arenas; continues north along the coastline of Bahía Bramadero and Punta Guanajibo; and ends approximately 1,640 ft (500 m) north of the mouth of the Guanajibo River. The offshore boundary of this unit extends approximately 820 ft (250 m) from the outer edge of seagrass beds within the

unit, 1,640 ft (500 m) from shore if no seagrass was mapped, or to the 49-ft (15-m) bathymetry line, whichever is closest to shore. The entire unit is within Commonwealth ownership.

(ii) Map of Unit PR-13 follows: Figure 14 to Antillean Manatee (*Trichechus manatus manatus*) paragraph (18)(ii)

**BILLING CODE 4333-15-C**

Florida Manatee (*Trichechus manatus latirostris*)

(1) Critical habitat units are depicted for Brevard, Broward, Charlotte, Citrus, Collier, Dixie, Gilchrist, Hendry, Hernando, Hillsborough, Indian River, Lake, Lee, Levy, Manatee, Marion, Martin, Miami-Dade, Monroe, Palm

Beach, Pasco, Pinellas, Putnam, Sarasota, Seminole, St. Lucie, Volusia, and Wakulla Counties in the State of Florida on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of the Florida manatee consist of the following components:

(i) Areas of water warmed by natural processes (e.g., spring discharges, passive thermal basins) that have either:

(A) Reliable thermal quality throughout the winter consisting of water temperatures that stay at or above:

(1) 72 degrees Fahrenheit (°F) (22 degrees Celsius (°C)) during mild weather,

(2) 68 °F (20 °C) during cold weather, and

(3) 64 °F (18 °C) during severe cold weather; or

(B) Established manatee use throughout the winter each year.

(ii) Areas supporting submerged, emergent, or floating aquatic vegetation within 18.6 miles (30 kilometers) of:

(A) The natural warm-water sources described in paragraph (2)(i) of this entry; or

(B) Other established winter manatee aggregation areas (*e.g.*, power plants with established manatee use).

(3) Critical habitat includes waters up to the ordinary high-water line. Critical habitat does not include areas of dry land such as small islands or rock

outcrops or federally maintained navigational channels.

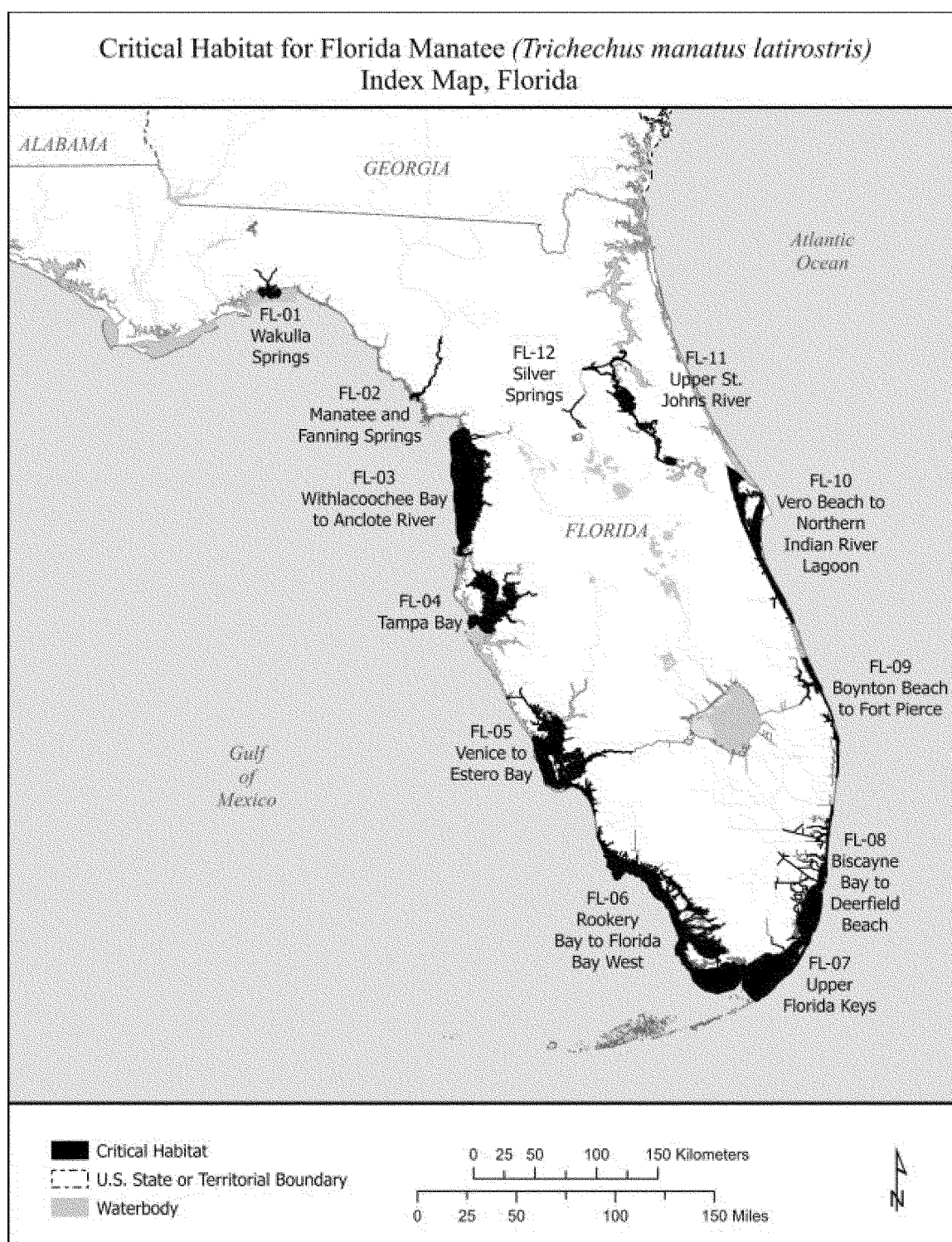
(4) Data layers defining map units were created using Esri ArcGIS mapping software along with various spatial data layers provided by multiple State and regional sources as available (*e.g.*, published data, unpublished reports, databases, and data maintained by the Florida Fish and Wildlife Conservation Commission, Florida's Water Management Districts, and the National Oceanographic and Atmospheric Administration across the range of the subspecies). The projection used in mapping and calculating distances and locations was Albers Conical Equal Area (Florida Geographic Data Library), North American Datum of 1983 High Accuracy

Reference Network. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at <https://www.regulations.gov> at Docket No. FWS-R4-ES-2024-0073 and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map follows:

Figure 1 to Florida Manatee (*Trichechus manatus latirostris*) paragraph (5)

BILLING CODE 4333-15-P



(6) Unit FL-01: Wakulla Springs; Wakulla County, Florida.

(i) Unit FL-01 consists of 22,593 acres (ac) (9,143 hectares (ha)) of springs, rivers, and open water along the Gulf of Mexico in Wakulla County, Florida. The unit extends from Wakulla Springs in Edward Ball Wakulla Springs State Park down the Wakulla River out to the Gulf of Mexico, where it fans out to

approximately 5 miles (mi) (8 kilometers (km)) east and west. The unit also extends up the St. Marks River approximately 9 river mi (14.5 km) from the confluence of the Wakulla and St. Marks Rivers. The unit includes all inshore, manatee-accessible waters below the mean high water (MHW) line within approximately 18.6 mi (30 km) of Wakulla Springs. Offshore, the unit

