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Title 3—

Notice of May 7, 2025

The President

Continuation of the National Emergency With Respect to the Actions of the Government of Syria

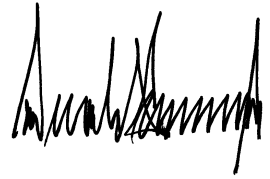
On May 11, 2004, pursuant to his authority under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) and the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003 (Public Law 108–175), the President issued Executive Order 13338, in which he declared a national emergency with respect to the actions of the Government of Syria. The national emergency was modified in scope and relied upon for additional steps taken in Executive Order 13399 of April 25, 2006, Executive Order 13460 of February 13, 2008, Executive Order 13572 of April 29, 2011, Executive Order 13573 of May 18, 2011, Executive Order 13582 of August 17, 2011, Executive Order 13606 of April 22, 2012, and Executive Order 13608 of May 1, 2012.

The President took these actions to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions of the Government of Syria in supporting terrorism, maintaining its then-existing occupation of Lebanon, pursuing weapons of mass destruction and missile programs, and undermining United States and international efforts with respect to the stabilization and reconstruction of Iraq.

Syria's lack of structure and limited governance capability with respect to chemical weapons and combatting terrorist organizations continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. As a result, the national emergency declared in Executive Order 13338, which was expanded in scope in Executive Order 13572, and with respect to which additional steps were taken in Executive Order 13399, Executive Order 13460, Executive Order 13573, Executive Order 13582, Executive Order 13606, and Executive Order 13608, must continue in effect beyond May 11, 2025. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13338.

The United States will consider changes in policies and actions of Syria in determining whether to continue or terminate this national emergency in the future.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

A handwritten signature in black ink, appearing to be "Donald Trump", located in the upper right quadrant of the page.

THE WHITE HOUSE,
May 7, 2025.

[FR Doc. 2025-08310
Filed 5-8-25; 8:45 am]
Billing code 3395-F4-P

Presidential Documents

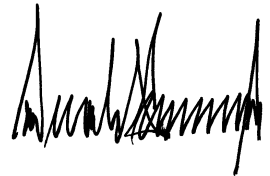
Notice of May 7, 2025

Continuation of the National Emergency With Respect to the Central African Republic

On May 12, 2014, by Executive Order 13667, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the situation in and in relation to the Central African Republic, which has been marked by a breakdown of law and order; intersectorian tension; widespread violence and atrocities; and the pervasive, often forced recruitment and use of child soldiers, and which threatens the peace, security, or stability of the Central African Republic and neighboring states.

The situation in and in relation to the Central African Republic, including widespread violence and atrocities committed by Kremlin-linked entities such as the Wagner Group, continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared in Executive Order 13667 must continue in effect beyond May 12, 2025. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13667.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
May 7, 2025.

Rules and Regulations

Federal Register

Vol. 90, No. 89

Friday, May 9, 2025

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.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 516, 520, 522, and 524

[Docket No. FDA-2025-N-0002]

New Animal Drugs; Approval of New Animal Drug Applications; Withdrawal of Approval of New Animal Drug Application; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA or we) is amending the animal drug regulations to reflect application-related actions for new animal drug applications (NADAs), abbreviated new animal drug applications (ANADAs), and conditionally approved new animal drug applications (CNADAs) during January, February, and March 2025. The animal drug regulations are also being amended to improve their accuracy and readability.

DATES: This rule is effective May 9, 2025.

FOR FURTHER INFORMATION CONTACT: Barbara Leotta, DVM, Deputy Office Director, Office of New Animal Product Evaluation Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl.,

Rockville, MD 20855, 240-402-0605, Barbara.Leotta@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Approval of New Animal Drug Applications

FDA is amending the animal drug regulations to reflect approval actions for NADAs and ANADAs during January, February, and March 2025, as listed in table 1. In addition, FDA is informing the public of the availability, where applicable, of documentation of environmental review required under the National Environmental Policy Act (NEPA) and, for actions requiring review of safety or effectiveness data, summaries of the basis of approval (FOIA Summaries) under the Freedom of Information Act (FOIA). These documents, along with marketing exclusivity and patent information, may be obtained at Animal Drugs @FDA: <https://animaldrugsatfda.fda.gov/adafda/views/#/search>.

TABLE 1—ORIGINAL AND SUPPLEMENTAL NADAs AND ANADAs APPROVED DURING JANUARY, FEBRUARY, AND MARCH 2025 REQUIRING EVIDENCE OF SAFETY AND/OR EFFECTIVENESS

Date of approval	File No.	Sponsor (drug labeler code ¹)	Product name	Effect of the action	21 CFR section
January 13, 2025 ...	200-626	Bimeda Animal Health Ltd. (061133).	EPRIMECTIN Pour-On (eprinomectin).	Original approval as a generic copy of NADA 141-079.	524.814
February 25, 2025	200-742	Hikma Pharmaceuticals USA, Inc. (086194).	Tulathromycin Injection (tulathromycin injection) Injectable Solution.	Original approval as a generic copy of NADA 141-244.	522.2630

¹ See 21 CFR 510.600(c) for sponsor addresses.

II. Withdrawal of Approval of New Animal Drug Applications

Boehringer Ingelheim Animal Health USA, Inc., 3239 Satellite Blvd., Duluth, GA 30096 (drug labeler code 000010) requested that FDA withdraw approval of ANADA 200-088 for SEDAZINE (xylazine hydrochloride) Injectable

Solution because the product is no longer manufactured or marketed. Accordingly, approval of ANADA 200-088 was withdrawn effective December 10, 2023. The animal drug regulations are being amended to reflect this action.

III. Changes of Sponsor

The sponsors of the approved applications listed in table 3 have informed FDA that they have transferred ownership of, and all rights and interest in, these applications to another sponsor. The regulations cited in table 2 are amended to reflect these actions.

TABLE 2—APPLICATIONS FOR WHICH OWNERSHIP WAS TRANSFERRED TO ANOTHER SPONSOR DURING JANUARY, FEBRUARY, AND MARCH 2025

File No.	Product name	Transferring sponsor (drug labeler code)	New sponsor (drug labeler code)	21 CFR section
200-379 ..	VETPROFEN (carprofen) Caplets	Belcher Pharmaceuticals, Inc. (051233).	Ajenat Pharmaceuticals, LLC (082983).	520.304
200-578 ..	Carprofen Flavored Tablets (carprofen).	Do	Do	520.304

IV. Technical Amendments

FDA is making the following amendments to improve the accuracy and readability of the animal drug regulations.

- 21 CFR 510.600(c) is amended to remove entries for Belcher Pharmaceuticals, LLC, as the firm is no longer the sponsor of approved applications, and to add entries for Ajenat Pharmaceuticals, LLC and Hikma Pharmaceuticals USA, Inc.
- 21 CFR 522.772 is amended to present an accurate list of bovine parasites.
- 21 CFR 522.2005 is amended to introduce sponsor drug labeler codes for approved propofol injectable solution.
- 21 CFR 522.2630(c) is amended to present the sequence of drug labeler codes for tulathromycin injectable solutions.

V. Legal Authority

This final rule is issued under section 512(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360b(i)). Although deemed a rule pursuant to the FD&C Act, this

document does not meet the definition of “rule” in 5 U.S.C. 804(3)(A) because it is a “rule of particular applicability” and is not subject to the congressional review requirements in 5 U.S.C. 801–808. Likewise, this is not a rule subject to Executive Order 12866.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 516

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

21 CFR Parts 520, 522, and 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 510, 516, 520, 522, and 524 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. In § 510.600:

■ a. In the table in paragraph (c)(1):

■ i. Remove the entry for “Belcher Pharmaceuticals, LLC”;

■ ii. Add an entry for “Ajenat Pharmaceuticals, LLC”; and

■ iii. Add an entry for “Hikma Pharmaceuticals USA, Inc.”; and

■ b. In the table in paragraph (c)(2):

■ i Remove the entry for “062250”; and

■ ii Add entries for “082983” and “086194”.

The additions read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

*	*	*	*	*
(c)	*	*	*	
(1)	*	*	*	

Firm name and address				Drug labeler code
*	*	*	*	*
Ajenat Pharmaceuticals, LLC, 6911 Bryan Dairy Rd., Suite 210, Largo, FL 33777				082983
*	*	*	*	*
Hikma Pharmaceuticals USA, Inc., 2 Esterbrook Ln., Cherry Hill, NJ 08003				086194
*	*	*	*	*

(2) * * *				
Drug labeler code	Firm name and address			
*	*	*	*	*
082983	Ajenat Pharmaceuticals, LLC, 6911 Bryan Dairy Rd., Suite 210, Largo, FL 33777			
*	*	*	*	*
086194	Hikma Pharmaceuticals USA, Inc., 2 Esterbrook Ln., Cherry Hill, NJ 08003			
*	*	*	*	*

PART 516—NEW ANIMAL DRUGS FOR MINOR USE AND MINOR SPECIES

■ 3. The authority citation for part 516 continues to read as follows:

Authority: 21 U.S.C. 360ccc–1, 360ccc–2, 371.

■ 4. Add § 516.2106 to subpart E to read as follows:

§ 516.2106 Sirolimus.

(a) *Specifications.* Each sustained-release tablet contains 0.4, 1.2, or 2.4 milligrams (mg) sirolimus.

(b) *Sponsor.* See No. 086169 in § 510.600(c) of this chapter.

(c) *Conditions of use in cats—(1) Amount.* Administer orally once weekly at a dose of 0.3 mg/kilogram of bodyweight.

(2) *Indications for use.* For the management of ventricular hypertrophy

in cats with subclinical hypertrophic cardiomyopathy (HCM).

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian. It is a violation of Federal law to use this product other than as directed in the labeling.

**PART 520—ORAL DOSAGE FORM
NEW ANIMAL DRUGS**

■ 5. The authority citation for part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.304 [Amended]

■ 6. In § 520.304, in paragraph (b)(1), remove the text “062250” and in its place add the text “082983”.

**PART 522—IMPLANTATION OR
INJECTABLE DOSAGE FORM NEW
ANIMAL DRUGS**

■ 7. The authority citation for part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.772 [Amended]

■ 8. In § 522.772, in paragraph (d)(1)(ii), remove the text “*Oncophora*, *Cooperia pectinata* (adults only)” and in its place add the text “*Cooperia oncophora*, *C. pectinata* (adults only)”

■ 9. In § 522.2005, revise paragraph (b) introductory text to read as follows:

§ 522.2005 Propofol.

* * * * *

(b) *Sponsors*. See sponsor numbers in § 510.600(c) of this chapter.

* * * * *

§ 522.2662 [Amended]

■ 10. In § 522.2662, in paragraph (b)(2), remove the text “Nos. 000010 and 061133” and in its place add the text “No. 061133”.

**PART 524—OPHTHALMIC AND
TOPICAL DOSAGE FORM NEW
ANIMAL DRUGS**

■ 11. The authority citation for part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 524.814 [Amended]

■ 12. In § 524.814, in paragraph (b), remove the text “and 055529” and in its place add the text “055529, and 061133”.

Dated: May 5, 2025.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation,
and International Affairs.

[FR Doc. 2025-08137 Filed 5-8-25; 8:45 am]

BILLING CODE 4164-01-P

**DEPARTMENT OF HEALTH AND
HUMAN SERVICES****Food and Drug Administration****21 CFR Part 862**

[Docket No. FDA-2025-N-0780]

**Medical Devices; Clinical Chemistry
and Clinical Toxicology Devices;
Classification of the Voriconazole Test
System**

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is classifying the voriconazole test system into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the voriconazole test system’s classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients’ access to beneficial innovative devices, in part by reducing regulatory burdens.

DATES: This order is effective May 9, 2025. The classification was applicable on May 5, 2017.

FOR FURTHER INFORMATION CONTACT: Dina Jerebitski, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3574, Silver Spring, MD 20993-0002, 301-796-2411, Dina.Jerebitski@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

Upon request, FDA has classified the voriconazole test system as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients’ access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an

action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as “postamendments devices” because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (see 21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through “De Novo” classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act (see also part 860, subpart D (21 CFR part 860, subpart D)). Section 207 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105-115) established the first procedure for De Novo classification. Section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112-144) modified the De Novo application process by adding a second procedure. A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients’ access to

beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see section 513(i) of the FD&C Act, defining “substantial equivalence”). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On July 15, 2016, FDA received ARK Diagnostics, Inc.’s request for De Novo classification of the ARK Voriconazole II Assay Test System. FDA reviewed the

request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act. We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general

controls, will provide reasonable assurance of the safety and effectiveness of the device. Therefore, on May 5, 2017, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 862.3970.¹ We have named the generic type of device “voriconazole test system,” and it is identified as a device intended to measure voriconazole in human serum. Measurements obtained by this device are used in monitoring levels of voriconazole to ensure appropriate therapy. FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—VORICONAZOLE TEST SYSTEM RISKS AND MITIGATION MEASURES

Identified risks to health	Mitigation measures
Clinical action (e.g., dose adjustments) based on falsely elevated inaccurate voriconazole results may lead to decreased clinical efficacy of the drug and consequently poorer clinical outcomes.	General control and special controls (1) (21 CFR 862.3970(b)(1)) and (2) (21 CFR 862.3970(b)(2)).
Clinical action (e.g., dose adjustments) based on falsely low inaccurate voriconazole results may lead to an increased risk of toxicity.	General and special controls (1) (21 CFR 862.3970(b)(1)) and (2) (21 CFR 862.3970(b)(2)).

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of

information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in in part 860, subpart D, regarding De Novo Classification have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subpart A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR parts 801 and 809, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 862

Medical devices. Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner

of Food and Drugs, 21 CFR part 862 is amended as follows: **PART 862—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES** ■ 1. The authority citation for part 862 continues to read as follows: **Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371. ■ 2. Add § 862.3970 to subpart D to read as follows:

§ 862.3970 Voriconazole test system. (a) *Identification.* A voriconazole test system is a device intended to measure voriconazole in human serum. Measurements obtained by this device are used in monitoring levels of voriconazole to ensure appropriate therapy. (b) *Classification.* Class II (special controls). The special controls for this device are: (1) Design verification and validation must include the following information: (i) Data demonstrating the precision of the voriconazole test system. Precision studies must include a minimum of three samples containing different

¹ FDA notes that the “ACTION” caption for this final order is styled as “Final amendment; final order,” rather than “Final order.” Beginning in December 2019, this editorial change was made to

indicate that the document “amends” the Code of Federal Regulations. The change was made in accordance with the Office of the Federal Register’s (OFR) interpretations of the Federal Register Act (44

U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

concentrations of voriconazole, including near medical decision points at the high and low end of the expected therapeutic range. Samples with concentrations near medical decision points must be individual or pooled clinical specimens, collected from patients taking voriconazole.

(ii) Method comparison data demonstrating accuracy of the voriconazole test system. Method comparison data must be collected at three laboratory sites. The comparator method must not be subject to bias due to nonspecific detection of voriconazole.

(iii) Data from interference studies performed to evaluate potential interference from co-administered medications used for conditions in which voriconazole is indicated.

(iv) Data from studies performed to evaluate cross reactivity of the major metabolite, N-oxide voriconazole.

(2) The labeling required under § 809.10(b) of this chapter must include a warning statement as follows: “This assay should only be used in conjunction with information available from clinical evaluations and other diagnostic procedures.”

Dated: May 5, 2025.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2025-08148 Filed 5-8-25; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 862

[Docket No. FDA-2025-N-0831]

Medical Devices; Clinical Chemistry and Clinical Toxicology Devices; Classification of the Breast Milk Macronutrients Test System

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is classifying the breast milk macronutrients test system into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the breast milk macronutrients test system’s classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a

reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients’ access to beneficial innovative devices, in part by reducing regulatory burdens.

DATES: This order is effective May 9, 2025. The classification was applicable on December 21, 2018.

FOR FURTHER INFORMATION CONTACT: Dina Jerebitski, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3574, Silver Spring, MD 20993-0002, 301-796-2411, Dina.Jerebitski@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the breast milk macronutrients test system as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients’ access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as “postamendments devices” because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (see 21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through “De Novo” classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act (see also part 860, subpart D (21 CFR part 860, subpart D)). Section 207 of the Food and Drug

Administration Modernization Act of 1997 established the first procedure for De Novo classification (Pub. L. 105-115). Section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112-144) modified the De Novo application process by adding a second procedure. A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients’ access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see 513(i) of the FD&C Act, defining “substantial equivalence”). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On October 24, 2018, FDA received Miris AB’s request for De Novo classification of the Miris Human Milk Analyzer. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to

establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general

controls, will provide reasonable assurance of the safety and effectiveness of the device. Therefore, on December 21, 2018, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 862.1493.¹ We have named the generic type of device “breast milk macronutrients test system,” and it is identified as a device intended to

quantitatively measure fat, protein, and total carbohydrate content in human breast milk. These measurements, in conjunction with other clinical assessments, may be used to aid in the nutritional management of infants. FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—BREAST MILK MACRONUTRIENTS TEST SYSTEM RISKS AND MITIGATION MEASURES

Identified risks to health	Mitigation measures
Incorrect test results	General controls and special controls (1) (21 CFR 862.1493(b)(1)) and (2) (21 CFR 862.1493(b)(2)).
Incorrect action based on test results	General controls and special control (2) (21 CFR 862.1493(b)(2)).

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in part 860, subpart D, regarding De Novo classification have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subpart A through E, regarding premarket approval, have been approved under OMB control number

0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR parts 801 and 809, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 862

Medical devices. Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 862 is amended as follows:

PART 862—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

- 1. The authority citation for part 862 continues to read as follows:
Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.
- 2. Add § 862.1493 to subpart B to read as follows:

§ 862.1493 Breast milk macronutrients test system.

(a) *Identification.* A breast milk macronutrients test system is a device intended to quantitatively measure fat, protein, and total carbohydrate content in human breast milk. These measurements, in conjunction with other clinical assessments, may be used

to aid in the nutritional management of infants. (b) *Classification.* Class II (special controls). The special controls for this device are: (1) Design verification and validation must include the following: (i) An appropriate traceability plan, as determined by FDA, to minimize the risk of drift in the breast milk macronutrient test system results over time. (ii) Data that demonstrate appropriate precision, as determined by FDA, of the breast milk macronutrients test system. Precision studies must include assessment of a minimum of three breast milk specimens containing different concentrations (low, medium, and high levels) of fat, carbohydrates, and protein. Precision data must include breast milk specimen measurements that are collected at a minimum of three laboratory sites. (iii) Data that demonstrate appropriate measurement accuracy, as determined by FDA, of fat, carbohydrates, and protein in breast milk. Measurement accuracy data must include breast milk specimen measurements that are collected at a minimum of one laboratory site. (iv) Data from studies appropriate, as determined by FDA, to demonstrate that the device is free from significant interference from substances that could be present in human milk, including hemoglobin, and medications that are used by breastfeeding subjects. (2) The labeling required under § 809.10 of this chapter must include a limiting statement indicating that the results should be used only as an aid in

¹ FDA notes that the “ACTION” caption for this final order is styled as “Final amendment; final order,” rather than “Final order.” Beginning in December 2019, this editorial change was made to

indicate that the document “amends” the Code of Federal Regulations. The change was made in accordance with the Office of the Federal Register’s (OFR) interpretations of the Federal Register Act (44

U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

the nutritional management of infants and not as the sole basis for making nutrition decisions.

Dated: May 5, 2025.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2025–08147 Filed 5–8–25; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 864

[Docket No. FDA–2025–N–0711]

Medical Devices; Hematology and Pathology Devices; Classification of the Coagulation System for the Measurement of Whole Blood Viscoelastic Properties in Perioperative Patients

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is classifying the coagulation system for the measurement of whole blood viscoelastic properties in perioperative patients into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the coagulation system for the measurement of whole blood viscoelastic properties in perioperative patients' classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices, in part by reducing regulatory burdens.

DATES: This order is effective May 9, 2025. The classification was applicable on March 12, 2019.

FOR FURTHER INFORMATION CONTACT: Dina Jerebitski, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3574, Silver Spring, MD 20993–0002, 301–796–2411, Dina.Jerebitski@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the coagulation system for the measurement of whole blood viscoelastic properties in

perioperative patients as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as “postamendments devices” because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (see 21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through “De Novo” classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act (see also part 860, subpart D (21 CFR part 860, subpart D)). Section 207 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) established the first procedure for De Novo classification. Section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) modified the De Novo application process by adding a second procedure. A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then

a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k) (see section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see section 513(i) of the FD&C Act, defining “substantial equivalence”). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On April 2, 2018, FDA received HemoSonics, LLC's, request for De Novo classification of the Quantra QPlus System. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on March 12, 2019, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21

CFR 864.5430.¹ We have named the generic type of device “coagulation system for the measurement of whole blood viscoelastic properties in perioperative patients,” and it is identified as an in vitro diagnostic device used to evaluate blood

coagulation, fibrinolysis, or both, in perioperative patients, as an aid in the assessment of coagulopathies when used in conjunction with clinical signs and symptoms and other clinical and laboratory findings.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—COAGULATION SYSTEM FOR THE MEASUREMENT OF WHOLE BLOOD VISCOELASTIC PROPERTIES IN PERIOPERATIVE PATIENTS RISKS AND MITIGATION MEASURES

Identified risks to health	Mitigation measures
Incorrect test results	Transparent device performance descriptions in labeling; Transparent device limitations descriptions in labeling; and Certain precision, performance, interference, and specimen stability testing.
Incorrect interpretation of test results	Transparent device performance descriptions in labeling; Transparent device limitations descriptions in labeling; and Certain precision, performance, interference, specimen stability, and human factors testing.
Cartridge malfunction	Transparent device performance descriptions in labeling; Transparent device limitations descriptions in labeling; and Certain precision, performance, interference, and specimen stability testing.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in part 860, subpart D, regarding De Novo Classification have been approved under OMB control number 0910–0844; the collections of information in 21 CFR

part 814, subpart A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR parts 801 and 809, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 864

Blood, Medical devices, Packaging and containers.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 864 is amended as follows:

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

- 1. The authority citation for part 864 continues to read as follows:

 Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.
- 2. Add § 864.5430 to subpart F to read as follows:

§ 864.5430 Coagulation system for the measurement of whole blood viscoelastic properties in perioperative patients.

(a) *Identification.* A coagulation system for the measurement of whole blood viscoelastic properties in perioperative patients is an in vitro diagnostic device used to evaluate blood coagulation, fibrinolysis, or both, in perioperative patients, as an aid in the assessment of coagulopathies when used in conjunction with clinical signs and symptoms and other clinical and laboratory findings.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Design verification and validation must include detailed documentation of, and results from, the following:

(i) A study assessing precision using protocols determined to be acceptable by FDA, to cover the measurement range for each reported parameter (test output). Testing must include native specimens with coagulation profiles representative of the intended use population. In order to cover the measuring range, testing may include a limited number of contrived specimens, not to exceed 10 to 20 percent, or as otherwise deemed appropriate by FDA. The contrived specimens must be prepared to resemble clinical specimens. This testing must evaluate repeatability and reproducibility and provide assessments of within-run, within-day, between-run, between-day, between-reagent lot, between-instrument, between-site, and between-

¹ FDA notes that the “ACTION” caption for this final order is styled as “Final amendment; final order,” rather than “Final order.” Beginning in December 2019, this editorial change was made to

indicate that the document “amends” the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register’s (OFR) interpretations of the Federal Register Act (44

U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

operator precision, as applicable to the system;

(ii) Studies that demonstrate the performance of each parameter (test output) throughout the claimed measurement range, to include linearity studies or dose-response studies, as applicable to the parameter (test output);

(iii) Potential interferent study that includes evaluation of hemolyzed and lipemic samples as potential interferents; exogenous and endogenous interferents associated with each patient population intended for use with the device, and which might be expected to affect assay performance, must be evaluated; and potential interferents that are specific for, or related to, the technology or methodology of the device. Evaluation of all potential interferents must be performed using a protocol determined to be acceptable to the FDA (e.g., an FDA-recognized standard) and include both normal and abnormal specimens covering coagulation profiles representative of the intended use population;

(iv) A study that evaluates specimen stability under the intended conditions for specimen collection, handling, and storage, using samples that cover the coagulation profiles representative of the intended use population, and using protocols determined to be acceptable by FDA;

(v) A multisite clinical study, determined to be acceptable by FDA, demonstrating performance, relative to clinically relevant and clinically validated laboratory test(s) for each parameter (test output). Further, the study must meet all of the following criteria:

(A) The study must be performed in the intended use population and include representation from all patient populations for whom the device is intended to be used. Potential endogenous and exogenous interferents for each target patient population must be evaluated or known prior to the study;

(B) The study must be conducted at a minimum of three external sites representative of the intended use setting by the intended operators;

(C) Test samples must be collected at time intervals relevant to the device's use in the intended use population;

(D) Clinical specimens, which cover coagulation profiles representative of the intended use population, must be evaluated at each of the three clinical sites in the study;

(E) Analysis of the concordance of clinical interpretation of patient coagulation status made from individual test parameter (test output) results as

compared to clinical interpretation of coagulation status from a clinically relevant laboratory test or tests (e.g., a comparative viscoelastic device or standard laboratory tests) must be conducted; and

(F) Expected (reference) values for each parameter (test output) must be demonstrated by testing a statistically appropriate number of samples from apparently healthy normal individuals;

(vi) For a device with a user interface that has information that needs to be interpreted by the user in correctly using the device to achieve the intended test results or a device that does not provide a final output that is a comprehensive interpretation of all parameter (test output) results, a study evaluating the ability of device users to correctly interpret results;

(vii) For any device indicated to guide blood product use, a clinical outcome study determined to be acceptable by FDA that specifically validates the device's indicated use in guiding blood product use; and

(viii) For any device indicated to guide use of medication, a clinical outcome study determined to be acceptable by FDA that specifically validates the device's indicated use in guiding use of medication.

(2) The labeling required under § 809.10(b) of this chapter must include the following:

(i) A summary of results from the study required by paragraph (b)(1)(i) of this section, including repeatability, reproducibility, and assessments of within-run, within-day, between-run, between-day, between-reagent lot, between-instrument, between-site, and between-operator precision, as applicable to the system.

(ii) The claimed measurement range of each parameter (test output), as supported by demonstrated performance of the parameter (test output) throughout the claimed measurement range, including studies required by paragraphs (b)(1)(i) through (iii) and (v) of this section, and, if applicable, paragraphs (b)(1)(vii) and (viii) of this section.

(iii) Identification of known interferents, including all endogenous, exogenous, technology-specific, and patient population-specific interferents, specific to each parameter (test output). The information must include the concentration(s) or level(s) at which interference was found to occur and the concentration range or levels at which interference was not found to occur.

(iv) Information regarding the multisite clinical study required by paragraph (b)(1)(v) of this section, including:

(A) Each patient population evaluated;

(B) Each intended use setting and the operators;

(C) A summary of the results, including the concordance analysis to clinically relevant laboratory test(s); and

(D) Demonstrated expected (reference) values for each parameter (test output).

(3) The labeling required under § 809.10 of this chapter must include the following:

(i) A limiting statement that the result(s) from the device is(are) not intended to be used as the sole basis for a patient diagnosis.

(ii) Unless appropriate clinical outcome studies are done in accordance with paragraph (b)(1)(vii) of this section that specifically validate an indication for the device's use in guiding blood product use, a limiting statement that the device has not been evaluated to guide blood product use.

(iii) Unless appropriate clinical outcome studies are done in accordance with paragraph (b)(1)(viii) of this section that specifically validate an indication for the device's use in guiding use of medication, a limiting statement that the device has not been evaluated to guide use of medication.

Dated: May 5, 2025.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2025-08151 Filed 5-8-25; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA-2025-N-0814]

Medical Devices; Immunology and Microbiology Devices; Classification of the Device To Detect Nucleic Acids From Non-Viral Microorganism(s) Causing Sexually Transmitted Infections and Associated Resistance Marker(s)

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is classifying the device to detect nucleic acids from non-viral microorganism(s) causing sexually transmitted infections and associated resistance marker(s) into class II (special controls). The special controls that apply to the device type

are identified in this order and will be part of the codified language for the device to detect nucleic acids from non-viral microorganism(s) causing sexually transmitted infections and associated resistance marker(s)'s classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices, in part by reducing regulatory burdens.

DATES: This order is effective May 9, 2025. The classification was applicable on January 23, 2019.

FOR FURTHER INFORMATION CONTACT: Dina Jerebitski, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3574, Silver Spring, MD 20993-0002, 301-796-2411, Dina.Jerebitski@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the device to detect nucleic acids from non-viral microorganism(s) causing sexually transmitted infections and associated resistance marker(s) as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as "postamendments devices" because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (see 21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval.

We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through "De Novo" classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act (see also part 860, subpart D (21 CFR part 860, subpart D)). Section 207 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105-115) established the first procedure for De Novo classification. Section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112-144) modified the De Novo application process by adding a second procedure. A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see section 513(i) of the FD&C Act, defining "substantial equivalence"). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On August 31, 2018, FDA received Hologic, Inc.'s request for De Novo classification of the Aptima Mycoplasma genitalium Assay. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on January 23, 2019, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 866.3393.¹ We have named the generic type of device "device to detect nucleic acids from non-viral microorganism(s) causing sexually transmitted infections and associated resistance marker(s)," and it is identified as an in vitro diagnostic device intended for the detection and identification of nucleic acids from non-viral microorganism(s) and their associated resistance markers in clinical specimens collected from patients suspected of sexually transmitted infections. The device is intended to aid in the diagnosis of non-viral sexually transmitted infections in conjunction with other clinical and laboratory data. These devices do not provide confirmation of antibiotic susceptibility since mechanisms of resistance may exist that are not detected by the device.

FDA has identified the following risks to health associated specifically with this type of device and the measures

¹ FDA notes that the "ACTION" caption for this final order is styled as "Final amendment; final order," rather than "Final order." Beginning in December 2019, this editorial change was made to indicate that the document "amends" the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register's (OFR) interpretations of the Federal Register Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

required to mitigate these risks in table 1.

TABLE 1—DEVICE TO DETECT NUCLEIC ACIDS FROM NON-VIRAL MICROORGANISM(S) CAUSING SEXUALLY TRANSMITTED INFECTIONS AND ASSOCIATED RESISTANCE MARKER(S) RISKS AND MITIGATION MEASURES

Identified risk to health	Mitigation measures
Risk of false results	General controls and special controls (1) (21 CFR 866.3393(b)(1)), (2) (21 CFR 866.3393(b)(2)), (3) (21 CFR 866.3393(b)(3)), and (4) (21 CFR 866.3393(b)(4)).
Failure to correctly interpret test results.	General controls and special controls (1) (21 CFR 866.3393(b)(1)), (3)(iii) (21 CFR 866.3393(b)(3)(iii)), (3)(iv) (21 CFR 866.3393(b)(3)(iv)), and (3)(v) (21 CFR 866.3393(b)(3)(v)).
Failure to correctly operate the device.	General controls and special controls (1) (21 CFR 866.3393(b)(1)), (3)(i) (21 CFR 866.3393(b)(3)(i)), and (4) (21 CFR 866.3393(b)(4)).

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in part 860, subpart D, regarding De Novo classification have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subpart A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR

parts 801 and 809, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 866 is amended as follows:

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

- 1. The authority citation for part 866 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

- 2. Add § 866.3393 to subpart D to read as follows:

§ 866.3393 Device to detect nucleic acids from non-viral microorganism(s) causing sexually transmitted infections and associated resistance marker(s).

(a) *Identification.* A device to detect nucleic acids from non-viral microorganism(s) causing sexually transmitted infections and associated resistance marker(s) is an in vitro diagnostic device intended for the detection and identification of nucleic acids from non-viral microorganism(s) and their associated resistance markers in clinical specimens collected from patients suspected of sexually transmitted infections. The device is intended to aid in the diagnosis of non-viral sexually transmitted infections in conjunction with other clinical and laboratory data. These devices do not provide confirmation of antibiotic susceptibility since mechanisms of resistance may exist that are not detected by the device.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) The intended use for the labeling required under § 809.10 of this chapter must include a detailed description of targets the device detects, the results

provided to the user, the clinical indications appropriate for test use, and the specific population(s) for which the device is intended.

(2) Any sample collection device used must be FDA-cleared, -approved, or -classified as 510(k) exempt (standalone or as part of a test system) for the collection of specimen types claimed by this device; alternatively, the sample collection device must be cleared in a premarket submission as a part of this device.

(3) The labeling required under § 809.10(b) of this chapter must include:

(i) A detailed device description, including reagents, instruments, ancillary materials, all control elements, and a detailed explanation of the methodology, including all pre-analytical methods for processing of specimens;

(ii) Detailed discussion of the performance characteristics of the device for all claimed specimen types based on analytical studies, including Limit of Detection, inclusivity, cross-reactivity, interfering substances, competitive inhibition, carryover/cross contamination, specimen stability, within lab precision, and reproducibility, as appropriate;

(iii) Detailed descriptions of the test procedure, the interpretation of test results for clinical specimens, and acceptance criteria for any quality control testing;

(iv) Limiting statements indicating that:

(A) A negative test result does not preclude the possibility of infection;

(B) The test results should be interpreted in conjunction with other clinical and laboratory data available to the clinician;

(C) Reliable results are dependent on adequate specimen collection, transport, storage, and processing. Failure to observe proper procedures in any one of these steps can lead to incorrect results; and

(D) If appropriate (e.g., recommended by the Centers for Disease Control and

Prevention, by current well-accepted clinical guidelines, or by published peer reviewed research), that the clinical performance is inferior in a specific clinical subpopulation or for a specific claimed specimen type; and

(v) If the device is intended to detect antimicrobial resistance markers, limiting statements, as appropriate, indicating that:

(A) Negative results for claimed resistance markers do not indicate susceptibility of detected microorganisms, as resistance markers not measured by the assay or other potential mechanisms of antibiotic resistance may be present;

(B) Detection of resistance markers cannot be definitively linked to specific microorganisms and the source of a detected resistance marker may be an organism not detected by the assay, including colonizing flora;

(C) Detection of antibiotic resistance markers may not correlate with phenotypic gene expression; and

(D) Therapeutic failure or success cannot be determined based on the assay results, since nucleic acid may persist following appropriate antimicrobial therapy.

(4) Design verification and validation must include:

(i) Detailed device description documentation, including methodology from obtaining sample to result, design of primer/probe sequences, rationale for target sequence selection, and computational path from collected raw data to reported result (e.g., how collected raw signals are converted into a reported result).

(ii) Detailed documentation of analytical studies, including, Limit of Detection, inclusivity, cross-reactivity, microbial interference, interfering substances, competitive inhibition, carryover/cross contamination, specimen stability, within lab precision, and reproducibility, as appropriate.

(iii) Detailed documentation and performance results from a clinical study that includes prospective (sequential) samples for each claimed specimen type and, when determined to be appropriate by FDA, additional characterized clinical samples. The study must be performed on a study population consistent with the intended use population and compare the device performance to results obtained from FDA accepted comparator methods. Documentation from the clinical studies must include the clinical study protocol (including a predefined statistical analysis plan) study report, testing results, and results of all statistical analyses.

(iv) A detailed description of the impact of any software, including software applications and hardware-based devices that incorporate software, on the device's functions.

Dated: May 5, 2025.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2025-08149 Filed 5-8-25; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA-2025-N-0725]

Medical Devices; Immunology and Microbiology Devices; Classification of the Cytomegalovirus Nucleic Acid Detection Device for Congenital Cytomegalovirus Infection

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is classifying the cytomegalovirus nucleic acid detection device for congenital cytomegalovirus infection into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the cytomegalovirus nucleic acid detection device for congenital cytomegalovirus infection's classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices, in part by reducing regulatory burdens.

DATES: This order is effective May 9, 2025. The classification was applicable on November 30, 2018.

FOR FURTHER INFORMATION CONTACT: Ryan Lubert, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3414, Silver Spring, MD 20993-0002, 240-402-6357, ryan.lubert@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the cytomegalovirus nucleic acid detection device for congenital cytomegalovirus

infection as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as "postamendments devices" because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (see 21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through "De Novo" classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act (see also part 860, subpart D (21 CFR part 860, subpart D)). Section 207 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105-115) established the first procedure for De Novo classification. Section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112-144) modified the De Novo application process by adding a second procedure. A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person

determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see section 513(i) of the FD&C Act, defining "substantial equivalence"). Instead, sponsors can use the less-

burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On July 30, 2018, FDA received Meridian Bioscience, Inc.'s request for De Novo classification of the Alethia CMV Assay Test System. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on November 30, 2018, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 866.3181.¹ We have named the generic type of device "cytomegalovirus nucleic acid detection device for congenital cytomegalovirus infection," and it is identified as an in vitro diagnostic device intended for the qualitative detection of cytomegalovirus deoxyribonucleic acid (DNA) in clinical samples from newborn babies to aid in the diagnosis of congenital cytomegalovirus infection. Negative results do not preclude infection and should not be used as the sole basis for diagnosis, treatment, or other patient management decisions. Positive results should be interpreted with consideration of other clinical information and laboratory findings and should not be used as the sole basis for treatment or other patient management decisions.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—CYTOMEGALOVIRUS NUCLEIC ACID DETECTION DEVICE FOR CONGENITAL CYTOMEGALOVIRUS INFECTION RISKS AND MITIGATION MEASURES

Identified risks to health	Mitigation measures
Risk of false results	General Controls and Special Controls (1) (21 CFR 866.3181(b)(1)) and (2) (21 CFR 866.3181(b)(2)).
Failure to correctly interpret test results.	General Controls and Special Controls (1)(i) (21 CFR 866.3181(b)(1)(i)), (iv) (21 CFR 866.3181(b)(1)(iv)), (v) (21 CFR 866.3181(b)(1)(v)), and (vi) (21 CFR 866.3181(b)(1)(vi)).
Failure to correctly operate the device.	General Controls and Special Controls (1) (21 CFR 866.3181(b)(1)) and (2) (21 CFR 866.3181(b)(2)).

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on

the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in part 860, subpart D, regarding De Novo Classification have been approved under OMB control number 0910–0844; the collections of information in 21 CFR

part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding the quality system regulation, have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR parts 801 and 809, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, Medical devices.

¹ FDA notes that the "ACTION" caption for this final order is styled as "Final amendment; final order," rather than "Final order." Beginning in December 2019, this editorial change was made to

indicate that the document "amends" the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register's (OFR) interpretations of the Federal Register Act (44

U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 866 is amended as follows:

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

■ 1. The authority citation for part 866 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 866.3181 to subpart D to read as follows:

§ 866.3181 Cytomegalovirus nucleic acid detection device for congenital cytomegalovirus infection.

(a) *Identification.* A cytomegalovirus nucleic acid detection device for congenital cytomegalovirus infection is an in vitro diagnostic device intended for the qualitative detection of cytomegalovirus DNA in clinical samples from newborn babies to aid in the diagnosis of congenital cytomegalovirus infection. Negative results do not preclude infection and should not be used as the sole basis for diagnosis, treatment, or other patient management decisions. Positive results should be interpreted with consideration of other clinical information and laboratory findings and should not be used as the sole basis for treatment or other patient management decisions.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) The labeling required under § 809.10(b) of this chapter must include:

(i) An intended use with a detailed description of what the device detects, the type of results provided to the user, the clinical indications appropriate for test use, and the specific population(s) to be tested.

(ii) A detailed device description, including all device components, instrument requirements, ancillary reagents required but not provided, and an explanation of the methodology, including all pre-analytical methods for specimen processing.

(iii) Performance characteristics from analytical and clinical studies required under paragraphs (b)(2)(ii) and (iii) of this section.

(iv) A detailed explanation of the interpretation of results and criteria for validity of results.

(v) A limiting statement that device results are not intended to be used as the sole basis for diagnosis, treatment, or other patient management decisions.

(vi) As applicable, a limiting statement and specific sample collection

recommendations to indicate that breast milk can result in false positive results for saliva samples if samples are collected less than 1 hour after breastfeeding. Sample collection a minimum of 1 hour from breastfeeding must be recommended.

(vii) Detailed instructions for use that minimize the risk of generating a false result.

(2) Design verification and validation must include:

(i) Detailed device description documentation, including methodology from obtaining sample to result, design of primer/probe sequences, rationale for sequence selection, and computational path from collected raw data to reported result (e.g., how collected raw signals are converted into a reported result).

(ii) Detailed documentation of analytical studies including characterization of the cutoff, analytical sensitivity (limit of detection), inclusivity, reproducibility, interference, cross reactivity, instrument and method carryover/cross contamination, and sample stability and handling.

(iii) Detailed documentation from a clinical study documenting sensitivity and specificity of the device; if the number of positive samples in the clinical study is insufficient to properly estimate device sensitivity, additional pre-selected positive samples must be evaluated to supplement the study. Clinical study subjects must be consistent with the intended use population (i.e., infants younger than 21 days of age), and device results must be compared to FDA-accepted comparator methods. Documentation from the clinical study must include the clinical study protocol, the clinical study report, testing results, and results of all statistical analyses.

(iv) Detailed documentation for device software, including software applications and hardware-based devices that incorporate software.

Dated: May 5, 2025.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2025-08146 Filed 5-8-25; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA-2025-N-0813]

Medical Devices; Immunology and Microbiology Devices; Classification of the Device To Detect and Identify Microbial Nucleic Acids by Fluorescence In Situ Hybridization in Clinical Specimens

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is classifying the device to detect and identify microbial nucleic acids by fluorescence in situ hybridization (FISH) in clinical specimens into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the device to detect and identify microbial nucleic acids by FISH in clinical specimens classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices, in part by reducing regulatory burdens. **DATES:** This order is effective May 9, 2025. The classification was applicable on August 18, 2017.