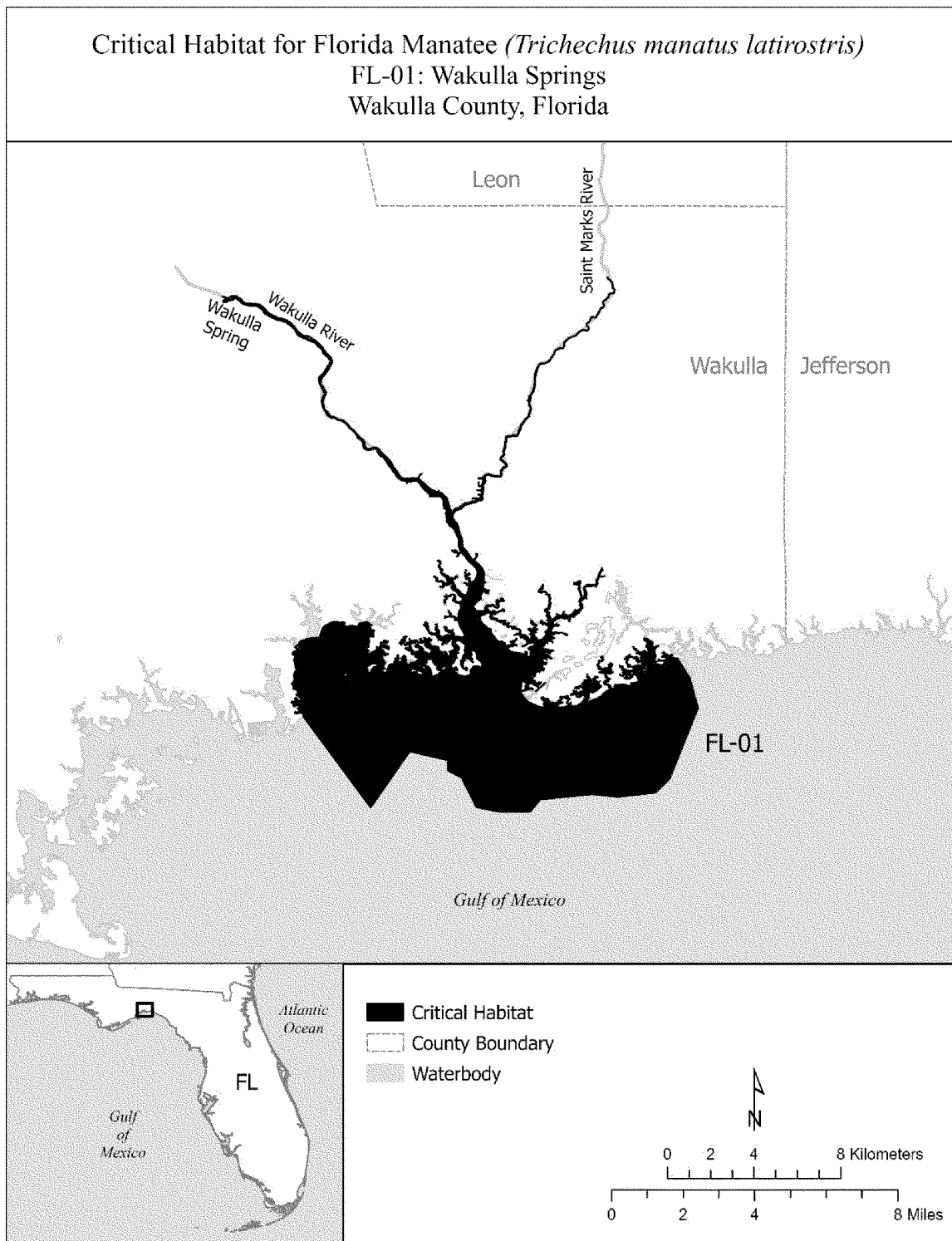
extends to either 18.6 mi (30 km) from Wakulla Springs or the outer extent of seagrass beds in the Gulf of Mexico. Areas within this unit include approximately 936 ac (379 ha) in Federal ownership, 21,598 ac (8,740 ha) in State ownership, 1 ac (less than 1 ha) in local government ownership, and 58 ac (23 ha) in private/other ownership. Federally owned lands in this unit

include St. Marks National Wildlife Refuge (NWR), and State-owned lands include Edward Ball Wakulla Springs

and San Marcos de Apalache Historic State Parks.

(ii) Map of Unit FL-01 follows:

Figure 2 to Florida Manatee (*Trichechus manatus latirostris*) paragraph (6)(ii)



(7) Unit FL-02: Manatee and Fanning Springs; Dixie, Levy, and Gilchrist Counties, Florida.

(i) Unit FL-02 consists of 4,452 ac (1,802 ha) of springs and river in the Big

Bend of the Gulf Coast in Dixie, Levy, and Gilchrist Counties, Florida. The unit extends from approximately 18.6 mi (30 km) north of Fanning Springs near Log Landing Conservation Area

downstream to the mouth of the Suwannee River at the Gulf of Mexico. The unit includes manatee-accessible waters below the MHW line within approximately 18.6 mi (30 km) of

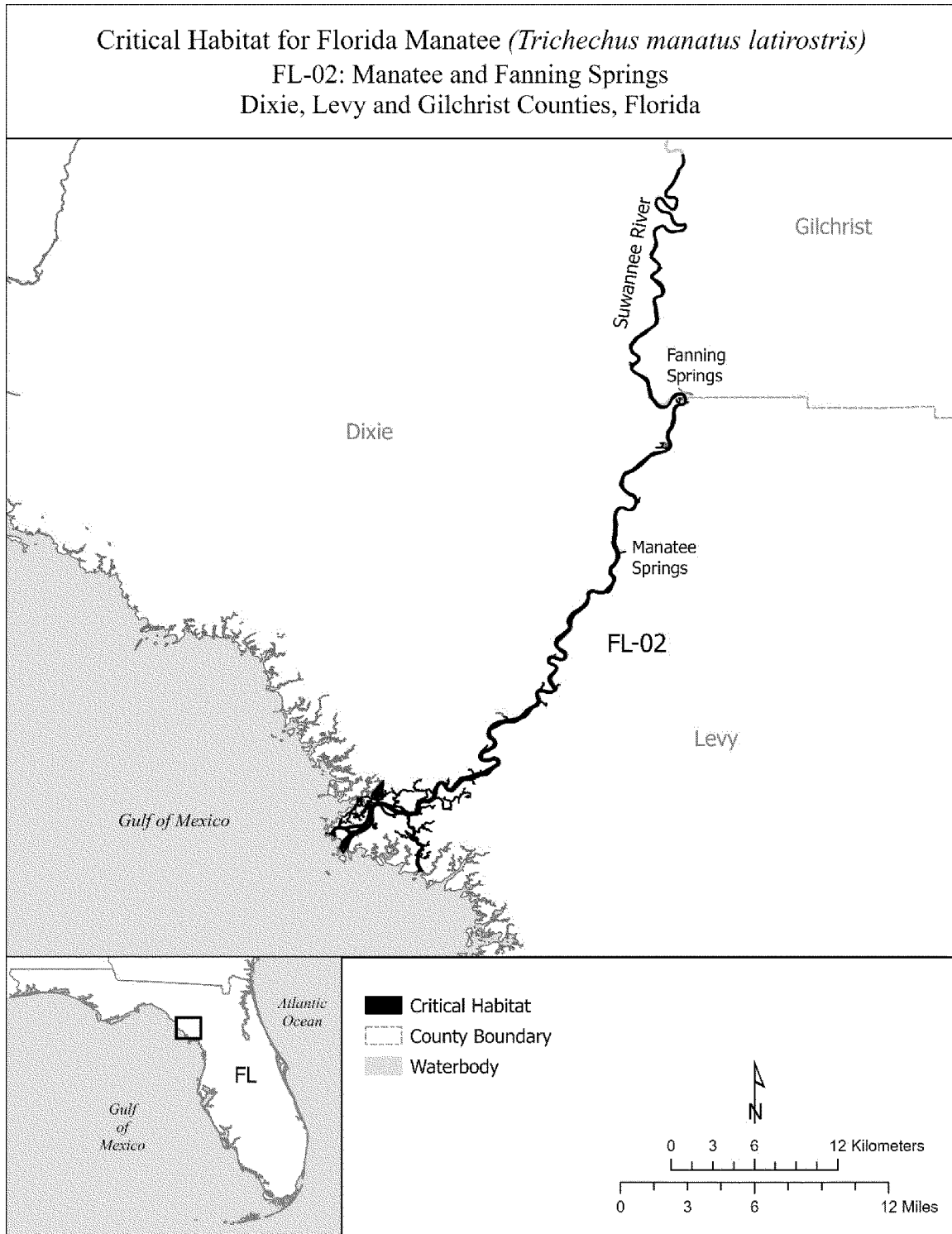
Fanning and Manatee Springs. Areas within this unit include approximately 224 ac (91 ha) in Federal ownership, 4,157 ac (1,682 ha) in State ownership, 12 ac (5 ha) in local government ownership, and 59 ac (24 ha) in private/

other ownership. Federally owned lands in this unit include Lower Suwannee NWR, and State-owned lands include Manatee Springs and Fanning Springs State Parks and Suwannee River Water

Management District (WMD) Conservation Areas.

(ii) Map of Unit FL-02 follows:

Figure 3 to Florida Manatee (*Trichechus manatus latirostris*) paragraph (7)(ii)



(8) Unit FL-03: Withlacoochee Bay to Anclote River; Levy, Citrus, Hernando, Pasco, and Pinellas Counties, Florida.

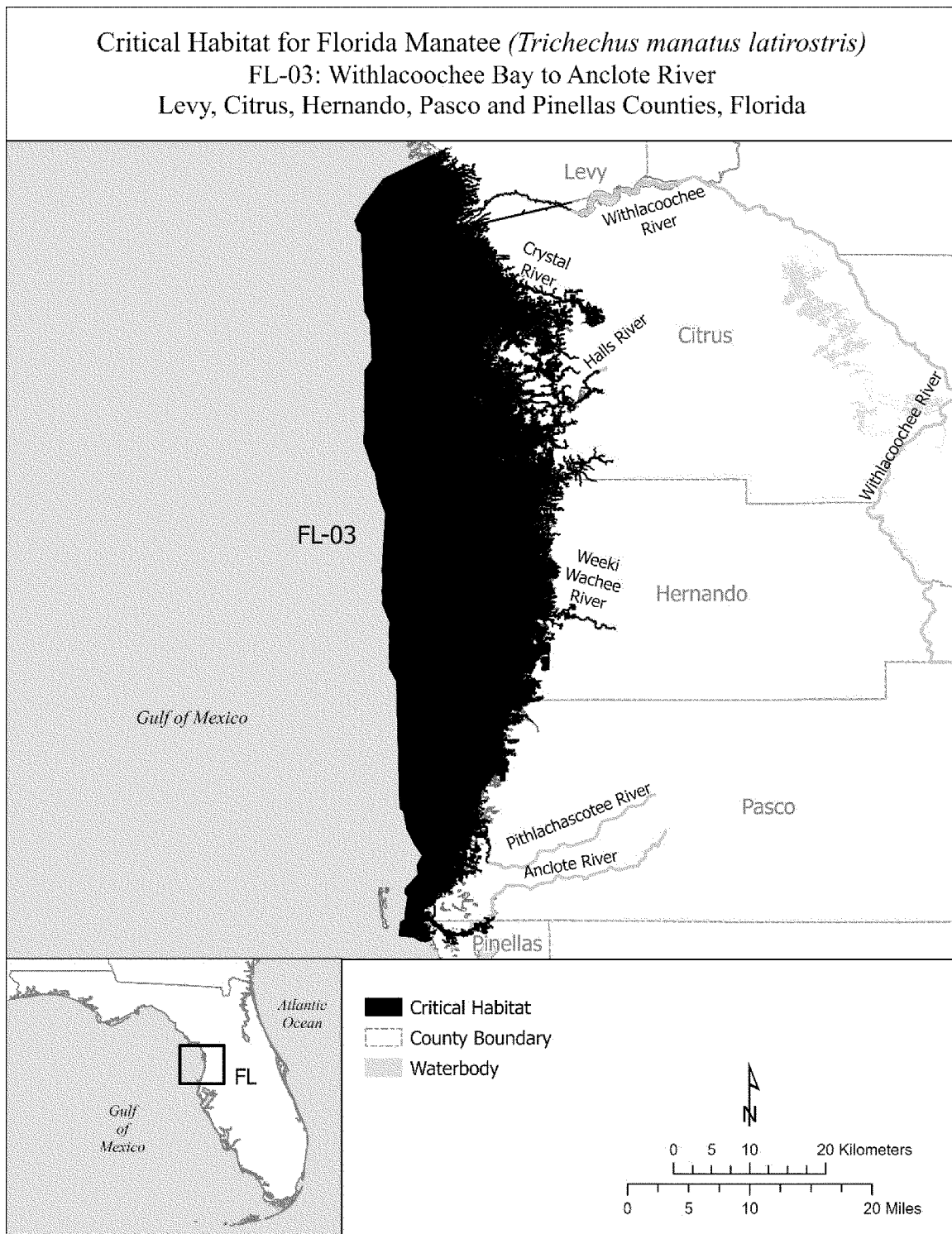
(i) Unit FL-03 consists of 364,584 ac (147,542 ha) of springs, rivers, and open water along the Gulf of Mexico in Levy, Citrus, Hernando, Pasco, and Pinellas Counties, Florida. The unit extends from approximately 6 mi (9.7 km) north of the mouth of the Withlacoochee River to Howard Beach Park, which is approximately 1.5 mi (2.4 km) south of the mouth of the Anclote River. The unit includes all inshore, manatee-

accessible waters below the MHW line within approximately 18.6 mi (30 km) of the Crystal River Springs Complex, Homosassa Springs, the Chassahowitzka Springs Group, the Weeki Wachee Spring Complex, and Cow Creek Spring. Offshore, the unit extends to either 18.6 mi (30 km) from the springs or to the outer extent of seagrass beds in the Gulf of Mexico. Areas within this unit include approximately 21,131 ac (8,551 ha) in Federal ownership, 335,064 ac (135,596 ha) in State ownership, 1,670 ac (676 ha) in local government

ownership, and 6,716 ac (2,719 ha) in private/other ownership. Federally owned lands in this unit include Crystal River and Chassahowitzka NWRs; State-owned lands in this unit include Anclote Key Preserve State Park, Marjorie Harris Carr Cross Florida Greenway State Recreation and Conservation Area, and Withlacoochee State Forest.

(ii) Map of Unit FL-03 follows:

Figure 4 to Florida Manatee (*Trichechus manatus latirostris*) paragraph (8)(ii)



(9) Unit FL-04: Tampa Bay; Pinellas, Hillsborough, and Manatee Counties, Florida.

(i) Unit FL-04 consists of 181,015 ac (73,254 ha) of Tampa Bay and the springs, rivers, and canals surrounding the bay in Pinellas, Hillsborough, and Manatee Counties, Florida. The unit includes all inshore waters of Tampa Bay east of the Skyway Bridge on

Interstate 275 and inshore waters from Fort De Soto Park to the Pinellas Bayway (State Road 682). The unit includes manatee-accessible waters below the MHW line within approximately 18.6 mi (30 km) from the established winter manatee aggregation areas near Duke Energy's Bartow Power Plant, Tampa Electric Company's Bayside Power Plant, and Tampa