FOR FURTHER INFORMATION CONTACT: Dina Jerebitski, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3574, Silver Spring, MD 20993-0002, 301-796-2411, Dina.Jerebitski@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the device to detect and identify microbial nucleic acids by FISH in clinical specimens as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without

any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as “postamendments devices” because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (see 21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through “De Novo” classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act (see also part 860, subpart D (21 CFR part 860, subpart D)). Section 207 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) established the first procedure for De Novo classification. Section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) modified the De Novo application process by adding a second procedure. A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has

not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients’ access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see section 513(i) of the FD&C Act, defining “substantial equivalence”). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On June 20, 2017, FDA received ID–FISH Technology, Inc.’s request for De Novo classification of the ID–FISH Plasmodium Genus Test Kit, ID–FISH

Plasmodium falciparum and P. vivax Combo Test Kit. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on August 18, 2017, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 866.3367.¹ We have named the generic type of device “device to detect and identify microbial nucleic acids by FISH in clinical specimens,” and it is identified as an in vitro diagnostic device intended for the detection and identification of microbial pathogens in specimens collected from patients with signs and symptoms of infection. The device is intended to aid in the diagnosis of human disease in conjunction with clinical signs and symptoms and other laboratory findings.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—DEVICE TO DETECT AND IDENTIFY MICROBIAL NUCLEIC ACIDS BY FISH IN CLINICAL SPECIMENS RISKS AND MITIGATION MEASURES

Identified risks to health	Mitigation measures
Incorrect identification or lack of identification of a pathogenic micro-organism by the device can lead to improper patient management.	General Controls and Special Controls, 21 CFR 866.3367(b)(1) and (2).
Failure to correctly interpret test results	General Controls and Special Controls, 21 CFR 866.3367(b)(2).
Failure to correctly operate the instrument	General Controls and Special Controls, 21 CFR 866.3367(b)(2)(i) and (ii).

FDA has determined that special controls, in combination with the

general controls, address these risks to health and provide reasonable assurance

of safety and effectiveness. For a device to fall within this classification, and

¹ FDA notes that the “ACTION” caption for this final order is styled as “Final amendment; final order,” rather than “Final order.” Beginning in December 2019, this editorial change was made to

indicate that the document “amends” the Code of Federal Regulations. The change was made in accordance with the Office of the Federal Register’s (OFR) interpretations of the Federal Register Act (44

U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in part 860, subpart D, regarding De Novo Classification have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subpart A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR parts 801 and 809, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 866 is amended as follows:

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

■ 1. The authority citation for part 866 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 866.3367 to subpart D to read as follows:

§ 866.3367 Device to detect and identify microbial nucleic acids by FISH in clinical specimens.

(a) *Identification.* A device to detect and identify microbial nucleic acids by fluorescence in situ hybridization (FISH) in clinical specimens is an in vitro diagnostic device intended for the detection and identification of microbial pathogens in specimens collected from patients with signs and symptoms of infection. The device is intended to aid in the diagnosis of human disease in conjunction with clinical signs and symptoms and other laboratory findings.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Design verification and validation must include the following:

(i) Detailed device description documentation, including the device components, instrument requirements, ancillary reagents required but not provided, and a detailed explanation of the methodology, including all pre-analytical methods for processing of specimens, probe sequences, and rationale for probe sequence selection;

(ii) Detailed description of the fluorophores, signal source, detection mechanism, and method of result interpretation;

(iii) Detailed documentation from the following analytical studies: analytical sensitivity (Limit of Detection), inclusivity, reproducibility, interference, cross reactivity, and specimen stability; and

(iv) Detailed documentation from a clinical study that includes prospective (sequential) samples. The study, performed on a study population consistent with the intended use population, must compare the device performance to results obtained from appropriate and well-accepted comparator methods.

(2) The labeling required under § 809.10(b) of this chapter must include:

(i) A statement that the device is intended to be used in conjunction with clinical history, signs, symptoms, and the results of other diagnostic testing;

(ii) A detailed explanation of the interpretation of results and acceptance criteria for any quality control testing; and

(iii) A limitation that negative results do not preclude the possibility of infection.

Dated: May 5, 2025.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2025–08150 Filed 5–8–25; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA–2025–N–0708]

Medical Devices; Immunology and Microbiology Devices; Classification of the DNA-Based Test To Measure Minimal Residual Disease in Hematological Malignancies

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is classifying the DNA-based test to measure minimal residual disease in hematological malignancies into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the DNA-based test to measure minimal residual disease in hematological malignancies classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices, in part by reducing regulatory burdens.

DATES: This order is effective May 9, 2025. The classification was applicable on September 28, 2018.

FOR FURTHER INFORMATION CONTACT: Dina Jerebitski, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3574, Silver Spring, MD 20993–0002, 301–796–2411, Dina.Jerebitski@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the DNA-based test to measure minimal residual disease in hematological malignancies as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the

level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as “postamendments devices” because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (see 21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through “De Novo” classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act (see also part 860, subpart D (21 CFR part 860, subpart D)). Section 207 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) established the first procedure for De Novo classification. Section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) modified the De Novo application process by adding a second procedure. A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying

the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients’ access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see section 513(i) of the FD&C Act, defining “substantial equivalence”). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On September 29, 2017, FDA received Adaptive Biotechnologies Corporation’s request for De Novo classification of the clonoSEQ Assay. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on September 28, 2018, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 866.6100.¹ We have named the generic type of device “DNA-based test to measure minimal residual disease in hematological malignancies,” and it is identified as a prescription in vitro diagnostic device that identifies and quantifies specific nucleic acid sequences within human tissues to estimate the percentage of cells that harbor the specific sequence(s). The test is intended to be used as an aid to measure minimal residual disease to assess the change in burden of disease during monitoring of treatment. The test is indicated for use by qualified healthcare professionals in accordance with professional guidelines for clinical decision-making, in conjunction with other clinicopathological features.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—DNA-BASED TEST TO MEASURE MINIMAL RESIDUAL DISEASE IN HEMATOLOGICAL MALIGNANCIES RISKS AND MITIGATION MEASURES

Identified risks to health	Mitigation measures
Incorrect test results	General controls and special controls (1) (21 CFR 866.6100(b)(1)), (2) (21 CFR 866.6100(b)(2)), and (3) (21 CFR 866.6100(b)(3)).
Incorrect interpretation of test results.	General controls and special controls (1) (21 CFR 866.6100(b)(1)), (2) (21 CFR 866.6100(b)(2)), (3) (21 CFR 866.6100(b)(3)), and (4) (21 CFR 866.6100(b)(4)).

FDA has determined that special controls, in combination with the

general controls, address these risks to health and provide reasonable assurance

of safety and effectiveness. For a device to fall within this classification, and

¹ FDA notes that the “ACTION” caption for this final order is styled as “Final amendment; final order,” rather than “Final order.” Beginning in December 2019, this editorial change was made to

indicate that the document “amends” the Code of Federal Regulations. The change was made in accordance with the Office of the Federal Register’s (OFR) interpretations of the Federal Register Act (44

U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in part 860, subpart D, regarding De Novo Classification have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subpart A through E, regarding premarket approval have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding the quality system regulation, have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR parts 801 and 809, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 866 is amended as follows:

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

■ 1. The authority citation for part 866 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 866.6100 to subpart G to read as follows:

§ 866.6100 DNA-based test to measure minimal residual disease in hematological malignancies.

(a) *Identification.* A DNA-based test to measure minimal residual disease in hematological malignancies is a prescription in vitro diagnostic device that identifies and quantifies specific nucleic acid sequences within human tissues to estimate the percentage of cells that harbor the specific sequence(s). The test is intended to be used as an aid to measure minimal residual disease to assess the change in burden of disease during monitoring of treatment. The test is indicated for use by qualified healthcare professionals in accordance with professional guidelines for clinical decision-making, in conjunction with other clinicopathological features.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Design verification and validation must include:

(i) A detailed description of the device, including:

(A) A detailed description of all test components, reagents, instrumentation, and software, including software applications and any hardware-based devices that incorporate software.

(B) A detailed description of all genomic regions that are detected and quantified by the assay.

(C) A detailed description of the methodology and protocols for each step of the test, including description of the quality metrics, thresholds, and filters at each step of the test that are implemented for final result reporting and a description of the metrics for run-failures, specimen-failures, and invalids, as appropriate.

(D) Detailed specifications and procedures for sample collection, processing, and storage.

(E) A description of the internal and external controls that are recommended or provided. The description must identify those control elements that are incorporated into the testing procedure. If appropriate, this description must include a description of the controls and control procedures used during the sequencing and data analysis.

(ii) Identification of risk mitigation elements used by the device, including a detailed description of all additional procedures, methods, and practices incorporated into the instructions for use that mitigate risks associated with use of the device.

(iii) As part of the risk management activities, an appropriate end user device training program must be offered as an effort to mitigate the risk of failure from user error, as appropriate.

(iv) Description of analytical and clinical studies, including:

(A) Device performance data that demonstrates the ability to measure minimal residual disease in the claimed specimen type(s) from patients that are representative of the intended use population. Data can be obtained via:

(1) A method comparison study comparing the device to a predicate device with clinical data for the specified hematological neoplastic indication using the specified specimen type(s); or

(2) A clinical study demonstrating clinical validity using well characterized clinical specimens from patients with known clinical outcomes using a study design deemed acceptable by FDA.

(B) Device precision (repeatability and reproducibility) data using clinical samples covering the range of minimal residual disease frequencies reported by the test and covering the stated range of DNA inputs that are indicated as allowable for use with the test. Results shall be reported as the standard deviation and/or percentage coefficient of variation with the 95 percent confidence interval for each level tested. The study must evaluate all sources of variability, including, as appropriate, between-site and between operator (minimum of three sites of which two must be external with a minimum of two operators per site), between-day (minimum of 3 days), between-run, within-run, between-lot (minimum of three lots), between instrument (minimum of three instruments), and total variation.

(C) Device linearity data generated from samples covering the device measuring range using a dilution panel created from clinical samples.

(D) Device accuracy by comparison to flow cytometry across the measuring interval or to the predicate method across the measuring interval.

(E) Device analytic sensitivity data, including limit of blank, limit of detection, and limit of quantitation, using a dilution panel created from clinical samples.

(F) Analytical specificity data, including interference and cross-contamination, and index cross-contamination, as appropriate.

(G) Validation of pre-analytical methods, including DNA extraction methods and cell enrichment methods, as appropriate.

(H) Device stability data, including real-time stability of reagents under various storage times and temperatures.

(I) Specimen and prepared sample stability data established for each specimen matrix in the anticoagulant

combinations and storage/use conditions that will be indicated, including specimen transport, as appropriate.

(2) The intended use for the labeling required under § 809.10(a)(4) of this chapter and for the labeling required under § 809.10(b)(5)(ii) of this chapter, as applicable, must include:

(i) The clinical hematopoietic malignancy for which the assay was designed and validated (*e.g.*, multiple myeloma or B-cell acute lymphoblastic leukemia);

(ii) Specimen type (*e.g.*, bone marrow);

(iii) The specific DNA regions that are being identified and quantified (*e.g.*, rearranged IgH (VDJ), IgH (DJ), IgK, and IgL receptor gene sequences); and

(iv) A statement that the results are indicated to be interpreted by qualified healthcare professionals in accordance with professional guidelines for clinical decision-making in conjunction with other clinicopathological features.

(3) The labeling required under § 809.10(b) of this chapter must include information that demonstrates the performance characteristics of the test, including a detailed summary of the performance studies conducted and their results, as described in paragraphs (b)(1)(iv)(A) through (I) of this section.

(4) The device output, including any test report, must include the estimated minimal residual disease (MRD) frequency and an appropriate range of the uncertainty of that frequency based on the amount of DNA that was evaluated by the test and the number of specific nucleic acid sequences that were detected (*e.g.*, “MRD = 1.2×10^{-5} [Range = 0.8×10^{-6} to 2.0×10^{-5}]”).

Dated: May 5, 2025.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2025–08143 Filed 5–8–25; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA–2025–N–0781]

Medical Devices; Immunology and Microbiology Devices; Classification of the Device To Detect and Measure Non-Microbial Analytes To Aid in the Detection and Identification of Localized Human Infections

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is classifying the device to detect and measure non-microbial analytes to aid in the detection and identification of localized human infections into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the device to detect and measure non-microbial analytes to aid in the detection and identification of localized human infections’ classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients’ access to beneficial innovative devices, in part by reducing regulatory burdens.

DATES: This order is effective May 9, 2025. The classification was applicable on May 23, 2019.

FOR FURTHER INFORMATION CONTACT: Dina Jerebitski, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3574, Silver Spring, MD 20993–0002, 301–796–2411, Dina.Jerebitski@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the device to detect and measure non-microbial analytes to aid in the detection and identification of localized human infections as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients’ access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as “postamendments devices” because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (see 21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through “De Novo” classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act (see also part 860, subpart D (21 CFR part 860, subpart D)). Section 207 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) established the first procedure for De Novo classification. Section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) modified the De Novo application process by adding a second procedure. A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order

within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see section 513(i) of the FD&C Act, defining "substantial equivalence"). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On June 29, 2018, FDA received CD Diagnostics Inc.'s request for De Novo

classification of the Synovasure Alpha Defensin Lateral Flow Test Kit, Synovasure Alpha Defensin Lateral Flow Test Kit (5 Test), Synovasure Alpha Defensin Lateral Flow Test Kit (10 Test), Synovasure Alpha Defensin Lateral Flow Test Kit (30 Test), and the Synovasure Alpha Defensin Control Kit. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general

controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on May 23, 2019, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 866.3230.¹ We have named the generic type of device "Device to detect and measure non-microbial analytes to aid in the detection and identification of localized human infections," and it is identified as an in vitro diagnostic device intended for the detection and qualitative measurement, quantitative measurement, or both of one or more non-microbial analytes in human clinical specimens to aid in the assessment, identification, or both of a localized microbial infection when used in conjunction with clinical signs and symptoms and other clinical and laboratory findings.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—DEVICE TO DETECT AND MEASURE NON-MICROBIAL ANALYTES TO AID IN THE DETECTION AND IDENTIFICATION OF LOCALIZED HUMAN INFECTIONS RISKS AND MITIGATION MEASURES

Identified risks to health	Mitigation measures
Risk of false test results	Certain device descriptions, performance characteristics, results interpretation information, limitations, and study details in labeling; Certain device description information, demographic analysis, validation procedures, risk mitigation strategies and end user trainings, and studies; and Collection device specification.
Failure to interpret test results correctly.	Certain device descriptions, performance characteristics, results interpretation information, limitations, and study details in labeling; and Certain demographic analysis, validation procedures, risk mitigation strategies and end user trainings, and studies.
Failure to operate the device correctly.	Certain device descriptions, performance characteristics, results interpretation information, limitations, and study details in labeling; Certain demographic analysis, validation procedures, risk mitigation strategies and end user trainings, and studies; and Collection device specification.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to

premarket notification requirements under section 510(k) of the FD&C Act.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information part 860, subpart D, regarding De Novo

¹ FDA notes that the "ACTION" caption for this final order is styled as "Final amendment; final order," rather than "Final order." Beginning in December 2019, this editorial change was made to indicate that the document "amends" the Code of Federal Regulations. The change was made in

accordance with the Office of the Federal Register's (OFR) interpretations of the Federal Register Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

classification have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding the Quality System Regulation, have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR parts 801 and 809, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 866 is amended as follows:

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

■ 1. The authority citation for part 866 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 866.3230 to subpart D to read as follows:

§ 866.3230 Device to detect and measure non-microbial analytes to aid in the detection and identification of localized human infections.

(a) *Identification.* A device to detect and measure non-microbial analytes to aid in the detection and identification of localized human infections is identified as an in vitro diagnostic device intended for the detection and qualitative measurement, quantitative measurement, or both of one or more non-microbial analytes in human clinical specimens to aid in the assessment, identification, or both of a localized microbial infection when used in conjunction with clinical signs and symptoms and other clinical and laboratory findings.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Any sample collection device used must be FDA-cleared, -approved, or -classified as 510(k) exempt (standalone or as part of a test system) for the collection of human specimens; alternatively, the sample collection device must be cleared in a premarket submission as a part of this device.

(2) The labeling required under § 809.10(b) of this chapter must include:

(i) An intended use with a detailed description of what the device detects and measures, the type of results provided to the user, the sample type, whether the measure is qualitative and/or quantitative, the clinical indications for the test use, and the specific population(s) for which the device is intended.

(ii) A detailed description of the performance characteristics of the device for all intended specimen types from the analytical and clinical studies (as applicable) required under paragraphs (b)(3)(ii) and (iii) of this section.

(iii) A detailed explanation of the interpretation of results, including acceptance criteria for evaluating the validity of individual runs (*e.g.*, assessment of internal and/or external quality controls, as applicable).

(iv) The following limiting statements:

(A) A statement that a negative test result does not preclude the possibility of infection;

(B) A statement that the test results should be interpreted in conjunction with other clinical and laboratory data available to the clinician;

(C) A statement that consistent device performance is dependent on adequate specimen collection, transport, storage, and processing. Failure to observe proper procedures in any one of these steps can lead to incorrect results; and

(D) A statement that details any limitations associated with the samples, as appropriate (*e.g.*, collected on the day of admission to the intensive care unit).

(3) Design verification and validation must include the following:

(i) A detailed device description, including as appropriate, all device parts; control elements incorporated into the test procedure; instrument requirements; reagents required but not provided; and the principle of device operation and test methodology, including all preanalytical methods for the processing of specimens and the methodology from obtaining a sample to the result; design of primer/probe sequences; rationale for target analyte selection; and computational path from collected raw data to reported result (*e.g.*, how collected raw signals are converted into a reported result).

(ii) Detailed documentation of analytical studies including analytical sensitivity (Limit of Detection, Limit of Quantitation, and Limit of Blank), inclusivity, cross-reactivity, microbial interference, interfering substances, competitive inhibition, carryover/cross-contamination, specimen stability,

within-lab precision, reproducibility, and linearity, as applicable.

(iii) Detailed documentation and results either from a clinical study, that includes prospective (sequentially collected) samples for each intended specimen type that are representative of the intended use populations and, when determined to be acceptable by FDA, additional characterized clinical samples; or, when determined to be acceptable by FDA, an equivalent sample set. The clinical study must compare the device performance to results obtained from an FDA-accepted reference method and/or FDA-accepted comparator method, as appropriate. Documentation from the clinical studies must include the clinical study protocol (*e.g.*, the predefined statistical analysis plan), clinical study report, testing results, and results of all statistical analyses.

(iv) An evaluation of the level of the non-microbial analyte in asymptomatic patients with demographic characteristics (*e.g.*, age, racial, ethnic, and sex distribution) similar to the intended use population of the device.

(v) Documentation of an appropriate end user device training program that will be offered as part of efforts to mitigate the risks of false results, failure to operate the device correctly, and failure to interpret test results correctly.

(vi) An appropriate risk mitigation strategy to ensure that the device does not prevent any other device(s) with which it is indicated for use, including incorporated device(s), from achieving their intended use (*e.g.*, safety and effectiveness of the functions of the indicated device(s) remain unaffected).

(vii) A detailed description of the impact of any software, including software applications and hardware-based devices that incorporate software, on the device's functions.

Dated: May 5, 2025.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2025–08144 Filed 5–8–25; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****21 CFR Part 866****[Docket No. FDA-2025-N-0710]****Medical Devices; Immunology and Microbiology Devices; Classification of the Microbial Nucleic Acid Storage and Stabilization Device****AGENCY:** Food and Drug Administration, Department of Health and Human Services (HHS).**ACTION:** Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is classifying the microbial nucleic acid storage and stabilization device into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the microbial nucleic acid storage and stabilization device's classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices, in part by reducing regulatory burdens.

DATES: This order is effective May 9, 2025. The classification was applicable on March 19, 2018.

FOR FURTHER INFORMATION CONTACT: Dina Jerebitski, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3574, Silver Spring, MD 20993-0002, 301-796-2411, Dina.Jerebitski@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

Upon request, FDA has classified the microbial nucleic acid storage and stabilization device as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is

automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as "postamendments devices" because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (see 21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through "De Novo" classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act (see also part 860, subpart D (21 CFR part 860, subpart D)). Section 207 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105-115) established the first procedure for De Novo classification. Section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112-144) modified the De Novo application process by adding a second procedure. A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo

classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or PMA to market a substantially equivalent device (see section 513(i) of the FD&C Act, defining "substantial equivalence"). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On May 25, 2017, FDA received Longhorn Vaccines and Diagnostics LLC's request for De Novo classification of the PrimeStore MTM. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on March 19, 2018, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 866.2950.¹ We have named the generic type of device "microbial nucleic acid storage and stabilization device," and it is identified as a device that consists of a container and reagents

¹ FDA notes that the "ACTION" caption for this final order is styled as "Final amendment; final order," rather than "Final order." Beginning in December 2019, this editorial change was made to indicate that the document "amends" the Code of Federal Regulations. The change was made in accordance with the Office of the Federal Register's (OFR) interpretations of the Federal Register Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

intended to stabilize microbial nucleic acids in human specimens for subsequent isolation and purification of nucleic acids for further molecular testing. The device is not intended for

preserving morphology or viability of microorganisms.

FDA has identified the following risks to health associated specifically with this type of device and the measures

required to mitigate these risks in table 1.

TABLE 1—MICROBIAL NUCLEIC ACID STORAGE AND STABILIZATION DEVICE RISKS AND MITIGATION MEASURES

Identified risks to health	Mitigation measures
Failure to stabilize pathogen nucleic acid resulting in a false negative result.	General Controls and Special Controls (1) (21 CFR 866.2950(b)(1)), (2) (21 CFR 866.2950(b)(2)), and (3) (21 CFR 866.2950(b)(3)).
Failure to inactivate the specimen	General Controls and Special Controls (1) (21 CFR 866.2950(b)(1)); (2)(i) (21 CFR 866.2950(b)(2)(i)), (2)(ii) (21 CFR 866.2950(b)(2)(ii)), and (2)(iv) (21 CFR 866.2950(b)(2)(iv)); and (3)(i) (21 CFR 866.2950(b)(3)(i)), (3)(ii) (21 CFR 866.2950(b)(3)(ii)), and (3)(iv) (21 CFR 866.2950(b)(3)(iv)).

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in part 860, subpart D, regarding De Novo Classification have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under

OMB control number 0910–0073; and the collections of information in 21 CFR parts 801 and 809, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 866 is amended as follows:

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

- 1. The authority citation for part 866 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

- 2. Add § 866.2950 to subpart C to read as follows:

§ 866.2950 Microbial nucleic acid storage and stabilization device.

(a) *Identification.* A microbial nucleic acid storage and stabilization device is a device that consists of a container and reagents intended to stabilize microbial nucleic acids in human specimens for subsequent isolation and purification of nucleic acids for further molecular testing. The device is not intended for preserving morphology or viability of microorganisms.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) The intended use for the labeling required under § 809.10 of this chapter must include a detailed description of microorganisms and types of human specimens intended to be preserved.

(2) The labeling required under § 809.10(b) of this chapter must include the following:

- (i) A detailed device description, including all device components;
- (ii) Performance characteristics from applicable analytical studies, including

nucleic acid stability and microorganism inactivation;

(iii) A limiting statement that erroneous results may occur when the transport device is not compatible with molecular testing; and

(iv) A limiting statement that the device has only been validated to preserve the representative microorganisms used in the analytical studies.

(3) Design verification and validation must include the following:

- (i) Overall device design, including all device components and all control elements incorporated into the analytical validation procedures;
- (ii) Thorough description of the microorganisms and methodology used in the validation of the device including, extraction platforms and assays used for the detection of preserved nucleic acids; and
- (iii) The limit of detection (LoD) of the molecular test used to establish microorganism nucleic acid stability.

Dated: May 5, 2025.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2025–08145 Filed 5–8–25; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2025–0218]

RIN 1625–AA08

Special Local Regulation; Ohio River, Cincinnati, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local

regulation on the navigable waters of the Ohio River, extending the entire width of the river, between mile marker (MM) 469.6–470.2 in Cincinnati, OH. This special local regulation is necessary to provide for the safety of life on these navigable waters near Cincinnati, OH, during the Queen City Triathlon on June 22, 2025.

DATES: This rule is effective from 6:30 a.m. through 9:30 a.m. on June 22, 2025.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2025–0218 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 MST1 Jean Jimenez Sosa, Marine Safety Detachment Cincinnati, U.S. Coast Guard; telephone 513–921–9033, email MSDCincinnati@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
MM Mile Marker
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. This action is necessary to publish an NPRM because the Coast Guard must establish this special local regulation by June 22, 2025, and lacks sufficient time to provide a reasonable comment period and then consider those comments before issuing the 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 contrary to public interest in ensuring the safety of participants and vessels during the event because immediate action is necessary to prevent possible loss of life

and property on June 22, 2025. The Coast Guard will issue Broadcast Notice to Mariners (BNM) to update mariners of the restrictions and enforcement times during this event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port Sector Ohio Valley (COTP) has determined that this action is necessary to provide for the safety of life on these navigable waters near Cincinnati, OH during the Queen City Triathlon on June 22, 2025. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the special local regulation from MM 469.6–470.2 from 6:30 a.m. through 9:30 a.m.

IV. Discussion of the Rule

This rule establishes a temporary special local regulation from 6:30 a.m. until 9:30 a.m. on June 22, 2025. The regulation will prevent mariners and persons not participating in the triathlon from entering the Ohio River between MM 469.6–470.2. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the schedule event. No vessel or person will be permitted to enter the regulated area 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.

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. 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 year of the temporary special local regulation. The temporary special local regulation will be in effect for only three hours and will cover an area less than one mile in length on the Ohio River. The Coast Guard expects minimum adverse impact to mariners from the temporary special local

regulation activation as the event has been advertised to the public.

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 regulated area 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 will 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 special local regulation that will prohibit entry from MM 469.6–470.2 of the Ohio River lasting from 6:30 a.m. through 9:30 a.m. It is categorically excluded from further review under paragraph L61of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Memorandum for the Record supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.T08–0218 to read as follows:

§ 100.T08–0218 Special Local Regulation; Ohio River, Cincinnati, OH.

(a) *Regulated area.* The regulations in this section apply to the following area: All navigable waters of the Ohio River extending from mile marker 469.6–470.2 in Cincinnati, OH.

(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 Sector Ohio Valley (COTP) in the enforcement of the regulations in this section.

Participant means all persons and vessels registered with the event sponsor as participants in the event.

(c) *Regulations.* All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the Captain of the Port Sector Ohio Valley or their designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative on VFH–FM radio channel 16 or phone at 1–800–253–7465. Those in the regulated area 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.

(d) *Enforcement period.* This temporary special local regulation will be enforced from 6:30 a.m. until 9:30 a.m. on June 22, 2025.

Dated: April 29, 2025.

H.R. Mattern,

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

[FR Doc. 2025–08200 Filed 5–8–25; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2025–0391]

Safety Zone; Fireworks Displays Within the Fifth Coast Guard District; The Wharf, Washington, DC

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for a fireworks display at “The Wharf DC,” in Washington, DC, to provide for the safety of life on navigable waterways during this event. Our regulation, “Safety Zones; Fireworks Displays within the Fifth Coast Guard District,” identifies the precise location. During the enforcement period, vessels may not enter, remain in, or transit through the safety zone unless authorized to do so by the COTP or his representative, and vessels in the vicinity must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

DATES: The regulation in 33 CFR 165.506 will be enforced for the location identified in line no. 1 of table 2 to 33 CFR 165.506(h)(2) from 8 p.m. until 10 p.m., on June 07, 2025.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email LCDR Kate M. Newkirk, Sector Maryland-NCR, Waterways Management Division, U.S. Coast Guard: telephone 410–576–2596, email MDNCRMarineEvents@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone regulation for a fireworks display at The Wharf DC from 8 p.m. to 10 p.m. on June 07, 2025. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation, “Safety Zones; Fireworks Displays within the Fifth Coast Guard District,” § 165.506, specifies the location of the safety zone for the fireworks show, which encompasses portions of the Washington Channel in the Upper Potomac River. As reflected in 33 CFR 165.23, vessels in the vicinity of the safety zone may not enter, remain in, or transit through the safety zone during the enforcement period unless authorized to do so by the COTP or his representative, and they must comply with directions from the Patrol

Commander or any Official Patrol displaying a Coast Guard ensign.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts.

Dated: May 2, 2025.

Patrick C. Burkett,

Captain, U.S. Coast Guard, Captain of the Port, Sector Maryland-National Capital Region.

[FR Doc. 2025–08169 Filed 5–8–25; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2025–0302]

RIN 1625–AA00

Safety Zone; Key West Paddle Classic, Key West, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the navigable waterways surrounding Key West, Florida, during the Key West Paddle Classic event. This safety zone is necessary to ensure the safety of event participants and spectators from potential hazards associated with this event. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Key West or a designated representative.

DATES: DATES: This rule is effective from 6 a.m. through 5 p.m. on May 10, 2025.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2025–0302 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 Chief Marine Science Technician Mathew Mason, Sector Key West Waterways Management Department, Coast Guard; telephone (305) 292–8823, email Mathew.R.Mason@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 impracticable. The Coast Guard did not receive the information required to develop and finalize plans for an official patrol of the safety zone in ample time to allow for public comment for the Key West Paddle Classic on May 10, 2025. It is impracticable to delay issuing this rule because it is necessary to protect the safety of participants, spectators, the public, and vessels transiting the waters adjacent to Key West, FL.

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** for the same reasons as discussed above.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority in 46 U.S.C. 70034. The Captain of the Port (COTP) Key West has determined that potential hazards associated with open water paddle events will be a safety concern for persons and vessels in the regulated area. This rule is needed to ensure the safety of the event participants, the public, vessels and the marine environment in the navigable waters within the safety zone during the Key West Paddle Classic event.

IV. Discussion of the Rule

This rule establishes a safety zone from 6 a.m. until 5 p.m. on May 10, 2025. The safety zone will cover all navigable waters within 50 yards in front of the lead safety vessel preceding the first event participants, 50 yards behind the safety vessel trailing the last event participants, and at all times extend 100 yards on either side of event participants. The event course begins at Higgs Beach in Key West, Florida, moves west to the area offshore of Fort Zachary Taylor Historic State Park, north through Key West Harbor, east

through Fleming Key Cut, south through Cow Key Channel, and west returning to Higgs Beach, in Key West, FL.

The duration of the safety zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the paddle event. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the Coast Guard assigned to units under the operational control of the Coast Guard Sector Key West. Requests for entry will be considered and reviewed on a case-by-case basis. The COTP may be contacted by telephone at (305) 292–8772 and at can be reached by VHF–FM channel 16. Persons and vessels permitted to enter these security zones must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or their 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.

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. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on: (1) This rule involves a safety zone that will prohibit persons and vessels from entering, transiting through, anchoring in, or remaining within a limited area on the navigable waters of Key West, Florida, during a paddle event lasting eleven hours; (2) Although persons and vessels may not enter, transit through, anchor in, or remain within the zone without authorization from the COTP or a designated representative, they will be able to safely transit around this safety zone; (3) persons and vessels may still enter, transit through, anchor in, or remain within the areas during the enforcement period if authorized by the COTP or a designated representative; and (4) the Coast Guard will provide advance notification of the zone to the

local maritime community by Broadcast Notice to Mariners, or by on-scene designated representatives.

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 will 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 11 hours that will prohibit entry of a zone within 100 yards directly surrounding race participants. 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.

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.T07–0302 to read as follows:

§ 165.T07–0302 Safety Zone; Key West Paddleboard Classic, Key West, FL.

(a) *Location.* The following regulated area is a moving safety zone beginning at Higgs Beach in Key West, Florida, moving west to the area offshore of Fort Zachary Taylor Historic State Park, moving north through Key West Harbor, moving east through Fleming Key Cut, moving south through Cow Key Channel, and moving west returning to Higgs Beach. The safety zone will extend 100-yards to either side of the race participants and safety vessels; extend 50 yards in front of the lead safety vessel preceding the first race participants; and extend 50 yards behind the safety vessel trailing the last race participants.

(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 (COTP) Key West 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 Key West or designated representative.

(2) Designated representatives may control vessel traffic throughout the enforcement area as determined by the prevailing conditions.

(3) To seek permission to enter, contact COTP Key West or representative by telephone at (305) 292–8772 or via VHF radio on channel 16. Those in the security zone must comply with all lawful orders or directions given to them by the COTP Key West or designated representative.

(d) *Enforcement period.* This section will be enforced from 6 a.m. to 5 p.m. on May 10, 2025.

Jason D. Ingram,

Captain, U.S. Coast Guard, Captain of the Port Key West.

[FR Doc. 2025–08170 Filed 5–8–25; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2024–0373; FRL–12413–02–R10]

Air Plan Approval; WA; Southwest Clean Air Agency; Revisions to Excess Emissions, Startup, Shutdown, and General Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving Washington State Implementation Plan (SIP) revisions to the Southwest Clean Air Agency (SWCAA) air quality regulations submitted by the State of Washington, through the Department of Ecology (Ecology) on June 22, 2023. The revisions were submitted in part to respond to the EPA’s June 12, 2015 “SIP call” in which the EPA found a provision in the Washington SIP applicable in the area regulated by SWCAA to be substantially inadequate, providing affirmative defenses that operate to limit the jurisdiction of the Federal court in an enforcement action related to excess emissions during startup, shutdown, and malfunction (SSM) events. The EPA’s approval of the SIP revisions to the substantially inadequate provision corrects the SWCAA deficiency identified in the 2015 SSM SIP call and the EPA’s January 2022 finding of failure to submit. Washington withdrew some portions of the revisions submitted that were not identified in the 2015 SSM SIP call and therefore the EPA is not approving those withdrawn portions. The EPA proposed to approve this action on December 10, 2024, and received no comments.

DATES: This final rule is effective June 9, 2025.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2024–0373. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly

available, e.g., Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov>.

or please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT:

Randall Ruddick, EPA Region 10, 1200 Sixth Avenue (Suite 155), Seattle, WA 98101, (206) 553–1999; or email ruddick.randall@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” or “our,” is used, it refers to the EPA.

Table of Contents

- I. Background
- II. Final Action
- III. Incorporation by Reference
- IV. Statutory and Executive Order Reviews

I. Background

On December 10, 2024 (89 FR 99177), the EPA proposed to approve State Implementation Plan (SIP) revisions to the Southwest Clean Air Agency (SWCAA) air quality regulations submitted by the State of Washington, through the Department of Ecology (Ecology) on June 22, 2023. In that proposal, we also proposed to determine that the revisions to SWCAA’s Rule 400–107, corrects the deficiency with respect to SWCAA that we identified in our June 12, 2015 action entitled “State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction”¹ (“2015 SSM SIP call”) and our January 12, 2022, Findings of Failure to Submit² (FFS). The remaining SIP revisions submitted with the revised SWCAA Rule 400–107 on June 15, 2023, were not specified in the 2015 SSM SIP call. The reasons for our proposed approval and determination can be found in the proposed action and will not be fully

¹ 80 FR 33839, June 12, 2015.

² Findings of Failure To Submit State Implementation Plan Revisions in Response to the 2015 Findings of Substantial Inadequacy and SIP Calls To Amend Provisions Applying To Excess Emissions During Periods of Startup, Shutdown, and Malfunction, 87 FR 1680 (January 12, 2022), available at www.regulations.gov, Docket ID No. EPA–HQ–OAR–2021–0863.

restated here. The public comment period for our proposed approval and determination ended on January 9, 2025, and no comments were received, adverse or otherwise. Therefore, we are finalizing our action as proposed.

II. Final Action

The EPA is approving and incorporating by reference in the Washington SIP the revisions Washington submitted on June 22, 2023, except for those withdrawn by Washington.³ This action includes revisions to SWCAA Rule 400–107—the provision identified as inconsistent with Clean Air Act (CAA) requirements in our 2015 SSM SIP call—for the SWCAA.

Once this action becomes effective, the Washington SIP will no longer include the following regulation for SWCAA’s jurisdiction:

SWCAA Rule 400–070(2)(a), *Emission Standards for Certain Source Categories*, (State effective September 21, 1995);

This action also approves and incorporates by reference at 40 CFR 52.2470(c)—*Table 8—Additional Regulations Approved for the Southwest Clean Air Agency (SWCAA) Jurisdiction*, the following revised regulations:

- SWCAA Rule 400–040, *General Standards for Maximum Emissions*, establishing maximum emissions allowed in certain instances, (State effective September 10, 2021);
- SWCAA Rule 400–070, *General Requirements for Certain Source Categories*, establishing general standards for certain sources, (State effective September 10, 2021);
- SWCAA Rule 400–081, *Startup and Shutdown*, establishing certain modeling and control technology determinations for periods of startup and shutdown (State effective September 10, 2021);
- SWCAA Rule 400–107, *Excess Emissions*, establishing reporting and excusing of certain excess emissions, (State effective September 10, 2021).

These SIP revisions apply specifically to the jurisdiction of the Southwest Clean Air Agency in Washington State.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference as described in section II of this preamble. The EPA has made, and will continue to make,

³ See 201 state submittal supplement *SWCAA Partial Withdrawal Request Letter—Ecology.pdf* and 202 state submittal supplement *SWCAA Partial Withdrawal Request Letter—SWCAA.pdf* included in the docket for this action.

these materials generally available through <https://www.regulations.gov> and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the Clean Air Act as of the effective date of the final rule of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.⁴ Also in this document, the EPA is removing regulatory text from incorporated by reference, as described in section II. of this preamble.

IV. Statutory and Executive Orders Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

The SIP is not approved to apply on any Indian reservation land in Washington except as specifically noted below and is also not approved to apply in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law. Washington's SIP is approved to apply on non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25

U.S.C. 1773, Congress explicitly provided State and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 17, 2025.

Emma Pokon,

Regional Administrator, Region 10.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

- 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart WW—Washington

- 2. In § 52.2470, in paragraph (c), amend table 8, under the heading "General Regulations for Air Pollution Sources" by:

- a. Revising entry "400–040";
- b. Removing entry "400–070(2)(a)"; and
- c. Revising entries "400–070", "400–81", and "400–107".

The revisions read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

TABLE 8—ADDITIONAL REGULATIONS APPROVED FOR THE SOUTHWEST CLEAN AIR AGENCY (SWCAA) JURISDICTION

[Applicable in Clark, Cowlitz, Lewis, Skamania and Wahkiakum counties, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction; facilities subject to the Washington Department of Ecology's direct jurisdiction under Chapters 173–405, 173–410, and 173–415 Washington Administrative Code (WAC); Indian reservations; any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction; and the Prevention of Significant Deterioration (PSD) permitting of facilities subject to the applicability sections of WAC 173–400–700.]

State/local citation	Title/subject	State/local effective date	EPA approval date	Explanations
Southwest Clean Air Agency Regulations General Regulations for Air Pollution Sources				
400–040	General Standards for Maximum Emissions.	9/10/21	5/9/2025, 90 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	Except: 400–040(1)(a), (c) and (d); 400–040(2); and 400–040(4).

⁴ 62 FR 27968 (May 22, 1997).

TABLE 8—ADDITIONAL REGULATIONS APPROVED FOR THE SOUTHWEST CLEAN AIR AGENCY (SWCAA) JURISDICTION—Continued

[Applicable in Clark, Cowlitz, Lewis, Skamania and Wahkiakum counties, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction; facilities subject to the Washington Department of Ecology's direct jurisdiction under Chapters 173–405, 173–410, and 173–415 Washington Administrative Code (WAC); Indian reservations; any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction; and the Prevention of Significant Deterioration (PSD) permitting of facilities subject to the applicability sections of WAC 173–400–700.]

State/local citation	Title/subject	State/local effective date	EPA approval date	Explanations
400–070	General Requirements for Certain Source Categories.	9/10/21	5/9/2025, 90 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	Except: 400–070(3)(b); 400–070(5); 400–070(6); 400–070(7); 400–070(8)(c); 400–070(9); 400–070(10); 400–070(11); 400–070(12); 400–070(14); 400–070(15)(c); and 400–070(16).
400–081	Startup and Shutdown.	9/10/21	5/9/2025, 90 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	
400–107	Excess Emissions ..	9/10/21	5/9/2025, 90 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	

* * * * *

[FR Doc. 2025–07846 Filed 5–8–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2024–0174; FRL–12570–02–R4]

Air Plan Approval; Alabama; Administrative Corrections and VOC Definition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Alabama, through the Alabama Department of Environmental Management (ADEM) on December 20, 2023. The revision modifies the State's air quality regulations as incorporated into the SIP by changing the definition of “volatile organic compounds” (VOC) to be consistent with federal regulations. The revision also addresses typographical errors and increases clarity and consistency with EPA's definitions and Alabama's Legislative Services Agency requirements.

DATES: This rule is effective June 9, 2025.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2024–0174. All documents in the docket are listed on the *regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Weston Freund, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and

Radiation Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8773. Mr. Freund can also be reached via electronic mail at freund.weston@epa.gov.

SUPPLEMENTARY INFORMATION:

I. This Action

EPA is approving changes to the Alabama SIP submitted by the State of Alabama through a letter dated December 20, 2023,¹ amending Chapter No. 335–3–1, *General Provisions*; Chapter No. 335–3–5, *Control of Sulfur Compound Emissions*; and Chapter No. 335–3–8, *Nitrogen Oxides Emissions*, to be consistent with federal regulations, address typographical errors, and increase clarity and consistency with EPA's definitions and Alabama's Legislative Services Agency requirements.

Through a notice of proposed rulemaking (NPRM), published on March 7, 2025 (90 FR 11500), EPA proposed to approve the December 20, 2023, changes to Alabama Administrative Code Rule 335–3–1–.02, *Definitions*; Rules 335–3–5–.10, *TR SO₂ Trading Program—Computation of Time*; 335–3–5–.11, *Administrative*

¹ Alabama submitted other revisions to the SIP under the December 20, 2023, cover letter that are not addressed in this rulemaking. EPA will act on those SIP revisions in separate rulemakings.

Appeal Procedures; 335–3–5–.14, *Authorization of Designated Representative and Alternate Designated Representative*; 335–3–5–.15, *Responsibilities of Designated Representative and Alternate Designated Representative*; 335–3–5–.16, *Changing Designated Representative and Alternate Designated Representative*; *Changes in Owners and Operators*; *Changes in Units at the Source*; 335–3–5–.17, *Certificate of Representation*; 335–3–5–.19, *Delegation by Designated Representative and Alternate Designated Representative*; 335–3–5–.22, *Recordation of TR SO₂ Allowance Allocations and Auction Results*; 335–3–5–.23, *Submission of TR SO₂ Allowance Transfers*; 335–3–5–.24, *Recordation of TR SO₂ Allowance Transfers*; 335–3–5–.25, *Compliance with TR SO₂ Emissions Limitation*; 335–3–5–.26, *Compliance with TR SO₂ Assurance Provisions*; 335–3–5–.28, *Account Error*; 335–3–5–.29, *Administrator's Action on Submissions*; 335–3–5–.33, *Monitoring System Out-of-Control Periods*; 335–3–5–.34, *Notifications Concerning Monitoring*; 335–3–5–.35, *Recordkeeping and Reporting*; and 335–3–5–.36, *Petitions for Alternatives to Monitoring, Recordkeeping, or Reporting Requirements*; and Rules 335–3–8–.11, *TR NO_x Annual Trading Program—Computation of Time*; 335–3–8–.12, *Administrative Appeal Procedures*; 335–3–8–.16, *Authorization of Designated Representative and Alternate Designated Representative*; 335–3–8–.17, *Responsibilities of Designated Representative and Alternate Designated Representative*; 335–3–8–.18, *Changing Designated Representative and Alternate Designated Representative*; *Changes in Owners and Operators*; *Changes in Units at the Source*; 335–3–8–.19, *Certificate of Representation*; 335–3–8–.21, *Delegation by Designated Representative and Alternate Designated Representative*; 335–3–8–.24, *Recordation of TR NO_x Annual Allowance Allocations and Auction Results*; 335–3–8–.25, *Submission of TR NO_x Annual Allowance Transfers*; 335–3–8–.26, *Recordation of TR NO_x Annual Allowance Transfers*; 335–3–8–.27, *Compliance with TR NO_x Annual Emissions Limitation*; 335–3–8–.28, *Compliance with TR NO_x Annual Assurance Provisions*; 335–3–8–.30, *Account Error*; 335–3–8–.31, *Administrator's Action on Submissions*; 335–3–8–.35, *Monitoring System Out-of-Control Periods*; 335–3–8–.36, *Notifications Concerning Monitoring*;

335–3–8–.37, *Recordkeeping and Reporting*; 335–3–8–.38, *Petitions for Alternatives to Monitoring, Recordkeeping, or Reporting Requirements*; 335–3–8–.43, *TR NO_x Ozone Season Group 2 Trading Program—Computation of Time*; 335–3–8–.44, *Administrative Appeal Procedures*; 335–3–8–.48, *Authorization of Designated Representative and Alternate Designated Representative*; 335–3–8–.49, *Responsibilities of Designated Representative and Alternate Designated Representative*; 335–3–8–.50, *Changing Designated Representative and Alternate Designated Representative*; *Changes in Owners and Operators*; *Changes in Units at the Source*; 335–3–8–.51, *Certificate of Representation*; 335–3–8–.53, *Delegation by Designated Representative and Alternate Designated Representative*; 335–3–8–.56, *Recordation of TR NO_x Ozone Season Group 2 Allowance Allocations and Auction Results*; 335–3–8–.57, *Submission of TR NO_x Ozone Season Group 2 Allowance Transfers*; 335–3–8–.58, *Recordation of TR NO_x Ozone Season Group 2 Allowance Transfers*; 335–3–8–.59, *Compliance with TR NO_x Ozone Season Group 2 Emissions Limitation*; 335–3–8–.60, *Compliance with TR NO_x Ozone Season Group 2 Assurance Provisions*; 335–3–8–.62, *TR NO_x Ozone Season Group 2 Trading Program—Account Error*; 335–3–8–.63, *TR NO_x Ozone Season Group 2 Trading Program—Administrator's Action on Submissions*; 335–3–8–.67, *Monitoring System Out-of-Control Periods*; 335–3–8–.68, *Notifications Concerning Monitoring*; 335–3–8–.69, *Recordkeeping and Reporting*; 335–3–8–.70, *Petitions for Alternatives to Monitoring, Recordkeeping, or Reporting Requirements*; and 335–3–8–.71, *NO_x Budget Program*. The details of Alabama's submission, as well as EPA's rationale for approving the changes, are described in more detail in the March 7, 2025, NPRM. Comments on the NPRM, were due on or before April 7, 2025. Two adverse comments and two comments in support were received on the NPRM.

II. Response to Comments

All comments received on the NPRM are provided in the docket for this final action. Summaries of the adverse comments and EPA's responses to these comments are provided below.

Comment 1: A commenter recommends that EPA “not approve the AL state plan by lowering the standards and redefining definitions.” The commenter contends that approval will

result in people suffering negative consequences from poor air quality.

Response 1: EPA disagrees with the commenter because the revisions to Alabama's SIP will not lower any standards. The amendments to Chapter No. 335–3–1, *General Provisions*, revise the definition of “volatile organic compounds” (VOC) by adding “trans-1,1,1,4,4,4 hexafluorobut-2-ene (HFO-1336mzz(E))” to the list of organic compounds that are exempted from being considered in the regulatory definition of VOC. This is done in accordance with EPA's revision of its VOC definition at 40 CFR 51.100(s) on February 8, 2023, which took into consideration effects on human health and the environment as part of the review process and exempted this compound because of its negligible reactivity. See 88 FR 8226. EPA's longstanding policy is that compounds of carbon with negligible reactivity need not be regulated to reduce ozone and should be excluded from the regulatory definition of VOC. Additionally, the amendments to Chapter No. 335–3–5, *Control of Sulfur Compound Emissions* and Chapter No. 335–3–8, *Nitrogen Oxides Emissions* are administrative in nature and merely address typographical errors and bring the amended rules into compliance with Alabama's Legislative Services Agency requirements.

Comment 2: A commenter summarizes EPA's proposed action in the March 27, 2025, NPRM as proposing to incorporate federal requirements for fine particulate matter (PM_{2.5}) into Alabama's Prevention of Significant Deterioration (PSD) permitting program to align the State's permitting process with the federal PM_{2.5} standards. The commenter then provides comments, questions, and supporting evidence on environmental justice, public health impacts, monitoring and enforcement, economic impacts, stakeholder engagement, and the timeline for implementation in the context of PSD permitting requirements for the federal PM_{2.5} standards.

Response 2: These comments are not relevant to EPA's action on Alabama's December 20, 2023, SIP revision as proposed in the March 7, 2025, NPRM. The SIP revision at issue in the NPRM and in this final rule does not address Alabama's PSD permitting program. The SIP revision only modifies the definition of “volatile organic compounds” (VOC) to be consistent with federal regulations, addresses typographical errors, and makes administrative changes to certain rules within Chapter Nos. 335–3–5 and 335–3–8, as discussed above.

Alabama did submit a SIP revision on December 20, 2023, consisting of changes to certain air permit regulations that have been amended by the State agency since EPA last approved those provisions; however, EPA will address these revisions in a separate rulemaking.

III. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in Section I and II of this preamble, EPA is finalizing the incorporation by reference of Alabama Administrative Code Rule 335–3–1–.02, *Definitions*;² Rules 335–3–5–.10, *TR SO₂ Trading Program—Computation of Time*; 335–3–5–.11, *Administrative Appeal Procedures*; 335–3–5–.14, *Authorization of Designated Representative and Alternate Designated Representative*; 335–3–5–.15, *Responsibilities of Designated Representative and Alternate Designated Representative*; 335–3–5–.16, *Changing Designated Representative and Alternate Designated Representative*; *Changes in Owners and Operators*; *Changes in Units at the Source*; 335–3–5–.17, *Certificate of Representation*; 335–3–5–.19, *Delegation by Designated Representative and Alternate Designated Representative*; 335–3–5–.22, *Recordation of TR SO₂ Allowance Allocations and Auction Results*; 335–3–5–.23, *Submission of TR SO₂ Allowance Transfers*; 335–3–5–.24, *Recordation of TR SO₂ Allowance Transfers*; 335–3–5–.25, *Compliance with TR SO₂ Emissions Limitation*; 335–3–5–.26, *Compliance with TR SO₂ Assurance Provisions*; 335–3–5–.28, *Account Error*; 335–3–5–.29, *Administrator's Action on Submissions*; 335–3–5–.33, *Monitoring System Out-of-Control Periods*; 335–3–5–.34, *Notifications Concerning Monitoring*; 335–3–5–.35, *Recordkeeping and Reporting*; and 335–3–5–.36, *Petitions for Alternatives to Monitoring, Recordkeeping, or Reporting Requirements*; and Rules 335–3–8–.11, *TR NO_x Annual Trading Program—Computation of Time*; 335–3–8–.12, *Administrative Appeal Procedures*; 335–3–8–.16, *Authorization of Designated Representative and Alternate Designated Representative*; 335–3–8–.17, *Responsibilities of Designated Representative and Alternate Designated Representative*; 335–3–8–.18, *Changing Designated*

Representative and Alternate Designated Representative; *Changes in Owners and Operators*; *Changes in Units at the Source*; 335–3–8–.19, *Certificate of Representation*; 335–3–8–.21, *Delegation by Designated Representative and Alternate Designated Representative*; 335–3–8–.24, *Recordation of TR NO_x Annual Allowance Allocations and Auction Results*; 335–3–8–.25, *Submission of TR NO_x Annual Allowance Transfers*; 335–3–8–.26, *Recordation of TR NO_x Annual Allowance Transfers*; 335–3–8–.27, *Compliance with TR NO_x Annual Emissions Limitation*; 335–3–8–.28, *Compliance with TR NO_x Annual Assurance Provisions*; 335–3–8–.30, *Account Error*; 335–3–8–.31, *Administrator's Action on Submissions*; 335–3–8–.35, *Monitoring System Out-of-Control Periods*; 335–3–8–.36, *Notifications Concerning Monitoring*; 335–3–8–.37, *Recordkeeping and Reporting*; 335–3–8–.38, *Petitions for Alternatives to Monitoring, Recordkeeping, or Reporting Requirements*; 335–3–8–.43, *TR NO_x Ozone Season Group 2 Trading Program—Computation of Time*; 335–3–8–.44, *Administrative Appeal Procedures*; 335–3–8–.48, *Authorization of Designated Representative and Alternate Designated Representative*; 335–3–8–.49, *Responsibilities of Designated Representative and Alternate Designated Representative*; 335–3–8–.50, *Changing Designated Representative and Alternate Designated Representative*; *Changes in Owners and Operators*; *Changes in Units at the Source*; 335–3–8–.51, *Certificate of Representation*; 335–3–8–.53, *Delegation by Designated Representative and Alternate Designated Representative*; 335–3–8–.56, *Recordation of TR NO_x Ozone Season Group 2 Allowance Allocations and Auction Results*; 335–3–8–.57, *Submission of TR NO_x Ozone Season Group 2 Allowance Transfers*; 335–3–8–.58, *Recordation of TR NO_x Ozone Season Group 2 Allowance Transfers*; 335–3–8–.59, *Compliance with TR NO_x Ozone Season Group 2 Emissions Limitation*; 335–3–8–.60, *Compliance with TR NO_x Ozone Season Group 2 Assurance Provisions*; 335–3–8–.62, *TR NO_x Ozone Season Group 2 Trading Program—Account Error*; 335–3–8–.63, *TR NO_x Ozone Season Group 2 Trading Program—Administrator's Action on Submissions*; 335–3–8–.67, *Monitoring System Out-of-Control Periods*; 335–3–8–.68, *Notifications Concerning Monitoring*; 335–3–8–.69, *Recordkeeping and Reporting*; 335–3–8–.70, *Petitions for Alternatives to*

Monitoring, Recordkeeping, or Reporting Requirements; and 335–3–8–.71, *NO_x Budget Program*, state effective February 12, 2024, which address typographical errors and increase clarity and consistency with EPA's definitions and Alabama's Legislative Services Agency requirements. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.³

IV. Final Action

EPA is approving Alabama's December 20, 2023, SIP revision consisting of the aforementioned changes to Chapter No. 335–3–1, *General Provisions*; Chapter No. 335–3–5, *Control of Sulfur Compound Emissions*; and Chapter No. 335–3–8, *Nitrogen Oxides Emissions* for the reasons discussed above.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

² EPA is also correcting the Chapter 335–3–1 title from "General Provision" to "General Provisions" in 40 CFR 52.50(c).

³ See 62 FR 27968 (May 22, 1997).

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 8, 2025. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 29, 2025.

Kevin McOmber,

Regional Administrator, Region 4.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart B—Alabama

■ 2. In § 52.50(c), amend the table by:

■ a. Revising the title for “Chapter 335–3–1 General Provisions”, and

■ b. Revising the entries for “Section 335–3–1–.02, *Definitions*”; “Section 335–3–5–.10, *TR SO₂ Trading Program—Computation of Time*”; “Section 335–3–5–.11, *Administrative Appeal Procedures*”; “Section 335–3–5–.14, *Authorization of Designated Representative and Alternate Designated Representative*”; “Section 335–3–5–.15, *Responsibilities of Designated Representative and Alternate Designated Representative*”; “Section 335–3–5–.16, *Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source*”; “Section 335–3–5–.17, *Certificate of Representation*”; “Section 335–3–5–.19, *Delegation by Designated Representative and Alternate Designated Representative*”; “Section 335–3–5–.22, *Recordation of TR SO₂ Allowance Allocations and Auction Results*”; “Section 335–3–5–.23, *Submission of TR SO₂ Allowance Transfers*”; “Section 335–3–5–.24, *Recordation of TR SO₂ Allowance Transfers*”; “Section 335–3–5–.25, *Compliance with TR SO₂ Emissions Limitation*”; “Section 335–3–5–.26, *Compliance with TR SO₂ Assurance Provisions*”; “Section 335–3–5–.28, *Account Error*”; “Section 335–3–5–.29, *Administrator’s Action on Submissions*”; “Section 335–3–5–.33, *Monitoring System Out-of-Control Periods*”; “Section 335–3–5–.34, *Notifications Concerning Monitoring*”; “Section 335–3–5–.35, *Recordkeeping and Reporting*”; “Section 335–3–5–.36, *Petitions for Alternatives to Monitoring, Recordkeeping, or Reporting Requirements*”; “Section 335–3–8–.11, *TR NO_x Annual Trading Program—Computation of Time*”; “Section 335–3–8–.12, *Administrative Appeal Procedures*”; “Section 335–3–8–.16, *Authorization of Designated*

Representative and Alternate Designated Representative”; “Section 335–3–8–.17, *Responsibilities of Designated Representative and Alternate Designated Representative*”; “Section 335–3–8–.18, *Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source*”; “Section 335–3–8–.19, *Certificate of Representation*”; “Section 335–3–8–.21, *Delegation by Designated Representative and Alternate Designated Representative*”; “Section 335–3–8–.24, *Recordation of TR NO_x Annual Allowance Allocations and Auction Results*”; “Section 335–3–8–.25, *Submission of TR NO_x Annual Allowance Transfers*”; “Section 335–3–8–.26, *Recordation of TR NO_x Annual Allowance Transfers*”; “Section 335–3–8–.27, *Compliance with TR NO_x Annual Emissions Limitation*”; “Section 335–3–8–.28, *Compliance with TR NO_x Annual Assurance Provisions*”; “Section 335–3–8–.30, *Account Error*”; “Section 335–3–8–.31, *Administrator’s Action on Submissions*”; “Section 335–3–8–.35, *Monitoring System Out-of-Control Periods*”; “Section 335–3–8–.36, *Notifications Concerning Monitoring*”; “Section 335–3–8–.37, *Recordkeeping and Reporting*”; “Section 335–3–8–.38, *Petitions for Alternatives to Monitoring, Recordkeeping, or Reporting Requirements*”; “Section 335–3–8–.43, *TR NO_x Ozone Season Group 2 Trading Program—Computation of Time*”; “Section 335–3–8–.44, *Administrative Appeal Procedures*”; “Section 335–3–8–.48, *Authorization of Designated Representative and Alternate Designated Representative*”; “Section 335–3–8–.49, *Responsibilities of Designated Representative and Alternate Designated Representative*”; “Section 335–3–8–.50, *Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source*”; “Section 335–3–8–.51, *Certificate of Representation*”; “Section 335–3–8–.53, *Delegation by Designated Representative and Alternate Designated Representative*”; “Section 335–3–8–.56, *Recordation of TR NO_x Ozone Season Group 2 Allowance Allocations and Auction Results*”; “Section 335–3–8–.57, *Submission of TR NO_x Ozone Season Group 2 Allowance Transfers*”; “Section 335–3–8–.58, *Recordation of TR NO_x Ozone Season Group 2 Allowance Transfers*”; “Section 335–3–8–.59, *Compliance with TR NO_x Ozone Season Group 2 Emissions Limitation*”; “Section 335–3–

8–60, *Compliance with TR NO_x Ozone Season Group 2 Assurance Provisions*”; “Section 335–3–8–62, *TR NO_x Ozone Season Group 2 Trading Program—Account Error*”; “Section 335–3–8–63, *TR NO_x Ozone Season Group 2 Trading Program—Administrator’s Action on*

Submissions”; “Section 335–3–8–67, *Monitoring System Out-of-Control Periods*”; “Section 335–3–8–68, *Notifications Concerning Monitoring*”; “Section 335–3–8–69, *Recordkeeping and Reporting*”; “Section 335–3–8–70, *Petitions for Alternatives to Monitoring,*

Recordkeeping, or Reporting Requirements”; and “Section 335–3–8–71, *NO_x Budget Program*”.

The amendments read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

TABLE 1 TO PARAGRAPH (c)—EPA-APPROVED ALABAMA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Chapter No. 335–3–1 General Provisions				
*	*	*	*	*
Section 335–3–1–.02	Definitions	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	*
*	*	*	*	*
Chapter No. 335–3–5 Control of Sulfur Compound Emissions				
*	*	*	*	*
Section 335–3–5–.10	TR SO ₂ Trading Program—Computation of Time.	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	*
Section 35–3–5–.11 ...	Administrative Appeal Procedures	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	*
*	*	*	*	*
Section 335–3–5–.14	Authorization of Designated Representative and Alternate Designated Representative.	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	*
Section 335–3–5–.15	Responsibilities of Designated Representative and Alternate Designated Representative.	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	*
Section 335–3–5–.16	Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source.	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	*
Section 335–3–5–.17	Certificate of Representation	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	*
*	*	*	*	*
Section 335–3–5–.19	Delegation by Designated Representative and Alternate Designated Representative.	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	*
*	*	*	*	*
Section 335–3–5–.22	Recordation of TR SO ₂ Allowance Allocations and Auction Results.	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	*
Section 335–3–5–.23	Submission of TR SO ₂ Allowance Transfers.	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	*
Section 335–3–5–.24	Recordation of TR SO ₂ Allowance Transfers.	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	*
Section 335–3–5–.25	Compliance with TR SO ₂ Emissions Limitation.	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	*
Section 335–3–5–.26	Compliance with TR SO ₂ Assurance Provisions.	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	*
*	*	*	*	*
Section 335–3–5–.28	Account Error	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	*
Section 335–3–5–.29	Administrator’s Action on Submissions	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	*
*	*	*	*	*
Section 335–3–5–.33	Monitoring System Out-of-Control Periods	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	*
Section 335–3–5–.34	Notifications Concerning Monitoring	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	*

TABLE 1 TO PARAGRAPH (c)—EPA-APPROVED ALABAMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section 335–3–5–.35	Recordkeeping and Reporting	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
Section 335–3–5–.36	Petitions for Alternatives to Monitoring, Recordkeeping, or Reporting Requirements.	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
*	*	*	*	*
Chapter No. 335–3–8 Control of Nitrogen Oxide Emissions				
*	*	*	*	*
Section 335–3–8–.11	TR NO _x Annual Trading Program—Computation of Time.	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
Section 335–3–8–.12	Administrative Appeal Procedures	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
*	*	*	*	*
Section 335–3–8–.16	Authorization of Designated Representative and Alternate Designated Representative.	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
Section 335–3–8–.17	Responsibilities of Designated Representative and Alternate Designated Representative.	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
Section 335–3–8–.18	Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source.	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
Section 335–3–8–.19	Certificate of Representation	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
*	*	*	*	*
Section 335–3–8–.21	Delegation by Designated Representative and Alternate Designated Representative.	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
*	*	*	*	*
Section 335–3–8–.24	Recordation of TR NO _x Annual Allowance Allocations and Auction Results.	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
Section 335–3–8–.25	Submission of TR NO _x Annual Allowance Transfers.	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
Section 335–3–8–.26	Recordation of TR NO _x Annual Allowance Transfers.	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
Section 335–3–8–.27	Compliance with TR NO _x Annual Emissions Limitation.	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
Section 335–3–8–.28	Compliance with TR NO _x Annual Assurance Provisions.	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
*	*	*	*	*
Section 335–3–8–.30	Account Error	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
Section 335–3–8–.31	Administrator's Action on Submissions	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
*	*	*	*	*
Section 335–3–8–.35	Monitoring System Out-of-Control Periods	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
Section 335–3–8–.36	Notifications Concerning Monitoring	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
Section 335–3–8–.37	Recordkeeping and Reporting	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
Section 335–3–8–.38	Petitions for Alternatives to Monitoring, Recordkeeping, or Reporting Requirements.	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
*	*	*	*	*
Section 335–3–8–.43	TR NO _x Ozone Season Group 2 Trading Program—Computation of Time.	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
Section 335–3–8–.44	Administrative Appeal Procedures	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	

TABLE 1 TO PARAGRAPH (c)—EPA-APPROVED ALABAMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
* * *	* * *	* * *	* * *	*
Section 335–3–8–.48	Authorization of Designated Representative and Alternate Designated Representative.	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
Section 335–3–8–.49	Responsibilities of Designated Representative and Alternate Designated Representative.	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
Section 335–3–8–.50	Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source.	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
Section 335–3–8–.51	Certificate of Representation	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
* * *	* * *	* * *	* * *	*
Section 335–3–8–.53	Delegation by Designated Representative and Alternate Designated Representative.	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
* * *	* * *	* * *	* * *	*
Section 335–3–8–.56	Recordation of TR NO _x Ozone Season Group 2 Allowance Allocations and Auction Results.	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
Section 335–3–8–.57	Submission of TR NO _x Ozone Season Group 2 Allowance Transfers.	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
Section 335–3–8–.58	Recordation of TR NO _x Ozone Season Group 2 Allowance Transfers.	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
Section 335–3–8–.59	Compliance with TR NO _x Ozone Season Group 2 Emissions Limitation.	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
Section 335–3–8–.60	Compliance with TR NO _x Ozone Season Group 2 Assurance Provisions.	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
* * *	* * *	* * *	* * *	*
Section 335–3–8–.62	TR NO _x Ozone Season Group 2 Trading Program—Account Error.	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
Section 335–3–8–.63	TR NO _x Ozone Season Group 2 Trading Program—Administrator's Action on Submissions.	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
* * *	* * *	* * *	* * *	*
Section 335–3–8–.67	Monitoring System Out-of-Control Periods	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
Section 335–3–8–.68	Notifications Concerning Monitoring	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
Section 335–3–8–.69	Recordkeeping and Reporting	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
Section 335–3–8–.70	Petitions for Alternatives to Monitoring, Recordkeeping, or Reporting Requirements.	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
Section 335–3–8–.71	NO _x Budget Program	2/12/2024	5/9/2025, 90 FR [Insert Federal Register page where the document begins].	
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[FR Doc. 2025–08091 Filed 5–8–25; 8:45 am]

BILLING CODE 6560–50–P

**GENERAL SERVICES
ADMINISTRATION****41 CFR Part 102–74****[Notice—MA–2025–17; Docket No. 2025–0002; Sequence No.15]****Federal Management Regulation;
Nondiscrimination Clarification in the
Federal Workplace; Rescission****AGENCY:** Office of Government-wide Policy (OGP); General Services Administration, (GSA).**ACTION:** Notification of Rescission.**SUMMARY:** GSA is rescinding the Federal Management Regulation (FMR) bulletin on Nondiscrimination Clarification in the Federal Workplace, which provided guidance on the interpretation of the prohibition against sex discrimination under various Federal civil rights laws. The rescission is based on E.O. 14168, *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*.

DATES: *Applicability:* May 9, 2025.

FOR FURTHER INFORMATION CONTACT: For clarification of content or information regarding a request for a delegation of authority, please contact Aluanda R. Drain, Associate Administrator, Office of Civil Rights, 202–501–0767, or by email at aluanda.drain@gsa.gov. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov. Please cite the Notification of Rescission of Nondiscrimination Clarification in the Federal Workplace in the subject line.

SUPPLEMENTARY INFORMATION: On August 18, 2016, GSA issued a bulletin titled “Nondiscrimination Clarification in the Federal Workplace” (81 FR 55148, as corrected at 81 FR 63134, September 14, 2016). This bulletin provided guidance on the interpretation of the prohibition against sex discrimination under

various Federal civil rights laws including Title VII of the Civil Rights Act of 1964 (Title VII), as amended, and Title IX of the Education Amendments Act of 1973, (Title IX) as amended. In particular, the Bulletin concludes that sex discrimination under relevant Federal laws also included discrimination based on gender identity and gender status. Pursuant to E.O. 14168 “*Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*” (90 FR 8615, January 30, 2025), GSA is now rescinding that bulletin.

E.O. 14168 states that gender ideology embraces the belief that there are genders disconnected from the sex that one is assigned at birth. Accordingly, the E.O. directs agencies to promptly remove all statements, policies, regulations, forms, communications, or other internal and external messages that promote or otherwise inculcate

gender ideology, and shall cease issuing such statements, policies, regulations, forms, communications or other messages. Additionally, the referenced Bulletin is inconsistent with E.O. 14168 in that it not only considers Title VII and Title IV to protect gender identity, but it also cites support in several cases issued by the U.S. Equal Employment Opportunity Commission upholding the use of restrooms based on gender identity. Therefore, the bulletin must be rescinded to bring GSA-controlled buildings into alignment with the principles of E.O. 14168 declaring that it is the Policy of the United States to recognize only two sexes, male and female.

Larry Allen,

Associate Administrator, Office of Government-wide Policy, U.S. General Services Administration.

[FR Doc. 2025–08129 Filed 5–8–25; 8:45 am]

BILLING CODE 6820–34–P

Proposed Rules

Federal Register

Vol. 90, No. 89

Friday, May 9, 2025

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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2025-0752; Project Identifier MCAI-2024-00340-R]

RIN 2120-AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus Helicopters Model EC 130 B4 and EC 130 T2 helicopters. This proposed AD was prompted by a report of heavy damage on the fenestron due to the loss of the tail rotor (TR) blade, which broke at the TR hub tension-torsion bar (tension-torsion bar). This proposed AD would require inspecting the tension-torsion bar and, depending on the inspection results, taking corrective actions. This proposed AD would also prohibit performing maintenance using certain maintenance manuals. These proposed actions are specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by June 23, 2025.

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* under Docket No. FAA-2025-0752; 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 NPRM, 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 EASA material identified in this proposed AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu*; website: *easa.europa.eu*. You may find the EASA material on the EASA website at *ad.easa.europa.eu*.

- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222 5110.

FOR FURTHER INFORMATION CONTACT: Tara Lucas, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (206) 231-3189; email: *tara.lucas@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA-2025-0752; Project Identifier MCAI-2024-00340-R” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, 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 proposal 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*, including any personal information you provide. The agency

will also post a report summarizing each substantive verbal contact received about this NPRM.

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 NPRM 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 NPRM, 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 NPRM. Submissions containing CBI should be sent to Tara Lucas, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2024-0113, dated June 13, 2024 (EASA AD 2024-0113) (also referred to as “the MCAI”), to correct an unsafe condition on Airbus Helicopters Model EC 130 B4 and EC 130 T2 helicopters. The MCAI states an occurrence was reported of heavy damage on the fenestron due to the loss of the TR blade, which broke at the tension-torsion bar and separated from the hub assembly. The FAA is proposing this AD to prevent failure of the tension-torsion bar, which could result in loss of the TR anti-torque function and consequent loss control of the helicopter.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA-2025-0752.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed EASA AD 2024-0113, which specifies procedures for inspecting all lamellas that compose the tension-torsion bar and, if any discrepancy is detected, replacing the

part with a serviceable part. The material referenced by EASA AD 2024–0113 defines discrepancies as cracks, nail-sensitive scratches, distorted lamellas, circular contact indications, and marks. EASA AD 2024–0113 also prohibits accomplishing maintenance using certain maintenance manuals dated prior to March 5, 2024.

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 referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type designs.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2024–0113, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2024–0113 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2024–0113 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Material referenced in EASA AD 2024–0113 for compliance will be available at *regulations.gov* under Docket No. FAA–2025–0752 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 108

helicopters of U.S. registry. Labor rates are estimated at \$85 per hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Inspecting all 10 tension-torsion bars on each helicopter (to include removing any corrosion) would take 4 work-hours for an estimated cost of \$340 per helicopter and \$36,720 for the U.S. fleet.

If required, replacing a tension torsion bar would take 4 work-hours and parts would cost \$1,144 for an estimated cost of \$1,484 per replacement.

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

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would 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 this proposed regulation:

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

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 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:

Airbus Helicopters: Docket No. FAA–2025–0752; Project Identifier MCAI–2024–00340–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by June 23, 2025.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Model EC 130 B4, and EC 130 T2 helicopters, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code: 6500, Tail rotor drive system.

(e) Unsafe Condition

This AD was prompted by a report of heavy damage on the fenestron, due to the loss of the tail rotor (TR) blade, which broke at the TR hub tension-torsion bar. The FAA is issuing this AD to prevent failure of the tension-torsion bar. The unsafe condition, if not addressed, could result in loss of the TR anti-torque function and consequent loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency AD 2024–0113, dated June 13, 2024 (EASA AD 2024–0113).

(h) Exceptions to EASA AD 2024–0113

(1) Where EASA AD 2024–0113 requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) Where EASA AD 2024–0113 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where EASA AD 2024–0113 defines Groups, for this AD, Group 1 also includes those helicopters for which it cannot be determined if maintenance was accomplished using Aircraft Maintenance

Manual (AMM) 64–21–00.6–27A or 64–21–00.6–27B, dated earlier than March 5, 2024.

(4) Where paragraph (2) of EASA AD 2024–0113 specifies “discrepancies as identified in the ASB are,” this AD requires replacing that text with, “a discrepancy, which is defined as a crack, nail-sensitive scratch, deformed lamella, broken lamella, mark, circular contact indication (other than those on the first and last lamella of the tension-torsion bar), or the P/N is not written on the first and the last lamella, is.”

(5) Where paragraph 3 of EASA AD 2024–0113 specifies “an aeroplane,” this AD requires replacing that text with “any helicopter.”

(6) Where the material referenced in EASA AD 2024–0113 specifies to discard parts, this AD requires removing those parts from service.

(7) Where the material referenced in EASA AD 2024–0113 specifies actions for non-installed equipment or parts, this AD does not require those actions.

(8) This AD does not adopt the “Remarks” section of EASA AD 2024–0113.

(i) No Reporting Requirement

Although the material referenced in EASA AD 2024–0113 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Special Flight Permits

Special flight permits are prohibited.

(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 (k) 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. The following provisions also apply to this AD.

(l) Additional Information

For more information about this AD, contact Tara Lucas, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (206) 231–3189; email: tara.lucas@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) European Union Aviation Safety Agency (EASA) AD 2024–0113, dated June 13, 2024.

(ii) [Reserved]

(3) For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3,

50668 Cologne, Germany; phone: +49 221 8999 000; email: ADS@easa.europa.eu; website: easa.europa.eu. You may find the EASA material on the EASA website at ad.easa.europa.eu.

(4) You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. 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 May 1, 2025.

Steven W. Thompson,

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

[FR Doc. 2025–08078 Filed 5–8–25; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2025–0750; Project Identifier MCAI–2022–01325–R]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Helicopters Deutschland GmbH (AHD) Model MBB–BK 117 D–3 helicopters. This proposed AD was prompted by reports of momentary direct current (DC) power interruption in flight of both essential busses. This proposed AD would require revising the existing rotorcraft flight manual (RFM) for your helicopter, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by June 23, 2025.

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 under Docket No. FAA–2025–0750; 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 NPRM, 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 EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: ADS@easa.europa.eu; website: easa.europa.eu. You may find the EASA material on the EASA website ad.easa.europa.eu.

- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at regulations.gov under Docket No. FAA–2025–0750.

FOR FURTHER INFORMATION CONTACT: Dan McCully, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (303) 342–1080; email: william.mccully@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA–2025–0750; Project Identifier MCAI–2022–01325–R” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, 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 proposal 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, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

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 NPRM 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 NPRM, 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 NPRM. Submissions containing CBI should be sent to Dan McCully, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0208, dated October 11, 2022 (EASA AD 2022–0208) (also referred to as the MCAI), to correct an unsafe condition on certain serial-numbered AHD Model MBB–BK117 D–3 and D–3m helicopters. This proposed AD was prompted by reports of momentary DC power interruption in flight of both essential busses. The investigation is still ongoing to identify the root cause of this occurrence. In the interim, AHD developed emergency and malfunction procedures to address this issue. The FAA is proposing this AD to address DC power interruption, which could result in loss of control of the helicopter or reduced situational awareness.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2025–0750.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0208, which specifies procedures for revising the RFM by incorporating an emergency and malfunction procedure, informing all flight crews, and thereafter, operating the helicopter accordingly. This material provides

updated battery discharging procedures, which includes a warning in case of total electrical failure.

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 civil 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, that authority has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2022–0208, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD. See "Differences Between this AD and the MCAI" for a discussion of the general differences included in this AD. The owner/operator (pilot) holding at least a private pilot certificate may revise the existing RFM for your helicopter and must enter compliance with the applicable paragraph of the proposed AD into the helicopter maintenance records in accordance with 14 CFR 43.9(a) and 91.417(a)(2)(v).

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2022–0208 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0208 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Material required by EASA AD 2022–0208 for compliance will be available at *regulations.gov* under Docket No. FAA–

2025–0750 after the FAA final rule is published.

Differences Between This NPRM and the EASA AD

EASA AD 2022–0208 applies to Model MBB–BK117 D–3m helicopters, whereas this proposed AD would not because that model is not FAA type-certificated.

The MCAI requires operators to "inform all flight crew" of the revisions to the RFM, and thereafter to "operate the helicopter accordingly." However, this AD does not require those actions as those actions are already required by FAA regulations. FAA regulations require operators furnish to pilots any changes to the RFM (for example, 14 CFR 135.21) and to ensure the pilots are familiar with the RFM (for example, 14 CFR 91.505). As with any other flight crew training requirement, training on the updated RFM content is tracked by the operators and recorded in each pilot's training record, which is available for the FAA to review. FAA regulations also require pilots to follow the procedures in the existing RFM including all updates. Therefore, including a requirement in this AD to inform the flight crew and operate the helicopter according to the revised RFM would be redundant and unnecessary.

Interim Action

The FAA considers this proposed AD would be an interim action. If final action is later identified, the FAA might consider further rulemaking then.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 27 helicopters of U.S. Registry. Labor rates are estimated at \$85 per hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Revising the existing RFM for your helicopter would take 1 work-hour for an estimated cost of \$85 per helicopter and \$2,295 for the U.S. fleet.

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

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would 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 this proposed regulation:

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

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 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:

Airbus Helicopters Deutschland GmbH (AHD): Docket No. FAA–2025–0750; Project Identifier MCAI–2022–01325–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by June 23, 2025.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Deutschland GmbH (AHD) Model MBB–BK 117 D–3 helicopters, certificated in any

category, as identified in European Union Aviation Safety Agency AD 2022–0208, dated October 11, 2022 (EASA AD 2022–0208).

(d) Subject

Joint Aircraft Service Component (JASC) Code: 2432, Battery/Charger System.

(e) Unsafe Condition

This AD was prompted by reports of momentary direct current (DC) power interruption in flight of both essential busses. The FAA is issuing this AD to address DC power interruption through updated procedures. The unsafe condition, if not addressed, could result in loss of control of the helicopter or reduced situational awareness.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0208. The owner/operator (pilot) holding at least a private pilot certificate may revise the existing RFM for your helicopter and must enter compliance with this paragraph of the AD into the helicopter maintenance records in accordance with 14 CFR 43.9(a) and 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(h) Exceptions to EASA AD 2022–0208

(1) Where paragraph (1) of EASA AD 2022–0208 specifies to inform all flight crews and operate the helicopter accordingly, this AD does not require those actions.

(2) Where paragraph (2) of EASA AD 2022–0208 specifies “the RFM emergency and malfunction procedure, is an acceptable method” this AD requires replacing that text with “the RFM emergency and malfunction procedure, as defined in this AD, is an acceptable method.”

(3) This AD does not adopt the “Remarks” section of EASA AD 2022–0208.

(i) Special Flight Permit

Special flight permits are prohibited.

(j) 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 (k) 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.

(k) Related Information

For more information about this AD, contact Dan McCully, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (303) 342–1080; email: william.mccully@faa.gov.

(l) 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) European Union Aviation Safety Agency (EASA) AD 2022–0208, dated October 11, 2022.

(ii) [Reserved]

(3) For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: ADS@easa.europa.eu; website: easa.europa.eu. You may find the EASA material on the EASA website at ad.easa.europa.eu.

(4) You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N–321, Fort Worth, TX 76177. 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 May 5, 2025.

Steven W. Thompson,

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

[FR Doc. 2025–08075 Filed 5–8–25; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. FDA–2024–N–2910]

RIN 0910–AI80

Food Labeling: Front-of-Package Nutrition Information; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or we) is extending the comment period for the proposed rule entitled “Food Labeling: Front-of-Package Nutrition Information” that appeared in the **Federal Register** of

January 16, 2025. We are taking this action in response to requests for an extension to allow interested parties additional time to submit comments.

DATES: FDA is extending the comment period on the proposed rule published January 16, 2025 (90 FR 5426), by 60 days. Either electronic or written comments must be submitted by July 15, 2025.

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 July 15, 2025. 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-2024-N-2910 for "Food Labeling: Front-of-Package Nutrition Information." 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." We will review this copy, including the claimed confidential information, in our 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.

FOR FURTHER INFORMATION CONTACT:

Claudine Kavanaugh, Office of Nutrition and Food Labeling, Human Foods Program, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 301-796-4647;

or Deirdre Jurand or Alexandra Beliveau, Office of Policy, Regulations, and Information, Human Foods Program, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-2378.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 16, 2025, FDA published a proposed rule entitled "Food Labeling: Front-of-Package Nutrition Information" (90 FR 5426) with a 120-day period for submission of public comments. We have received requests to extend the comment period. The requests expressed concern that the current 120-day comment period does not allow sufficient time to develop a meaningful response to the proposed rule.

We have considered the requests and are extending the comment period for the proposed rule for 60 days, until July 15, 2025. We believe that a 60-day extension allows adequate time for interested parties to submit comments without significantly delaying rulemaking on the important issues in the proposed rule.

Dated: May 5, 2025.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2025-08204 Filed 5-8-25; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2025-0210]

RIN 1625-AA87

Security Zone; Upper Mississippi River, Saint Louis, MO

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a permanent security zone for certain waters of the Upper Mississippi River adjacent to the Jefferson Barracks military installation, Saint Louis, MO. This proposed rulemaking would prohibit persons and vessels from operating or anchoring within the Security zone unless authorized by the Captain of the Port Sector Upper Mississippi River or a designated representative. This action is necessary to ensure no unauthorized entry into the waters adjacent to the military installation to safeguard the installation from sabotage or other

subversive acts. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 9, 2025.

ADDRESSES: You may submit comments identified by docket number USCG–2025–0210 using the Federal Decision-Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments. This notice of proposed rulemaking with its plain-language, 100-word-or-less proposed rule summary, will be available in this same docket.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email MST2 Jekeydon Pratcher, Sector Upper Mississippi River Waterways Management Division, U.S. Coast Guard; telephone 314–269–2564, email Jekeydon.A.Pratcher@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
COTP Captain of the Port

II. Background, Purpose, and Legal Basis

In accordance with 33 CFR 165.5, the Missouri Air National Guard notified the Coast Guard of waterside security concerns at the Jefferson Barracks military installation and requested that the Coast Guard establish a security zone for this area. Accordingly, the Captain of the Port Sector Upper Mississippi River (COTP) has determined that security risks exist in this area and have potential navigable waterway impact, and therefore a security zone would be needed to safeguard the military installation from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature.