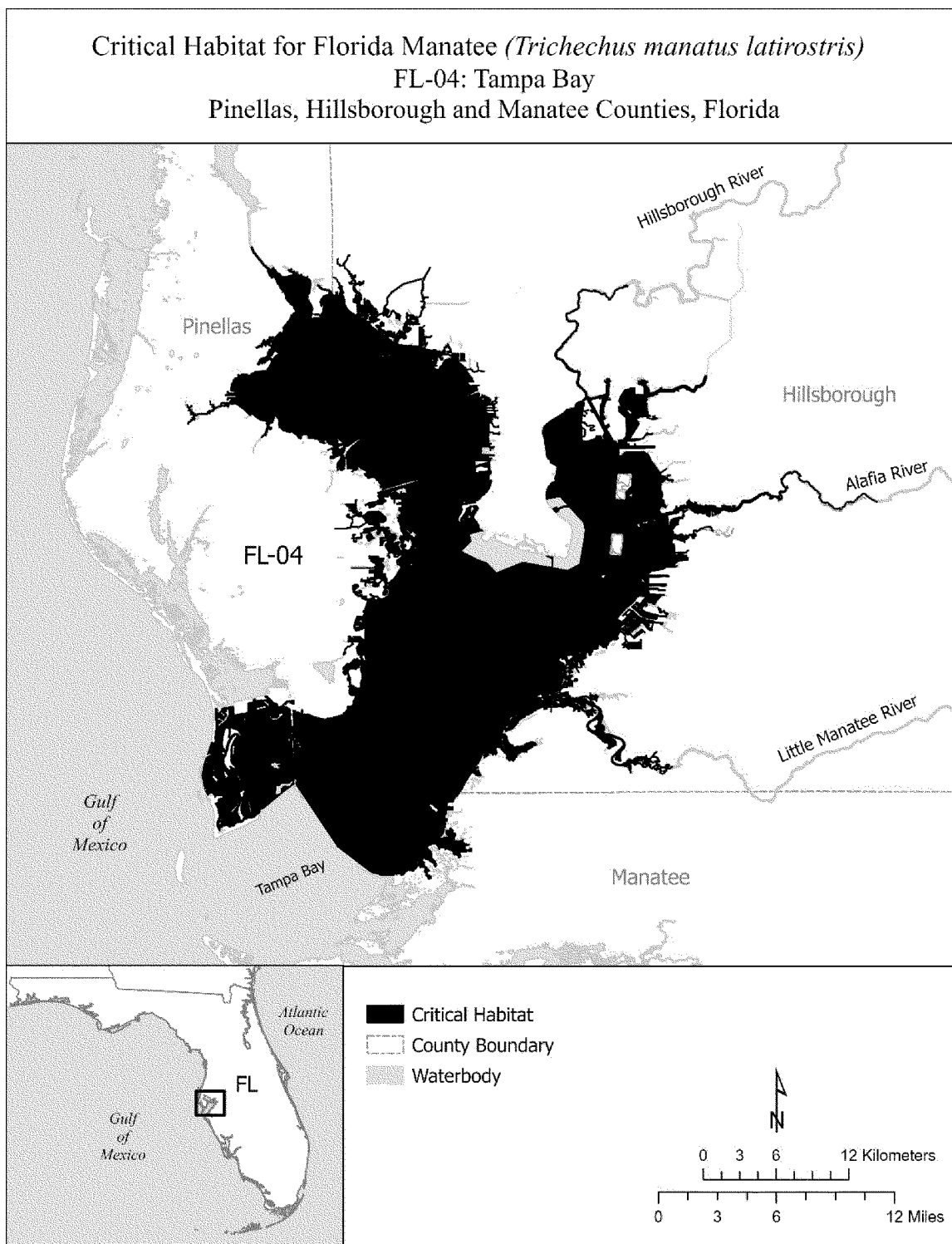
Electric Company's Big Bend Station. Areas within this unit include approximately 682 ac (276 ha) in Federal ownership, 68,347 ac (27,659 ha) in State ownership, 108,805 ac (44,032 ha) in local government ownership, and 3,181 ac (1,287 ha) in private/other ownership. Federally owned lands in this unit include Pinellas NWR; State-owned lands in this

unit include Cockroach Bay Preserve, Terra Ceia Preserve, Little Manatee

River, and Skyway Fishing Pier State Parks.

(ii) Map of Unit FL-04 follows:

Figure 5 to Florida Manatee (*Trichechus manatus latirostris*) paragraph (9)(ii)



(10) Unit FL-05: Venice to Estero Bay; Sarasota, Charlotte, Lee, Hendry, and Collier Counties, Florida.

(i) Unit FL-05 consists of 219,217 ac (88,714 ha) of Charlotte Harbor,

Gasparilla Sound, Matlacha Pass, and Estero Bay, as well as the rivers, canals, and springs surrounding them, in Sarasota, Charlotte, Lee, Collier, and Hendry Counties, Florida. The unit

includes inshore waters from the Boca Grande Causeway south to Vanderbilt Beach Road. From Charlotte Harbor, the unit extends up the Myakka River, then down Curry Creek to the Venice Inlet.

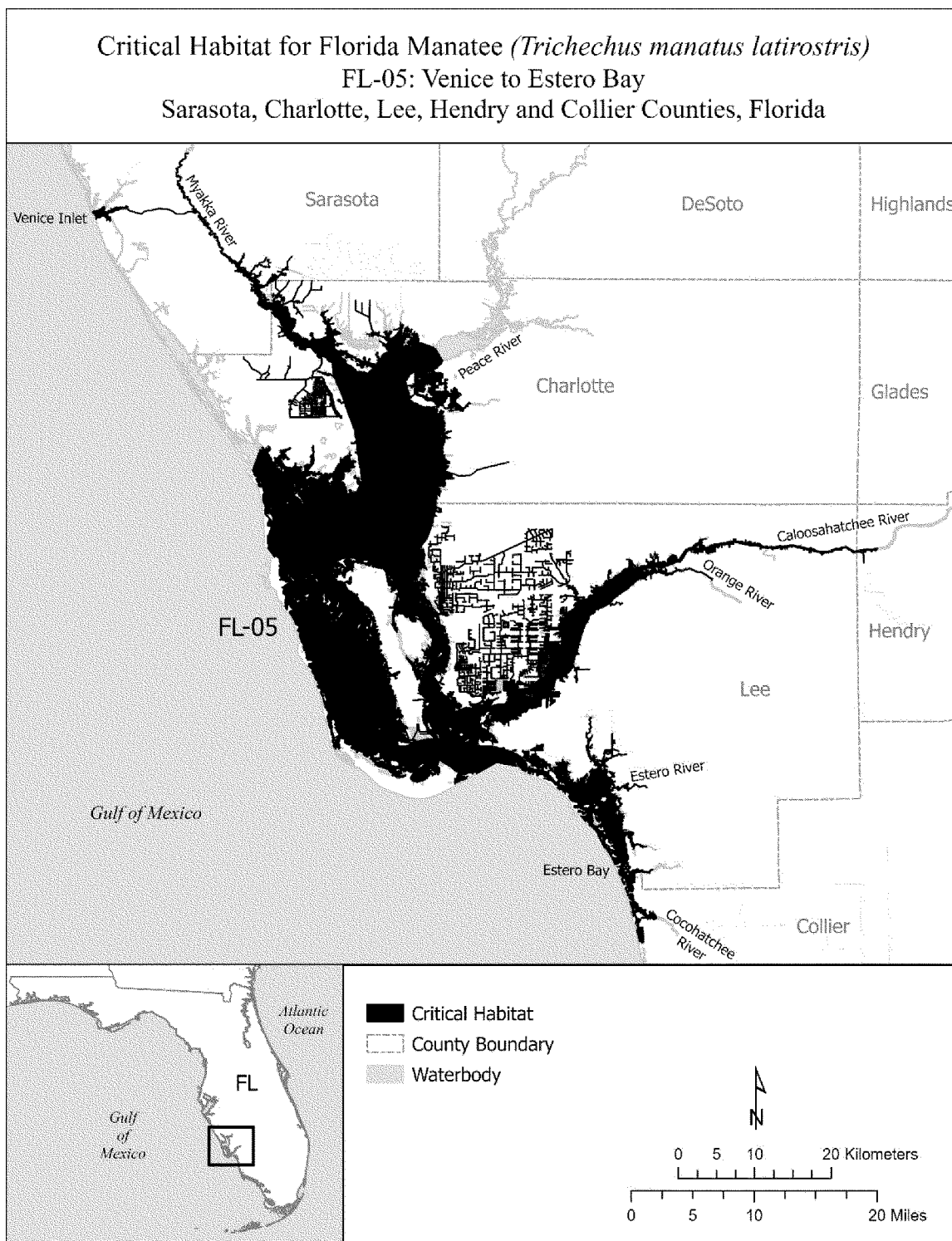
The unit does not include the Peace River east of the Barron Collier Bridge on State Road 41. The unit includes the Caloosahatchee River from its mouth near Cape Coral to near the Caloosahatchee and C-43 Basin Storage Reservoir. The unit includes manatee-accessible waters below the MHW line within approximately 18.6 mi (30 km) from the warm-water sites of Warm Mineral Springs, Matlacha Isles, North Cape Coral Canal, and Ten Mile Canal

Borrow Pit, and the established winter manatee aggregation area near Florida Power and Light's Fort Myers Power Plant. Areas within this unit include approximately 2,048 ac (829 ha) in Federal ownership, 191,975 ac (77,690 ha) in State ownership, 16,821 ac (6,807 ha) in local government ownership, and 8,373 ac (3,388 ha) in private/other ownership. Federally owned lands in this unit include Caloosahatchee, Matlacha Pass, Pine Island, Island Bay,

and J.N. Ding Darling NWRs. State-owned lands in this unit include Lovers Key, Charlotte Harbor Preserve, Estero Bay Preserve, Delnor-Wiggins Pass, and Cayo Costa State Parks; Myakka State Forest; Southwest Florida WMD's Deer Prairie Creek Preserve; and the C-43 Basin Storage Reservoir.