The purpose of this rulemaking is to address and mitigate security risks on the navigable waters adjacent to the Jefferson Barracks National Cemetery. The Coast Guard may issue security zone regulations under authority in 46 U.S.C. 70051 and 70124.

III. Discussion of Proposed Rule

The COTP is proposing to establish a permanent security zone that would cover all navigable waters within 300

feet of the right descending bank of the Upper Mississippi River from mile marker 169.3 to 169.5. No vessel or person would be permitted to enter the security zone without obtaining permission from the COTP or a designated representative. The proposed regulatory text appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed 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.

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 NPRM has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size and location of the security zone. The security zone impacts approximately 350 yards along the Upper Mississippi River and extends only 300 feet into the river from the right descending bank. Vessels would be able to safely transit up and down the Mississippi River without entering this zone, but the rule would allow vessels to enter with the permission of the COTP. The Coast Guard will issue Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), or Marine Safety Information Bulletins (MSIBs), via VHF–FM marine channel 13 or 16, to notify the public about 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the security zone may be small entities, for the

reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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

C. Collection of Information

This proposed rule would 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would 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. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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 proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed 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 made a preliminary determination 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 proposed rule involves a permanent security zone that would prohibit entry within approximately 300 feet of the right descending bank of the Upper Mississippi River from mile marker 169.3 to 169.5. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG–2025–0210 in the search box and click “Search.” Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions web page. Also, if you click on the Dockets tab and then the proposed rule, you should see a “Subscribe” option for email alerts. The option will notify you when comments are posted, or a final rule is published.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

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 is proposing to amend 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 § 165.826 to read as follows:

§ 165.826 Security Zone; Upper Mississippi River, Mile Marker 169.3–169.5, Near Saint Louis, MO.

(a) *Location.* The following area is a security zone: all waters of the Upper Mississippi River, from surface to bottom, encompassed by a line connecting the following points beginning at 38°30.000′ N, –90°16.550′ W; thence to 38°30.000′ N, –90°16.483′ W; thence to 38°29.833′ N, 90°16.583′ W; thence to 38°29.833′ N, 90°16.517′ W and along the shore line back to the beginning point. These coordinates are based on the 1984 World Geodetic System (WGS 84).

(b) *Definitions.* (1) As used in this section, *designated representative* means any Coast Guard Commissioned Officer, Warrant Officer, or Petty Officer authorized by the Captain of the Port Sector Upper Mississippi River to act on his or her behalf.

(2) As used in this section, *Captain of the Port* means the Sector Commander of Coast Guard Sector Upper Mississippi River, or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act as a designated representative on his or her behalf.

(c) *Regulations.* While this security zone is being enforced, the following regulations, along with those contained in 33 CFR 165.33, apply:

(1) Under the general security zone regulations in subpart D of this part, you may not enter the security 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 on Channel 16 or by phone at 314–269–2332. Those in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP’s designated representative.

Dated: May 1, 2025.

A.R. Bender,

Captain, U.S. Coast Guard, Captain of the Port Sector Upper Mississippi River.

[FR Doc. 2025–08194 Filed 5–8–25; 8:45 am]

BILLING CODE 9110–04–P

Notices

Federal Register

Vol. 90, No. 89

Friday, May 9, 2025

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.

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Oklahoma 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 the Oklahoma Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold virtual business meetings via ZoomGov on Wednesday, May 21, 2025 and Thursday, June 5, 2025 from 2 p.m.–3 p.m. central time (CT). For the purpose of considering the topic for their next project.

DATES: The meeting will take place on Wednesday, May 21st and Thursday, June 5, 2025 from 2 p.m.–3 p.m. CT. Wednesday, May 21, 2025

- *Registration Link (Audio/Visual):* https://www.zoomgov.com/webinar/register/WN_FR9HVXrSQjWumyFWYQ3MEQ#/registration.

- *Join by Phone (Audio Only):* 1–833–435–1820 USA Toll Free; Webinar ID: # 160 028 8267.

Thursday, June 5, 2025

- *Registration Link (Audio/Visual):* https://www.zoomgov.com/webinar/register/WN_F7HNk_zmSGiY00KuA_V37Q#/registration.

- *Join by Phone (Audio Only):* 1–833–435–1820 USA Toll Free; Webinar ID: #160 372 2142.

FOR FURTHER INFORMATION CONTACT:

Brooke Peery, Designated Federal Officer (DFO) at bpeery@usccr.gov or by phone at (202) 701–1376.

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 Corrine Sanders, Support Services Specialist, csanders@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 Brooke Peery (DFO) at bpeery@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, Texas 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 csanders@usccr.gov.

Agenda:

- I. Welcome & Roll Call
- II. Approval of Minutes
- III. Committee Discussion
- IV. Public Comment
- V. Adjournment

Dated: May 5, 2025.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2025–08098 Filed 5–8–25; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–045, C–570–046]

1-Hydroxyethylidene-1, 1-Diphosphonic Acid From the People's Republic of China: Preliminary Affirmative Determination of Circumvention

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that imports of 1-hydroxyethylidene-1, 1-diphosphonic acid, also referred to as hydroxyethylidenediphosphonic acid, hydroxyethanediphosphonic acid, acetodiphosphonic acid, and etidronic acid, in solid or powder form (acidic solid HEDP) from the People's Republic of China (China) are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on 1-hydroxyethylidene-1, 1-diphosphonic acid (HEDP) from China. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable May 9, 2025.

FOR FURTHER INFORMATION CONTACT:

Charles Vannatta, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4036.

SUPPLEMENTARY INFORMATION:

Background

On May 18, 2017, Commerce published in the **Federal Register** the AD and CVD orders on HEDP from China.¹ On November 13, 2024, Compass Chemical International LLC (Compass) requested that Commerce initiate a circumvention inquiry with regard to acidic solid HEDP that is exported to the United States from China.² In its Circumvention Request,

¹ See *1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 82 FR 22807 (May 18, 2017); see also *1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Countervailing Duty Order*, 82 FR 22809 (May 18, 2017) (collectively, *Orders*).

² See Compass' Letter, "Request for an Anticircumvention Inquiry Pursuant to 19 U.S.C.

Compass alleged that acidic solid HEDP constitutes merchandise altered in form or appearance in such minor respects that it should be included within the scope of the *Orders*, pursuant to section 781(c) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.226(j).³ Compass requested that Commerce conduct this circumvention inquiry on a country-wide basis.⁴

On December 19, 2024, Commerce published in the **Federal Register** a notice of initiation of this circumvention inquiry.⁵ In the *Initiation Notice*, Commerce initiated the circumvention inquiry on the basis of the minor alterations allegation, pursuant to section 781(c) of the Act and 19 CFR 351.226(j).⁶ Commerce initiated this inquiry on a country-wide basis.⁷ For a complete description of events that followed the initiation of this inquiry, *see* the Preliminary Decision Memorandum.⁸

Scope of the Orders

The merchandise covered by the *Orders* includes all grades of aqueous acidic (non-neutralized) concentrations of acidic HEDP from China. For a complete description of the scope of the *Orders*, *see* the Preliminary Decision Memorandum.

Merchandise Subject to the Circumvention Inquiry

This circumvention inquiry covers acidic solid HEDP produced in China and exported to the United States. A complete description of the merchandise subject to the circumvention inquiry is contained in the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this circumvention inquiry pursuant to section 781(c) of the Act and 19 CFR 351.226(j). For a complete description of the methodology underlying the preliminary determination, *see* the

Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic 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>.

Preliminary Affirmative Determination of Circumvention

As detailed in the Preliminary Decision Memorandum, we preliminarily determine that acidic solid HEDP is being produced in China and exported to the United States, and that the sale of acidic solid HEDP in the United States is circumventing the *Orders*. Further, we preliminarily determine that acidic solid HEDP constitutes merchandise altered in form or appearance in such minor respects that it should be included within the scope of the *Orders*, pursuant to section 781(c) of the Act and 19 CFR 351.226(j). We make this determination on a country-wide basis. As a result, we preliminarily determine that it is appropriate to include this merchandise within the *Orders*, and to instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of acidic solid HEDP produced in China and exported to the United States, and to require cash deposits of estimated antidumping and countervailing duties.

Use of Adverse Facts Available (AFA)

Pursuant to section 776(a) of the Act, if necessary information is not available on the record, or an interested party withholds requested information, fails to provide requested information by the deadline or in the form and manner requested, or significantly impedes a proceeding, Commerce shall use the facts otherwise available in reaching the applicable determination. Moreover, pursuant to section 776(b) of the Act, Commerce may use inferences adverse to the interests of an interested party in selecting from among the facts otherwise available if the party fails to cooperate by not acting to the best of its ability to provide requested information.

Commerce requested quantity and value (Q&V) information from twelve companies: Dalian Sinobio Chemistry Co., Ltd. (Dalian Sinobio), Henan Qingshuiyuan Technology Co, Ltd. (Henan Qingshuiyuan), Jiangsu Yao's

Environmental Protection Technology Co., Ltd. (Jiangsu Yao), Jiuyuan Qingyuan Water Treatment Co. (Jiuyuan Qingyuan), Juancheng Kangtai, KCC Industrial Enterprise Limited (KCC Industrial), Nantong Uniphos Chemicals Co., Ltd. (Nantong Uniphos), Plastix Company Ltd. (Plastix), Shandong Dongyue Chemical (Shandong Dongyue), Shandong Green Technologies Import Export Co., Ltd. (Green Technologies), Shandong Taihe Chemicals Co., Ltd. (Taihe Chemicals), and Shandong Taihe Water Treatment Technologies Co., Ltd (Taihe Water Treatment).⁹ In the Q&V Questionnaire,¹⁰ Commerce explained that failure to respond may result in the determination that the company failed to cooperate by not acting to the best of its ability to comply with the request for information, and Commerce may use an inference that is adverse to the company's interests in selecting from the facts otherwise available, in accordance with section 776(b) of the Act.¹¹ Commerce received a timely response to the Q&V Questionnaire from Plastix, which explained that it was a Taiwanese, third-country exporter of acidic solid HEDP, but did not produce or export acidic solid HEDP from China.¹² Dalian Sinobio, Henan Qingshuiyuan, Jiangsu Yao, Jiuyuan Qingyuan, Juancheng Kangtai, KCC Industrial, Nantong Uniphos, Shandong Dongyue, Green Technologies, Taihe Chemicals, and Taihe Water Treatment (collectively, the Eleven Non-Responsive Companies) failed to respond to Commerce's Q&V Questionnaire.

Therefore, we preliminarily find that the Eleven Non-Responsive Companies withheld requested information, failed to provide requested information by the deadline or in the form and manner requested, and significantly impeded this inquiry, within the meaning of sections 776(a)(1) and (2)(A)–(C) of the Act. Moreover, we find that the Eleven Non-Responsive Companies failed to cooperate by not acting to the best of their ability to provide the requested information because they did not provide a timely response to Commerce's questionnaire. Consequently, we used adverse inferences with respect to the Eleven Non-Responsive Companies in selecting

1677j(c); Response to Supplemental Questionnaire," dated November 13, 2024 (Circumvention Request).

³ *Id.*

⁴ *Id.* at Attachment A at 30.

⁵ *See* 1-Hydroxyethylidene-1, 1-Diphosphonic Acid From the People's Republic of China: Initiation of Circumvention Inquiry of the Antidumping and Countervailing Duty Orders, 89 FR 103779 (December 19, 2024) (*Initiation Notice*), and accompanying Initiation Checklist.

⁶ *Id.*

⁷ *Id.*

⁸ *See* Memorandum, "Circumvention Inquiry of the Antidumping Duty and Countervailing Duty Orders on 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Preliminary Decision Memorandum," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁹ *See* Commerce's Letter, "Quantity and Value Questionnaire for Chinese Producers, Exporters, or U.S. Importers," dated January 21, 2025 (Q&V Questionnaire); *see also* Memorandum, "Issuance of Quantity and Value Questionnaire," dated January 22, 2025.

¹⁰ *See* Q&V Questionnaire.

¹¹ *See* Q&V Questionnaire at 2.

¹² *See* Plastix's Letter, "Q&V Response," dated February 11, 2025.

from the facts otherwise available on the record, pursuant to sections 776(a)(2)(B) and (C) and section 776(b) of the Act. For details regarding the AFA applied in this preliminary determination, *see* the Preliminary Decision Memorandum.

As detailed in the Preliminary Decision Memorandum, based on AFA, we preliminarily determine that the Eleven Non-Responsive Companies have exported inquiry merchandise during the period of inquiry (*i.e.*, January 1, 2022, through July 31, 2024) and that sales of such merchandise in the United States are circumventing the *Orders*.

Suspension of Liquidation and Cash Deposit Requirements

In accordance with 19 CFR 351.226(l)(2), we will direct CBP to continue the suspension of liquidation of previously suspended entries and to suspend liquidation of all entries of acidic solid HEDP produced in China that are entered, or withdrawn from warehouse, for consumption in the United States on or after December 19, 2024, the date of publication of the initiation of this circumvention inquiry in the **Federal Register**.¹³ Commerce also intends to instruct CBP to require a cash deposit for estimated antidumping and countervailing duties at the applicable rates for each unliquidated entry of acidic solid HEDP.

These suspension of liquidation instructions and cash deposit requirements will remain in effect until further notice.

Disclosure

Normally, Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice in accordance with 19 CFR 351.224(b). However, in this inquiry, there are no calculations to disclose as this preliminary determination is based entirely on facts available. Accordingly, there will be no disclosure for this preliminary affirmative determination.

Public Comment and Request for Hearing

Interested parties may submit affirmative comments to Commerce no later than 14 days after the date of publication of this notice in the **Federal Register**.¹⁴ Rebuttal comments, limited to issues raised in the affirmative comments, may be submitted no later

than seven days after the deadline for affirmative comments.¹⁵ No new factual information will be accepted in the comments or rebuttal comments.

In this circumvention inquiry, we request that interested parties provide at the beginning of their affirmative and rebuttal comments, a public executive summary for each issue raised in their comments.¹⁶ 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 in this circumvention inquiry. 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).¹⁷

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, within 30 days after the date of publication of this notice in the **Federal Register**, filed electronically via ACCESS. Hearing 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 issues raised in the respective comments.¹⁸ If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined and will notify the parties through ACCESS.¹⁹ Parties should confirm the date, time, and location of the hearing two days before the scheduled date.

All submissions, including affirmative and rebuttal comments, as well as hearing requests, should be filed using ACCESS. An electronically-filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline.

¹⁵ *Id.*

¹⁶ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁷ *See Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069 (September 29, 2023).

¹⁸ *See* 19 CFR 351.310.

¹⁹ *See* 19 CFR 351.310(d).

Notification to Interested Parties

Commerce is issuing and publishing this preliminary determination in accordance with section 781(c) of the Act and 19 CFR 351.226(g)(1).

Dated: May 5, 2025.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Orders*
- IV. Merchandise Subject to the Circumvention Inquiry
- V. Period of Inquiry
- VI. Use of Facts Available and Adverse Inferences
- VII. Statutory and Regulatory Framework: Minor Alterations
- VIII. Circumvention Analysis
- IX. Preliminary Affirmative Determination of Circumvention
- X. Country-Wide Determination
- XI. Recommendation

[FR Doc. 2025-08210 Filed 5-8-25; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-010]

Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Notice of Court Decision Not in Harmony With the Results of the Antidumping Duty Administrative Review; Notice of Amended Final Results

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

SUMMARY: On April 14, 2025, the U.S. Court of International Trade (CIT) issued its final judgment in *Trina Solar Co., Ltd., et al. v. United States*, Slip Op. 25-40, Court no. 23-213, sustaining the U.S. Department of Commerce (Commerce)'s remand results pertaining to the administrative review of the antidumping duty (AD) order on certain crystalline silicon photovoltaic products from the People's Republic of China (China) covering the period February 1, 2021, through January 31, 2022 (POR). Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results of the administrative review, and that Commerce is amending the final results with respect to the dumping margin assigned to: (1) Trina Solar (Changzhou) Science & Technology Co., Ltd.; (2)

¹³ *See Initiation Notice.*

¹⁴ *See* 19 CFR 351.226(f)(4).

Trina Solar Co., Ltd.; (3) Yancheng Trina Guoneng Photovoltaic Technology Co., Ltd. (a.k.a. Yancheng Trina Solar Guoneng Science & Technology Co., Ltd.); (4) Trina Solar Yiwu Technology Co., Ltd.; (5) Trina Solar (Su Qian) Technology Co., Ltd.; (6) Trina Solar (Yancheng Dafeng) Co., Ltd.; (7) Changzhou Trina Hezhong Photoelectric Co., Ltd. (a.k.a. Changzhou Trina Hezhong PV Co., Ltd.); (8) Changzhou Trina Solar Yabang Energy Co., Ltd.; and (9) Turpan Trina Solar Energy Co., Ltd. (collectively, Trina).

DATES: Applicable April 24, 2025.

FOR FURTHER INFORMATION CONTACT: Krisha Hill, 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) 482-4037.

SUPPLEMENTARY INFORMATION:

Background

On September 8, 2023, Commerce published the *Final Results* in the 2021–2022 AD administrative review of certain crystalline silicon photovoltaic products from China, in which it calculated a weighted-average dumping margin of 10.50 percent for Trina.¹

Trina appealed Commerce's *Final Results*. On August 20, 2024, the CIT remanded the *Final Results* to Commerce to further explain or reconsider its decision not to adjust the prices of Trina's sales of subject merchandise during the POR by the countervailing duties imposed on certain programs in the 2017 administrative review of the companion countervailing duty order.²

In its final results of redetermination, issued on December 18, 2024, Commerce, under respectful protest, adjusted the prices of Trina's sales of subject merchandise during the POR by the countervailing duties imposed on three of the six subsidy programs at issue.³ On April 14, 2025, the CIT

sustained Commerce's final remand redetermination.⁴

Timken Notice

In its decision in *Timken*,⁵ as clarified by *Diamond Sawblades*,⁶ the U.S. Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT's April 14, 2025, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Results*. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Results

Because there is now a final court judgment, Commerce is amending its *Final Results* and with respect to Trina as follows:

Exporter	Weighted-average dumping margin (percent)
Trina Solar (Changzhou) Science & Technology Co., Ltd./Trina Solar Co., Ltd./Yancheng Trina Guoneng Photovoltaic Technology Co., Ltd. (a.k.a. Yancheng Trina Solar Guoneng Science & Technology Co., Ltd.)/Trina Solar Yiwu Technology Co., Ltd./Trina Solar (Su Qian) Technology Co., Ltd./Trina Solar (Yancheng Dafeng) Co., Ltd./Changzhou Trina Hezhong Photoelectric Co., Ltd. (a.k.a. Changzhou Trina Hezhong PV Co., Ltd.)/Changzhou Trina Solar Yabang Energy Co., Ltd./Turpan Trina Solar Energy Co., Ltd	9.09

Cash Deposit Requirements

Because Trina does not have a superseding cash deposit rate, *i.e.*, there have been no final results published in a subsequent administrative review covering Trina, Commerce will issue revised cash deposit instructions for Trina to U.S. Customs and Border Protection (CBP). Commerce will revise Trina's cash deposit rate from 10.50 percent to 9.09 percent *ad valorem*.

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that: were exported by Trina and were entered, or withdrawn from

warehouse, for consumption during the period February 1, 2021, through January 31, 2022. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess antidumping duties on unliquidated entries of subject merchandise exported by Trina in accordance with 19 CFR 351.212(b). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-

specific *ad valorem* assessment rate is not zero or *de minimis*. Where an import-specific *ad valorem* assessment rate is zero or *de minimis*,⁷ we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

¹ See *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2021–2022*, 88 FR 62049 (September 8, 2023) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

² See *Trina Solar Co., Ltd., et al. v. United States*, Court No. 23–00213, Slip Op. 24–96 (CIT August 20, 2024) (*Remand Order*); see also *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Preliminary Results of*

Countervailing Duty Administrative Review, and Rescission of Review in Part; 2017, 84 FR 15585 (April 16, 2019) and accompanying Preliminary Decision Memorandum, unchanged in *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2017*, 84 FR 56765 (October 23, 2019), and accompanying IDM.

³ See *Final Results of Redetermination Pursuant to Court Remand, Trina Solar Co., Ltd., et al. v. United States*, Court No. 23–00213, Slip Op. 24–96

(CIT August 20, 2024), dated December 18, 2024, available at: <https://access.trade.gov/public/FinalRemandRedetermination.aspx>.

⁴ See *Trina Solar Co., Ltd., et al. v. United States*, Court No. 23–213, Slip Op. 25–40 (CIT April 14, 2025).

⁵ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

⁶ See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

⁷ See 19 CFR 351.106(c)(2).

Dated: May 5, 2025.
Abdelali Elouaradia,
Deputy Assistant Secretary for Enforcement and Compliance.
[FR Doc. 2025–08162 Filed 5–8–25; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE
International Trade Administration
[A–580–902]

Utility Scale Wind Towers From the Republic of Korea: 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) determines that utility scale wind towers (wind towers) from the Republic of Korea (Korea) were not made at less than normal value during the period of review (POR) August 1, 2022, through July 31, 2023.

DATES: Applicable May 9, 2025.

FOR FURTHER INFORMATION CONTACT: Anne Entz, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3845.

SUPPLEMENTARY INFORMATION:

Background

This review covers one producer/exporter of the subject merchandise, Dongkuk S&C Co., Ltd. (Dongkuk). On September 13, 2024, Commerce published the *Preliminary Results* and invited interested parties to comment.¹ On December 9, 2024, Commerce tolled certain deadlines in this administrative proceeding by 90 days.² On April 3, 2025, Commerce extended the deadline for issuing the final results of this review until May 2, 2025.³

For a summary of the events that occurred since the *Preliminary Results*, as well as a full discussion of the issues raised by parties for these final results, see the Issues and Decision

¹ See *Utility Scale Wind Towers from the Republic of Korea: Preliminary Results and Rescission of Review, in Part, of Antidumping Duty Administrative Review; 2022–2023*, 89 FR 74880 (September 13, 2024) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

² See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated December 9, 2024.

³ See Memorandum, “Extension of Deadline for Final Results of 2022–2023 Antidumping Duty Administrative Review,” dated April 3, 2025.

Memorandum.⁴ Commerce conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order⁵

The merchandise subject to the *Order* is wind towers. The product is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.20.0020 or 8502.31.0000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written product description remains dispositive.⁶

Analysis of Comments Received

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

Final Results of Review

We determine that the following weighted-average dumping margin exists for the period, August 1, 2022, through July 31, 2023:

Producer/Exporter	Weighted-average dumping margin (percent)
Dongkuk S&C Co., Ltd	0.00

Disclosure

Normally, Commerce discloses to interested parties the calculations of the final results of an administrative review within five days of a public announcement or, if there is no public announcement, within five days of the

⁴ See Memorandum, “Issues and Decision Memorandum for the Final Results of the 2022–2023 Administrative Review of the Antidumping Duty Order on Utility Scale Wind Towers from the Republic of Korea,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

⁵ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 86 FR 55811 (October 7, 2021); see also *Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Antidumping Duty Orders*, 85 FR 52546 (August 26, 2020) (*Order*).

⁶ For a complete description of the scope of the *Order*, see the Issues and Decision Memorandum.

date of publication of the notice of 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 new 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. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

Pursuant to 19 CFR 351.212(b)(1), Dongkuk reported the entered value of its U.S. sales such that 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 the sales for which entered value was reported. 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” practice will apply to entries of subject merchandise during the POR produced by Dongkuk for which the company did not know that the merchandise it 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 of 5.41 percent if there is no rate for the intermediate company(ies) involved in the transaction.⁷

Commerce intends to issue liquidation 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).

⁷ See *Order*; and *Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Notice of Correction to the Antidumping Duty Orders*, 85 FR 56213 (September 11, 2020) (correcting the date that the provisional measures period expired). For a full discussion of the “automatic assessment” practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the company listed above will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) 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 merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 5.41 percent, the all-others rate established in the LTFV investigation.⁸ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this 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 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 results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 2, 2025.

Christopher Abbott,

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. Discussion of the Issues
 - Comment 1: Whether Commerce Should Reconsider its Selected Constructed Value (CV) Profit and Selling Expense Data
 - Comment 2: Whether to Adjust Dongkuk's Conversion Costs
 - Comment 3: Dongkuk's General and Administrative (G&A) Expense Ratio Calculation
- V. Recommendation

[FR Doc. 2025–08164 Filed 5–8–25; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–908]

Passenger Vehicle and Light Truck Tires From the Republic of Korea: Final Results of the Antidumping Duty Administrative Review; 2022–2023

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Hankook Tire & Technology Co. Ltd. (Hankook) and Nexen Tire Corporation (Nexen) made sales of passenger vehicle and light truck tires from the Republic of Korea (Korea) at prices below normal value (NV) during the period of review (POR), July 1, 2022, through June 30, 2023.

DATES: Applicable May 9, 2025.

FOR FURTHER INFORMATION CONTACT:

Charles DeFilippo and Jun Jack Zhao, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3797 and (202) 482–1396, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 2024, Commerce published the *Preliminary Results* in the **Federal Register** and invited comments from interested parties.¹ On December 4, 2024, Commerce extended the deadline for these final results by 60 days to February 5, 2025, in accordance with section 751(2)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(2).² On December 9, 2024, Commerce tolled the deadline to issue the final results in this administrative review by 90 days.³ Accordingly, the deadline for these final results is now May 6, 2025. For details regarding the events that occurred since the *Preliminary Results*, see the Issues and Decision Memorandum.⁴

Scope of the Order⁵

The merchandise covered by the Order is passenger vehicle and light truck tires from Korea. For a complete description of the scope of the Order, see the Issues and Decision Memorandum.⁶

Analysis of Comments Received

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

¹ See *Passenger Vehicle and Light Truck Tires from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2022–2023*, 89 FR 65328 (August 9, 2024) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

² See Memorandum, “Extension of Deadline for Final Results of Antidumping Duty Administrative Review,” dated December 4, 2024.

³ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated December 9, 2024.

⁴ See Memorandum, “Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review: Passenger Vehicle and Light Truck Tires from the Republic of Korea; 2022–2023,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

⁵ See *Passenger Vehicle and Light Truck Tires from the Republic of Korea, Taiwan, and Thailand: Antidumping Duty Orders and Amended Final Affirmative Antidumping Duty Determination for Thailand*, 86 FR 38011 (July 19, 2021) (*Order*).

⁶ See Issues and Decision Memorandum.

⁸ See *Order*, 85 FR 52547.

Changes Since the Preliminary Results

Based on our review of the record and comments received from interested parties, we made certain changes to the margin calculations for Hankook and Nexen for these final results of review. As a result of these changes, the weighted-average dumping margin changed for the company subject to this review, but not selected for individual examination. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Rate for Non-Examined Companies

The Act and Commerce's regulations do not address the establishment of a weighted-average dumping margin to be determined for companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a less-than-fair-value (LTFV) investigation, for guidance when determining the weighted-average dumping margin for companies which were not selected for individual examination in an administrative review.

Section 735(c)(5)(A) of the Act provides that Commerce will base the all-others rate on the weighted average of the estimated weighted-average dumping margins calculated for the individually examined respondents, excluding rates that are zero, *de minimis*, or based entirely on facts available. Where the estimated weighted-average dumping margin for each of the individually examined companies is zero, *de minimis*, or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use "any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated."

In this review, we calculated weighted-average dumping margins for Hankook and Nexen are not zero, *de minimis*, or based entirely on facts otherwise available. Therefore, we have assigned to the non-examined company, Kumho Tire Co., Inc., a rate equal to the weighted average of the weighted-average dumping margins calculated for Hankook and Nexen, consistent with the guidance in section 735(c)(5)(A) of the Act.⁷

⁷ See Memorandum, "Final Results of the Antidumping Duty Administrative Review of

Final Results of Review

As a result of this review, Commerce determines that the following estimated weighted-average dumping margins exist for the period July 1, 2022, through June 30, 2023:

Producer or exporter	Weighted-average dumping margin (percent)
Hankook Tire & Technology Co., Ltd., Hankook Tire Mfg Co. Ltd., and Hankook Tire Co., Ltd. ⁸	4.64
Nexen Tire Corporation	4.09
Kumho Tire Co., Inc	4.37

Disclosure

We intend to disclose the calculations performed to parties in this proceeding within five days after the date of publication in the **Federal Register** of these final results of review, 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 shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.⁹

Because the weighted-average dumping margins for Hankook and Nexen are not zero or *de minimis* (*i.e.*, less than 0.5 percent), we calculated importer-specific *ad valorem* assessment rates based on the ratio of the total amount of dumping calculated for the examined sales for each importer to the total entered value of the same sales. Where an importer-specific rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. For entries of subject merchandise during the POR produced by an

Passenger Vehicles and Light Truck Tires from the Republic of Korea: Rate for Non-Examined Companies," dated concurrently with this notice.

⁸ In the LTFV investigation, Commerce determined that Hankook Tire Mfg. Co., Ltd. and Hankook Tire Co., Ltd. are alternative names for Hankook Tire & Technology Co. Ltd. *See Passenger Vehicle and Light Truck Tires from the Republic of Korea: Preliminary Affirmative Determination of Sales at Less than Fair Value, Postponement of Final Determination and Extension of Provisional Measures*, 86 FR 501 (January 6, 2021), and accompanying PDM at 2 (n. 9).

⁹ In these final results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012).

individually examined respondent for which it did not know its merchandise was destined for the United States, we intend to instruct CBP to liquidate such entries at the all-others rate (*i.e.*, 21.74 percent)¹⁰ if there is no rate for the intermediate company(ies) involved in the transaction.¹¹

For Kumho Tire Co., Inc., the assessment rate for antidumping duties will be equal to the weighted-average dumping margin in the final results of review. If the weighted-average dumping margin is zero or *de minimis* in the final results of review, then we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this administrative 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 for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review in the **Federal Register**, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the exporters listed above will be equal to the weighted-average dumping margin established in the final results of this review (except, if the rate is zero or *de minimis*, then no cash deposit will be required); (2) for previously reviewed or investigated exporters not listed above, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the producer is, the cash deposit rate will be equal to the weighted-average dumping margin established for these final results or the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or

¹⁰ See Order, 86 FR at 38012.

¹¹ For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

exporters will continue to be 21.74 percent, the all-others rate established in the less-than-fair value investigation.¹²

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as the 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

This notice also serves as a reminder to parties subject to an 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.

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 351.213(h)(2) and 19 CFR 351.221(b)(5).

Dated: May 5, 2025.

Abdelali Elouaradia,

Deputy 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: Commerce's Use of the Cohen's *d* Test
 - Comment 2: Hankook's Affiliated-Party Sales in the Home Market
 - Comment 3: Hankook's Name
 - Comment 4: Nexen's Sale Dates
 - Comment 5: Nexen's Level of Trade

VI. Recommendation

[FR Doc. 2025–08205 Filed 5–8–25; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–932]

Certain Steel Threaded Rod From the People's Republic of China: Final Results of the Expedited Third Sunset Review of the Antidumping Duty Order

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

SUMMARY: The U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on certain steel threaded rod (steel threaded rod) from the People's Republic of China (China) would be likely to lead to continuation or recurrence of dumping, at the levels indicated in the “Final Results of Sunset Review” section of this notice.

DATES: Applicable May 9, 2025.

FOR FURTHER INFORMATION CONTACT: Karina Holbrook, Trade Agreements Policy and Negotiations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–8192.

SUPPLEMENTARY INFORMATION:

Background

On February 3, 2025, Commerce published the notice of initiation of the third five-year review of the *Order*,¹ pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).² On February 19, 2025, Commerce received a notice of intent to participate in this review from Vulcan Threaded Products, Inc. (the petitioner), pursuant to 19 CFR 351.218(d)(1)(i).³ The petitioner claimed interested party status under section 771(9)(C) of the Act, as a manufacturer of a domestic like product in the United States.⁴

On March 5, 2024, the petitioner filed an adequate substantive response within the deadline specified in 19 CFR

¹ See *Certain Steel Threaded Rod from the People's Republic of China: Notice of Antidumping Duty Order*, 74 FR 17154 (April 14, 2009) (*Order*).

² See *Initiation of Five-Year (Sunset) Reviews*, 90 FR 8789 (February 3, 2025).

³ See Petitioner's Letter, “Five-Year (Sunset) Review of the Antidumping Duty Order on Steel Threaded Rod from the People's Republic of China—Petitioner's Notice of Intent to Participate,” dated February 19, 2025.

⁴ *Id.* at 2.

351.218(d)(3)(i).⁵ Commerce did not receive a substantive response from any respondent interested party, nor was a hearing requested. On March 21, 2025, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.⁶ As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the *Order*.

Scope of the Orders

The merchandise covered by this *Order* is steel threaded rod from China. For the full description of the scope of the *Order*, see the Issues and Decisions Memorandum.⁷

Analysis of Comments Received

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

Final Results of Sunset Reviews

Pursuant to sections 751(c)(1), 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail would be weighted-

⁵ See Petitioner's Letter, “Five-Year (Sunset) Review of the Antidumping Duty Order on Steel Threaded Rod from the People's Republic of China—Petitioner's Substantive Response to Notice of Initiation,” dated March 5, 2025.

⁶ See Commerce's Letter, “Sunset Reviews Initiated on February 3, 2025,” dated March 21, 2025.

⁷ See Memorandum, “Issues and Decision Memorandum for the Final Results of the Expedited Third Sunset Reviews of the Antidumping Duty Order on Certain Steel Threaded Rod from the People's Republic of China,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

¹² See *Order*, 86 FR at 38012.

average dumping margins up to 206.00 percent.

Administrative Protective Order (APO)

This notice serves as the only reminder to parties subject to APO of the responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). 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 terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.218 and 19 CFR 351.221(c)(5)(ii).

Dated: May 5, 2025.

Abdelali Elouaradia,

Deputy 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. History of the Order
- V. Legal Framework
- VI. Discussion of the Issues
 1. Likelihood of Continuation or Recurrence of Dumping
 2. Magnitude of the Margins of Dumping Likely to Prevail
- VII. Final Results of Sunset Review
- VIII. Recommendation

[FR Doc. 2025-08165 Filed 5-8-25; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 99-17A05]

Export Trade Certificate of Review

ACTION: Notice of application for an amended Export Trade Certificate of Review for California Almond Export Association, LLC, Application No. 99-17A05.

SUMMARY: The Secretary of Commerce, through the Office of Trade and Economic Analysis (OTEA) of the International Trade Administration, received an application for an amended Export Trade Certificate of Review (Certificate). This notice summarizes the application and seeks public comments on whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Amanda Reynolds, Acting Director, OTEA, International Trade Administration, by telephone at (202) 482-5131 (this is not a toll-free number) or email at etca@trade.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4011-21) (“the Act”) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing Title III are found at 15 CFR part 325. OTEA is issuing this notice pursuant to 15 CFR 325.6(a), which requires the Secretary of Commerce to publish a summary of the application in the **Federal Register**, identifying the applicant and each member and summarizing the proposed export conduct for which certification is sought.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

Written comments should be sent to etca@trade.gov. An original and two (2) copies should also be submitted no later than 20 days after the date of this notice to Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce, Room 21028, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the amended Certificate. Comments should refer to this application as “Export Trade Certificate of Review, application number 99-17A05.”

Summary of the Application

Applicant: California Almond Export Association, LLC (CAEA), 4800 Sisk Rd., Modesto, CA 95356.

Contacts: Jared Smith, Officer, CAEA; Michael Willemse, CPA, Wahl, Willemse & Wilson, LLP.

Application No.: 99-17A05.

Date Deemed Submitted: April 23, 2025.

Proposed Amendment: CAEA seeks to amend its Certificate as follows:

1. Add the following entities as Members of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)):
 - Treehouse California Almonds, LLC, Earlimart, CA
 - Cal Coast Almond Processing, Inc., Crows Landing, CA
 2. Remove the following company as a Member of the Certificate:
 - Western Nut Company, Chico, CA
 3. Change the names of the following Members of the Certificate:
 - Farmer’s International, Inc., Chico, CA changes to Farmers International, Inc., Chico, CA
 - Nutco, LLC d.b.a. Spycher Brothers—Select Harvest, Turlock, CA changes to Nutco, LLC dba Spycher Brothers—Select Harvest, Turlock, CA
 - Wonderful Pistachios & Almonds, LLC, Los Angeles, CA changes to Wonderful Pistachios & Almonds LLC, Los Angeles, CA
- CAEA’s proposed amendment of its Certificate would result in the following Members list:
- Almonds California Pride, Inc., Caruthers, CA
 - Bear Republic Nut, Chico, CA
 - Blue Diamond Growers, Sacramento, CA
 - Cal Coast Almond Processing, Inc., Crows Landing, CA
 - Campos Brothers, Caruthers, CA
 - Chico Nut Company, Chico, CA
 - Del Rio Nut Company, Livingston, CA
 - Farmers International, Inc., Chico, CA
 - Fisher Nut Company, Modesto, CA
 - Hilltop Ranch, Inc., Ballico, CA
 - Hughson Nut, Inc., Hughson, CA
 - JSS Almonds, LLC, Bakersfield, CA
 - Mariani Nut Company, Winters, CA
 - Nutco, LLC dba Spycher Brothers—Select Harvest, Turlock, CA
 - Pearl Crop, Inc., Stockton, CA
 - P-R Farms, Inc., Clovis, CA
 - Roche Brothers International Family Nut Co., Escalon, CA
 - RPAC, LLC, Los Banos, CA
 - South Valley Almond Company, LLC, Wasco, CA
 - Stewart & Jasper Marketing, Inc., Newman, CA
 - SunnyGem, LLC, Wasco, CA
 - Treehouse California Almonds, LLC, Earlimart, CA
 - VF Marketing Corporation DBA Vann Family Orchards, Williams, CA

- Wonderful Pistachios & Almonds LLC, Los Angeles, CA

Dated: May 5, 2025.

Amanda Reynolds,

Acting Director, Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 2025–08106 Filed 5–8–25; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–855]

Certain Corrosion-Resistant Steel Products From the Republic of Türkiye: Amended Preliminary Determination of Sales at Less Than Fair Value

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

SUMMARY: On April 10, 2025, the U.S. Department of Commerce (Commerce) published its preliminary determination in the less-than-fair-value investigation of certain corrosion-resistant steel products (CORE) from the Republic of Türkiye (Türkiye) in the **Federal Register**. Commerce is amending this preliminary determination to correct a significant ministerial error.

DATES: Applicable May 9, 2025.

FOR FURTHER INFORMATION CONTACT: Olivia Woolverton or Brittany Bauer, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7452 or (202) 482–3860, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 10, 2025, Commerce published in the **Federal Register** the *Preliminary Determination* in the less-than-fair-value investigation of CORE from Türkiye.¹ On April 14, 2025, Steel Dynamics, Inc., Nucor Corporation, United States Steel Corporation, Wheeling-Nippon Steel, Inc., and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC

(collectively, the petitioners) filed a timely ministerial error allegation concerning the *Preliminary Determination*.²

Scope of the Investigation

The product covered by this investigation is CORE from Türkiye. For a complete description of the scope of this investigation, *see* the appendix to this notice.

Legal Framework

A ministerial error is defined in 19 CFR 351.224(f) as “an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.” A significant ministerial error is defined as a ministerial error, the correction of which, singly or in combination with other errors, would result in: (1) a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original preliminary determination; or (2) a difference between a weighted-average dumping margin of zero or *de minimis* and a weighted-average dumping margin of greater than *de minimis* or vice versa.³ In accordance with 19 CFR 351.224(e), Commerce “will analyze any comments received and, if appropriate, correct any significant ministerial error by amending the preliminary determination.”

Analysis of Significant Ministerial Error

In the *Preliminary Determination*, Commerce calculated the foreign unit price in dollars (FUPDOL) for Borcelik.⁴ The petitioners allege that, in calculating Borcelik’s FUPDOL, Commerce made a currency conversion into U.S. dollars for certain values (*i.e.*, the home market net price and difference-in-merchandise adjustment), which were already denominated in U.S. dollars.⁵ After analyzing this allegation, we determine that we made

² See Petitioners’ Letter, “Petitioners’ Comments on Significant Ministerial Error in the Preliminary Determination,” dated April 14, 2025 (Petitioners’ Ministerial Error Allegation).

³ See 19 CFR 351.224(g)(1) and (2).

⁴ Commerce has determined that Borcelik is a single entity which consists of Borcelik Celik Sanayii Ticaret A.Ş., ArcelorMittal Celik Ticaret A.Ş., Bamesa Celik Servis San. Ve Tic. A.Ş. and Bamesa Muradiye Demir Celik San. Ve Tic. A.Ş. See Memorandum, “Single-Entity Analysis for Borcelik Celik Sanayii Ticaret A.Ş. and Affiliated Companies,” dated April 3, 2025.

⁵ See Petitioners’ Ministerial Error Allegation.

an error with respect to the calculation of Borcelik’s FUPDOL. Further, we find that this miscalculation is “an error in addition, subtraction, or other arithmetic function” that resulted from Commerce not appropriately accounting for the currency in which certain values are denominated. Thus, this error constitutes a ministerial error in the *Preliminary Determination*.

Lastly, pursuant to 19 CFR 351.224(g)(2), Commerce’s ministerial error in the calculation of Borcelik’s FUPDOL is significant because its correction results in a difference between a weighted-average dumping margin of zero and a weighted-average dumping margin greater than *de minimis* (*i.e.*, a change from an estimated weighted-average dumping margin of 0.00 percent to 2.04 percent). Therefore, we are correcting this ministerial error and amending the *Preliminary Determination* accordingly. For a detailed discussion of the aforementioned ministerial error allegation, as well as Commerce’s analysis of the petitioners’ comments, *see* the Ministerial Error Memorandum.⁶

All-Others Rate

Section 735(c)(5)(A) of the Tariff Act of 1930, as amended (the Act), provides that Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate 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.

As a result of this amended preliminary determination, in this investigation Commerce calculated estimated weighted-average dumping margins for both Borcelik and Yıldız Demir Çelik Sanayi A.Ş. and Yıldız Entegre Ağaç Sanayi ve Ticaret A.Ş. (collectively, YDÇ) that are not zero, *de minimis*, or based entirely on facts otherwise available. Accordingly, Commerce recalculated the all-others rate using a simple average of the estimated weighted-average dumping margins calculated for Borcelik and YDÇ.⁷

⁶ See Memorandum, “Less-Than-Fair-Value Investigation of Certain Corrosion-Resistant Steel Products from the Republic of Türkiye—Analysis of Ministerial Error Allegation,” dated concurrently with, and hereby adopted by, this notice (Ministerial Error Memorandum).

⁷ With two respondents under examination, Commerce normally calculates: (A) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents;

Continued

¹ See *Certain Corrosion-Resistant Steel Products from the Republic of Türkiye: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 90 FR 15340 (April 10, 2025) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

Amended Preliminary Determination

As a result of the correction of the ministerial error, the revised estimated weighted-average dumping margin for Borcelik and all other producers and exporters are as follows:

Exporter or producer	Estimated weighted-average dumping margin (percent)
Borcelik Celik Sanayii Ticaret A.S., ArcelorMittal Çelik Ticaret A.Ş., Bamesa Celik Servis San. Ve Tic. A.Ş. and Bamesa Muradiye Demir Çelik San. Ve Tic. A.Ş.	2.04
Yıldız Demir Çelik Sanayi A.S., Yıldız Entegre Ağaç Sanayi ve Ticaret A.S.	15.18
All Others	8.61

Disclosure

We intend to disclose the calculations performed to parties in this proceeding within five days after public announcement of the amended preliminary determination, in accordance with 19 CFR 351.224.

Amended Suspension of Liquidation and Cash Deposit Requirements

The suspension of liquidation and cash deposit requirements will be revised according to this amended preliminary determination, in accordance with section 733(d) of the Act. Because this amended preliminary determination results in revised suspension of liquidation and cash deposit requirements, these changes will be effective on the date of publication of this notice in the **Federal Register**. Specifically, subject merchandise that is produced and exported to the United States by Borcelik is no longer excluded from the provisional measures imposed by the *Preliminary Determination*. Rather, Commerce will instruct U.S. Customs

and Border Protection (CBP) to suspend liquidation of shipments of subject merchandise produced and exported by Borcelik, entered, or withdrawn from warehouse, for consumption on or after publication of this notice, and require a cash deposit equal to the revised estimated weighted-average dumping margin for Borcelik (*i.e.*, 2.04 percent).

Further, Commerce has revised the estimated weighted-average dumping margin for all other producers and exporters of subject merchandise. Accordingly, Commerce will instruct CBP, for shipments of subject merchandise, not produced or exported by Borcelik or YDÇ, entered, or withdrawn from warehouse, for consumption on or after publication of this notice, and require a cash deposit equal to the revised estimated weighted-average dumping margin for all other producers and exporters (*i.e.*, 8.61 percent).

These suspension of liquidation instructions will remain in effect until further notice.

U.S. International Trade Commission (ITC) Notification

In accordance with section 773(f) of the Act, we intend to notify the ITC of our amended preliminary determination.

Notification to Interested Parties

This amended preliminary determination is issued and published in accordance with sections 733(f) and 777(i) of the Act, and 19 CFR 351.224(e).

Dated: May 5, 2025.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The products covered by this investigation are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or

other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been “worked after rolling” (*e.g.*, products which have been beveled or rounded at the edges).

For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of these investigations are products in which: (1) iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is 2 percent or less, by weight.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description are within the scope of the investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (“terne plate”) or both chromium and chromium oxides (“tin free steel”), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;

- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness;

- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 mm in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio; and

Also excluded from the scope of the antidumping duty investigation on corrosion resistant steel from Taiwan are any products covered by the existing antidumping duty order on corrosion-resistant steel from Taiwan. *See Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders*, 81 FR 48390 (July 25, 2016); *Corrosion-Resistant Steel Products from Taiwan: Notice of Third Amended Final Determination of Sales at*

(B) a simple average of the estimated weighted-average dumping margins calculated for the examined respondents; and (C) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly-ranged U.S. sales values for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53662 (September 1, 2010), and accompanying Issues and Decision Memorandum at Comment 1. For a complete analysis of the data, *see* Memorandum, “Amended Calculation of All-Others Rate,” dated concurrently with this notice.

Less Than Fair Value Pursuant to Court Decision and Partial Exclusion from Antidumping Duty Order, 88 FR 58245 (August 25, 2023).

Also excluded from the scope of the antidumping duty investigation on corrosion-resistant steel from the United Arab Emirates and the antidumping duty and countervailing duty investigations on corrosion-resistant steel from the Socialist Republic of Vietnam are any products covered by the existing antidumping and countervailing duty orders on corrosion-resistant steel from the People's Republic of China and the Republic of Korea and the antidumping duty order on corrosion-resistant steel from Taiwan. *See Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders*, 81 FR 48390 (July 25, 2016); *see also Certain Corrosion-Resistant Steel Products from India, Italy, Republic of Korea and the People's Republic of China: Countervailing Duty Order*, 81 FR 48387 (July 25, 2016). This exclusion does not apply to imports of corrosion-resistant steel that are entered, or withdrawn from warehouse, for consumption in the United States for which the relevant importer and exporter certifications have been completed and maintained and all other applicable certification requirements have been met such that the entry is entered into the United States as not subject to the antidumping and countervailing duty orders on corrosion-resistant steel from the People's Republic of China, the antidumping and countervailing duty orders on corrosion-resistant steel from the Republic of Korea, or the antidumping duty order on corrosion-resistant steel from Taiwan.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0040, 7210.49.0045, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7225.91.0000, 7225.92.0000, 7226.99.0110, and 7226.99.0130.

The products subject to the investigation may also enter under the following HTSUS subheadings: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.99.0090, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

[FR Doc. 2025-08163 Filed 5-8-25; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE904]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will convene an online meeting of its Ecosystem Workgroup (EWG), which is open to the public.

DATES: The online meeting will be held Tuesday, May 27, 2025, from 1 p.m. to 5 p.m. Pacific time, or until business for the day is completed.

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

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

FOR FURTHER INFORMATION CONTACT: Gilly Lyons, Staff Officer, Pacific Council; telephone: (503) 820-2427.

SUPPLEMENTARY INFORMATION: The EWG will meet via webinar to discuss items relevant to ecosystem management in advance of the Pacific Council's June 11-16, 2025, meeting. A detailed meeting agenda will be available on the Pacific Council's website prior to the meeting.

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

Special Accommodations

Requests for sign language interpretation or other auxiliary aids

should be directed to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov; (503-820-2412)) at least 10 days prior to the meeting date.

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

Dated: May 6, 2025.

Rey Israel Marquez,

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

[FR Doc. 2025-08176 Filed 5-8-25; 8:45 am]

BILLING CODE 3510-22-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds product(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) and service(s) from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* June 8, 2025.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 489-1322, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION:

Additions

On July 26, 2024, the Committee for Purchase From People Who Are Blind or Severely Disabled (operating as the U.S. AbilityOne Commission) published an initial notice of proposed additions to the Procurement List. (89 FR 60605). This final notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51-2.3. The Committee has determined that the product(s) listed below are suitable for procurement by the Federal Government and has added these product(s) to the Procurement List as a mandatory purchase for Federal entities. In accordance with 41 CFR 51-5.2, the Committee has authorized the qualified nonprofit agencies described with the products as the mandatory source(s) of supply.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product(s) to the Government.

2. The action will result in authorizing small entities to furnish the product(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product(s) are added to the Procurement List:

Product(s)**NSN(s)—Product Name(s):**

650023201N—Face Shield, .01"

Polycarbonate, Elastic Headband, IJJA Compliant

650023202N—Face Shield, .008" PET,

Elastic Headband, IJJA Compliant

650017601N—Face Shield, with Glasses

Frame, PET, One Size, IJJA Compliant

650017701N—Face Shield, with Glasses

Frame, PET, One Size

Authorized Source of Supply: Association for Vision Rehabilitation and Employment, Inc., Binghamton, NY

Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA TROOP SUPPORT

Mandatory for: Broad Government Requirement

Distribution: B-List

Deletions

On April 4, 2025 (90 FR 14813), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) and service(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or

other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) deleted from the Procurement List.

End of Certification

Accordingly, the following product(s) and service(s) are deleted from the Procurement List:

Product(s)

NSN(s)—Product Name(s): 7510–01–579–9326—Binder, Removable Slant-D Rings, 100% Recyclable, Turned Edge, Dark Green, 1" Capacity, Letter

Authorized Source of Supply: South Texas Lighthouse for the Blind, Corpus Christi, TX

Contracting Activity: STRATEGIC ACQUISITION CENTER, FREDERICKSBURG, VA

Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

NSN(s)—Product Name(s):

MR 813—Thermometer, Analog Probe

MR 815—Thermometer, Digital

Authorized Source of Supply: Chicago Lighthouse Industries, Chicago, IL

Contracting Activity: Military Resale-Defense Commissary Agency

NSN(s)—Product Name(s):

MR 11305—Water Bottle, Travel, Cortland, 24 oz.

MR 11308—Tumbler, Travel, Shake and Go, 20 oz.

MR 11334—Bottle, Eddy, 0.75L, Assorted

MR 13083—Mug, Snap Seal, Contigo, 16 oz

MR 13084—Bottle, Bubba, 32 oz

MR 13086—Bottle, Kids, Bubba, 16 oz

MR 13088—Mug, Travel, Plastic, West

Loop 2.0, 20 oz

MR 3201—Stay Put Elastics Black

Authorized Source of Supply: Association for Vision Rehabilitation and Employment, Inc., Binghamton, NY

Contracting Activity: Military Resale-Defense Commissary Agency

NSN(s)—Product Name(s): MR 549—Sponge, Pop-Up, Small

Authorized Source of Supply: MISSISSIPPI INDUSTRIES FOR THE BLIND (INC), Jackson, MS

Contracting Activity: Military Resale-Defense Commissary Agency

NSN(s)—Product Name(s):

MR 13041—Box, Insulated, Assorted

Colors, Lunch

MR 13042—Bag, Triangular, Assorted

Colors, Lunch

MR 13044—Bag, Round Handle, Assorted

Colors, Lunch

Authorized Source of Supply: West Texas

Lighthouse for the Blind, San Angelo, TX

Contracting Activity: Military Resale-Defense

Commissary Agency**NSN(s)—Product Name(s):**

MR 13060—Flavor Injector, Meat and Poltry

MR 13062—Rack, Pressure Cooker, Silicone

MR 13063—Rack, Roasting, Silicone

MR 13079—Set, Glass Containers, Smart Seal, 12 Piece

MR 13152—POP 4 Pc Baking Accessories Set

MR 13022—Corer, Cupcake

MR 13024—Cookie Press, Disc Storage, 12 Discs

MR 13056—Kit, Bottle, Bakers, 8pc

MR 13058—cups, Baking, Silicone

MR 13059—Spatula, Baking, cookie, Silicone

MR 855—Ergo Nylon Spoon

MR 856—Ergo Nylon Slotted Spoon

MR 857—Ergo Nylon Spaghetti Server

MR 861—Ergo Nylon Ladle

MR 869—Oxo Good Grip Silicone Spatula

MR 891—Handheld Grater

MR 892—Ergo Apple Divider

MR 1123—Mat Drying, Silicone, Large

MR 13128—Set, Bowl, Mixing, 3 pc

MR 13129—Set, Container, Plastic, 16 pc

MR 13001—Greensaver Produce Keeper, 1.6 Qt.

MR 13037—Microwave Bacon Crisper

MR 13002—Greensaver Produce Keeper, 4.3 Qt

MR 820—Opener, Can and Bottle

MR 826—Peeler, Vegetable

MR 829—Meat Hammer, Tenderizing

MR 842—Tong, Scissor

MR 849—Whisk, Wire Looped

MR 862—Whisk, Silicone, Balloon, Red

MR 853—Ergo Nylon Square Turner

MR 854—Ergo Nylon Round Turner

MR 335—Squeezer, Citrus, Aluminum

MR 338—Mandolin Slicer, Handheld

MR 342—Shaker, Salad Dressing

MR 800—BBQ 4 Piece Tool Set

MR 803—BBQ Fork

MR 819—Can Opener, Gear Type

MR 888—Ergo Pizza Wheel

Authorized Source of Supply: CINCINNATI ASSOCIATION FOR THE BLIND AND VISUALLY IMPAIRED, Cincinnati, OH

Contracting Activity: Military Resale-Defense Commissary Agency

NSN(s)—Product Name(s): MR 949—Mitt, Oven, Quilted, Cotton

Authorized Source of Supply: CHESTER COUNTY BRANCH, PA ASSOCIATION FOR THE BLIND AND VISUALLY IMPAIRED, Coatesville, PA

Contracting Activity: Military Resale-Defense Commissary Agency

Service(s)

Service Type: Mailroom Operation & Administrative Supp

Mandatory for: US Army, Logistics Data Analysis Center, Huntsville, AL

Authorized Source of Supply: Huntsville Rehabilitation Foundation, Inc., Huntsville, AL

Contracting Activity: DEPT OF THE ARMY,
W6QK ACC-RSA

Michael R. Jurkowski,
Director, Business Operations.

[FR Doc. 2025-08177 Filed 5-8-25; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete product(s) and service(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before: June 08, 2025.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 489-1322, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following product(s) and service(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):

- 8115-00-NSH-0277—Crate, Wood, Style A
- 8115-00-NSH-0278—Crate, Wood, Style B-4
- 8115-00-NSH-0279—Crate, Wood, Style 1, Style 1 with 3/8" Sides and Ends
- 8115-00-NSH-0280—Crate, Wood, Style 1 with 1" Sides and Ends
- 8115-00-NSH-0281—Crate, Wood, Style 2
- 8115-00-NSH-0282—Crate, Wood, Style 4
- 8115-00-NSH-0283—Crate, Wood, Style 104

Mandatory Source of Supply: Knox County Association for Remarkable Citizens, Inc., Vincennes, IN

Contracting Activity: NSWC CRANE, CRANE, IN

NSN(s)—Product Name(s): 8430-00-NSH-0002—Snowshoes, Assault, Cramp-on, Marine Corps, Black, Royal Blue, and

Plum

Authorized Source of Supply: PRIDE Industries, Roseville, CA

Contracting Activity: W6QK ACC-APG NATICK, NATICK, MA

NSN(s)—Product Name(s):

- 8340-00-NSH-0002—Rainfly, Shelter, Complete, Olive Drab
- 8340-00-NSH-0003—Rainfly, Shelter, Complete, Tan
- 8340-00-NSH-0005—Spare Parts Kit, Shelter, Complete

Authorized Source of Supply: ORC Industries, Inc., La Crosse, WI

Contracting Activity: COMMANDER, QUANTICO, VA

NSN(s)—Product Name(s): 7690-00-NSH-0078—Microfiche of FAA Directives & Advisory Circulars

Authorized Source of Supply: Alliance, Inc., Baltimore, MD

Contracting Activity: Government Printing Office, Washington, DC

NSN(s)—Product Name(s):

- 8405-00-001-1547—Parka, Rain Suit for Wet Weather, Army, Woodland Camouflage Green, Brown, Black, XS
- 8405-00-001-1548—Parka, Rain Suit for Wet Weather, Army, Woodland Camouflage Green, Brown, Black, Small
- 8405-00-001-1549—Parka, Rain Suit for Wet Weather, Army, Woodland Camouflage Green, Brown, Black, Medium
- 8405-00-001-1550—Parka, Rain Suit for Wet Weather, Army, Woodland Camouflage Green, Brown, Black, Large
- 8405-00-001-1551—Parka, Rain Suit for Wet Weather, Army, Woodland Camouflage Green, Brown, Black, X Large
- 8405-01-053-9202—Parka, Rain Suit for Wet Weather, with Hood, Army, Woodland Camouflage, XXS
- 8405-00-001-8025—Trousers, Wet Weather, Army, Men's, Woodland Camouflage Green, Brown, Black, XS
- 8405-00-001-8026—Trousers, Wet Weather, Army, Men's, Woodland Camouflage Green, Brown, Black, Small
- 8405-00-001-8027—Trousers, Wet Weather, Army, Men's, Woodland Camouflage Green, Brown, Black, Medium
- 8405-00-001-8028—Trousers, Wet Weather, Army, Men's, Woodland Camouflage Green, Brown, Black, Large
- 8405-00-001-8029—Trousers, Wet Weather, Army, Men's, Woodland Camouflage Green, Brown, Black, X Large

Authorized Source of Supply: ORC Industries, Inc., La Crosse, WI

Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):

- 8415-01-443-9176—Vest, Load Bearing Equipment
- PART NO 3505-06-115—Pouch, 40mm 2round
- PART NO 3505-06-114—Pad, Belt
- PART NO 3505-06-107—D-Ring Assembly
- PART NO 3505-06-106—Vest, Front & Back Co
- PART NO 3505-06-105—Panel, Vest, Right

PART NO 3505-06-104—Panel, Vest, Left

PART NO 3505-06-103—Pad, Shoulder Assembly

PART NO 3505-06-102—Panel, Back

8415-01-440-9528—Vest Assembly

8465-01-440-5885—Pouch, 3Pocket, 40mm

8465-01-440-9529—Pad, Leg

8465-01-440-9530—Pouch, Utility, Medium

8465-01-440-9538—Pouch, Utility, Small

Authorized Source of Supply: Chautauqua County Chapter, NYSARC, Jamestown, NY

Contracting Activity: COMMANDER, QUANTICO, VA

NSN(s)—Product Name(s): 1440-01-132-9719—Kit, Tiedown, Guided Missile

Authorized Source of Supply: Huntsville Rehabilitation Foundation, Inc., Huntsville, AL

Contracting Activity: DLA AVIATION, RICHMOND, VA

NSN(s)—Product Name(s):

- 5340-00-460-4522—Clamp, Loop, CRES, Teflon-Asbestos, 203/250" Loop x 1/2" Wide
- 5340-00-460-4524—Clamp, Loop, CRES, Teflon-Asbestos, 86/125" Loop x 1/2" Wide
- 5340-00-562-2947—Clamp, Loop, CRES, Teflon-Asbestos, 1-47/250" Loop x 1/2" Wide
- 5340-01-018-8983—Clamp, Loop, CRES, Teflon-Asbestos, 1-39/125" Loop x 1/2" Wide

Authorized Source of Supply: Skookum Educational Programs, Bremerton, WA

Contracting Activity: DLA LAND AND MARITIME, COLUMBUS, OH

NSN(s)—Product Name(s):

- 8415-00-NSH-0051—Hood, Disposable
- 8415-00-NSH-0052—Cap, Disposable

Authorized Source of Supply: TradeWinds Services, Inc., Merrillville, IN

Contracting Activity: NAVSUP FLT LOG CTR PUGET SOUND, BREMERTON, WA

NSN(s)—Product Name(s):

- 6645-04-000-3337—Clock, Wall, Slimline, Black, Postal Service Logo, 12 3/4" Quartz
- 6645-04-000-3338—Clock, Wall, Slimline, Brown, Postal Service Logo, 12 3/4" Quartz
- 6645-04-000-3343—Clock, Wall, Mahogany, Postal Service Logo, 16" Quartz
- 6645-04-000-4266—Clock, Wall, 12/24 Hour, Bronze, Postal Service Logo, 12 3/4" Slimline Quartz

Authorized Source of Supply: Chicago Lighthouse Industries, Chicago, IL

Contracting Activity: U.S. Postal Service, Washington, DC

NSN(s)—Product Name(s): 3920-02-000-1916—Strip, Door

Authorized Source of Supply: Rauch, Inc., New Albany, IN

Contracting Activity: USPS, Topeka Purchasing Center, Topeka, KS

NSN(s)—Product Name(s): 3990-00-NSH-0074—Pallet, 4-Way Speciality

Authorized Source of Supply: Northeastern Michigan Rehabilitation and Opportunity Center (NEMROC), Alpena, MI

Contracting Activity: FA7014 AFDW PK, ANDREWS AFB, MD

NSN(s)—Product Name(s): 2920-01-151-3627—Glow Plug, Diesel

Authorized Source of Supply: Shares, Inc., Shelbyville, IN

Contracting Activity: DLA LAND AND MARITIME, COLUMBUS, OH

NSN(s)—Product Name(s):

8415-01-552-5547—Shirt, T, Cold Weather Anti Microbial Combat Level 1, PCU, Army, Brown, XXL

8415-01-552-5535—Shirt, T, Cold Weather Anti Microbial Combat Level 1, PCU, Army, Brown, XS

8415-01-552-5536—Shirt, T, Cold Weather Anti Microbial Combat Level 1, PCU, Army, Brown, S

8415-01-552-5537—Shirt, T, Cold Weather Anti Microbial Combat Level 1, PCU, Army, Brown, M

8415-01-552-5538—Shirt, T, Cold Weather Anti Microbial Combat Level 1, PCU, Army, Brown, ML

8415-01-552-5540—Shirt, T, Cold Weather Anti Microbial Combat Level 1, PCU, Army, Brown, L

8415-01-552-5542—Shirt, T, Cold Weather Anti Microbial Combat Level 1, PCU, Army, Brown, LL

8415-01-552-5543—Shirt, T, Cold Weather Anti Microbial Combat Level 1, PCU, Army, Brown, XXL

8415-01-552-5544—Shirt, T, Cold Weather Anti Microbial Combat Level 1, PCU, Army, Brown, XL

8415-01-552-5546—Shirt, T, Cold Weather Anti Microbial Combat Level 1, PCU, Army, Brown, XXXL

8415-01-552-5549—Shirt, T, Cold Weather Anti Microbial Combat Level 1, PCU, Army, Brown, XXXL

8415-01-552-5551—Shirt, T, Cold Weather Anti Microbial Combat Level 1, PCU, Army, Brown, XXXL

8415-01-552-5635—Drawers, Boxer, Extreme Cold Weather Anti Microbial Level 1, PCU, Army, Brown, XS

8415-01-552-5637—Drawers, Boxer, Extreme Cold Weather Anti Microbial Level 1, PCU, Army, Brown, X

8415-01-552-5641—Drawers, Boxer, Extreme Cold Weather Anti Microbial Level 1, PCU, Army, Brown, M

8415-01-552-5640—Drawers, Boxer, Extreme Cold Weather Anti Microbial Level 1, PCU, Army, Brown, ML

8415-01-552-5642—Drawers, Boxer, Extreme Cold Weather Anti Microbial Level 1, PCU, Army, Brown, L

8415-01-552-5622—Drawers, Boxer, Extreme Cold Weather Anti Microbial Level 1, PCU, Army, Brown, LL

8415-01-552-5626—Drawers, Boxer, Extreme Cold Weather Anti Microbial Level 1, PCU, Army, Brown, XLL

8415-01-552-5628—Drawers, Boxer, Extreme Cold Weather Anti Microbial Level 1, PCU, Army, Brown, XLXL

8415-01-552-5644—Drawers, Boxer, Extreme Cold Weather Anti Microbial Level 1, PCU, Army, Brown, XXL

8415-01-552-5625—Drawers, Boxer, Extreme Cold Weather Anti Microbial Level 1, PCU, Army, Brown, XL

8415-01-552-5631—Drawers, Boxer, Extreme Cold Weather Anti Microbial Level 1, PCU, Army, Brown, XXXL-R

8415-01-552-5634—Drawers, Boxer, Extreme Cold Weather Anti Microbial Level 1, PCU, Army, Brown, XXXL

8415-01-535-7843—Drawers, Boxer Shorts, Level 1, PCU, Army, Brown, XXL

Authorized Source of Supply: Southeastern Kentucky Rehabilitation Industries, Inc., Corbin, KY

Authorized Source of Supply: Knox County Association for Remarkable Citizens, Inc., Vincennes, IN

Contracting Activity: W6QK ACC-APG NATICK, NATICK, MA

NSN(s)—Product Name(s): 7530-00-138-9919—Paper, Tabulating Machine

Authorized Source of Supply: Association for Vision Rehabilitation and Employment, Inc., Binghamton, NY

Contracting Activity: SOCIAL SECURITY ADMINISTRATION, BALTIMORE, MD

NSN(s)—Product Name(s): 5340-01-105-1002—Strap, Webbing, 6" x 1"

Authorized Source of Supply: The Charles Lea Center, Inc., Spartanburg, SC

Contracting Activity: DLA LAND AND MARITIME, COLUMBUS, OH

NSN(s)—Product Name(s): 620003501N—Desk Lamp, LED, Wireless and USB Charging, Black

Authorized Source of Supply: Chicago Lighthouse Industries, Chicago, IL

Contracting Activity: GSA/FAS FURNITURE SYSTEMS MGT DIV, PHILADELPHIA, PA

NSN(s)—Product Name(s): 6515-00-383-0565—Tourniquet, Non-Pneumatic

Authorized Source of Supply: Blind And Vision Rehabilitation Services Of Pittsburgh, Pittsburgh, PA

Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):

8415-01-327-5296—Coat, Combat Type VII, Army, Desert Camouflage, X Small X Short

8415-01-327-5297—Coat, Combat Type VII, Army, Desert Camouflage, X Small/Short

8415-01-327-5298—Coat, Combat Type VII, Army, Desert Camouflage, X Small/Regular

8415-01-327-5299—Coat, Combat Type VII, Army, Desert Camouflage, Small/XX Short

8415-01-327-5300—Coat, Combat Type VII, Army, Desert Camouflage, Small X Short

8415-01-327-5301—Coat, Combat Type VII, Army, Desert Camouflage, Small Short

8415-01-327-5302—Coat, Combat Type VII, Army, Desert Camouflage, Small Regular

8415-01-327-5303—Coat, Combat Type VII, Army, Desert Camouflage, Small Long

8415-01-327-5304—Coat, Combat Type VII, Army, Desert Camouflage, Small X Long

8415-01-327-5305—Coat, Combat Type VII, Army, Desert Camouflage, Medium/XX Short

8415-01-327-5306—Coat, Combat Type VII, Army, Desert Camouflage, Medium/X Short

8415-01-327-5307—Coat, Combat Type VII, Army, Desert Camouflage, Medium/Short

8415-01-327-5308—Coat, Combat Type VII, Army, Desert Camouflage, Medium/Regular

8415-01-327-5309—Coat, Combat Type VII, Army, Desert Camouflage, Medium/Long

8415-01-327-5310—Coat, Combat Type VII, Army, Desert Camouflage, Medium/X Long

8415-01-327-5311—Coat, Combat Type VII, Army, Desert Camouflage, Large/X Short

8415-01-327-5312—Coat, Combat Type VII, Army, Desert Camouflage, Large/Short

8415-01-327-5313—Coat, Combat Type VII, Army, Desert Camouflage, Large/Regular

8415-01-327-5314—Coat, Combat Type VII, Army, Desert Camouflage, Large/Long

8415-01-327-5315—Coat, Combat Type VII, Army, Desert Camouflage, Large/X Long

8415-01-327-5316—Coat, Combat Type VII, Army, Desert Camouflage, X Large/Regular

8415-01-327-5317—Coat, Combat Type VII, Army, Desert Camouflage, X Large/Long

Authorized Source of Supply: ReadyOne Industries, Inc., El Paso, TX

Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):

8415-01-472-6867—Overalls, Bib, Cold Weather, Fleece, Army, Black, XSSR

8415-01-472-6908—Overalls, Bib, Cold Weather, Fleece, Army, Black, XSL

8415-01-472-6909—Overalls, Bib, Cold Weather, Fleece, Army, Black, SSR

8415-01-472-6911—Overalls, Bib, Cold Weather, Fleece, Army, Black, SL

8415-01-472-6912—Overalls, Bib, Cold Weather, Fleece, Army, Black, MSR

8415-01-472-6914—Overalls, Bib, Cold Weather, Fleece, Army, Black, ML

8415-01-472-6915—Overalls, Bib, Cold Weather, Fleece, Army, Black, LSR

8415-01-472-6916—Overalls, Bib, Cold Weather, Fleece, Army, Black, LL

8415-01-472-6917—Overalls, Bib, Cold Weather, Fleece, Army, Black, XLSR

8415-01-472-6918—Overalls, Bib, Cold Weather, Fleece, Army, Black, XLL

Authorized Source of Supply: ReadyOne Industries, Inc., El Paso, TX

Authorized Source of Supply: Peckham Vocational Industries, Inc., Lansing, MI

Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):

8415-01-501-6888—Drawers, Lightweight Extreme Cold Weather, SPEAR, Army, Unisex, Ankle Length, Black, SR

8415-01-501-6891—Drawers, Lightweight Extreme Cold Weather, SPEAR, Army, Unisex, Ankle Length, Black, MR

8415-01-501-6892—Drawers, Lightweight Extreme Cold Weather, SPEAR, Army, Unisex, Ankle Length, Black, LR
 8415-01-501-6894—Drawers, Lightweight Extreme Cold Weather, SPEAR, Army, Unisex, Ankle Length, Black, LL
 8415-01-501-6896—Drawers, Lightweight Extreme Cold Weather, SPEAR, Army, Unisex, Ankle Length, Black, XLR
 8415-01-501-6897—Drawers, Lightweight Extreme Cold Weather, SPEAR, Army, Unisex, Ankle Length, Black, XLL
 8415-01-501-7074—Shirt, Underwear, Lightweight Extreme Cold Weather, SPEAR, Army, Unisex, Black, SR
 8415-01-501-7075—Shirt, Underwear, Lightweight Extreme Cold Weather, SPEAR, Army, Unisex, Black, MR
 8415-01-501-7077—Shirt, Underwear, Lightweight Extreme Cold Weather, SPEAR, Army, Unisex, Black, LR
 8415-01-501-7108—Shirt, Underwear, Lightweight Extreme Cold Weather, SPEAR, Army, Unisex, Black, LL
 8415-01-501-7113—Shirt, Underwear, Lightweight Extreme Cold Weather, SPEAR, Army, Unisex, Black, XLR
 8415-01-501-7114—Shirt, Underwear, Lightweight Extreme Cold Weather, SPEAR, Army, Unisex, Black, XLL
 8415-01-502-3981—Overalls, Bib, Stretch, SPEAR, Army, Unisex, Green, SR
 8415-01-502-3984—Stretch Fleece Bib Overall, Size Medium Regular
 8415-01-502-4029—Overalls, Bib, Stretch, SPEAR, Army, Unisex, Green, LR
 8415-01-502-4030—Overalls, Bib, Stretch, SPEAR, Army, Unisex, Green, LL
 8415-01-502-4031—Overalls, Bib, Stretch, SPEAR, Army, Unisex, Green, XLR
 8415-01-502-4032—Overalls, Bib, Stretch, SPEAR, Army, Unisex, Green, XLL
Authorized Source of Supply: Peckham Vocational Industries, Inc., Lansing, MI
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

Service(s)

Service Type: Office Supply Store
Mandatory for: Federal Building: 700 W Capitol, Little Rock, AR
Authorized Source of Supply: The Arkansas Lighthouse for the Blind, Little Rock, AR
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR
Service Type: Furniture Design, Configuration and Installation
Mandatory for: U.S. Department of Interior, Bureau of Land Management, National Operations Center, Denver, CO
Authorized Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI
Contracting Activity: DEPARTMENTAL OFFICES, IBC ACQ SVCS DIRECTORATE (00004)
Service Type: Janitorial/Custodial
Mandatory for: US Army Corps of Engineers, Missouri River Area Office, Napoleon, MO
Contracting Activity: DEPT OF THE ARMY, W071 ENDIST, KANSAS CITY
Service Type: Shelf Stocking & Custodial
Mandatory for: Redstone Arsenal (Provide specified end items produced through

Huntsville, AL)
Authorized Source of Supply: Alabama Goodwill Industries, Inc., Birmingham, AL
Contracting Activity: DEFENSE COMMISSARY AGENCY (DECA), DEFENSE COMMISSARY AGENCY
Service Type: Janitorial and Related Services
Mandatory for: FAA, Air Traffic Control Tower, Youngstown Municipal Airport, Vienna, OH
Authorized Source of Supply: VGS, Inc., Cleveland, OH
Contracting Activity: FEDERAL AVIATION ADMINISTRATION, 697DCK REGIONAL ACQUISITIONS SVCS
Service Type: Switchboard Operation
Mandatory for: Department of Housing and Urban Development, Headquarters, Washington, DC
Authorized Source of Supply: ServiceSource, Inc., Oakton, VA
Contracting Activity: AGENCY NAME, CPO: PHILADELPHIA OPERATIONS BRANCH
Service Type: Grounds Maintenance and Switchboard Operations
Mandatory for: Department of Veterans Affairs, Lake City VA Medical Center, Lake City, FL
Authorized Source of Supply: CARG-Advocates for Citizens with Disabilities, Inc., Lake City, FL
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, 248-NETWORK CONTRACT OFC 8(00248)

Michael R. Jurkowski,
Director, Business Operations.

[FR Doc. 2025-08183 Filed 5-8-25; 8:45 am]

BILLING CODE 6353-01-P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038-0012, Futures Volume, Open Interest, Price, Deliveries, and Exchanges of Futures

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (“CFTC” or “Commission”) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (“PRA”), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on futures volume, open interest, price, deliveries, and

purchases/sales of futures for commodities or for derivatives positions.

DATES: Comments must be submitted on or before July 8, 2025.

ADDRESSES: You may submit comments, identified by “Futures Volume & Open Interest Collection,” 3038-0012, by any of the following methods:

- The Agency’s website, at <http://comments.cftc.gov/>. Follow the instructions for submitting comments through the website.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <https://www.cftc.gov>.

FOR FURTHER INFORMATION CONTACT:

Adam Charnisky, Market Analyst, Division of Market Oversight, Commodity Futures Trading Commission, (312) 596-0630; email: acharnisky@cftc.gov.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (“OMB”) for each collection of information they conduct or sponsor. “Collection of Information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 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 provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below. 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.¹

Title: Futures Volume, Open Interest, Price, Deliveries and Exchanges of Futures (OMB Control No. 3038-0012). This is a request for extension of a currently approved information collection.

¹ 44 U.S.C. 3512, 5 CFR 1320.5(b)(2)(i) and 1320.8(b)(3)(vi).

Abstract: Commission Regulation 16.01 requires reporting markets to publish daily information on the items listed in the title of the collection. The information required by this rule is in the public interest and is necessary for market surveillance and analysis. This rule is promulgated pursuant to the Commission's rulemaking authority contained in section 5 of the Commodity Exchange Act, 7 U.S.C. 7 (2010).

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.²

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <https://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Information Collection Request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The respondent burden for this collection is estimated to be as follows:

Respondents/Affected Entities: Designated Contract Markets.

Estimated number of respondents: 38.
Estimated Average Burden Hours per Respondent: 250.

Estimated Total Annual Burden Hours: 9,500 hours.

Frequency of collection: Daily.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: May 6, 2025.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2025–08142 Filed 5–8–25; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Extend Collection 3038–0089: Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (“Commission” or “CFTC”) is announcing an opportunity for public comment on the proposed renewal of a collection of certain information by the agency. Under the Paperwork Reduction Act (“PRA”), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on reporting requirements relating to swap data recordkeeping and reporting requirements codified in 17 CFR 46. This part imposes recordkeeping and reporting requirements on the following entities: Swap Dealers (“SDs”), Major Swap Participants (“MSPs”), and swap counterparties that are neither swap dealers nor major swap participants (“non-SD/MSP counterparties”).

DATES: Comments must be submitted on or before July 8, 2025.

ADDRESSES: You may submit comments, identified by “OMB Control No. 3038–0089” by any of the following methods:

- The Agency's website, at <https://comments.cftc.gov/>. Follow the instructions for submitting comments through the website.

- **Mail:** Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

- **Hand Delivery/Courier:** Same as Mail above.

Please submit your comments using only one method.

FOR FURTHER INFORMATION CONTACT:

Alicia Viguri, Assistant Chief Counsel, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; (202) 738–2140; email: aviguri@cftc.gov.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501 *et seq.*, Federal agencies must obtain approval from the Office of Management and Budget (“OMB”) for each collection of information they conduct or sponsor. “Collection of Information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 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 provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the Commission is publishing notice of the proposed extension of the existing collection of information listed below. 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.¹

Title: Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps (OMB Control No. 3038–0089). This is a request for an extension of a currently approved information collection.

Abstract: Sections 4r(a)(2)(A) and 2(h)(5) of the Commodity Exchange Act requires the reporting of pre-enactment and transition swaps. Regulations 46.2, 46.3, and 46.11 establish reporting requirements that are mandated by 4r and 2(h) and, thus, are necessary to implement the objectives of 4r and 2(h). Regulation 46.2 establishes swap counterparties' recordkeeping requirements for pre-enactment and transition swaps. Regulation 46.3 establishes reporting requirements for uncleared pre-enactment or transition swaps in existence on or after April 25, 2011, and throughout the existence of

¹ The OMB control numbers for the CFTC regulations were published on December 30, 1981. See 46 FR 63035 (Dec. 30, 1981).

² 17 CFR 145.9.

the swap.² Regulation 46.11 addresses the reporting of errors and omission in previously reported data. The data required to be compiled and maintained pursuant to the Part 46 regulations would be used by the Commission and other financial regulators for fulfillment of various regulatory mandates. The collection of information is needed to ensure that the CFTC and other regulators have access to data regarding pre-enactment and transition swaps, as required by the Commodity Exchange Act as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

- Ways to minimize the burden of 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.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <https://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish for the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.³

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or

remove any or all of your submission from <https://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Information Collection Request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The Commission estimates that the respondent burden for this collection is as follows:

Recordkeeping:
Estimated Number of Respondents: 30,106.

Estimated Average Burden Hours per Respondent: 0.43 hours.

Estimated Total Annual Burden Hours: 13,230 hours.

Frequency of Collection: On occasion.
Reporting:

Estimated Number of Respondents: 499.

Estimated Average Burden Hours per Respondent: 1.4 hours.

Estimated Total Annual Burden Hours: 716 hours.

Frequency of Collection: On occasion.
Total Annual Burden for the Collection: 13,946 hours.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: May 6, 2025.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2025-08141 Filed 5-8-25; 8:45 am]

BILLING CODE 6351-01-P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038-0070: Real-Time Public Reporting and Block Trade

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is announcing an opportunity for public comments on the proposed renewal of a collection of certain information by the agency. Under the Paperwork Reduction Act ("PRA"), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed renewal of an existing collection of

information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collections pertaining to the Commission's real-time public reporting and dissemination of swap data and rules for block trade requirements. These rules impose recordkeeping and reporting requirements on the following entities: Swap Dealers ("SDs"), Major Swap Participants ("MSPs"), Swap Execution Facilities ("SEFs"), designated contract markets ("DCMs"), swap data repositories ("SDRs"), derivatives clearing organizations ("DCOs"), and swap counterparties that are neither swap dealers nor major swap participants ("non-SD/MSP counterparties").

DATES: Comments must be submitted on or before July 8, 2025.

ADDRESSES: You may submit comments, identified by "OMB Control No. 3038-0070" by any of the following methods:

- The CFTC website, at <https://comments.cftc.gov/>. Follow the instructions for submitting comments through the website.

- **Mail:** Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

- **Delivery/Courier:** Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <https://www.cftc.gov>.

FOR FURTHER INFORMATION CONTACT:

Isabella Bergstein, Assistant Chief Counsel, Division of Market Oversight, Commodity Futures Trading Commission, (202) 993-1384, email: ibergstein@cftc.gov, and refer to OMB Control No. 3038-0070.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501 *et seq.*, Federal agencies must obtain approval from the Office of Management and Budget ("OMB") for each collection of information they conduct or sponsor. "Collection of Information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 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 provide a 60-day notice in the **Federal Register** concerning each proposed information collection including each proposed revision or

² See 17 CFR part 46.1 (defining "pre-enactment swap" as any swap entered into prior to enactment of the Dodd-Frank Act of 2010 (July 21, 2010), the terms of which have not expired as of the date of enactment of that Act, and "transition swap" as any swap entered into on or after the enactment of the Dodd-Frank Act of 2010 (July 21, 2010) and prior to the applicable compliance date on which a registered entity or swap counterparty subject to the jurisdiction of the Commission is required to commence full compliance with all provisions of part 46).

³ See 17 CFR 145.9.

extension of an existing information collection, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below. 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.¹

Title: Real Time Public Reporting and Block Trades (OMB Control No. 3038–0070). This is a request for comment on a currently approved information collection.

Abstract: The collection of information is needed to ensure that swap data repositories publicly disseminate swap data as required by the Commodity Exchange Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). The Dodd-Frank Act directed the CFTC to adopt rules providing for the real-time public reporting and dissemination of swap data and rules for block trades.