(ii) Map of Unit FL-05 follows:

Figure 6 to Florida Manatee (*Trichechus manatus latirostris*) paragraph (10)(ii)



(11) Unit FL-06: Rookery Bay to Florida Bay West; Collier, Monroe, and Miami-Dade Counties, Florida.

(i) Unit FL-06 consists of 450,052 ac (182,130 ha) of inshore and coastal waters from Naples Bay to the western half of Florida Bay in Collier, Monroe, and Miami-Dade Counties, Florida. The unit includes inshore waters of Naples from the Golden Gate Parkway (County

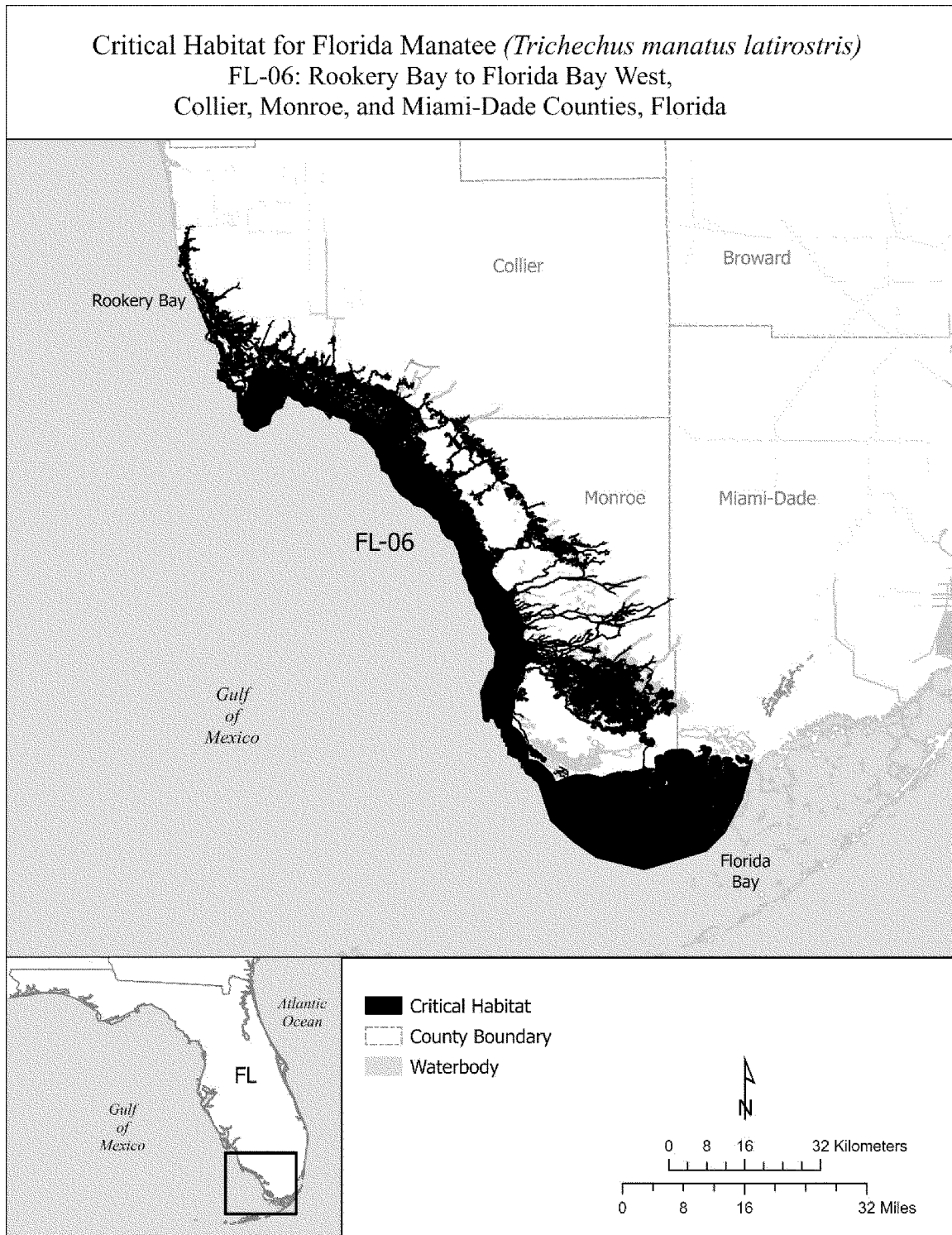
Road 886) bridge over Gordon River to Marco Island. From Ten Thousand Island to Florida Bay, the unit includes inshore waters and offshore waters ranging from 1 to 13 mi (1.6 to 21 km) offshore. The unit includes manatee-accessible waters below the MHW line within approximately 18.6 mi (30 km) from the warm-water sites of Henderson Creek, Marco Island Canals, Port of the

Islands Canals, Port of the Islands Mitigation Site, Wooten's Pond, Big Cypress Preserve Canal, Mud Bay, and the Everglades Complex. Areas within this unit include approximately 343,626 ac (139,061 ha) in Federal ownership, 105,559 ac (42,718 ha) in State ownership, 18 ac (7 ha) in local government ownership, and 849 ac (344 ha) in private/other ownership.

Federally owned lands in this unit include Ten Thousand Island NWR, Everglades National Park, and Big Cypress National Preserve; State-owned

lands in this unit include Collier-Seminole and Fakahatchee Strand Preserve State Parks, and Rookery Bay National Estuarine Research Reserve.

(ii) Map of Unit FL-06 follows:
Figure 7 to Florida Manatee (*Trichechus manatus latirostris*) paragraph (11)(ii)



(12) Unit FL-07: Upper Florida Keys; Miami-Dade and Monroe Counties, Florida.

(i) Unit FL-07 consists of 244,254 ac (98,846 ha) of inshore and coastal waters of the Upper Florida Keys, from Islamorada north to Old Rhodes Key, in

Monroe and Miami-Dade Counties, Florida. The unit includes waters of Eastern Florida Bay to approximately 13 mi (21 km) offshore, inshore waters and

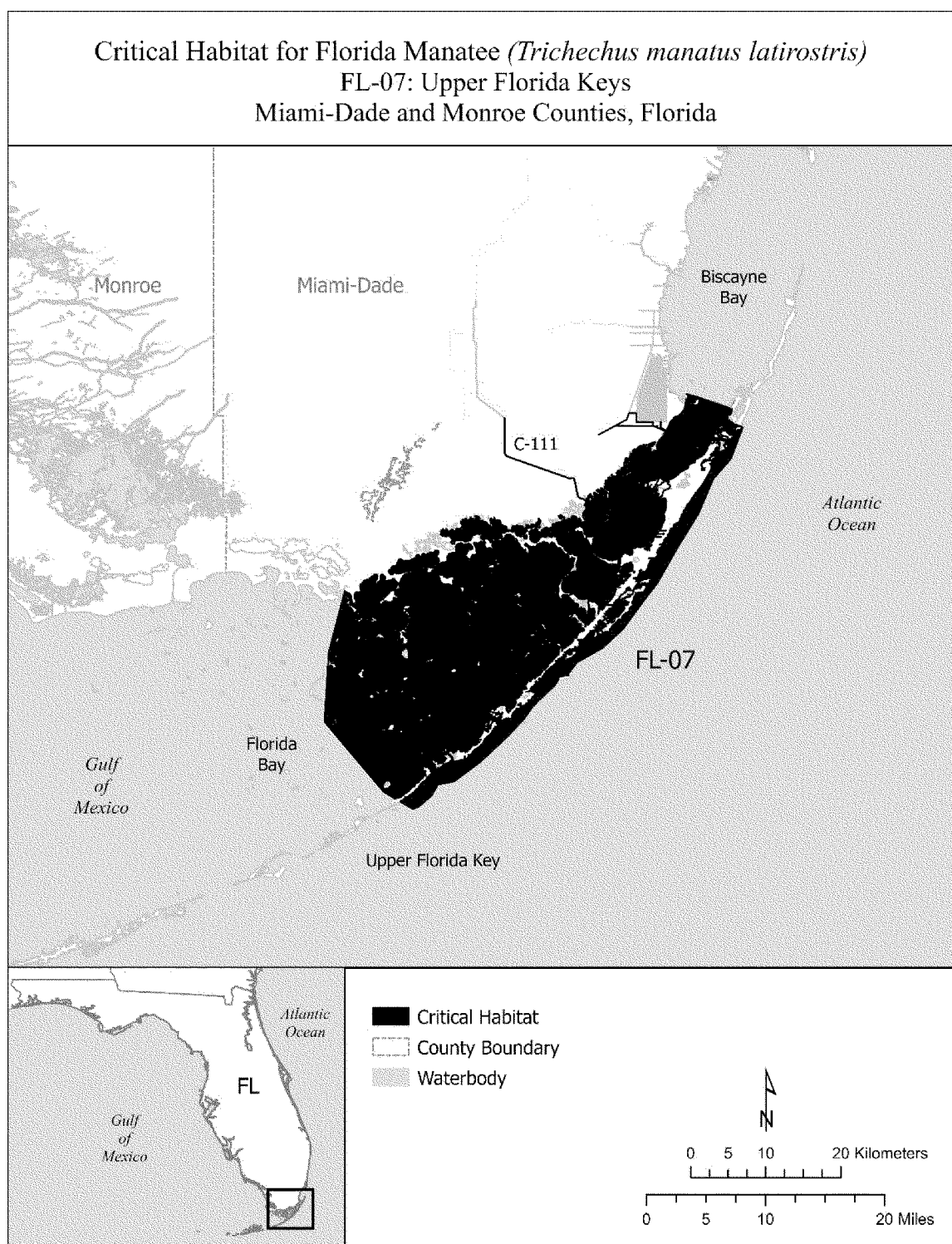
canals of the Keys, and waters of the Atlantic Ocean approximately 0.5 to 1.5 mi (0.8 to 2.4 km) offshore. The unit also extends inland into the Glades Canal approximately 11 mi (17.7 km) and into the Florida Power and Light Everglades Mitigation Bank Canals approximately 7 mi (11 km). The unit includes manatee-accessible waters below the MHW line within approximately 18.6 mi (30 km) from the

warm-water sites of the Upper Keys Canals and Brown Street Canal. Areas within this unit include approximately 161,201 ac (65,236 ha) in Federal ownership, 76,635 ac (31,013 ha) in State ownership, 2,762 ac (1,118 ha) in local government ownership, and 3,656 ac (1,480 ha) in private/other ownership. Federally owned lands in this unit include Crocodile Lake NWR, Everglades National Park, and Biscayne

National Park. State-owned lands in this unit include Lignumvitae Key Botanical, John Pennkamp Coral Reef, Windley Key Fossil Reef Geological, and Dagny Johnson Key Largo Hammock Botanical State Parks, and the Florida Keys Wildlife and Environmental Area.

(ii) Map of Unit FL-07 follows:

Figure 8 to Florida Manatee (*Trichechus manatus latirostris*) paragraph (12)(ii)



(13) Unit FL-08: Biscayne Bay to Deerfield Beach; Miami-Dade, Broward, and Palm Beach Counties, Florida.

(i) Unit FL-08 consists of 146,725 ac (59,378 ha) of inshore waters from Biscayne Bay to Deerfield Beach in Miami-Dade, Broward, and Palm Beach Counties, Florida. The unit includes inshore waters of Biscayne Bay and the intracoastal waterways, rivers, and

canals (up to 24 mi (38.6 km) inland) along the southeastern Florida coast from the southern end of Biscayne National Park to Deerfield Beach. The unit includes manatee-accessible waters below the MHW line within approximately 18.6 mi (30 km) from the warm-water sites of the Coral Gables Waterway, Palmer Lake, and the Little River-S-27 structure, as well as the

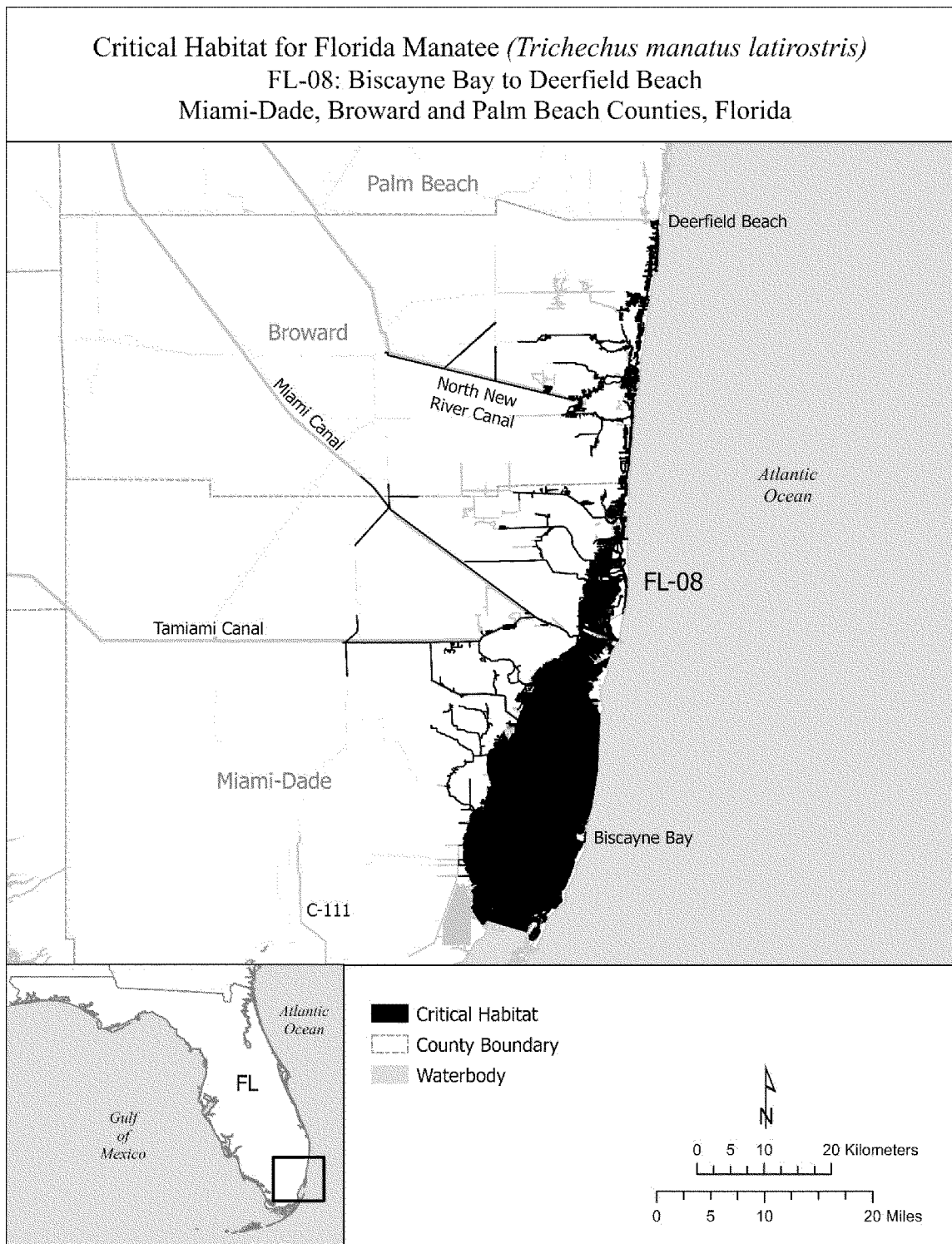
established winter manatee aggregation areas near Florida Power and Light's Dania Beach and Port Everglades Energy Centers. Areas within this unit include approximately 91,404 ac (36,990 ha) in Federal ownership, 46,768 ac (18,926 ha) in State ownership, 5,525 ac (2,236 ha) in local government ownership, and 3,028 ac (1,225 ha) in private/other ownership. Federally owned lands in

this unit include Biscayne National Park. State-owned lands in this unit include Oleta River, Bill Baggs Cape Florida, and Dr. Von D. Mizell-Eula

Johnson State Parks, and the Everglades and Francis S. Taylor Wildlife Management Area.

(ii) Map of Unit FL-08 follows:

Figure 9 to Florida Manatee (*Trichechus manatus latirostris*) paragraph (13)(ii)



(14) Unit FL-09: Boynton Beach to Fort Pierce; Palm Beach, Martin, and St. Lucie Counties, Florida.