In 2020, the Commission amended part 43 by issuing the Real-Time Public Reporting Requirements final rule (“2020 RTR Final Rule”).² The 2020 RTR Final Rule revised the method and timing of real-time reporting and public dissemination, generally and for specific types of swaps; the delay and anonymization of the public dissemination of block trades and large notional trades; the standardization and validation of real-time reporting fields; the delegation of specific authority to Commission staff; and the clarification of specific real-time reporting questions and common issues.³

On June 10, 2022, the Commission staff issued a Staff Advisory on Reporting of Errors and Omissions in Previously Reported Data (“Advisory”),⁴ which included a form as an Appendix (“Form”). The Advisory specifies the format and manner for submitting information required under regulations 45.14 and 43.3(e), and accordingly amended Information Collection 3038–0070. Subsequently, the Commission has revised the estimated burdens associated with 3038–0070.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper

performance of the functions of the CFTC, including whether the information will have a practical use;

- The accuracy of the CFTC’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

- Ways to minimize the burden of 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.

You should submit only information that you wish to make available publicly. If you wish the CFTC to consider information that you believe is exempt from disclosure under the Freedom of Information Act (“FOIA”), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the CFTC’s regulations.⁵

The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <https://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Information Collection Request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under FOIA.

Burden Statement: Provisions of CFTC Regulations 43.3, 43.3(e), 43.4, and 43.6 result in information collection requirements within the meaning of the PRA. With respect to the ongoing reporting and recordkeeping burdens associated with swaps, the CFTC believes that SDRs, SDs, MSPs, SEFs, DCMs, DCOs, and non-SD/MSP/DCO counterparties incur an annual time-burden of 803,142 hours. This time-burden represents a proportion of the burden respondents incur to operate and maintain their swap data recordkeeping and reporting systems.

Respondents/Affected Entities: SDRs, SDs, MSPs, and other counterparties to swap transaction (i.e., non-SD/MSP/DCO counterparties).

Estimated Number of Respondents: 1,742.

Estimated Average Burden Hours per Respondent: 461.

Estimated Total Annual Burden Hours on Respondents: 803,142.

Frequency of Collection: Ongoing.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: May 6, 2025.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2025–08154 Filed 5–8–25; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection

Activities: Notice of Intent To Extend Collection 3038–0061: Daily Trade and Supporting Data Reports

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC or Commission) is announcing an opportunity for public comment on the proposed renewal of a collection of certain information by the agency. Under the Paperwork Reduction Act (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on the daily trade and supporting data reports that are submitted to CFTC related to reporting requirements on Reporting Markets, including Designated Contract Markets.

DATES: Comments must be submitted on or before July 8, 2025.

ADDRESSES: You may submit comments, identified by “OMB Control No. 3038–0061,” by any of the following methods:

- The Agency’s website, at <https://comments.cftc.gov/>. Follow the instructions for submitting comments through the website.

- **Mail:** Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

- **Hand Delivery/Courier:** Same as Mail above.

Please submit your comments using only one method.

FOR FURTHER INFORMATION CONTACT:

Owen Kopon, Associate Director, Division of Market Oversight, Commodity Futures Trading Commission, (202) 418–5360; email: OKopon@cftc.gov.

¹ 44 U.S.C. 3512, 5 CFR 1320.5(b)(2)(i) and 1320.8(b)(3)(vi). See also 46 FR 63035 (Dec. 30, 1981).

² Real-Time Public Reporting Requirements, 85 FR 75422 (Nov. 25, 2020).

³ *Id.*

⁴ CFTC Letter 22–06.

⁵ 17 CFR 145.9.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501 *et seq.*, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. “Collection of Information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 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 provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed extension of the existing collection of information listed below. 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.

Title: Regulation 16.02—Daily Trade and Supporting Data Reports (OMB Control No. 3038–0061). This is a request for extension of a currently approved information collection.

Abstract: Commission Rule 16.02 requires Reporting Markets to report transaction-level trade data and related order information for each executed transaction. The Commission uses the transaction-level trade data and related order information to discharge its regulatory responsibilities, including the responsibilities to prevent market manipulations and commodity price distortions and ensure the financial integrity of its jurisdictional markets.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <https://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission’s regulations.¹

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse, or remove any or all of your submission from <https://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Information Collection Request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The Commission estimates that up to 20 Reporting Markets could provide daily trade and supporting data reports to the Commission in the future. The CFTC believes that Reporting Markets incur an average burden of two hours to compile and submit each report made pursuant to Commission Rule 16.02. Reporting Markets submit an average of 250 reports annually. The estimated total annual time-burden for all Reporting Markets is 10,000 hours. The respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 20.

Estimated Average Burden Hours per Respondent: 500 hours.

Estimated Total Annual Burden Hours: 10,000 hours.

Frequency of Collection: Daily.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: May 6, 2025.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2025–08155 Filed 5–8–25; 8:45 am]

BILLING CODE 6351–01–P

¹ 17 CFR 145.9.

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Extend Collection 3038–0078: Conflicts of Interest Policies and Procedures by Futures Commission Merchants and Introducing Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (“Commission”) is announcing an opportunity for public comment on the proposed renewal of a collection of certain information by the agency. Under the Paperwork Reduction Act (“PRA”), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on the collections of information mandated by Commission regulation 1.71 (Conflicts of interest policies and procedures by futures commission merchants and introducing brokers).

DATES: Comments must be submitted on or before July 8, 2025.

ADDRESSES: You may submit comments, identified by “OMB Control Number 3038–0078” by any of the following methods:

- The Agency’s website, at <https://comments.cftc.gov/>. Follow the instructions for submitting comments through the website.

- **Mail:** Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

- **Hand Delivery/Courier:** Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <https://www.cftc.gov>.

FOR FURTHER INFORMATION CONTACT: Catherine Brescia, Attorney Advisor, Market Participants Division, Commodity Futures Trading Commission, (202) 418–6236, email: cbrescia@cftc.gov.

SUPPLEMENTARY INFORMATION: Under the PRA,¹ Federal agencies must obtain approval from the Office of Management and Budget (“OMB”) for each collection

¹ 44 U.S.C. 3501 *et seq.*

of information they conduct or sponsor. "Collection of Information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 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 provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the Commission is publishing notice of the proposed collection of information listed below. 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.²

Title: Conflicts of Interest Policies and Procedures by Futures Commission Merchants and Introducing Brokers (OMB Control Nos. 3038–0078). This is a request for an extension of a currently approved information collection.

Abstract: On April 3, 2012, the Commission adopted Commission regulation 1.71 (Conflicts of interest policies and procedures by futures commission merchants and introducing brokers)³ pursuant to sections 4d(c)⁴ of the Commodity Exchange Act ("CEA").⁵ Commission regulation 1.71 generally requires that, among other things, futures commission merchants ("FCMs")⁶ and introducing brokers ("IBs")⁷ to: (1) develop conflicts of interest systems, procedures, and disclosures; (2) adopt and implement written policies and procedures reasonably designed to ensure compliance with their conflicts of interest and disclosure obligations; and (3) maintain specified records related to those requirements.⁸ The Commission believes that the information collection obligations imposed by Commission regulation 1.71 are essential to (i) ensuring that FCMs and IBs develop and maintain the conflicts of interest systems, procedures and disclosures required by the CEA, and Commission

regulations, and (ii) the effective evaluation of these registrants' actual compliance with the CEA and Commission regulations.

With respect to the collection of information, the Commission invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act ("FOIA"), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.⁹

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <https://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the information collection request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under FOIA.

Burden Statement: The Commission is revising its estimate of the burden for this collection to reflect the current number of respondents. The respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 959.

Estimated Average Burden Hours per Respondent: 44.5.

Estimated Total Annual Burden Hours: 42,675.5.

⁹ 17 CFR 145.9, 74 FR 17395 (Apr. 15, 2009).

Frequency of Collection: As applicable.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: May 6, 2025.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2025–08152 Filed 5–8–25; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF EDUCATION

Withdrawal of Notices Inviting Application and Cancellation of the Competitions for the Fulbright-Hays Group Projects Abroad (GPA) Program, Doctoral Dissertation Research Abroad (DDRA) Program, and Faculty Research Abroad (FRA) Fellowship Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice; cancellation.

SUMMARY: The Department of Education (Department) withdraws the notice inviting applications (NIA) for fiscal year (FY) 2025 for the Fulbright-Hays Group Projects Abroad (GPA) Program, Doctoral Dissertation Research Abroad (DDRA) Program, and the Faculty Research Abroad (FRA) Fellowship Program.

DATES: The NIAs published in the **Federal Register** on October 25, 2024 (89 FR 85176)—GPA, October 20, 2024 (89 FR 86323)—DDRA, and January 8, 2025 (90 FR 1469)—FRA, are withdrawn and the competitions cancelled as of May 9, 2025.

FOR FURTHER INFORMATION CONTACT: Stacey Slijepcevic, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202–5076. Telephone: (202) 453–6150. Email: stacey.slijepcevic@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: On October 25, 2024, the Department published an NIA in the **Federal Register** for the FY 2025 GPA competition, Assistance Listing Number (ALN) 84.021A/B. On October 30, 2024, the Department published an NIA in the **Federal Register** for the FY 2025 DDRA competition, ALN 84.022A. On January 8, 2025, the Department published an NIA in the **Federal Register** for the FY 2025 FRA competition, ALN 84.019A. The Department is cancelling the

² 44 U.S.C. 3512, 5 CFR 1320.5(b)(2)(i) and 1320.8(b)(3)(vi). See also 46 FR 63035 (Dec. 30, 1981).

³ 17 CFR 1.71.

⁴ 7 U.S.C. 6d(c).

⁵ 77 FR 20198 (Apr. 3, 2012).

⁶ For the definition of FCM, see section 1a(28) of the CEA and Commission regulation 1.3. 7 U.S.C. 1a(49) and 17 CFR 1.3.

⁷ For the definitions of IB, see section 1a(31) of the CEA and Commission regulation 1.3. 7 U.S.C. 1a(33) and 17 CFR 1.3.

⁸ See 17 CFR 1.71.

competitions as part of a comprehensive review of recently published FY 2025 NIAs. This reevaluation seeks to ensure that all priorities and requirements for the Department's FY 2025 competitions align with the objectives established by the Trump Administration, foster consistency across all grant programs, and enhance the economic effectiveness of federal education funding.

Program Authority: 22 U.S.C. 2452(b)(6).

Intergovernmental Review: These programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this notice and the NIAs in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site, you can view this document, as well as all other Department documents published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access Department documents published in the **Federal**

Register by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

James Bergeron,

Acting Under Secretary (Delegated the authority to perform the functions and duties of the Assistant Secretary for Postsecondary Education).

[FR Doc. 2025–08109 Filed 5–8–25; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Expanding Opportunity Through Quality Charter Schools Program (CSP)—State Charter School Facilities Incentive Grant (SFIG) Program

AGENCY: Office of Elementary and Secondary Education, Department of Education

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications (NIA) for fiscal year (FY) 2025 for the SFIG Program.

DATES:

Applications Available: May 9, 2025.

Deadline for Notice of Intent to Apply: Applicants are strongly encouraged but not required to submit a notice of intent to apply by June 9, 2025.

Application Deadline: July 8, 2025.

Deadline for Intergovernmental Review: September 8, 2025.

ADDRESSES: For the addresses for obtaining and submitting an

application, please refer to the Application Submission Instructions section.

FOR FURTHER INFORMATION CONTACT:

Clifton Jones, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202–5970. Telephone: (202) 205–2204. Email: charter.facilities@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

1. *Purpose of Program:* Through the CSP SFIG program, the Department provides grants on a competitive basis to eligible States¹ to help them establish or enhance, and administer, a *per-pupil facilities aid program* for charter schools in the State that is specified in State law and provides annual financing, on a per-pupil basis, for charter school facilities.

Charter schools that receive financial assistance through CSP SFIG Grants provide elementary or secondary education, or both, and may also serve students in *early childhood education programs* or postsecondary students.

Assistance Listing Number: 84.282D.

OMB Control Number: 1894–0006.

Note: The table below highlights key aspects of the funding opportunity in this NIA. Applicants are encouraged to thoroughly review this notice for a detailed listing and description of all competition requirements before submitting an application.

TABLE 1—FUNDING OPPORTUNITY AT-A-GLANCE

Topic	Notes
Application Deadline	All interested applicants must submit applications in <i>Grants.gov</i> no later than 11:59 p.m. Eastern time on July 8, 2025. Complete instructions on how to register and apply can be found at <i>Grants.gov</i> .
Eligibility	States are eligible to apply. In order to be eligible to receive a grant, a State shall establish or enhance, and administer, a per-pupil facilities aid program for charter schools in the State, that— (a) Is specified in State law; and (b) Provides annual financing, on a per-pupil basis, for charter school facilities.
Funding	Estimated Available Funds: \$10,000,000. Estimated Range of Awards: \$1,000,000 to \$10,000,000 per year. Estimated Average Size of Awards: \$10,000,000 per year. Estimated Number of Awards: 1–2. The Department is not bound by any estimates in this notice.
Competitive Preference Priorities (CPPs). <i>The full text is in the priorities section below.</i>	This notice includes two CPPs. We award additional points to an application that addresses the CPPs. Responding to the CPPs is optional. 1. Capacity of Charter Schools to Offer Public School Choice in Communities with the Greatest Need for Choice (Up to 6 points). 2. Applicants that Have Not Previously Received a SFIG Grant (0 or 3 points).

¹ Terms defined in this notice are italicized the first time each term is used.

TABLE 1—FUNDING OPPORTUNITY AT-A-GLANCE—Continued

Topic	Notes
Application Requirements	Applicants are required to complete the four program specific application package instruction forms. OMB Control Number: 1894–0006. 1. Table 1—Charter School Aid Paid by State. 2. Table 2—Budget Form: Grant Funds Expenditures. 3. Table 3—Grant Funds as a Percentage of the Cost of Per-Pupil Facilities Aid. 4. Program-Specific Assurance.
Selection Criteria <i>The full text is in the selection criteria section below.</i>	We evaluate applications using selection criteria. The maximum score for addressing all selection criteria is 100 points. (a) Need for facility funding (30 points). (b) Quality of plan (40 points). (c) The grant project team (10 points). (d) The budget (10 points). (e) State Experience (10 points).
Cost Sharing or Matching	A State must provide a State share of the total cost of the project. The minimum State share of the total cost of the project increases each year of the grant, as follows: • 10 percent in the first year. • 20 percent in the second year. • 40 percent in the third year. • 60 percent in the fourth year. • 80 percent in the fifth year.
Supplement-Not-Supplant	This program involves supplement-not-supplant requirements.

2. *Background:* Accessing affordable, and appropriate facilities is one of the biggest obstacles to creating and expanding charter schools as cited by charter school leaders.² In 2021, the Government Accountability Office (GAO) issued a report identifying the challenges charter schools encounter with locating and securing charter school facilities and government assistance that can address these challenges, such as per-pupil allowances, which provide extra funds to help cover facility expenses. In the report, the GAO identified the following four challenges unique to charter schools when trying to secure charter school facilities and funding: (1) affordability and limited access to State and local funding, and affordable private loans as well as rising real estate costs and renovation expenses; (2) availability of safe and secure building space and lack of amenities (e.g., a cafeteria or playground), and limited access to buildings; (3) inconsistent assistance for charter school facilities' needs and, (4) limited staff expertise in facilities management.³ This program addresses these challenges by providing grants to encourage States to establish and enhance or administer per-pupil facilities aid programs for charter schools.

3. *Award Information:*

Type of Award: Discretionary grants.

Estimated Available Funds:

\$10,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in

subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards:

\$1,000,000 to \$10,000,000.

Estimated Average Size of Awards:

\$10,000,000.

Estimated Number of Awards: 1–2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

4. *Eligible Applicants:* States. In order to be eligible to receive a grant, a State shall establish or enhance, and administer, a per-pupil facilities aid program for charter schools in the State, that—

(a) Is specified in State law; and

(b) Provides annual financing, on a per-pupil basis, for charter school facilities. (ESEA section 4304(k)(4)(B)(i)).

A State that is required under State law to provide charter schools with access to adequate facility space, but that does not have a per-pupil facilities aid program for charter schools specified in State law, is eligible to receive a grant if the State agrees to use the funds to develop a per-pupil facilities aid program consistent with the requirements in this NIA. (ESEA section 4304(k)(4)(B)(ii))

5. *Priorities:* This notice includes two competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(ii), these priorities are from 34 CFR 226.14.

Competitive Preference Priorities: For FY 2025 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. We award up to an additional 6 points,

depending on how well an application meets Competitive Preference Priority 1, and 3 additional points to applicants that meet Competitive Preference Priority 2.

These priorities are:

Competitive Preference Priority 1—Capacity of Charter Schools to Offer Public School Choice in Communities with the Greatest Need for Choice (Up to 6 points).

To meet this priority, the applicant must demonstrate the capacity of charter schools to offer public school choice in those communities with the greatest need for this choice based on—

(a) The extent to which the applicant would target services to geographic areas in which a large proportion or number of public schools have been identified for comprehensive support and improvement or targeted support and improvement under the ESEA;

(b) The extent to which the applicant would target services to geographic areas in which a large proportion of students perform poorly on State academic assessments; and

(c) The extent to which the applicant would target services to communities with large proportions of low-income students.

Competitive Preference Priority 2—Applicants that Have Not Previously Received a SFIG Grant (0 or 3 points).

This priority is for applicants that have not previously received a grant under the program.

6.a. *Cost Sharing or Matching:* Under section 4304(k)(2)(C) of the ESEA, a State must provide a State share of the total cost of the project. The minimum State share of the total cost of the project

² 2024–CSP-Impact-Report.pdf.

³ <https://www.gao.gov/assets/gao-21-104446.pdf>.

increases each year of the grant, as follows:

- 10 percent in the first year
- 20 percent in the second year
- 40 percent in the third year
- 60 percent in the fourth year
- 80 percent in the fifth year

A State may partner with one or more organizations, and such organizations may provide up to 50 percent of the State share of the cost of establishing or enhancing, and administering, the per-pupil facilities aid program. (ESEA section 4304(k)(2)(D)).

Note: Applicants that are provisionally selected to receive grants will not receive grant funds unless they demonstrate before grant funds are obligated that they are, or will be able to, provide the State share required under this program.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Under section 4304(k)(3)(C) of the ESEA (20 U.S.C. 7221c(k)(3)(C)), program funds must be used to supplement, and not supplant, State and local public funds expended to provide per-pupil facilities aid programs, operations financing programs, or other programs, for charter schools. Therefore, the Federal funds provided under this program, as well as the matching funds provided by the grantee, must be in addition to the State and local funds that would otherwise be used for this purpose in the absence of this Federal program. The Department generally considers that State and local funds would be available for this purpose at least in the amount of the funds that was available in the preceding year and that the Federal funds and matching funds under this program would supplement that amount.

c. *Indirect Cost Rate Information:* This program uses a restricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see <https://www.ed.gov/about/ed-offices/fofo#Indirect-Cost-Division>.

d. *Administrative Cost Limitation:* State grantees may use up to five percent of their grant award for administrative expenses that include: indirect costs, evaluation, technical assistance, dissemination, personnel costs, and any other costs involved in administering the State's per-pupil facilities aid program. (34 CFR 226.22)

Charter school subgrantees may use grant funds for administrative costs that are necessary and reasonable for the proper and efficient performance and administration of this Federal grant. This use of funds, as well as indirect

costs and rates, must comply with EDGAR and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200 (Uniform Guidance), as adopted and amended as regulations of the Department in 2 CFR part 3474.

Consistent with the requirements in 34 CFR 75.564(c)(2), any charter school subgrantees that use grant funds for construction activities may not be reimbursed for indirect costs for those activities. (34 CFR 226.23)

7. *Other:* a. *Build America, Buy America Act:* This program is subject to the Build America, Buy America Act (Pub. L. 117–58) domestic sourcing requirements. Accordingly, under this program, grantees and their subrecipients (subgrantees) and contractors may not use their grant funds for infrastructure projects or activities (e.g., construction, remodeling, and broadband infrastructure) unless—

- i. All iron and steel used in the infrastructure project or activity are produced in the United States;
- ii. All manufactured products used in the infrastructure project or activity are produced in the United States; and
- iii. All construction materials are manufactured in the United States.

Grantees may request waivers to these requirements by submitting a Build America, Buy America Act Waiver Request Form. For more information, including a link to the Waiver Request Form, see the Department's Build America Buy America Waiver website at: <https://www2.ed.gov/policy/fund/guid/buy-america/index.html>.

b. The charter schools that a grantee selects to benefit from this program must meet the definition of “charter school” in section 4310(2) of the ESEA (20 U.S.C. 7221i(2)), which is included in this notice.

8. *Definitions:*

The following definitions are from sections 4310(1), 4310(2), 4304(k)(1), and 8101(48) of the ESEA (20 U.S.C. 7221i(1), 7221i(2), 7221c(k)(1), 7801)), and 34 CFR 77.1(c).

Ambitious means promoting continued, meaningful improvement for program participants or for other individuals or entities affected by the grant or representing a significant advancement in the field of education research, practices, or methodologies. When used to describe a *performance target*, whether a performance target is ambitious depends upon the context of the relevant *performance measure* and the baseline for that measure. (34 CFR 77.1)

Authorized public chartering agency means a State educational agency, local

educational agency, or other public entity that has the authority pursuant to State law and approved by the Secretary to authorize or approve a *charter school*. (Section 4310(1) of the ESEA)

Charter school means a public school that—

(1) In accordance with a specific State statute authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements in section 4310 of the ESEA;

(2) Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

(3) Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the *authorized public chartering agency*;

(4) Provides a program of elementary or secondary education, or both;

(5) Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;

(6) Does not charge tuition;

(7) Complies with the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), section 444 of the General Education Provisions Act (20 U.S.C. 1232g) (commonly referred to as the “Family Educational Rights and Privacy Act of 1974”), and part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 *et seq.*);

(8) Is a school to which parents choose to send their children, and that—

(i) Admits students on the basis of a lottery, consistent with section 4303(c)(3)(A) of the ESEA (20 U.S.C. 7221b(c)(3)(A)), if more students apply for admission than can be accommodated; or

(ii) In the case of a school that has an affiliated charter school (such as a school that is part of the same network of schools), automatically enrolls students who are enrolled in the immediate prior grade level of the affiliated charter school and, for any additional student openings or student openings created through regular attrition in student enrollment in the

affiliated charter school and the enrolling school, admits students on the basis of a lottery as described in paragraph (h)(i);

(9) Agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such State audit requirements are waived by the State;

(10) Meets all applicable Federal, State, and local health and safety requirements;

(11) Operates in accordance with State law;

(12) Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the *charter school*; and

(13) May serve students in early childhood education programs or postsecondary students. (Section 4310(2) of the ESEA).

Early childhood education program means—

(1) A Head Start program or an Early Head Start program carried out under the Head Start Act (42 U.S.C. 9831 *et seq.*), including a migrant or seasonal Head Start program, an Indian Head Start program, or a Head Start program or an Early Head Start program that also receives State funding;

(2) A State licensed or regulated child care program; or

(3) A program that (i) serves children from birth through age 6 that addresses the children's cognitive (including language, early literacy, and early mathematics), social, emotional, and physical development; and (ii) is (A) a State prekindergarten program, (B) a program authorized under section 619 (20 U.S.C. 1419) or part C of the IDEA, or (C) a program operated by an LEA (section 8101(16) of the ESEA).

Performance measure means any quantitative indicator, statistic, or metric used to gauge program or project performance. (34 CFR 77.1)

Performance target means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project. (34 CFR 77.1)

Per-pupil facilities aid program means a program in which a State makes payments, on a per-pupil basis, to charter schools to provide the schools with financing—

(1) That is dedicated solely to funding charter school facilities; or

(2) A portion of which is dedicated for funding charter school facilities. (section 4304(k)(1))

Public means as applied to an agency, organization, or institution that the agency, organization, or institution is under the administrative supervision or control of a government other than the Federal Government. (34 CFR 77.1)

State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas. (section 8101(48) of the ESEA)

9. *Selection Criteria:* The selection criteria for this program are from 34 CFR 226.12. The maximum score for addressing all of the selection criteria is 100 points. The maximum score for addressing each criterion is indicated in parentheses and are as follows:

(a) *Need for facility funding* (30 points).

(1) The need for per-pupil charter school facility funding in the State.

(2) The extent to which the proposal meets the need to fund charter school facilities on a per-pupil basis.

(b) *Quality of plan* (40 points).

(1) The likelihood that the proposed grant project will result in the State either retaining a new per-pupil facilities aid program or continuing to enhance such a program without the total amount of assistance (State and Federal) declining over a five-year period.

(2) The flexibility charter schools have in their use of facility funds for the various authorized purposes.

(3) The quality of the plan for identifying charter schools and determining their eligibility to receive funds.

(4) The per-pupil facilities aid formula's ability to target resources to charter schools with the greatest need and the highest proportions of students in poverty.

(5) For projects that plan to reserve funds for evaluation, the quality of the applicant's plan to use grant funds for this purpose.

(6) For projects that plan to reserve funds for technical assistance, dissemination, or personnel, the quality of the applicant's plan to use grant funds for these purposes.

(c) *The grant project team* (10 points).

(1) The qualifications, including relevant training and experience, of the project manager and other members of the grant project team, including employees not paid with grant funds, consultants, and subcontractors.

(2) The adequacy and appropriateness of the applicant's staffing plan for the grant project.

(d) *The budget* (10 points).

(1) The extent to which the requested grant amount and the project costs are reasonable in relation to the objectives, design, and potential significance of the proposed grant project.

(2) The extent to which the costs are reasonable in relation to the number of students served and to the anticipated results and benefits.

(3) The extent to which the non-Federal share exceeds the minimum percentages (which are based on the percentages under section 4304(k)(2)(C) of the ESEA), particularly in the initial years of the program.

(e) *State Experience* (10 points).

(1) The experience of the State in addressing the facility needs of charter schools through various means, including providing per-pupil aid and access to State loan or bonding pools.

10. *Program Authority:* Section 4304(k) of the ESEA (20 U.S.C. 7221c(k)).

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 97, 98, and 99. (b) The Office of Management and Budget (OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Guidance for Federal Financial Assistance in 2 CFR part 200 (Uniform Guidance), as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 226.

II. Application and Submission Information

1. Application Submission

Instructions: Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 23, 2024 (89 FR 104528) and available at <https://www.federalregister.gov/documents/2024/12/23/2024-30488/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs>.

2. Submission of Proprietary

Information: Given the types of projects that may be proposed in applications for the State Charter School Facilities Incentive Grants Program, an application may include business information that is considered proprietary. In 34 CFR 5.11, we define

“business information” and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600 (Predisclosure Notification Procedures for Confidential Commercial Information), please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under “Other Attachments Form,” please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review*: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Funding Restrictions*: We reference funding restrictions in the *Administrative Cost Limitation* section of this notice. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Notice of Intent to Apply*: The Department will be able to review grant applications more efficiently if we know the approximate number of applicants that intend to apply. Therefore, we strongly encourage each potential applicant to notify us of their intent to submit an application. To do so, please email the program contact person listed under **FOR FURTHER INFORMATION CONTACT** with the subject line “Intent to Apply,” and include the applicant’s name and a contact person’s name and email address. Applicants that do not submit a notice of intent to apply may still apply for funding; applicants that do submit a notice of intent to apply are not bound to apply or bound by the information provided.

6. *Date of Pre-Application Webinar Information*: The SFIG Program intends to hold a webinar designed to provide technical assistance to interested applicants. Detailed information regarding this webinar will be provided on the SFIG Program web page at <https://www.ed.gov/grants-and-programs/grants-birth-grade-12/charter-school-programs/state-charter-school-facilities-incentive-grants>.

Note: For new potential grantees unfamiliar with grantmaking at the Department, please consult our “Getting Started with Discretionary Grant Applications” web page at <https://www.ed.gov/grants-and-programs/apply-grant/getting-started-discretionary-grant-applications>.

III. Application Review Information

1. *Review and Selection Process*: We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant’s use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

Note: As described in 34 CFR 226.14(c), the Secretary may elect to consider the points awarded under the competitive preference priorities only for proposals that exhibit sufficient quality to warrant funding under the selection criteria.

2. *Risk Assessment and Specific Conditions*: Before awarding grants under this program the Department conducts a review of the risks posed by applicants. The Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

3. *Integrity and Performance System*: If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently \$250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system

(currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds \$10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed \$10,000,000.

IV. Award Administration Information

1. *Award Notices*: If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We also may notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements*: We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements*: Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and

selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. See the standards in 2 CFR 170.105 to determine whether you are covered by 2 CFR part 170.

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary. The Secretary may also require more frequent performance reports. For specific requirements on reporting, please go to www.ed.gov/fund/grant/apply/appforms/appforms.html.

5. *Performance Measures:* The Department has developed the following performance measure for the purpose of Department reporting under 34 CFR 75.110:

(a) *Program Performance Measures.*

(1) The ratio of funds leveraged by States for charter school facilities to funds awarded by the Department under the program. Grantees must provide information that is responsive to this measure as part of their annual performance reports.

(2) In accordance with 34 CFR 75.110(b), applications must describe: (i) The data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data.

(ii) The applicant's capacity to collect and report the quality of the performance data, as evidenced by quality data collection, analysis, and reporting in other projects or research.

(b) *Project-Specific Performance Measures.* Applicants must propose project-specific performance measures and performance targets consistent with the objectives of the proposed project. In accordance with 34 CFR 75.110(c), applications must include the following:

(1) *Project-specific performance measures.* How each proposed project-specific performance measure would: accurately measure the performance of the project; be consistent with the program performance measures established under paragraph (a) of this section; and be used to inform continuous improvement of the project.

(2) *Baseline data.* (i) Why each proposed baseline is valid and reliable, including an assessment of the quality data used to establish the baseline; or (ii) if the applicant has determined that there are no established baseline data for a particular performance measure, an explanation of why there is no established baseline and of how and when, during the project period, the applicant would establish a valid baseline for the performance measure.

(3) *Performance targets.* Why each proposed performance target is ambitious yet achievable compared to the baseline for the performance measure and when, during the project period, the applicant would meet the performance target(s).

All grantees must submit an annual performance report with information that is responsive to these performance measures.

6. *Data Collection and Reporting:* (i) The data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data; and (ii) The applicant's capacity to collect and report reliable, valid, and meaningful performance data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research.

Note: If applicants do not have experience with collection and reporting of performance data through other projects or research, they should provide other evidence of their capacity to successfully carry out data collection and reporting for their proposed project.

7. *Continuation Awards:* In making a continuation award, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department.

8. *Project Directors' Meeting:* Applicants approved for funding under this competition must attend a meeting for project directors at a location to be determined in the continental United

States during each year of the project. Applicants may include the cost of attending this meeting as an administrative cost in their proposed budgets.

9. *Technical Assistance:* Grantees under this competition must participate in all program technical assistance offerings provided by the Department and its contractual technical assistance providers and partners throughout the life of the project.

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other Department documents published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access Department documents published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Hayley B. Sanon,

Principal Deputy Assistant Secretary and Acting Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2025-08093 Filed 5-8-25; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Application for New Awards; Expanding Opportunity Through Quality Charter Schools Program (CSP)—Grants to State Entities (State Entity Grants)

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education is issuing a notice inviting applications for fiscal year (FY) 2025 for CSP Grants to State Entities.

DATES:

Applications Available: May 9, 2025.

Application Deadline: June 9, 2025.

Deadline for Intergovernmental Review: August 7, 2025.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to the Application Submission Instructions section.

FOR FURTHER INFORMATION CONTACT:

Sareeta Schmitt, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202–5970.

Telephone: (202) 205–0730. *Email:* SE_Competition@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

1. *Purpose of Program:* Through CSP State Entity grants, the Department awards grants on a competitive basis to *State entities*¹ that, in turn, award subgrants to *eligible applicants* for the purpose of opening new *charter schools* and *replicating* and *expanding high-quality charter schools*.

This program provides financial assistance to State entities to support charter schools that serve elementary and secondary school students in States with a State statute specifically authorizing the establishment of charter schools. Charter schools receiving funds under this program may also serve students in *early childhood education programs* or postsecondary students.

Assistance Listing Number: 84.282A.

OMB Control Number: 1810–0767.

Note: The table below highlights key aspects of the funding opportunity in this NIA. Applicants are encouraged to thoroughly review this notice for a detailed listing and description of all competition requirements before submitting an application.

TABLE 1—FUNDING OPPORTUNITY AT-A-GLANCE

Topic	Notes
Application submission deadline	All interested applicants must submit applications in <i>Grants.gov</i> no later than 11:59 p.m. Eastern time on June 9, 2025. Complete instructions on how to register and apply can be found at <i>Grants.gov</i> .
Eligibility	State entities with a State statute specifically authorizing the establishment of charter schools are eligible to apply.
<i>Additional information on eligibility, including a list of eligible States under this competition, is available in the Eligible Applicants for Grants section below.</i>	No State entity may receive a grant under this program for use in a State in which a State entity is currently using a grant received under this program.
Funding	“State entity” means— (a) A State educational agency; (b) A State charter school board; (c) A Governor of a State; or (d) A charter school support organization.
Absolute Priority (AP)	Estimated Available Funds: \$107,000,000.
<i>The full text of the AP is in the Priorities section below.</i>	Estimated Range of Awards: \$2,000,000 to \$20,000,000 per year.
Competitive Preference Priorities (CPPs).	Estimated Average Size of Awards: \$9,000,000 per year.
<i>The full text of the CPPs is in the Priorities section below.</i>	Estimated Number of Awards: 4–6.
Invitational Priority (IP)	The Department is not bound by any estimates in this notice.
<i>The full text of the IP is in the Priorities section below.</i>	This notice includes one AP. We consider for funding only applications that meet the AP.
Application Requirements	AP: Best Practices for Charter School Authorizers.
Requests for Waiver	This notice includes five CPPs. We award additional points to an application that addresses the CPPs. Responding to the CPPs is optional.
Selection Criteria	1. At Least One Authorized Public Chartering Agency Other than a Local Educational Agency, or an Appeals Process (0 or 1 point).
<i>The full text is in the Selection Criteria section below.</i>	2. Equitable Financing (up to 2 points).
	3. Best Practices to Improve Struggling Schools and LEAs (up to 2 points).
	4. Charter School Facilities (up to 2 points).
	5. Serving At-Risk Students (up to 3 points).
	This notice includes one IP. We are particularly interested in applications that meet the IP but do not give them competitive or absolute preference over others. Responding to the IP is optional.
	IP: Encouraging Innovative Charter School Models.
	Applicants are required to address all application requirements in this notice.
	Applicants may include in their applications a request and justification for a waiver of any Federal statutory or regulatory requirements over which the Secretary exercises authority, except for requirements in the definition of “charter school” under the CSP.
	We evaluate applications using selection criteria. The maximum score for addressing all selection criteria is 100 points.
	(a) Quality of the Project Design (30 points).
	(b) Quality of Eligible Applicants Receiving Subgrants (15 points).
	(c) State Plan (35 points).
	(d) Quality of the Management Plan (up to 20 points).

2. *Award Information.*

Type of Award: Discretionary grants.

Estimated Available Funds:
\$107,000,000. Contingent upon the availability of funds and the quality of

applications, we may make additional awards in subsequent years from the list

¹ Defined terms are italicized the first time they are used.

of unfunded applications from this competition.

Estimated Range of Awards:

\$2,000,000 to \$20,000,000 per year.

Estimated Average Size of Awards:

\$9,000,000 per year.

Maximum Award: See section II.3(a) of this notice, *Reasonable and Necessary Costs*, for information regarding the maximum amount of funds that State entities may award for each charter school receiving subgrant funds.

Estimated Number of Awards: 4–6.

Note: The Department is not bound by any estimates in this notice. The estimated range and average size of awards are based on a single 12-month budget period. We may use FY 2025 funds to support multiple 12-month budget periods for one or more grantees.

Project Period: Up to 60 months.

3. *Eligible Applicants for Grants:* State entities in States with a specific State statute authorizing the granting of charters to schools.

Under section 4303(e)(1) of the Elementary and Secondary Education Act of 1965, as amended (ESEA), no State entity may receive a grant under this competition for use in a State in which a State entity is currently using a CSP State Entity grant.

State entities located in States in which a State entity has a current CSP State Entity grant that is not in its final budget period, or that is in its final budget period, but the grantee plans to request a one-time no-cost extension in accordance with 34 CFR 75.261 and 2 CFR 200.308(g)(2)² (*i.e.*, Arizona, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, New Jersey, New Mexico, New York, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, West Virginia, and Wisconsin), are ineligible to apply for a CSP State Entity grant under this competition.

State entities located in States in which a State entity has a current CSP State Entity grant that is operating under a no-cost extension (*i.e.*, Alabama, Arkansas, Delaware, New Hampshire, and Washington), or that is not operating under a no-cost extension but is in its final budget period and has notified the Department that it does not intend to request a no-cost extension

(*i.e.*, Nevada), however, are eligible to apply for a CSP State Entity grant under this competition. The Department will accept applications from current State entity grantees located in these States as well as from State entities located in these States that do not have current grants.

If multiple State entities in a State submit applications that receive high enough scores to be recommended for funding under this competition, only the highest scoring application among such State entities will be funded.

Note: Charter school developers in a State in which no State entity has an approved State Entity grant application under section 4303 of the ESEA may apply for funding directly from the Department under the CSP Grants to Charter School Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-Quality Charter Schools (Developer) (ALN numbers 84.282B and 84.282E) program. Additional information about the CSP Developer program is available at <https://www.ed.gov/grants-and-programs/grants-birth-grade-12/charter-school-programs/charter-schools-program-csp-grants-to-charter-school-developers-for-the-opening-of-new-charter-schools-and-for-the-replication-and-expansion-of-high-quality-charter-schools>.

4. *Priorities* This notice includes one absolute priority, five competitive preference priorities, and one invitational priority. In accordance with 34 CFR 75.105(b)(2)(iv), the absolute priority and competitive preference priorities are from section 4303(g)(2) of the ESEA (20 U.S.C. 7221b(g)(2)).

Absolute Priority: For FY 2025, and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. We consider only applications that meet the absolute priority.

This priority is:

Best Practices for Charter School Authorizers.

To meet this priority, the State entity must demonstrate that it has taken steps to ensure that all authorized public chartering agencies³ implement best practices for charter school authorizing.⁴

Competitive Preference Priorities: For FY 2025, and any subsequent year in which we make awards from the list of

unfunded applications from this competition, these priorities are competitive preference priorities. We award 1 additional point to an application that meets Competitive Preference Priority 1; up to 2 additional points depending on how well an application meets Competitive Preference Priority 2; up to 2 additional points depending on how well an application meets Competitive Preference Priority 3; up to 2 additional points depending on how well an application meets Competitive Preference Priority 4; and up to 3 additional points depending on how well an application meets Competitive Preference Priority 5. An application may receive a maximum of 10 additional points under the competitive preference priorities.

An applicant must identify in the abstract form and in the project narrative section of its application the priority or priorities it wishes the Department to consider for purposes of earning competitive preference priority points. The Department will not review or award points for any competitive preference priority that an applicant fails to clearly identify as a competitive preference priority that it wishes the Department to consider for purposes of awarding competitive preference priority points.

These priorities are:

Competitive Preference Priority 1—At Least One Authorized Public Chartering Agency Other than a Local Educational Agency, or an Appeals Process (0 or 1 point).

To meet this priority, the State entity must demonstrate that it is located in a State that—

(a) Allows at least one entity that is not a local educational agency (LEA) to be an authorized public chartering agency for *developers* seeking to open a charter school in the State; or

(b) In the case of a State in which LEAs are the only authorized public chartering agencies, the State has an appeals process for the denial of an application for a charter school.

Competitive Preference Priority 2—Equitable Financing (up to 2 points).

To be eligible to receive points under this priority, the State entity must demonstrate that it is located in a State that ensures equitable financing, as compared to traditional public schools, for charter schools and students in a prompt manner.

Competitive Preference Priority 3—Best Practices to Improve Struggling Schools and LEAs (up to 2 points).

To be eligible to receive points under this priority, the State entity must demonstrate that it is located in a State

² Under 34 CFR 75.261, a grantee may extend the project period of an award one time for up to 12 months without the prior approval of the Department if the grantee meets the requirements for extension in 2 CFR 200.308(g)(2), and Department statutes, regulations, and the terms of the award do not prohibit the extension.

³ Although section 4303(g)(2)(F) of the ESEA uses the term “authorizing public chartering agencies,” consistent with section 4310(1), the correct term is “authorized public chartering agencies.”

⁴ See Assurance (5) in the *Requirements* section below for additional detail on how a State entity may promote quality authorizing.

that uses best practices from charter schools to help improve struggling schools and LEAs.

Competitive Preference Priority 4—Charter School Facilities (up to 2 points).

To be eligible to receive points under this priority, the State entity must demonstrate that it is located in a State that provides charter schools one or more of the following:

- (a) Funding for facilities.
- (b) Assistance with facilities acquisition.
- (c) Access to public facilities.
- (d) The ability to share in bonds or mill levies.
- (e) The right of first refusal to purchase public school buildings.
- (f) Low- or no-cost leasing privileges.

Competitive Preference Priority 5—Serving At-Risk Students (up to 3 points).

To be eligible to receive points under this priority, the State entity must demonstrate that it supports charter schools that serve at-risk students through activities such as dropout prevention, dropout recovery, or comprehensive career counseling services.

Invitational Priority: For FY 2025, and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Invitational Priority—Encouraging Innovative Charter School Models.