(i) Unit FL-09 consists of 37,829 ac (15,309 ha) of inshore waters from approximately 1.3 mi (2 km) south of the Boynton Inlet to approximately 4.7

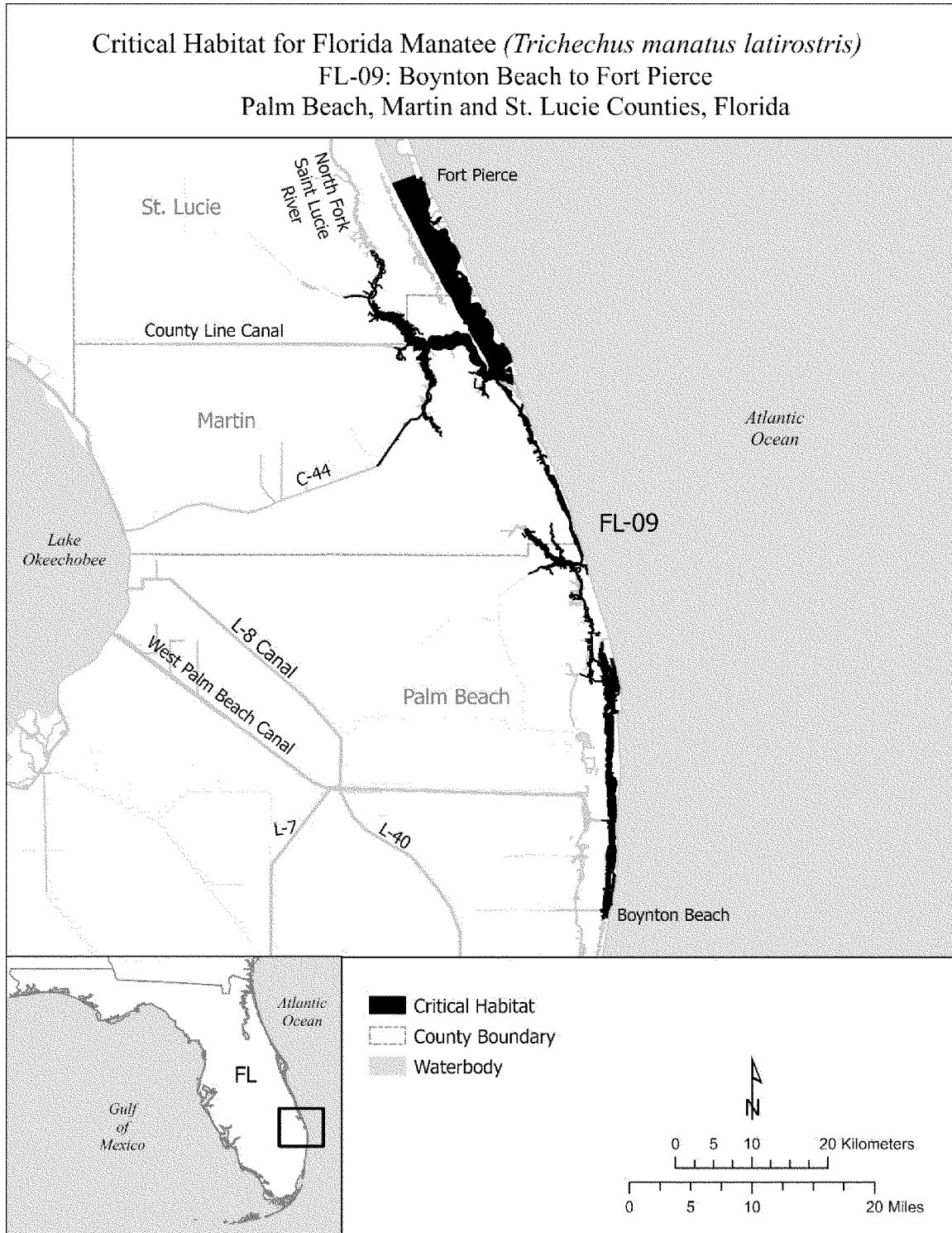
mi (7.6 km) south of the Fort Pierce Inlet in Palm Beach, Martin, and St. Lucie Counties, Florida. The unit includes inshore waters (up to 18 mi (29 km)

inland) of the intracoastal waterways, rivers, and canals along the eastern Florida coast even with Lake Okeechobee. The unit includes manatee-accessible waters below the MHW line within approximately 18.6 mi (30 km) from the warm-water site of

Willoughby Creek and the established winter manatee aggregation area near Florida Power and Light's Riviera Beach Energy Center. Areas within this unit include approximately 203 ac (82 ha) in Federal ownership, 35,967 ac (14,555 ha) in State ownership, 533 ac (216 ha)

in local government ownership, and 1,126 ac (456 ha) in private/other ownership.

(ii) Map of Unit FL-09 follows: Figure 10 to Florida Manatee (*Trichechus manatus latirostris*) paragraph (14)(ii)



(15) Unit FL–10: Vero Beach to Northern Indian River Lagoon; Indian River, Brevard, and Volusia Counties, Florida.

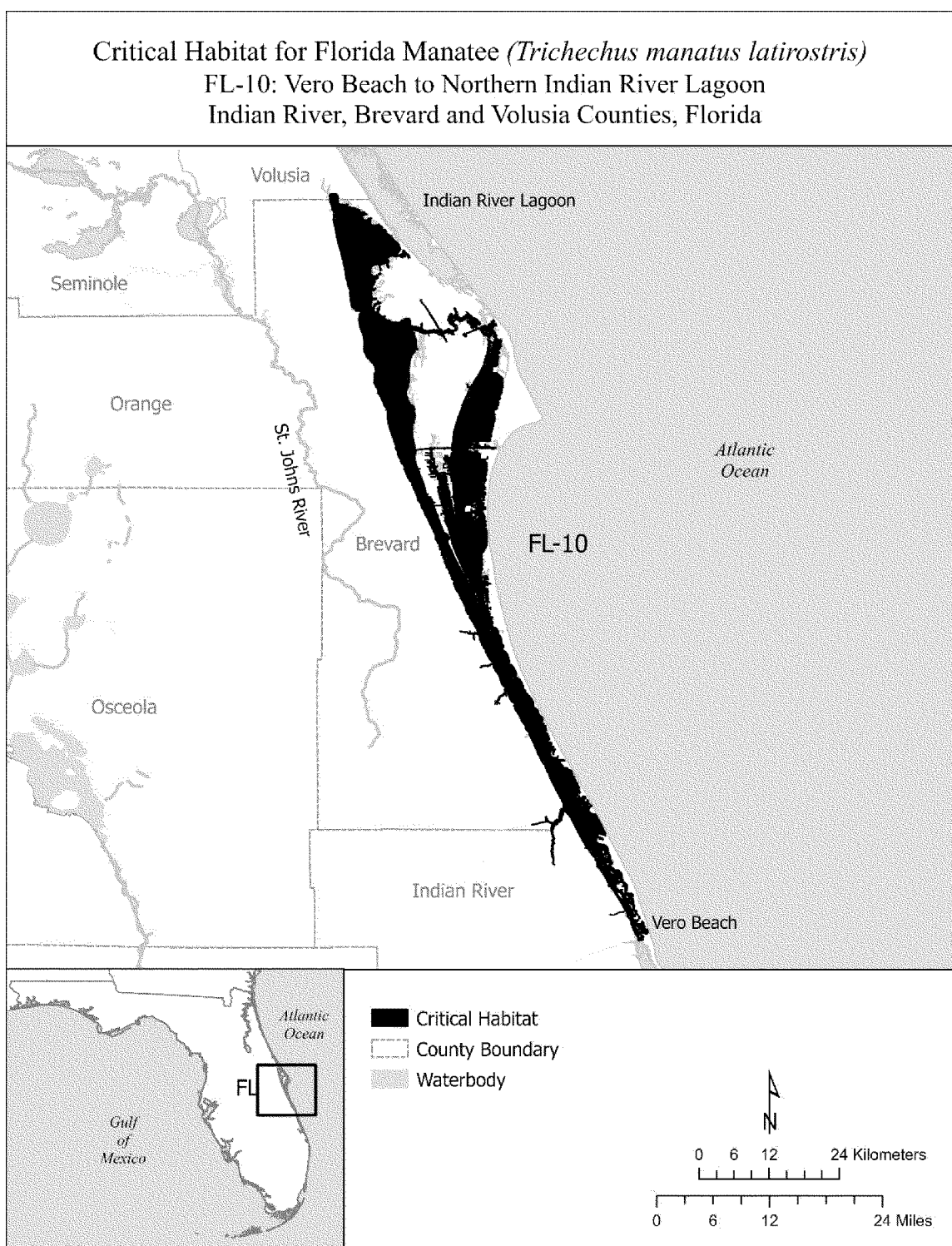
(i) Unit FL–10 consists of 153,588 ac (62,155 ha) of inshore waters from the Merrill P. Barber Bridge (on State Road 60) in Vero Beach to the northern tip of the Indian River Lagoon in Indian River, Brevard, and Volusia Counties, Florida. The unit includes rivers and canals along the Indian River Lagoon and Banana River on the central east coast of Florida. The unit includes manatee-accessible waters below the MHW line

within approximately 18.6 mi (30 km) from the warm-water sites of the Sebastian River (C–54 Canal), DeSoto Canal, Berkeley Canal, and Banana River Marine Service Marina, as well as the established winter manatee aggregation area near Florida Power and Light's Port Canaveral Energy Center. The unit does not extend all the way through the Haulover Canal or include Mosquito Lagoon. Areas within this unit include approximately 33,077 ac (13,386 ha) in Federal ownership, 117,318 ac (47,477 ha) in State ownership, 1,782 ac (721 ha) in local

government ownership, and 1,410 ac (571 ha) in private/other ownership. Federally owned lands in this unit include Merritt Island, Pelican Island, and Archie Carr NWRs; State-owned lands in this unit include Indian River Lagoon Preserve, St. Sebastian River Preserve, and Sebastian Inlet State Parks.

(ii) Map of Unit FL–10 follows:

Figure 11 to Florida Manatee
(*Trichechus manatus latirostris*)
paragraph (15)(ii)



(16) Unit FL-11: Upper St. Johns River; Lake, Seminole, Volusia, Marion, and Putnam Counties, Florida.

(i) Unit FL-11 consists of 79,444 ac (32,150 ha) of springs, rivers, and lakes in the Upper St. Johns, Hontoon Dead, Ziegler Dead, Norris Dead, and Ocklawaha Rivers in Lake, Seminole, Volusia, Marion, and Putnam Counties, Florida. The unit extends from Lake

Monroe north to Memorial Bridge (State Road 100) over the St. Johns River, east to the mouth of Dunns Creek at Crescent Lake, and west to the Rodman Reservoir through the Cross Florida Barge Canal. The unit also includes the section of the Ocklawaha River from the St. Johns River to the Rodman Dam. The unit includes manatee-accessible waters below the MHW line within

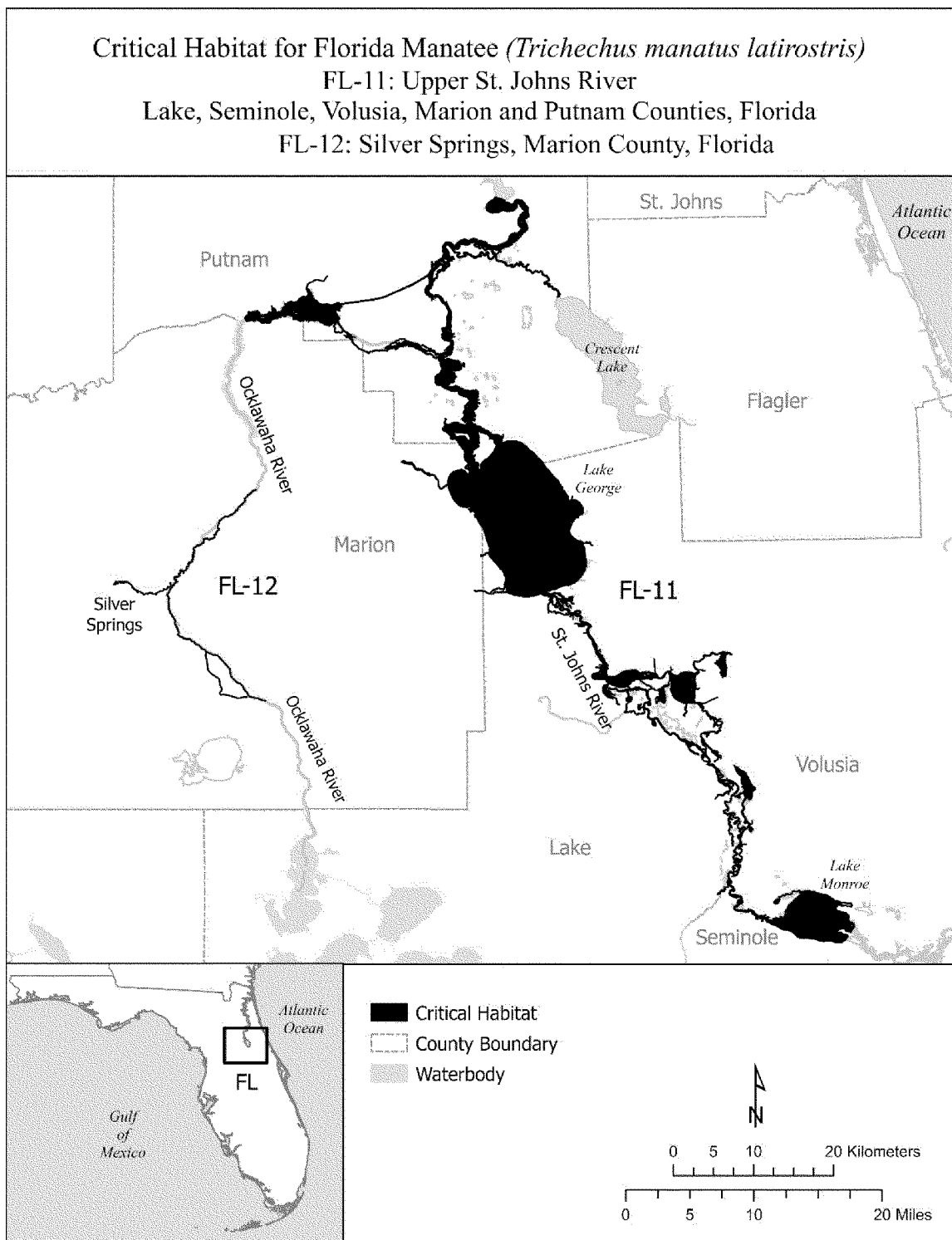
approximately 18.6 mi (30 km) from the warm-water sites of Blue, Silver Glen, Salt, and Welaka Springs. Areas within this unit include approximately 1,815 ac (735 ha) in Federal ownership, 76,984 ac (31,154 ha) in State ownership, 150 ac (61 ha) in local government ownership, and 495 ac (200 ha) in private/other ownership. Federally owned lands in this unit include Lake

Woodruff NWR and Ocala National Forest. State-owned lands in this unit include DeLeon Springs, Blue Spring, Hontoon Island, Ravine Gardens, Lower Wekiva River Preserve, and Dunns

Creek State Parks; Marjorie Harris Carr Cross Florida Greenway State Recreation and Conservation Area; Welaka State Forest; and Lake George State Forest.

(ii) Map of Units FL-11 and FL-12 follows:

Figure 12 to Florida Manatee (*Trichechus manatus latirostris*) paragraph (16)(ii)



(17) Unit FL-12: Silver Springs; Marion County, Florida.

(i) Unit FL-12 consists of 438 ac (177 ha) of springs and rivers in Marion County, Florida. The unit extends from

Silver Springs down Silver River, then north and south into the Ocklawaha River approximately 13 mi (21 km) to

Cedar Creek to the north and Southeast Highway 464C to the south. The unit includes manatee-accessible waters below the MHW line within approximately 18.6 mi (30 km) from the warm-water site of Silver Springs. Areas within this unit include approximately 6 ac (2 ha) in Federal ownership, 417 ac (169 ha) in State ownership, and 15 ac

(6 ha) in private/other ownership. Federally owned lands in this unit include the Ocala National Forest; State-owned lands in this unit include Silver Springs State Park, Marjorie Harris Carr Cross Florida Greenway State Recreation and Conservation Area, and the Ocklawaha Prairie Restoration Area.

(ii) Map of Unit FL-12 is provided at paragraph (16)(ii) of this entry.

* * * * *

Madonna Baucum,
Regulations and Policy Chief, Division of Policy, Economics, Risk Management, and Analytics of the Joint Administrative Operations, U.S. Fish and Wildlife Service.

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