Background: Charter schools are a key pillar in providing access to education choice, empowering parents and families to seek the best learning environment for their children and fostering innovation in education models that address the unique needs of students across the country. Through this competition, the Department is interested in supporting further innovation in charter schools, and for this reason, we have included an Invitational Priority to encourage the growth of high-quality charter school models that employ innovative practices to meet the needs of students and provide parents and families with high-quality options for their children.

Priority: The Secretary is particularly interested in applications that propose to encourage, but not require, eligible applicants for subgrants to propose high-quality charter school models that focus on one or more of the following: classical and civics education; science,

technology, engineering, and mathematics (STEM) education, including computer science; career and technical education; other innovative educational practices with evidence of success; or serving students with particularly unique needs, such as students with disabilities or receiving special education or related services, military-connected students, students living in rural areas, or Native American students.

5. Requirements:

The application requirements in this notice are from section 4303(f) of the ESEA (20 U.S.C. 7221b(f)). The Department will not fund an application that does not meet each application requirement. Applicants must clearly identify the application requirement they are addressing in the project narrative.

Application Requirements:

Applications for funding under the CSP State Entity program must contain the following:

(a) Description of Program—A description of the State entity's objectives in running a quality charter school program and how the objectives of the program will be carried out, including—

(1) A description of how the State entity will—

(i) Support the opening of charter schools through the startup of new charter schools and, if applicable, the replication of high-quality charter schools, and the expansion of high-quality charter schools (including the proposed number of new charter schools to be opened, high-quality charter schools to be opened as a result of the replication of a high-quality charter school, or high-quality charter schools to be expanded under the State entity's program);

(ii) Inform eligible charter schools, developers, and authorized public chartering agencies of the availability of funds under the program;

(iii) Work with eligible applicants to ensure that the eligible applicants access all Federal funds that such applicants are eligible to receive, and help the charter schools supported by the applicants and the students attending those charter schools—

(A) Participate in the Federal programs in which the schools and students are eligible to participate;

(B) Receive the commensurate share of Federal funds the schools and students are eligible to receive under such programs; and

(C) Meet the needs of students served under such programs, including students with disabilities and English learners;

(iv) Ensure that authorized public chartering agencies, in collaboration with surrounding LEAs where applicable, establish clear plans and procedures to assist students enrolled in a charter school that closes or loses its charter to attend other high-quality schools;

(v) In the case of a State entity that is not a State educational agency (SEA)—

(A) Work with the SEA and charter schools in the State to maximize charter school participation in Federal and State programs for which charter schools are eligible; and

(B) Work with the SEA to operate the State entity's program under section 4303 of the ESEA, if applicable;

(vi) Ensure that each eligible applicant that receives a subgrant under the State entity's program—

(A) Is using funds provided under this program for one of the activities described in section 4303(b)(1) of the ESEA; and

(B) Is prepared to continue to operate charter schools funded under section 4303 of the ESEA in a manner consistent with the eligible applicant's application for such subgrant once the subgrant funds under this program are no longer available;

(vii) Support—

(A) Charter schools in LEAs with a significant number of schools identified by the State for comprehensive support and improvement under section 1111(c)(4)(D)(i) of the ESEA; and

(B) The use of charter schools to improve struggling schools, or to turn around struggling schools;

(viii) Work with charter schools on—

(A) Recruitment and enrollment practices to promote inclusion of all students, including by eliminating any barriers to enrollment for educationally disadvantaged students (who include foster youth and unaccompanied homeless youth); and

(B) Supporting all students once they are enrolled to promote retention, including by reducing the overuse of discipline practices that remove students from the classroom;

(ix) Share best and promising practices between charter schools and other public schools;

(x) Ensure that charter schools receiving funds under the State entity's program meet the educational needs of their students, including children with disabilities and English learners;

(xi) Support efforts to increase charter school quality initiatives, including meeting the quality authorizing elements described in section 4303(f)(2)(E) of the ESEA;

(xii)(A) In the case of a State entity that is not a charter school support

organization, a description of how the State entity will provide oversight of authorizing activity, including how the State will help ensure better authorizing, such as by establishing authorizing standards that may include approving, monitoring, and re-approving or revoking the authority of an authorized public chartering agency based on the performance of the charter schools authorized by such agency in the areas of student achievement, student safety, financial and operational management, and compliance with all applicable statutes and regulations; and

(B) In the case of a State entity that is a charter school support organization, a description of how the State entity will work with the State to support the State's system of technical assistance and oversight of the authorizing activity of authorized public chartering agencies, as described in application requirement (a)(1)(xii)(A); and

(xiii) Work with eligible applicants receiving a subgrant under the State entity's program to support the opening of new charter schools or charter school models described in application requirement (a)(1)(i) that are high schools (ESEA section 4303(f));

(2) A description of the extent to which the State entity—

(i) Is able to meet and carry out Competitive Preference Priorities 1 through 5;⁵

(ii) Is working to develop or strengthen a cohesive statewide system to support the opening of new charter schools and, if applicable, the replication of high-quality charter schools, and the expansion of high-quality charter schools; and

(iii) Is working to develop or strengthen a cohesive strategy to encourage collaboration between charter schools and LEAs on the sharing of best practices (ESEA section 4303(f));

(3) A description of how the State entity will award subgrants, on a competitive basis, including—

(i) A description of the application each eligible applicant desiring to receive a subgrant will be required to submit, which application must include the following:

(A) A description of the roles and responsibilities of eligible applicants,

partner organizations, and *charter management organizations* (CMOs), including the administrative and contractual roles and responsibilities of such partners (ESEA section 4303(f));

(B) A description of the quality controls agreed to between the eligible applicant and the authorized public chartering agency involved, such as a contract or performance agreement; how a school's performance in the State's accountability system and impact on student achievement (which may include student academic growth) will be one of the most important factors for renewal or revocation of the school's charter; and how the State entity and the authorized public chartering agency involved will reserve the right to revoke or not renew a school's charter based on financial, structural, or operational factors involving the management of the school (ESEA section 4303(f));

(C) A description of how the autonomy and flexibility granted to a charter school is consistent with the definition of charter school in section 4310 of the ESEA (ESEA section 4303(f));

(D) A description of how the eligible applicant will solicit and consider input from parents and other members of the community on the implementation and operation of each charter school that will receive funds under the State entity's program (ESEA section 4303(f));

(E) A description of the eligible applicant's planned activities and expenditures of subgrant funds to support opening and preparing for the operation of new charter schools, opening and preparing for the operation of replicated high-quality charter schools, or expanding high-quality charter schools, and how the eligible applicant will maintain financial sustainability after the end of the subgrant period (ESEA section 4303(f));

(F) A description of how the eligible applicant will support the use of effective parent, family, and community engagement strategies to operate each charter school that will receive funds under the State entity's program (ESEA section 4303(f)); and

(ii) A description of how the State entity will review applications from eligible applicants (ESEA section 4303(f));

(4) In the case of a State entity that partners with an outside organization to carry out the State entity's quality charter school program, in whole or in part, a description of the roles and responsibilities of the partner (ESEA section 4303(f));

(5) A description of how the State entity will ensure that each charter school receiving funds under the State

entity's program has considered and planned for the transportation needs of the school's students (4303(f));

(6) A description of how the State in which the State entity is located addresses charter schools in the State's open meetings and open records laws (ESEA section 4303(f));

(7) A description of how the State entity will support diverse charter school models, including models that serve rural communities (ESEA section 4303(f));

(b) Assurances—Assurances by the State entity that—

(1) Each charter school receiving funds through the State entity's program will have a high degree of autonomy over budget and operations, including autonomy over personnel decisions (ESEA section 4303(f));

(2) The State entity will support charter schools in meeting the educational needs of their students, including children with disabilities and English learners (ESEA section 4303(f));

(3) The State entity will ensure that the authorized public chartering agency of any charter school that receives funds under the State entity's program adequately monitors each charter school under the authority of such agency in recruiting, enrolling, retaining, and meeting the needs of all students, including children with disabilities and English learners (ESEA section 4303(f));

(4) The State entity will provide adequate technical assistance to eligible applicants to meet the objectives described in application requirement (a)(1)(viii) (ESEA section 4303(f));

(5) The State entity will promote quality authorizing, consistent with State law, such as through providing technical assistance to support each authorized public chartering agency in the State to improve such agency's ability to monitor the charter schools authorized by the agency, including by—

(i) Assessing annual performance data of the schools, including, as appropriate, graduation rates, student academic growth, and rates of student attrition;

(ii) Reviewing the schools' independent, annual audits of financial statements prepared in accordance with generally accepted accounting principles and ensuring that any such audits are publicly reported; and

(iii) Holding charter schools accountable to the academic, financial, and operational quality controls agreed to between the charter school and the authorized public chartering agency involved, such as renewal, non-renewal, or revocation of the school's charter (ESEA section 4303(f));

⁵ In accordance with 34 CFR 75.105(c)(2)(i), applications are not required to address competitive preference priorities but may receive additional points if they do so. However, to meet this application requirement, the State entity must describe the extent to which it is able to meet and carry out competitive preference priorities 1 through 5. If the State entity is unable to meet and carry out one or more of these competitive preference priorities, the description for that priority should state that the State entity is unable to meet or carry out the priority.

(6) The State entity will work to ensure that charter schools are included with the traditional public schools in decision-making about the public school system in the State (ESEA section 4303(f)); and

(7) The State entity will ensure that each charter school receiving funds under the State entity's program makes publicly available, consistent with the dissemination requirements of the annual State report card under section 1111(h) of the ESEA, including on the website of the school, information to help parents make informed decisions about the education options available to their children, including—

(i) Information on the educational program;

(ii) Student support services;

(iii) Parent contract requirements (as applicable), including any financial obligations or fees;

(iv) Enrollment criteria (as applicable); and

(v) Annual performance and enrollment data for each of the subgroups of students, as defined in section 1111(c)(2) of the ESEA, except that such disaggregation of performance and enrollment data must not be required in a case in which the number of students in a group is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student (ESEA section 4303(f)).

(c) Waivers—Requests for information about waivers, including—

(1) A request and justification for waivers of any Federal statutory or regulatory provisions that the State entity believes are necessary for the successful operation of the charter schools that will receive funds under the State entity's program under section 4303 of the ESEA or, in the case of a State entity that is a charter school support organization, a description of how the State entity will work with the State to request such necessary waivers, where applicable; and

(2) A description of any State or local rules, generally applicable to public schools, that will be waived or otherwise not apply to such schools. 4303(a) of the ESEA).

Note: The Secretary recognizes that State entities and the charter schools they serve may need additional flexibility in implementing CSP grants and subgrants to achieve the purposes of the CSP. Under section 4303(d)(5) of the ESEA, the Secretary, in her discretion, may waive any statutory or regulatory requirement over which she exercises administrative authority, except the requirements related to the definition of

“charter school” in section 4310(2), provided that the waiver is requested in an approved application and the Secretary determines that granting the waiver will promote the purposes of the CSP.

For example, a State Entity applicant may request approval from the Department, on behalf of its subgrant applicants, for a waiver of requirements in section 4303(h) of the ESEA regarding use of funds to allow subgrantees to use funds for sustained costs (e.g., personnel costs for school leaders or instructional staff, software subscriptions, student assessments, etc.) throughout the life of the grant, provided that such costs are necessary to open new charter schools or replicate or expand high-quality charter schools and that the charter school can demonstrate that it will maintain financial sustainability after the end of the subgrant period.

6. *Definitions:* The following definitions are from sections 4303(a), 4310, and 8101 of the ESEA (20 U.S.C. 7221b(a), 7221i, and 7801); 34 CFR 77.1.

Ambitious means promoting continued, meaningful improvement for program participants or for other individuals or entities affected by the grant, or representing a significant advancement in the field of education research, practices, or methodologies. When used to describe a *performance target*, whether a performance target is ambitious depends upon the context of the relevant performance measure and the baseline for that measure (34 CFR 77.1).

Authorized public chartering agency means an SEA, LEA, or other public entity that has the authority pursuant to State law and approved by the Secretary to authorize or approve a charter school (section 4310(1) of the ESEA).

Baseline means the starting point from which performance is measured and targets are set (34 CFR 77.1).

Charter management organization means a nonprofit organization that operates or manages a network of charter schools linked by centralized support, operations, and oversight (section 4310(3) of the ESEA).

Charter school means a public school that—

(1) In accordance with a specific State statute authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this definition;

(2) Is created by a developer as a public school, or is adapted by a developer from an existing public

school, and is operated under public supervision and direction;

(3) Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;

(4) Provides a program of elementary or secondary education, or both;

(5) Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;⁶

(6) Does not charge tuition;

(7) Complies with the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), section 444 of GEPA (20 U.S.C. 1232g) (commonly referred to as the “Family Educational Rights and Privacy Act of 1974”), and part B of the Individuals with Disabilities Education Act (IDEA);

(8) Is a school to which parents choose to send their children, and that—

(i) Admits students on the basis of a lottery, consistent with section 4303(c)(3)(A) of the ESEA, if more students apply for admission than can be accommodated; or

(ii) In the case of a school that has an affiliated charter school (such as a school that is part of the same network of schools), automatically enrolls students who are enrolled in the immediate prior grade level of the affiliated charter school and, for any additional student openings or student openings created through regular attrition in student enrollment in the affiliated charter school and the enrolling school, admits students on the basis of a lottery as described in paragraph (i);

(9) Agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such State audit requirements are waived by the State;

(10) Meets all applicable Federal, State, and local health and safety requirements;

(11) Operates in accordance with State law;

(12) Has a written performance contract with the authorized public

⁶ The Department will apply this element of the definition of “charter school” consistent with applicable U.S. Supreme Court precedent, including *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S.Ct. 2012 (2017), *Espinoza v. Montana Department of Revenue*, 140 S.Ct. 2246 (2020), and *Carson v. Makin*, 142 S.Ct. 1987 (2022).

chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school; and

(13) May serve students in early childhood education programs or postsecondary students (section 4310(2) of the ESEA).

Charter school support organization means a nonprofit, nongovernmental entity that is not an authorized public chartering agency and provides, on a statewide basis—

(1) Assistance to developers during the planning, program design, and initial implementation of a charter school; and

(2) Technical assistance to operating charter schools (section 4310(4) of the ESEA).

Child with a disability means—

(1) A child (i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to as “emotional disturbance”), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and (ii) who, by reason thereof, needs special education and related services.

(2) For a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the LEA, include a child (i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and (ii) who, by reason thereof, needs special education and related services (section 8101(4) of the ESEA).

Developer means an individual or group of individuals (including a public or private nonprofit organization), which may include teachers, administrators and other school staff, parents, or other members of the local community in which a charter school project will be carried out (section 4310(5) of the ESEA).

Early childhood education program means—

(1) A Head Start program or an Early Head Start program carried out under the Head Start Act (42 U.S.C. 9831 *et seq.*), including a migrant or seasonal Head Start program, an Indian Head

Start program, or a Head Start program or an Early Head Start program that also receives State funding;

(2) A State licensed or regulated child care program; or

(3) A program that (i) serves children from birth through age 6 that addresses the children’s cognitive (including language, early literacy, and early mathematics), social, emotional, and physical development; and (ii) is (A) a State prekindergarten program, (B) a program authorized under section 619 (20 U.S.C. 1419) or part C of the IDEA, or (C) a program operated by an LEA (section 8101(16) of the ESEA).

Eligible applicant means a developer that has—

(1) Applied to an authorized public chartering authority to operate a charter school; and

(2) Provided adequate and timely notice to that authority (section 4310(6) of the ESEA).

English learner, when used with respect to an individual, means an individual—

(1) Who is aged 3 through 21;

(2) Who is enrolled or preparing to enroll in an elementary school or secondary school;

(3)(i) Who was not born in the United States or whose native language is a language other than English;

(ii)(A) Who is a Native American or Alaska Native, or a native resident of the outlying areas; and

(B) Who comes from an environment where a language other than English has had a significant impact on the individual’s level of English language proficiency; or

(iii) Who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and

(4) Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual—

(i) The ability to meet the challenging State academic standards;

(ii) The ability to successfully achieve in classrooms where the language of instruction is English; or

(iii) The opportunity to participate fully in society (section 8101(20) of the ESEA).

Expand, when used with respect to a high-quality charter school, means to significantly increase enrollment or add one or more grades to the high-quality charter school (section 4310(7) of the ESEA).

High-quality charter school means a charter school that—

(1) Shows evidence of strong academic results, which may include

strong student academic growth, as determined by a State;

(2) Has no significant issues in the areas of student safety, financial and operational management, or statutory or regulatory compliance;

(3) Has demonstrated success in significantly increasing student academic achievement, including graduation rates where applicable, for all students served by the charter school; and

(4) Has demonstrated success in increasing student academic achievement, including graduation rates where applicable, for each of the subgroups of students, as defined in section 1111(c)(2) of the ESEA, except that such demonstration is not required in a case in which the number of students in a group is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student (section 4310(8) of the ESEA).

Logic model (also referred to as a theory of action) means a framework that identifies key *project components* of the proposed project (*i.e.*, the active “ingredients” that are hypothesized to be critical to achieving the *relevant outcomes*) and describes the theoretical and operational relationships among the key project components and relevant outcomes (34 CFR 77.1).

Parent includes a legal guardian or other person standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child’s welfare) (section 8101(38) of the ESEA).

Performance measure means any quantitative indicator, statistic, or metric used to gauge program or project performance (34 CFR 77.1).

Performance target means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project (34 CFR 77.1).

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual *project component* or to a combination of project components (*e.g.*, training teachers on instructional practices for English learners and follow-on coaching for these teachers) (34 CFR 77.1).

Public, as applied to an agency, organization, or institution, means that the agency, organization, or institution is under the administrative supervision or control of a government other than the Federal Government. (34 CFR 77.1).

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to

improve, consistent with the specific goals of the program (34 CFR 77.1).

Replicate, when used with respect to a high-quality charter school, means to open a new charter school, or a new campus of a high-quality charter school, based on the educational model of an existing high-quality charter school, under an existing charter or an additional charter, if permitted or required by State law (section 4310(9) of the ESEA).

State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas (section 8101(48) of the ESEA).

State educational agency means the agency primarily responsible for the State supervision of public elementary schools and secondary schools (section 8101(49) of the ESEA).

State entity means—

- (1) A State educational agency;
- (2) A State charter school board;
- (3) A Governor of a State; or
- (4) A charter school support organization (section 4303(a) of the ESEA)

7. *Selection Criteria*: The selection criteria for this competition are from section 4303(g)(1) of the ESEA (20 U.S.C. 7221b(g)(1)) and 34 CFR 75.210. The maximum possible total score an application can receive for addressing the criteria is 100 points. The maximum possible score for addressing each criterion is indicated in parentheses following the criterion.

(a) *Quality of the Project Design (up to 30 points)*. The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers:

(1) The quality of the logic model or other conceptual framework underlying the proposed project, including how inputs are related to outcomes. (34 CFR 75.210) (up to 5 points);

(2) The ambitiousness of the State entity's objectives for the quality charter school program carried out under the CSP State Entity program (section 4303(g)(1)(B) of the ESEA (20 U.S.C. 7221b(g)(1)(B))) (up to 5 points);

(3) The extent to which the budget is adequate to support the proposed project and the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project. (section 34 CFR 74.210) (up to 10 points); and

(4) The extent to which the proposed project demonstrates that it is designed to build capacity and yield sustainable results that will extend beyond the project period. (section 34 CFR 74.210) (up to 10 points)

(b) *Quality of Eligible Applicants Receiving Subgrants (up to 15 points)*:

The likelihood that the eligible applicants receiving subgrants under the program will meet the State entity's objectives for the quality charter school program and improve educational results for students (section 4303(g)(1)(C) (20 U.S.C. 7221b(g)(1)(C))).

(c) *State Plan (up to 35 points)*: The State entity's plan to—

(1) Adequately monitor the eligible applicants receiving subgrants under the State entity's program (section 4303(g)(1)(D)(i) (20 U.S.C. 7221b(g)(1)(D)(i))) (up to 10 points);

(2) Work with the authorized public chartering agencies involved to avoid duplication of work for the charter schools and authorized public chartering agencies (section 4303(g)(1)(D)(ii) (20 U.S.C. 7221b(g)(1)(D)(ii))) (up to 5 points);

(3) Provide technical assistance and support for—

(i) The eligible applicants receiving subgrants under the State entity's program; and

(ii) Quality authorizing efforts in the State (section 4303(g)(1)(D)(iii) of ESEA (20 U.S.C. 7221b(g)(1)(D)(iii))) (up to 10 points);

(4) The State entity's plan to solicit and consider input from parents and other members of the community on the implementation and operation of charter schools in the State (section 4303(g)(1)(E) of ESEA (20 U.S.C. 7221b(g)(1)(E))) (up to 5 points); and

(5) The degree of flexibility afforded by the State's charter school law and how the State entity will work to maximize the flexibility provided to charter schools under such law (section 4303(g)(1)(A) of ESEA (20 U.S.C. 7221b(g)(1)(A))) (up to 5 points).

(d) *Quality of the Management Plan (up to 20 points)*. The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers:

(1) The feasibility of the management plan to achieve project objectives and goals on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks (34 CFR 75.210) (up to 10 points);

(2) The adequacy of plans for ensuring the use of quantitative and qualitative data, including meaningful community member and partner input, to inform continuous improvement in the operation of the proposed project (34 CFR 75.210) (up to 5 points); and

(3) The extent to which the time commitments of the project director and

principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project (34 CFR 75.210) (up to 5 points).

In addressing the selection criteria and application requirements in this notice, an applicant must clearly identify which criterion or requirement it is addressing. In addition, an applicant must address corresponding application requirements when addressing the specific selection criteria noted in the table below.

TABLE 2—ALIGNMENT OF THE SELECTION CRITERIA AND APPLICATION REQUIREMENTS

Selection criterion	Application requirement(s)
Quality of the Project Design paragraph (a)(1).	(a)(1)(i), (a)(1)(vii), (a)(1)(ix), (a)(2)(ii), and (a)(2)(iii).
Quality of Eligible Subgrant Applicants (b).	(a)(1)(ii), (a)(1)(xiii), (a)(3)(i), (a)(3)(ii), (a)(5), and (a)(7).
State Plan paragraph (c)(1).	(a)(1)(vi) and (a)(1)(x).
State Plan paragraph (c)(3).	(a)(1)(iii), (a)(1)(iv), (a)(1)(vii), and (a)(1)(xi).
Management Plan (d)	(a)(4).

All other application requirements not listed in the table above must be addressed elsewhere in the Project Narrative. This includes all assurances and the following requirements: (a)(1)(v), (a)(1)(xi), (a)(2)(i), and (a)(6), (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), (b)(6), (b)(7), (c)(1), and (c)(2).

8. *Performance Measures*: The Department has developed the following performance measures for the purposes of the Department reporting under 34 CFR 75.110:

(a) *Program Performance Measures*. (1) The performance indicators for this program are: (i) The number of charter schools in operation around the Nation, and (ii) the percentage of fourth- and eighth-grade charter school students who are achieving at or above the proficient level on State assessments in mathematics and reading/language arts. Additionally, the Secretary has established the following measure to examine the efficiency of the CSP: the Federal cost per student in implementing a successful school (defined as a school in operation for three or more consecutive years).

(2) In accordance with 34 CFR 75.110(b), applications must describe:

(i) The data collection and reporting methods the applicant would use and why those methods are likely to yield

reliable, valid, and meaningful performance data.

(ii) The applicant's capacity to collect and report reliable, valid, and meaningful performance data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research.

(b) *Project-Specific Performance Measures.* Applicants must propose project-specific performance measures and performance targets consistent with the objectives of the proposed project. In accordance with 34 CFR 75.110(c), applications must include the following:

(1) *Project-specific performance measures.* How each proposed project-specific performance measure would: accurately measure the performance of the project; be consistent with the program performance measures established under paragraph (a) of this section; and be used to inform continuous improvement of the project.

(2) *Baseline data.* (i) Why each proposed baseline is valid and reliable, including an assessment of the quality data used to establish the baseline; or (ii) if the applicant has determined that there are no established baseline data for a particular performance measure, an explanation of why there is no established baseline and of how and when, during the project period, the applicant would establish a valid baseline for the performance measure.

(3) *Performance targets.* Why each proposed performance target is ambitious yet achievable compared to the baseline for the performance measure and when, during the project period, the applicant would meet the performance target(s).

All grantees must submit an annual performance report with information that is responsive to these performance measures.

9. Program Authority and Applicable Regulations:

Program Authority: Title IV, part C of the ESEA (20 U.S.C. 7221–7221j).

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 76, 77, 79, 81, 82, 84, 97, 98, and 99. (b) The Office of Management and Budget (OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and

Audit Requirements for Federal Awards in 2 CFR part 200 (Uniform Guidance), as adopted and amended as regulations of the Department in 2 CFR part 3474.

II. Supplemental Requirements

1. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see <https://www.ed.gov/about/ed-offices/fofo#Indirect-Cost-Division>.

c. *Administrative Cost Limitation:* A State entity receiving a grant under this section must not reserve more than 3 percent of funds for administrative costs, which may include technical assistance (ESEA section 4303(c)(1)(C)).

2. *Subgrantees:* (a) Under section 4303(b) and (c)(2) of the ESEA, a State entity must award subgrants to eligible applicants and may award subgrants to technical assistance providers.

(b) Under section 4303(d)(2) of the ESEA, when awarding subgrants to eligible applicants, a State entity must use a peer review process to review applications.

3. *Other:* (a) *Use of Funds:* State entities may use grant funds to provide technical assistance to eligible applicants and authorized public chartering agencies in opening and preparing for the operation of new charter schools and replicated high-quality charter schools, and expanding high-quality charter schools, and to work with these agencies in the State to improve authorizing quality, including developing capacity for, and conducting, fiscal oversight and auditing of charter schools. State Entity grant funds may also be used for grant administration, which may include technical assistance and monitoring of subgrants for performance and fiscal and regulatory compliance, as required under 2 CFR 200.332(e).

(b) *Reasonable and Necessary Costs:* The Secretary may elect to impose maximum limits on the amount of subgrant funds that a State entity may award to an eligible applicant per new charter school created or replicated, per charter school expanded, or per new school seat created (34 CFR 75.101(a)(2) and 75.104(b)).

For this competition, the maximum amount of subgrant funds a State entity may award to a subgrantee per new charter school, replicated high-quality charter school, or expanded high-quality charter school over a 5-year subgrant period is \$2,000,000.

Note: Applicants must ensure that all costs included in the proposed budget are necessary and reasonable to meet the goals and objectives of the proposed project. Any costs determined by the Secretary to be unreasonable or unnecessary will be removed from the final approved budget.

(c) *Audits:* (i) A non-Federal entity that expends \$1,000,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of 2 CFR part 200. (2 CFR 200.501(a))

(ii) A non-Federal entity that expends less than \$1,000,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in 2 CFR 200.503 (Relation to other audit requirements), but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office. (2 CFR 200.501(d)).

4. *Funding Restrictions:* In accordance with section 4303(c) of the ESEA, a State entity receiving a grant under this program must: (a) use not less than 90 percent of the grant funds to award subgrants to eligible applicants, in accordance with the quality charter school program described in the State entity's application pursuant to section 4303(f), for activities related to opening and preparing for the operation of new charter schools and replicated high-quality charter schools, or expanding high-quality charter schools; (b) reserve not less than 7 percent of the grant funds to provide technical assistance to eligible applicants and authorized public chartering agencies in carrying out such activities, and to work with authorized public chartering agencies in the State to improve authorizing quality, including developing capacity for, and conducting, fiscal oversight and auditing of charter schools; and (c) reserve not more than 3 percent of the grant funds for administrative costs, which may include technical assistance. The State entity's application should include a description of the State entity's objectives in providing technical assistance to eligible applicants and authorized public chartering agencies under section 4303(b)(2) of the ESEA, and the activities identified to provide such technical assistance. A State entity may use a grant received under this program to provide technical assistance and to work with authorized public chartering agencies to improve authorizing quality under section 4303(b)(2) of the ESEA

directly or through grants, contracts, or cooperative agreements.

Limitation on Grants and Subgrants: Under section 4303(d) of the ESEA, a grant awarded by the Secretary to a State entity under this competition must be for a period of not more than 5 years.

Additionally, a subgrant awarded by a State entity under this program must be for a period of not more than 5 years, of which an eligible applicant may use not more than 18 months for planning and program design. An eligible applicant may not receive more than one subgrant under this program for each individual charter school for a 5-year period, unless the eligible applicant demonstrates to the State entity that such individual charter school has at least 3 years of improved educational results for students enrolled in such charter school, with respect to the elements described in section 4310(8)(A) and (D) of the ESEA.⁷

Other CSP Grants: A charter school that previously received funds for opening or preparing to operate a new charter school, or replicating or expanding a high-quality charter school, under the CSP State Entity program (ALN number 84.282A), the CSP Grants to Charter Management Organizations for the Replication and Expansion of High-Quality Charter Schools (CMO) program (ALN number 84.282M), or the CSP Developer program (ALN numbers 84.282B and 84.282E), may not use funds under this program to carry out the same or substantially similar activities. However, such charter school may be eligible to receive funds under this competition to expand the charter school beyond the existing grade levels or student count.

Likewise, a charter school that previously was awarded a subgrant by a State entity under this program (or the former CSP Grants for State Educational Agencies program) is ineligible to receive funds to carry out the same activities under the CMO program (ALN number 84.282M) or Developer program (ALN numbers 84.282B and 84.282E), including for opening or preparing to operate a new charter school, or for replication or expansion.

Uses of Subgrant Funds: Under section 4303(b) of the ESEA, State entities awarded grants under this competition must award subgrants to

eligible applicants to enable such eligible applicants to—

(a) Open and prepare for the operation of new charter schools;

(b) Open and prepare for the operation of replicated high-quality charter schools; or

(c) Expand high-quality charter schools.

Under section 4303(h) of the ESEA, an eligible applicant receiving a subgrant under this program must use such funds to support activities related to opening and preparing for the operation of new charter schools or replicating or expanding high-quality charter schools, which must include one or more of the following:

(a) Preparing teachers, school leaders, and specialized instructional support personnel, including through paying costs associated with—

(i) Providing professional development; and

(ii) Hiring and compensating, during the eligible applicant's planning period specified in the application for subgrant funds, one or more of the following:

(A) Teachers.

(B) School leaders.

(C) Specialized instructional support personnel.

(b) Acquiring supplies, training, equipment (including technology), and educational materials (including developing and acquiring instructional materials).

(c) Carrying out necessary renovations to ensure that a new school building complies with applicable statutes and regulations, and minor facilities repairs (excluding construction).

(d) Providing one-time, startup costs associated with providing transportation to students to and from the charter school.

(e) Carrying out community engagement activities, which may include paying the cost of student and staff recruitment.

(f) Providing for other appropriate, non-sustained costs related to opening, replicating, or expanding high-quality charter schools when such costs cannot be met from other sources.

Diversity of Projects: Per section 4303(d)(4) of the ESEA, each State entity awarding subgrants under this competition must award subgrants in a manner that, to the extent practicable and applicable, ensures that such subgrants—

(a) Are distributed throughout different areas, including urban, suburban, and rural areas; and

(b) Will assist charter schools representing a variety of educational approaches.

Award Basis: In determining whether to approve a grant award and the

amount of such award, the Department will consider, among other things, the applicant's performance and use of funds under a previous or existing award under any Department program (34 CFR 75.217(d)(3)(ii)) and any other financial resources available to the applicant (34 CFR 75.233(b)). In assessing the applicant's performance and use of funds under a previous or existing award, the Secretary will consider, among other things, the outcomes the applicant has achieved and the results of any Departmental grant monitoring, including the applicant's progress in remedying any deficiencies identified in such monitoring.

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

III. Application and Submission Information

1. Application Submission

Instructions: Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 23, 2024 (89 FR 104528) and available at <https://www.federalregister.gov/d/2024-30488>, which contain requirements and information on how to submit an application.

2. Submission of Proprietary

Information: Given the types of projects that may be proposed in applications for the CSP State Entity grant competition, your application may include business information that you consider proprietary. In 34 CFR 5.11, we define "business information" and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600 (Predisclosure Notification Procedures for Confidential Commercial Information), please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under "Other Attachments Form," please list the page number or numbers on which we can find this information. For additional information, please see 34 CFR 5.11(c).

3. Intergovernmental Review: This competition is subject to

⁷ Section 4303(e)(2) of the ESEA prescribes the circumstances under which an eligible applicant may be eligible to apply to a State entity for a second subgrant for an individual charter school for a 5-year period. The eligible applicant still would have to meet all program requirements, including the requirements for replicating or expanding a high-quality charter school.

intergovernmental review under Executive Order 12372. Information about this process is in the application package.

4. *Pre-Application Webinar*

Information: The Department will hold a pre-application meeting via webinar designed to provide technical assistance to interested applicants. Detailed information regarding this webinar will be provided at <https://www.ed.gov/grants-and-programs/grants-birth-grade-12/charter-school-programs/expanding-opportunities-through-quality-charter-schools-program-csp-grants-to-state-entities>, on the *FY 2025 CSP State Entity Competition* tab. There is no registration fee for attending this meeting.

For further information about the pre-application meeting, contact Sareeta Schmitt, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202-5970. Telephone: (202) 205-0730. Email: SE_Competition@ed.gov.

IV. Application Review Information

1. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, completion of grant activities, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

2. *Risk Assessment and Specific Conditions:* Before awarding grants under this competition, the Department conducts a review of the risks posed by applicants. The Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

3. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition

threshold (currently \$250,000), we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the System for Award Management's (SAM) Responsibility/Qualification reports (formerly referred to as the Federal Awardee Performance and Integrity Information System (FAPIS)). You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in the Responsibility/Qualification reports in SAM.

If the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds \$10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to SAM semiannually. Please review these requirements if this grant plus all the other Federal funds you receive exceed \$10,000,000.

V. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We also may notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal

restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements, please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements should you receive funding under the competition. See the standards in 2 CFR 170.105 to determine whether you are covered by 2 CFR part 170.

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary, including a description of the State entity's objectives in providing technical assistance to eligible applicants and authorized public chartering agencies under section 4303(b)(2) of the ESEA, and the activities identified to provide such technical assistance; and the impact of the State entity's actions or, if no known impact, an explanation of why. The Secretary may also require more frequent performance reports. For specific requirements on reporting, please go to www.ed.gov/fund/grant/apply/appforms/appforms.html.

(c) In accordance with section 4303(i) of the ESEA, each State entity receiving a grant under this section must submit to the Secretary, at the end of the third year of the 5-year grant period (or at the end of the second year if the grant period is less than 5 years), and at the end of such grant period, a report that includes the following:

(1) The number of students served by each subgrant awarded under this section and, if applicable, the number of new students served during each year of the period of the subgrant.

(2) A description of how the State entity met the objectives of the quality charter school program described in the State entity's application, including—

(A) How the State entity met the objective of sharing best and promising practices as outlined in section 4303(f)(1)(A)(ix) of the ESEA in areas such as instruction, professional development, curricula development,

and operations between charter schools and other public schools; and

(B) If known, the extent to which such practices were adopted and implemented by such other public schools.

(3) The number and amount of subgrants awarded under this program to carry out activities described in section 4303(b)(1)(A) through (C) of the ESEA.

(4) A description of—

(A) How the State entity complied with, and ensured that eligible applicants complied with, the assurances included in the State entity's application; and

(B) How the State entity worked with authorized public chartering agencies, and how the agencies worked with the management company or leadership of the schools that received subgrant funds under this program, if applicable.

(d) The Secretary may provide a grantee with additional funding for data collection, analysis, and reporting. In this case, the Secretary establishes a data collection period.

5. *Continuation Awards:* In making a continuation award, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department.

6. *Project Directors' Meeting:*

Applicants approved for funding under this competition must attend a meeting for project directors at a location to be determined in the continental United States during each year of the project. Applicants may include, if applicable, the cost of attending these meetings in their proposed budgets as allowable administrative costs.

7. *Technical Assistance:* Applicants approved for funding under this competition will be required to participate in all general and certain specified technical assistance offerings, to include but not limited to, other on-site gatherings sponsored by the Department and its contracted technical

assistance providers and partners throughout the life of the grant.

VI. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

Hayley B. Sanon,

Principal Deputy Assistant Secretary and Acting Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2025-08092 Filed 5-8-25; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an in-person/virtual meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, June 18, 2025; 4–7:25 p.m. PDT.

ADDRESSES: Molasky Corporate Center, 15th Floor Conference Room, 100 North City Parkway, Las Vegas, Nevada 89106. This meeting will be held in-person at the Molasky Corporate Center and virtually. To receive the virtual access information, please contact the Nevada Site Specific Advisory Board (NSSAB) Administrator at the telephone number or email listed below at least two days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Barbara Ulmer, NSSAB Administrator, NSSAB Office, by phone: 702-523-0894 or email: nssab@emcbc.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to provide advice and recommendations concerning the following EM site-specific issues: clean-up activities and environmental restoration; waste and nuclear materials management and disposition; excess facilities; future land use and long-term stewardship. The Board may also be

asked to provide advice and recommendations on other EM program components. The Board also provides an avenue to fulfill public participation requirements outlined in the National Environmental Policy Act (NEPA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERLA), the Resource Conservation and Recovery Act (RCRA), Federal Facility Agreements, Consent Orders, Consent Decrees and Settlement Agreements.

Tentative Agenda: (agenda topics are subject to change; please contact the NSSAB Administrator for the most current agenda).

- Public Comment Period
- Update from Deputy Designated Federal Officer
- Update from National Nuclear Security Administration/Nevada Field Office
- Updates from NSSAB Liaisons
- Presentations to the Board

Public Participation: The meeting is open to the public and public comment can be given orally or in writing. Fifteen minutes are allocated during the meeting for public comment and those wishing to make oral comment will be given a minimum of two minutes to speak. Written comments received at least two working days prior to the meeting will be provided to the members and included in the meeting minutes. Written comments received within two working days after the meeting will be included in the minutes. For additional information on public comment and to submit written comment, please contact the NSSAB Administrator. The EM SSAB, Nevada, welcomes the attendance of the public at its meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact the NSSAB Administrator at least seven days in advance of the meeting.

Meeting Conduct: The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Questioning of board members or presenters by the public is not permitted.

Minutes: Minutes will be available at the following website: <https://www.nnss.gov/nssab/nssab-meetings/>.

Signing Authority: This document of the Department of Energy was signed on May 5, 2025, by David Borak, Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is

maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on May 5, 2025.
Jennifer Hartzell,
Alternate Federal Register Liaison Officer,
U.S. Department of Energy.
[FR Doc. 2025–08108 Filed 5–8–25; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Notice of Intent To Prepare a Programmatic Environmental Impact Statement for Plutonium Pit Production

AGENCY: National Nuclear Security Administration, Department of Energy.
ACTION: Notice of intent.

SUMMARY: The National Nuclear Security Administration (NNSA), a semi-autonomous agency within the United States (U.S.) Department of Energy (DOE), announces its intent to initiate a National Environmental Policy Act of 1969 (NEPA) programmatic environmental impact statement (PEIS) process to ensure NEPA compliance for the production of plutonium pits in support of NNSA’s Stockpile Stewardship and Management Program. The PEIS will evaluate the programmatic environmental impacts of producing pits at the Congressionally mandated rate (and potentially other reasonable rates) using various single site and multi-site alternatives; associated activities at other NNSA sites; and associated waste management and transportation activities. The purpose of this Notice is to invite public participation in the PEIS process and to solicit public comment on the scope, environmental issues, and alternatives for consideration by NNSA in the draft PEIS.

DATES: NNSA will hold initial virtual public scoping meetings and subsequent public hearings on the draft PEIS. During scoping, NNSA invites other Federal agencies, Native American Tribes, State and local governments, industry, other organizations, and members of the public to review and

submit comments on the scope and alternatives of the PEIS. The deadline to submit these comments will be 45 days after the final public scoping meeting. As noted, the final public scoping meeting is currently scheduled for May 28, 2025, and therefore, the current deadline for comments is July 14, 2025. Comments received after this date will be considered to the extent practicable. NNSA will hold two virtual public scoping meetings. The information about the scoping meetings (*i.e.*, date, time, phone number, and accessible hyperlink) is provided in the table below. If there are future changes to this information, it would be provided in a future notice posted on the following website: <https://www.energy.gov/nnsa/nnsa-nepa-reading-room>, no fewer than 15 days from the planned meeting date.

Virtual scoping meeting dates and times	Hyperlink
Tuesday, May 27, 2025, 5–7:30 p.m. ET.	https://bit.ly/PuPEISMTg1 . Dial in by Phone: (571) 429–4592. Phone conference ID: 808 821 801#.
Wednesday, May 28, 2025, 7–9:30 p.m. ET.	https://bit.ly/PuPEISMTg2 . Dial in by Phone: (571) 429–4592. Phone conference ID: 989 289 432#.

ADDRESSES: Written comments on the scope of the PEIS, requests to be placed on the PEIS distribution list, and comments or questions on the scoping process should be sent to: Ms. Jade Fortiner, NEPA Document Manager, National Nuclear Security Administration, Office of Pit Production Modernization, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585 or email to PitPEIS@nnsa.doe.gov. Before including your address, phone number, email address, or other personal identifying information in your comment, please be advised that your entire comment—including your personal identifying information—may be made publicly available. If you wish for NNSA to withhold your name and/or other personally identifiable information, please state this prominently at the beginning of your comment. You may also submit comments anonymously. NNSA requests all Federal, State, Native American Tribes, and local agencies that desire to be designated as cooperating agencies on the PEIS to contact the NEPA Document Manager at the address listed in this section by the end of the scoping period.

FOR FURTHER INFORMATION CONTACT: For further information about this Notice, please contact Ms. Kristen M. Dors, NEPA Compliance Officer, NNSA Office

of Environment, Safety and Health, Los Alamos Field Office, 3747 West Road, Los Alamos, NM 87544; telephone: 505–606–8953; or email to: PitPEIS@nnsa.doe.gov.

This Notice will be available on the internet at: <https://www.energy.gov/nepa/listings/notices-intent-noi> and <https://www.energy.gov/nnsa/nnsa-nepa-reading-room>.

SUPPLEMENTARY INFORMATION:

Background

NNSA is responsible for meeting the national security requirements established by the President and Congress to maintain and enhance the safety, reliability, and performance of the U.S. nuclear weapons stockpile. Plutonium pits are critical components of every nuclear weapon; nearly all current stockpile pits were produced from 1978 to 1989. The United States’ capability to produce plutonium pits is limited and does not meet Federal requirements.

Per title 50 United States Code (U.S.C.) 2538a, NNSA is mandated to manufacture no fewer than 80 war reserve pits per year by 2030. This number is driven by the stockpile’s size, the need to replace existing pits as they age, and the requirement for the United States to have a flexible and resilient manufacturing capability with the capacity to produce a variety of pits to meet current and planned military stockpile requirements and ensure the safety, security, and effectiveness of the nation’s nuclear stockpile.

Previously, NNSA prepared the 2008 Complex Transformation Supplemental PEIS (DOE/EIS–0236–S4) to analyze the potential environmental impacts associated with pit production at different site alternatives: Los Alamos National Laboratory (LANL) in Los Alamos, New Mexico; Savannah River Site (SRS) near Aiken, South Carolina; Pantex Plant near Amarillo, Texas; Y–12 National Security Complex in Oak Ridge, Tennessee; and the Nevada Test Site (now named the Nevada National Security Site) north of Las Vegas, Nevada. At SRS, the Complex Transformation Supplemental PEIS also evaluated a pit production facility that would use the Mixed-Oxide Fuel Fabrication Facility and Pit Disassembly and Conversion Facility infrastructure. Additionally, pit production at LANL has been analyzed in several NEPA documents over the past two decades, including the 2008 Site-Wide Environmental Impact Statement for Continued Operation of the Los Alamos National Laboratory, Los Alamos, New Mexico (DOE/EIS–0380) and the 2020 Final Supplement Analysis of the 2008

Site-Wide Environmental Impact Statement for the Continued Operation of Los Alamos National Laboratory for Plutonium Operations (DOE/EIS-380-SA-06). On September 2, 2020, NNSA published a record of decision (ROD) stating LANL will implement actions to produce a minimum of 30 war reserve pits per year during 2026 for the national pit production mission and implement surge efforts to exceed 30 pits per year up to the analyzed limit (80 war reserve pits per year) as necessary (85 FR 54550).

Purpose and Need for Agency Action

The national security policies of the United States require a safe, secure, and reliable nuclear weapons stockpile and the maintenance of core competencies to design, manufacture, and maintain nuclear weapons. The 2022 Nuclear Posture Review identified plutonium pit production as one of the highest priorities in the modernization of the nuclear security enterprise over the next ten years. To meet the need outlined in Federal legislation and requirements delineated by the U.S. Department of Defense, NNSA must establish a workforce and infrastructure capable of producing no fewer than 80 pits per year as soon as possible, while eliminating single point failures and providing flexible capacity options. The PEIS process is to ensure NEPA compliance for production of plutonium pits in support of these requirements and NNSA's Stockpile Stewardship and Management Program. The PEIS will evaluate the programmatic environmental impacts of producing pits at the Congressionally mandated rate needed to meet Federal requirements (and potentially other reasonable rates) using various single site and multi-site alternatives; associated activities at other NNSA sites; and associated waste management and transportation activities.

Requirements To Fulfill DOE NEPA Compliance

NNSA is responsible for management and implementation of the requirements of NEPA, and the regulations and policies promulgated thereunder, including, but not limited to the National Environmental Policy Act of 1969, DOE NEPA implementing procedures (10 CFR part 1021), the Amendments to NEPA from the Fiscal Responsibility Act of 2023 (H.R. 3746), DOE Order 451.1B NEPA Compliance Program, and NNSA Policy (NAP) 451.1 NEPA Compliance Program. The PEIS will be prepared pursuant to NEPA and applicable regulations and policies promulgated thereunder. The PEIS will

be prepared in the same manner as a draft or final EIS and will provide the public with an analysis of the potential environmental impacts, at a programmatic level, associated with the reasonable alternatives.

Preliminary Alternatives

The PEIS will evaluate NNSA's proposal to produce plutonium pits at required quantities to meet national security requirements and the potential environmental impacts associated with a range of reasonable alternatives for achieving the necessary pit production capabilities and operations at a programmatic level. For analytical purposes, this PEIS will evaluate potential impacts over a 50-year period, through approximately 2075.

In the PEIS, NNSA intends to analyze: (1) site alternatives; and (2) capacity alternatives for the near term (producing pits at the current Congressionally mandated rate) and the long term (to account for potential changes in future national security requirements for pits). With regard to site alternatives, NNSA considers LANL and SRS to be reasonable alternatives because of the available facilities and infrastructure at those sites that is being/could be used to produce pits to meet the mandated schedule and capacity requirements. NNSA will evaluate other potential site alternatives in the PEIS if they are determined to be reasonable. Construction of a new facility (greenfield) is likely to be considered unreasonable because it would not meet the federally mandated pit production rate in the near term and is likely cost prohibitive, however, NNSA has not decided to exclude greenfield alternatives at this time.

The No-Action Alternative will be based on NNSA's prior decision to produce 30 pits per year at LANL with surge efforts to produce up to 80 pits per year (85 FR 54544, September 2, 2020). NNSA welcomes input on alternatives to be analyzed in the PEIS.

Preliminary Environmental Analysis

The following issues have been identified for analysis in the PEIS. The list is tentative and intended to facilitate public comment on the scope of the PEIS. It is not intended to be all-inclusive, nor does it imply any predetermination of potential impacts. NNSA specifically invites suggestions for the addition or deletion of items on this list.

1. Impacts on land use and applicable plans and policies.
2. Impacts on visual aesthetics.
3. Impacts on geology and soil.

4. Impacts on water resources, including floodplains and wetlands.

5. Impacts on air quality and noise.

6. Impacts to plants and animals and their habitat, including species which are federally- or State-listed as threatened or endangered, or of special concern.

7. Impacts to cultural resources such as those that are historic and paleontological.

8. Socioeconomic impacts to affected communities.

9. Impacts from traffic and transportation of radiological and hazardous materials and waste.

10. Impacts from use of utilities, including water and electricity consumption, fuel use, sewer discharges, and resource conservation.

11. Impacts on the public and workers from exposures to radiological and hazardous materials during construction and normal operations.

12. Impacts on the public and workers from exposures to radiological and hazardous materials from reasonably foreseeable accidents, and intentional destructive acts.

13. Impacts on waste management activities and capacities at on-site and off-site locations.

PEIS Process

The scoping process is intended to involve all interested agencies (Federal, State, Native American Tribes, county, and local), public interest groups, businesses, and members of the public. Interested parties are invited to participate in the PEIS process, both to refine the preliminary alternatives and environmental issues to be analyzed in depth and to eliminate from detailed study those alternatives and environmental issues that are not reasonable or pertinent. Input from the scoping process will assist NNSA in formulating the proposed action, refining the alternatives, and defining the scope of PEIS analyses.

Following the scoping period announced in this Notice, and after consideration of comments received during scoping, NNSA will prepare a draft PEIS for pit production. NNSA will announce the availability of the draft PEIS in the **Federal Register** and through other means, including media outlets in the areas around planned hearing locations. The comment period on the draft PEIS will be at least 90 days. NNSA will hold public hearings on the draft PEIS in Aiken, South Carolina; Kansas City, Missouri; Livermore, California; Santa Fe, New Mexico; Washington DC; and any other location NNSA deems relevant to the PEIS. Details related to those hearings

will be provided in NNSA's public notices. Comments received on the draft PEIS will be considered and addressed in the Final PEIS. NNSA will issue a ROD no sooner than 30 days after publication by the Environmental Protection Agency of a Notice of Availability of the final PEIS.

PEIS Preparation and Schedule

NNSA expects to issue the draft PEIS within approximately one year of this NOI and complete the final PEIS and ROD within approximately 2 years.

Signing Authority

This document of the Department of Energy was signed on April 22, 2025, by Teresa M. Robbins, Acting Under Secretary for Nuclear Security and NNSA Administrator, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on May 6, 2025.

Jennifer Hartzell,

*Alternate Federal Register Liaison Officer,
U.S. Department of Energy.*

[FR Doc. 2025-08140 Filed 5-8-25; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2365-060]

Eagle Creek Madison Hydro, LLC; Notice of Application for Project Boundary Amendment Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Project Boundary Amendment.

b. *Project No*: 2365-060.

c. *Date Filed*: October 31, 2024, and supplemented November 19, 2024, and May 2, 2025.

d. *Applicant*: Eagle Creek Madison Hydro, LLC (licensee).

e. *Name of Project*: Anson Hydroelectric Project.

f. *Location*: The project is located on the Kennebec River in Somerset County, Maine. There are no Federal lands associated with the project.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791a-825r.

h. *Applicant Contact*: David Fox, 7315 Wisconsin Ave., Suite 1100W, Bethesda, MD 20814, (201) 306-5616 or david.fox@eaglecreekre.com.

i. *FERC Contact*: Jeremy Jessup, (202) 502-6779, Jeremy.Jessup@ferc.gov.

j. *Cooperating agencies*: With this notice, the Commission is inviting Federal, State, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues affected by the proposal, that wish to cooperate in the preparation of any environmental document, if applicable, to follow the instructions for filing such requests described in item k below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of any environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. *Deadline for filing comments, motions to intervene, and protests*: June 4, 2025.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at <https://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 <https://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, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. The first page of any filing should include the docket number P-2365-060. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the

official service list for the project.

Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Request*: The licensee proposes to amend the project boundary and relocate approximately 1,250 feet of the project transmission line. The transmission line is bordered by lands owned by the Anson-Madison Sanitary District (District). Due to an expansion and upgrade of the District's facilities, it has requested that the licensee's 1,250-foot section of transmission line be relocated a negligible distance southwest of its current location. The relocation would not change the length of the transmission line or quantity of lands within the project boundary. There would be minor ground disturbance in a previously disturbed area with the installation of six new transmission line poles. The District would be the lead for all other agency consultation and would manage construction activities associated with the transmission line.

m. *Locations of the Application*: This filing may be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502-8659. Agencies may obtain copies of the application directly from the applicant.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions to Intervene*: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title “COMMENTS”, “PROTEST”, or “MOTION TO INTERVENE” as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

q. 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, 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: May 5, 2025.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2025–08185 Filed 5–8–25; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15390–000]

HGE Energy Storage 8, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On January 3, 2025, Gravity Storage, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of Barrett Lake Pumped Storage Project to be located in San Diego County, California. 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 facilities: (1) a new 4,700-foot-long, 30-foot-high earthen with rubber sheet and asphalt lined Upper Embankment creating the Upper Reservoir with a surface area of 30 acres, and a total storage capacity of 1,500 acre-feet at a normal maximum operating elevation of 3,00 feet average mean sea level (msl); (2) the existing Barrett Lake to be used as the Lower Reservoir at elevation of 903 feet average msl; (3) six new 6,500-foot-long, 10-foot-diameter steel lined penstock shafts; (4) a new 100-foot-long 30-foot-diameter vertical access tunnel to the powerhouse; (5) a new 350-foot-long, 75-foot-wide, 100-foot-high reinforced concrete underground powerhouse housing six 220-megawatt reversible variable-speed pump-turbines totaling 1,320 MW of generating capacity; (6) a new 350-foot long, 300-foot wide concrete lined tailrace; (7) a new 4-mile long 69-kilovolt (kV) transmission line that would interconnect to the power grid via a new planned AC–DC converter station, and (8) appurtenant facilities. The estimated annual power generation at the Barrett Lake Pumped Storage would be 3,900 gigawatt-hours.

Applicant Contact: Mr. Wayne Krouse, Manager, HGE Energy Storage 8, LLC, 2901 4th Avenue South #B253, Birmingham, AL 35233 wayne@hgenenergy.com.

FERC Contact: Ousmane Sidibe; email: Ousmane.sidibe@ferc.gov; phone: (202) 502–6245.

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’s Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, community organizations, 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.

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 [https://](https://ferconline.ferc.gov/FERCOOnline.aspx)

ferconline.ferc.gov/FERCOOnline.aspx. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <https://ferconline.ferc.gov/QuickComment.aspx>.

For assistance, please contact FERC Online Support at FERCOOnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–15390–000.

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 <https://www.ferc.gov/ferc-online/elibrary/overview>.

Enter the docket number (P–15390) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: May 5, 2025.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2025–08179 Filed 5–8–25; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP25–167–000]

Golden Triangle Storage, LLC; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Spindletop Expansion Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document, that will discuss the environmental impacts of the Spindletop Expansion Project involving construction and operation of facilities by Golden Triangle Storage, LLC (GTS) in Jefferson County, Texas. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission

will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the NEPA Process and Environmental Document section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on June 4, 2025. Comments may be submitted in written form. Further details on how to submit comments are provided in the Public Participation section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on March 31, 2025, you will need to file those comments in Docket No. CP25-167-000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement.

However, if the Commission approves the project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

GTS provided landowners with a fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (www.ferc.gov) under the Natural Gas, Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208-3676 or FercOnlineSupport@ferc.gov.

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (www.ferc.gov) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is also on the Commission's website (www.ferc.gov) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; a comment on a particular project is considered a "Comment on a Filing"; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP25-167-000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary,

Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

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, community organizations, 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.

Summary of the Proposed Project

GTS proposes to expand its existing natural gas storage facility by constructing and operating (1) four new salt dome storage caverns and well pads, (2) ten 5,500 horsepower (hp) gas-fired reciprocating engine compressor units, and (3) various appurtenances. The Spindletop Expansion Project would add 30.75 billion cubic feet (Bcf) of working gas and 24.2 Bcf of base gas capacity storage. According to GTS, its project would enhance customers' ability to move natural gas to and from storage on very short notice and at high rates of flow.

The Spindletop Expansion Project would consist of the following facilities:

- development and operation of four new salt dome natural gas storage caverns;
- surface development of temporary and permanent well pad sites for the new caverns;
- construction and operation of facilities related to the new caverns, including injection/withdrawal pipelines, water supply and brine return piping, instrument air piping, electrical conduit, gas dehydration equipment, heaters, metering, and other process control equipment;

- construction and operation of a new compressor building housing 55,000 hp of natural gas-driven compression on the existing Central Storage Site; and
- construction of new permanent access roads.

The general location of the project facilities is shown in appendix 1.¹

Land Requirements for Construction

Construction of the proposed aboveground facilities would occur within the existing storage facilities situated on land leased by GTS, and would disturb about 81.4 acres of land for the surface facilities associated with the new caverns. Following construction, GTS would maintain about 36.6 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed project under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- air quality and noise; and
- reliability and safety.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be

issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/Notice of Schedule* will be issued, which will open an additional comment period. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary² and the Commission's natural gas environmental documents web page (<https://www.ferc.gov/industries-data/natural-gas/environmental-documents>). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.³ Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.⁴ The environmental document for this project will document findings on the impacts on historic properties and

summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes Federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to GasProjectAddressChange@ferc.gov stating your request. You must include the docket number CP25-167-000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

(2) Return the attached "Mailing List Update Form" (appendix 2).

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC website at www.ferc.gov using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number in the "Docket Number" field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or (866) 208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission,

¹ The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at www.ferc.gov using the link called "eLibrary". For instructions on connecting to eLibrary, refer to the last page of this notice. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll free, (886) 208-3676 or TTY (202) 502-8659.

² For instructions on connecting to eLibrary, refer to the last page of this notice.

³ Cooperating agency responsibilities are addressed in Section 107(a)(3) of NEPA (42 U.S.C. 4336(a)(3)).

⁴ The Advisory Council on Historic Preservation's regulations are at title 36, Code of Federal Regulations, part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at <https://www.ferc.gov/news-events/events> along with other related information.

Dated: May 5, 2025.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2025-08180 Filed 5-8-25; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2020-0693; FRL-12334-01-OCSPP]

Agency Information Collection Activities; Proposed Renewal Collection and Request for Comment; Pesticide Data Call-Ins (DCIs) (EPA ICR No. 2288.07; OMB Control No. 2070-0174)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces the availability of and solicits public comment on the following Information Collection Request (ICR) that EPA is planning to submit to the Office of Management and Budget (OMB): Pesticide Data Call-Ins (DCIs) (EPA ICR No. 2288.07 and OMB Control No. 2070-0174). This ICR represents a renewal of an existing ICR that is currently approved through December 31, 2025. Before submitting the ICR to OMB for review and approval under the PRA, EPA is soliciting comments on specific aspects of the information collection that is summarized in this document. The ICR and accompanying material are available in the docket for public review and comment.

DATES: Comments must be received on or before July 8, 2025.

ADDRESSES: Submit your comments, identified by docket identification (ID) number Docket ID No. EPA-HQ-OPP-2020-0693, online at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Carolyn Siu, Mission Support Division (7602M), Office of Program Support, Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (703) 719-1649; email address: siu.carolyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

1. 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.
2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What information collection activity or ICR does this action apply to?

Title: Pesticide Data Call-Ins.

EPA ICR No.: 2288.07.

OMB Control No.: 2070-0174.

ICR Status: This ICR is currently approved through December 31, 2025. Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA

regulations is consolidated in 40 CFR part 9.

Abstract: This ICR covers the information collection activities associated with the issuance of data-call-ins (DCIs) under section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

EPA regulates the use of pesticides under the authority of two federal statutes: FIFRA and the Federal Food, Drug and Cosmetic Act (FFDCA), both as amended by the Food Quality Protection Act (FQPA) of 1996. In general, before manufacturers can sell pesticides in the United States, EPA must evaluate the pesticides thoroughly to ensure that they meet federal safety standards to protect human health and the environment. EPA grants a "registration" or license that permits a pesticide's distribution, sale, and use only after the company meets the scientific and regulatory requirements.

In evaluating a pesticide registration application, EPA assesses a wide variety of potential human health and environmental effects associated with the use of the product. Applicants, or potential registrants, must generate or provide the scientific data necessary to address concerns pertaining to the identity, composition, potential adverse effects, and environmental fate of each pesticide. The data allow EPA to evaluate whether a pesticide has the potential to cause harmful effects to human health and the environment, including effects to non-target organisms, federally threatened and endangered (listed) species, and to surface water or ground water.

Through a rigorous scientific and public process, EPA specifies the kinds of data and information necessary to make regulatory judgments about the risks and benefits of pesticide products under FIFRA section 3, 4 and 5, as well as the data and information needed to determine the safety of pesticide chemical residues under FFDCA section 408. The regulations in 40 CFR part 158 describe the minimum data and information EPA typically requires to support an application for pesticide registration or amendment; support the reregistration of a pesticide product; support the maintenance of a pesticide registration by means of the data call-in process (e.g., as used in the registration review program); or establish or maintain a tolerance or exemption from the requirements of a tolerance for a pesticide chemical residue.

The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities

and the burden estimate that is only briefly summarized here:

Form number(s): EPA Form No. 8570–4, 8574–27, 8570–28, 8570–32, 8579–34, 8570–35, 8570–36, 8570–37, 6300–3, and 6300–4.

Respondents/affected entities: Entities potentially affected are those that are pesticide registrants. A list of potentially affected entities with North American Industrial Classification System (NAICS) codes provided to assist in determining potential applicability in question 12.

Respondent's obligation to respond: Mandatory under FIFRA section 3(c)(2)(B).

Estimated number of potential respondents: 385.

Frequency of response: On Occasion.

Total estimated average number of responses for each respondent: 1.

Total estimated burden: 2,551,600 hours (three-year total). Burden is defined at 5 CFR 1320.3(b).

Total estimated costs: \$240,726,041 (three-year total), includes \$0 annualized capital investment or maintenance and operational costs.

III. Are there changes in the estimates from the last approval?

There is a decrease of 7,194,896 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This change, which is discussed in more detail in the ICR, reflects the projected number of DCIs that have decreased for most IC groups. While the number of Maintenance DCIs have increased by 45, the number of estimated Registration Review DCIs have decreased by 227. In addition, the Agency has determined that Registration Review DCIs, specifically Resistance Management Plans, are unlikely to be called in and therefore reducing the number of DCIs from 237 to 1. The total decrease in DCIs is 418. This change is considered an adjustment.

IV. What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** document pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: May 4, 2025.

Nancy B. Beck,

*Principal Deputy Assistant Administrator,
Office of Chemical Safety and Pollution
Prevention.*

[FR Doc. 2025–08181 Filed 5–8–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2021–0660; FRL–8903–01–OCSPPI]

Agency Information Collection Activities; Proposed Renewal Collection and Request for Comment; TSCA Section 5 Premanufacture Review of New Chemical Substances and Significant New Use Rules for New and Existing Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces the availability of and solicits public comment on the following Information Collection Request (ICR) that EPA is planning to submit to the Office of Management and Budget (OMB) “TSCA Section 5 Premanufacture Review of New Chemical Substances and Significant New Use Rules for New and Existing Chemical Substances (EPA ICR No. 1188.16 and OMB Control No. 2070–0038).” This ICR represents a renewal of an existing ICR that is currently approved through December 31, 2025. Before submitting the ICR to OMB for review and approval under the PRA, EPA is soliciting comments on specific aspects of the information collection that is summarized in this document. The ICR and accompanying material are available in the docket for public review and comment.

DATES: Comments must be received on or before July 8, 2025.

ADDRESSES: Submit your comments, identified by docket identification (ID) number Docket ID No. EPA–HQ–OPPT–2021–0660, online at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

Katherine Sleasman, Office of Program Support (Mail Code 7602M), Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–1206; email address: sleasman.katherine@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

1. 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.

2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What information collection activity or ICR does this action apply to?

Title: TSCA Section 5 Premanufacture Review of New Chemical Substances and Significant New Use Rules for New and Existing Chemical Substances.

EPA ICR No.: 1188.16.

OMB Control No.: 2070–0038.

ICR Status: This ICR is currently approved through December 31, 2025. Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on

the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: TSCA section 5 requires that any person who proposes to manufacture (which includes import) a “new chemical substance” (*i.e.*, a chemical not listed on the TSCA section 8(b) Inventory) must provide a premanufacture notice (PMN) to EPA at least 90 days prior to commencing manufacture of that chemical and that EPA review such notice and take action as appropriate. Under TSCA, the term “chemical substance” includes microorganisms; the 90-day notice for microorganisms is a Microbial Commercial Activity Notice (MCAN).

Under TSCA section 5, EPA is authorized to determine that a use of a chemical substance is a significant new use and promulgate a significant new use rule (SNUR). In certain instances, persons may opt to pursue that significant new use, in which case they must submit a notice and undergo a review. For such circumstances, TSCA section 5 requires a significant new use notice (SNUN) from any person who proposes to manufacture or process a chemical for a use that is determined by EPA to be a “significant new use.”

TSCA section 5 requires EPA to make one of five possible determinations before the conclusion of its review of the submitted notices regarding risk to human health and the environment from the manufacture, processing, distribution in commerce, use and/or disposal of new chemical substances or significant new uses. EPA’s determination on a new chemical substance or new use will dictate how and to what extent the chemical’s manufacture, processing, distribution, use, and/or disposal may be restricted. If EPA fails to make a timely determination, fees may be refunded; however, nothing relieves EPA of its obligation to make a determination. EPA requires that the submitter of a PMN or MCAN inform EPA when non-exempt commercial manufacture of the substance in question actually begins by submitting a Notice of Commencement; EPA would then add the new chemical substance to the TSCA section 8(b) Inventory.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b), and regulations that interpret TSCA section 12(b) appear at 40 CFR part 707 and the associated paperwork activities and burdens are approved under OMB Control No. 2070–0030, ICR

entitled “Notification of Chemical Exports—TSCA Section 12(b),” identified by EPA ICR No. 0795.16.

Existing chemicals are chemicals that are already listed on the TSCA Inventory and therefore “existing chemical SNURs” are generally written to require notice for significant new uses of chemicals that are already in commerce.

The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized here:

Form number(s): 7710–23, 7710–25, 7710–56 and 6300–7.

Respondents/affected entities: Entities potentially affected by this ICR include processors, *e.g.*, entities identified by the North American Industrial Classification System (NAICS) codes 325, Chemicals and Allied Products Manufacturers, and 324, Petroleum Refining.

Respondent’s obligation to respond: Mandatory, 15 U.S.C. 2604. 40 CFR parts 720, 721, 723 and 725.

Estimated number of potential respondents: 4,243.

Frequency of response: On occasion.

Total estimated average number of responses for each respondent: 1.

Total estimated burden: 128,367 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated costs: \$45,183,758 (per year), includes \$0 annualized capital investment or maintenance and operational costs.

III. Are there changes in the estimates from the last approval?

There is no change in the burden hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB.

IV. What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** document pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: May 2, 2025.

Nancy B. Beck,

*Principal Deputy Assistant Administrator,
Office of Chemical Safety and Pollution
Prevention.*

[FR Doc. 2025–08191 Filed 5–8–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–177]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or <https://www.epa.gov/nepa>.

Weekly receipt of Environmental Impact Statements (EIS)

Filed April 28, 2025 10 a.m. EST

Through May 5, 2025 10 a.m. EST

Pursuant to CEQ Guidance on 42 U.S.C. 4332.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA’s comment letters on EISs are available at: <https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search>.

EIS No. 20250049, Final, GSA, MN, Environmental Impact Statement for the Grand Portage Land Port of Entry Modernization and Expansion Project Grand Portage, MN, Review Period Ends: 06/09/2025, Contact: Matthew Heiman 612–615–6172.

EIS No. 20250050, Final, NRC, OH, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 61, Regarding Perry Nuclear Power Plant, Unit 1, Final Report (NUREG–1437), Review Period Ends: 06/09/2025, Contact: Lance Rakovan 301–415–2589.

EIS No. 20250051, Draft, USFS, AZ, Hermosa Critical Minerals Project, Comment Period Ends: 06/23/2025, Contact: Daniel O’Toole 202–309–1523.

EIS No. 20250052, Final, GSA, CT, Final Environmental Impact Statement for the Construction of a New Federal Courthouse (Hartford, Connecticut), Review Period Ends: 06/09/2025, Contact: Joseph Mulligan 312–505–5426.

EIS No. 20250053, Third Final Supplemental, USACE, CA, American River Common Features, 2016 Flood Risk Management Project, Sacramento, California, Supplemental Environmental Impact Statement/ Subsequent Environmental Impact Report XIV, Review Period Ends: 06/

11/2025, Contact: Mr. Guy Romine
916–557–5100.

Dated: May 6, 2025.

Nancy Abrams,

Associate Director, Office of Federal
Activities.

[FR Doc. 2025–08166 Filed 5–8–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2021–0728; FRL–12357–
01–OCSPP]

Agency Information Collection Activities; Proposed Renewal Collection and Request for Comment; Consolidation of Certain Reporting and Recordkeeping Under Section 8 of the Toxic Substances Control Act (TSCA)

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces the availability of and solicits public comment on the following Information Collection Request (ICR) that EPA is planning to submit to the Office of Management and Budget (OMB): “Consolidation of Certain Reporting and Recordkeeping Under Section 8 of the Toxic Substances Control Act (TSCA) (EPA ICR No. 2703.02 and OMB Control No. 2070–0224).” This ICR represents a renewal of an existing ICR that is currently approved through November 30, 2025. Before submitting the ICR to OMB for review and approval under the PRA, EPA is soliciting comments on specific aspects of the information collection that is summarized in this document. The ICR and accompanying material are available in the docket for public review and comment. EPA is also consolidating two ICRs covering reporting and recordkeeping activities under TSCA Section 8(a) to streamline the presentation of the paperwork burden estimates for these various activities and eliminate any duplication.

DATES: Comments must be received on or before July 8, 2025.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2021–0728, through the Federal eRulemaking Portal at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional

instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/>.

FOR FURTHER INFORMATION CONTACT: Carolyn Siu, Mission Support Division (7602M), Office of Program Support, Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 719–1649; email address: siu.carolyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

1. 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.
2. Evaluate the accuracy of the Agency’s estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What information collection activity or ICR does this action apply to?

Title: Consolidation of Certain Reporting and Recordkeeping Under Section 8 of the Toxic Substances Control Act (TSCA).

EPA ICR No.: 2703.02.

OMB Control No.: 2070–0224.

ICR status: This ICR is currently approved through November 30, 2025. Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA’s regulations in title 40 of the Code of

Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR covers reporting and recordkeeping requirements in TSCA section 8, for persons who manufacture, import, or process chemical substances, mixtures, or categories, or distribute them in commerce. The purpose of the ICR activities is to collect data that will help EPA evaluate the potential for human health and environmental risks caused by the manufacture, processing, and distribution in commerce of chemical substances, mixtures, or categories.

The TSCA section 8(a) Preliminary Assessment Information Rule (PAIR) requires manufacturers and importers of certain chemical substances to submit information about production, use, and/or exposure-related data. Under TSCA section 8(a), persons who manufacture, import, or process certain chemical substances or mixtures, or propose to manufacture, import, or process certain chemical substances or mixtures, are subject to chemical-specific rules promulgated under TSCA section 8(a). A chemical-specific “8(a) rule” requires more detailed and more types of information than is required by a PAIR rule. For example, a chemical-specific “8(a) rule” might require information that includes, but is not limited to, chemical names, categories of use, production volume, byproducts of chemical production, existing data on health and environmental effects, exposure data, and disposal information. EPA is consolidating two TSCA section 8(a) chemical specific rules into this ICR: including the reporting and recordkeeping requirements for persons who manufacture or process chemical substances as nanoscale materials under the authority of section 8(a) of the TSCA (40 CFR 704.20) covered by “Chemical-Specific Rules under the Toxics Substances Control Act Section 8(a); Certain Nanoscale Materials (Renewal) (EPA ICR No. 2517.04; OMB Control No. 2070–0194), and the one-time asbestos reporting and recordkeeping requirements (40 CFR 704.180), which is covered by the “TSCA Section 8(a) Reporting and Recordkeeping Requirements for Asbestos (Final Rule) (EPA ICR No. 2711.02; OMB Control No. 2070–0222).”

Under TSCA section 8(c), persons who manufacture, import, process, or distribute in commerce any chemical substance or mixture must keep records of significant adverse reactions to health or the environment, as determined by the Administrator by rule. Allegations of adverse reactions to the health of employees be kept for thirty years, and all other allegations be kept for five years. The rule also prescribes the conditions under which a firm must submit or make the records available to a duly designated representative of the Administrator.

Finally, under TSCA section 8(d), persons, who manufacture, import, process, or distribute in commerce (or propose to manufacture, import, process, or distribute in commerce) certain chemical substances and mixtures, are required to submit to EPA lists and copies of health and safety studies which relate to health and/or environmental effects of the chemical substances and mixtures. To comply with an “8(d)” rule, respondents must search their records to identify any health and safety studies in their possession, make copies of relevant studies, list studies that are currently in progress, and submit this information to EPA.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to be between 0.4 to 106.4 hours per response. Burden is defined in 5 CFR 1320.3(b).

The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized here:

Respondents/affected entities: Entities potentially affected by this ICR are manufacturers (including imports) or processors of chemical substances of mixtures. A list of potentially affected entities with North American Industrial Classification System (NAICS) codes provided to assist in determining potential applicability in question 12.

Respondent's obligation to respond: Mandatory, as per TSCA Section 8 and 40 CFR 703, 704; 712; 716; 717; 766, and 792.

Forms: EPA Forms 7710–25, 7710–35, 7710–51, and 9600–07.

Frequency of response: On Occasion.
Total estimated number of potential respondents: 13,595.

Total estimated average number of responses for each respondent: 193.

Total estimated annual burden hours: 106,522 hours.

Total estimated annual respondent costs: \$9,138,943, which includes \$0 for

capital investment or maintenance and operational costs.

III. Are there changes in the estimates from the last approval?

This ICR renewal includes the consolidation of multiple ICRs. Accordingly, for this particular ICR, the overall number of hours will increase to reflect the consolidation whereas EPA will retire the ICRs that are being consolidated into this ICR (*i.e.*, an increase of 647 hours in information collection activities associated with *Chemical-Specific Rules under TSCA section 8(a); Certain Nanoscale Materials* (OMB Control No. 2070–0194) and *TSCA section 8(a) Reporting and Recordkeeping Requirements for Asbestos* (OMB Control No. 2070–0222)). EPA also notes that a recent TSCA section 8(d) rulemaking, published on December 13, 2024 (89 FR 100756), incorporated an increase of associated burden arising out of a requirement to report studies showing any measurable content of the subject chemicals. In response to that proposed rulemaking, stakeholders provided information indicating that the file search burden would incur additional burden. Accordingly, for that rulemaking, EPA increased the associated estimate for file search in the economic analysis for the rule. This increase in burden would apply only where the Agency, via the applicable regulations, requires reporting of studies at any measurable content. EPA does not anticipate promulgating 8(d) rules requiring such reporting in this ICR's renewal period. These changes are the result of a program adjustment. Thus, any 8(d) rules promulgated during this renewal period would not reflect this increase in burden.

IV. What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** document pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: May 2, 2025.

Nancy B. Beck,

*Principal Deputy Assistant Administrator,
Office of Chemical Safety and Pollution
Prevention.*

[FR Doc. 2025–08190 Filed 5–8–25; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

[Docket No. FMC–2025–0008]

Notice of Filing of Petition and Request for Comments: Exemption From Tariff Rate Publication Requirements

AGENCY: Federal Maritime Commission.

ACTION: Notice of filing and request for comments.

SUMMARY: The Federal Maritime Commission (Commission) has received a petition from a controlled carrier requesting an exemption from the statutory requirement to provide 30 days' notice of a reduction in its tariff rates and seeks public comment.

DATES: Submit comments on or before June 9, 2025.

ADDRESSES: You may submit comments, identified by Docket No. FMC–2025–0008, by the following method:

Federal eRulemaking Portal: Your comments must be written and in English and submitted electronically through the Federal Rulemaking Portal at www.regulations.gov. To submit comments on that site, search for Docket No. FMC–2025–0008 and follow the instructions provided. If you would like to receive future information regarding this petition, you must include your contact information.

A copy of the comment must also be served on the Petitioner's counsel, Cameron W. Roberts, Roberts & Kehagiaras LLP, at cwr@tradeandcargo.com, 210 Yacht Club, Redondo Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: For questions regarding the submission of written public comments or the treatment of any confidential information, please contact David Eng, Secretary, at (202) 523–5725 or by email at secretary@fmc.gov.

SUPPLEMENTARY INFORMATION: Notice is given that the Chinese-Polish Joint Stock Shipping Company (“Chipolbrok”), has petitioned the Commission, pursuant to 46 U.S.C. 40103(a) and 46 CFR 502.94, for an exemption from 46 U.S.C. 40703 so that it may reduce its tariff rates effective upon publication. A copy of this petition, Petition No. P1–25, can be found at www.regulations.gov under Docket No. FMC–2025–0008.

To grant an exemption, the Commission must conclude that such exemption will not result in substantial reduction in competition or be detrimental to commerce. The Commission has stated that “detriment to commerce” must signify something other than “substantial reduction in competition.”¹ In order to determine whether either prong of this standard occurs, the Commission will examine the percent of cargo and number of twenty-foot equivalent units (TEUs) moving in the controlled carrier’s U.S. trades under service contracts and tariffs. The Commission will also examine whether allowing the carrier to reduce tariff rates and charges with immediate effectiveness may allow it to compete more vigorously, especially when compared to any shortage of capacity or overcapacity that may be occurring in the shipping industry as a whole.

For the Commission to make a thorough evaluation of the exemption requested in the petition, interested parties are afforded an opportunity to participate through submission of written public comments. Comments must be received no later than the above stated date. The comments must be written and in English and submitted electronically through the Federal Rulemaking Portal at www.regulations.gov. To submit comments on that site, search for Docket No. FMC–2025–0008 and follow the instructions provided. A copy of the comment must also be served on the Petitioner’s counsel, Cameron W. Roberts, Roberts & Kehagiaras LLP, at cwr@tradeandcargo.com, 210 Yacht Club, Redondo Beach, CA 90802.

The Commission will provide confidential treatment for identified confidential information to the extent allowed by law. If you would like to request confidential treatment, pursuant to 46 CFR 502.5, you must submit the following, by email, to secretary@fmc.gov:

- A transmittal letter that identifies the specific information in the comments for which protection is sought and demonstrates that the information is a trade secret or other confidential research, development, or commercial information.

¹ See Petition No. P7–92, *Motor Vehicle Manufacturers Association of the United States, Inc. and Wallenius Lines, N.A.-Joint Application for Exemption from Certain Requirements of the Shipping Act of 1984 for Certain Limited Shipments of Passenger Vehicles*, 26 S.R.R. 1269 (FMC 1994) and Docket No. 05–05, *Non-Vessel-Operating Common Carrier Service Arrangements*, 30 S.R.R. 763 (FMC 2005).

- A confidential copy of your comments, consisting of the complete filing with a cover page marked “Confidential-Restricted,” and the confidential material clearly marked on each page.

- A public version of your comments with the confidential information excluded. The public version must state “Public Version—confidential materials excluded” on the cover page and on each affected page and must clearly indicate any information withheld.

Dated: May 6, 2025.

David Eng,
Secretary.

[FR Doc. 2025–08211 Filed 5–8–25; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

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 question whether the proposal complies with the standards of section 4 of the BHC 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.

Unless otherwise noted, comments regarding the 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 May 27, 2025.

A. Federal Reserve Bank of San Francisco: (Mongkha Pavlick, Senior Vice President, Community and Regional Institution Supervision) 101 Market Street, San Francisco, California 94105–1579. Comments can also be sent electronically to sf.fisc.comments.applications@sf.frb.org.

1. *Lewis & Clark Bancorp, Oregon City, Oregon;* to acquire additional interests in iCache, Inc., Portland, Oregon, and thereby continue to indirectly engage in trust company functions, printing and selling MICR-encoded items, and data processing, pursuant to sections 225.28(b)(5), 225.28(b)(10)(ii), and 225.28(b)(14), respectively, all of the Board’s Regulation Y.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,
Associate Secretary of the Board.

[FR Doc. 2025–08188 Filed 5–8–25; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

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

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

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal

Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments 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 June 9, 2025.

A. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198-0001. Comments can also be sent electronically to KCAApplicationComments@kc.frb.org:

1. *Community Bancorp, Inc., Chanute, Kansas*; to merge with Farmers National Bancshares, Inc., and thereby indirectly acquire Prairie Bank of Kansas, both of Stafford, Kansas.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2025-08187 Filed 5-8-25; 8:45 am]

BILLING CODE 6210-01-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 May 27, 2025.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to Applications.Comments@atl.frb.org:

1. *Amie Anderson Glenn Goodwin, Greenville, South Carolina, individually, and as general partner of Anderson Volunteer Holdings, L.P., Longboat Key, Florida ("AVH"); Howard Bishop Anderson, Chattanooga, Tennessee, individually, and as managing partner of AVH; Doralynn Elizabeth Garrison Anderson, Longboat Key, Florida, Amie Anderson Glenn Goodwin, and Howard Bishop Anderson, as co-trustees of the Irrevocable Family Trust Agreement of Robert Randolph Anderson dated August 15, 2011, Chattanooga, Tennessee; and Robert Randolph Anderson, Longboat Key, Florida, Amie Anderson Glenn Goodwin, and Howard Bishop Anderson, as co-trustees of the Irrevocable Family Trust Agreement of Doralynn Elizabeth Garrison Anderson dated August 15, 2011, Chattanooga, Tennessee; to become members of the Anderson Family Group, a group acting in concert, to retain voting shares of Builtwell Bancorp, Inc., Chattanooga, Tennessee, and thereby indirectly retain voting shares of Builtwell Bank, Chattanooga, Tennessee, and Bank of Cleveland, Cleveland, Tennessee.*

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2025-08189 Filed 5-8-25; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[Notice-PBS-2025-04; Docket No. 2025-0002; Sequence No. 5]

Notice of Availability of a Final Environmental Impact Statement for a New Federal Courthouse in Hartford, Connecticut

AGENCY: New England Region, Public Buildings Service (PBS), U.S. General Services Administration (GSA).

ACTION: Notice of availability (NOA).

SUMMARY: This notice announces the availability of the Final Environmental Impact Statement (EIS) that analyzes the potential environmental effects from the acquisition of a site in Hartford, CT, and the subsequent design, construction, and operation of a new federal courthouse. The new courthouse would be owned and managed by GSA and occupied by the U.S. District Court for the District of Connecticut (the Court) and related agencies. The Final EIS describes the purpose and need for the project; the alternatives considered; the existing environment that could be affected; the potential impacts resulting from each of the alternatives and proposed best management practices and mitigation measures. The Final EIS identifies the Preferred Alternative, as summarized below (see the **SUPPLEMENTARY INFORMATION** section of this NOA). The Final EIS can be viewed or downloaded from the GSA project website at www.gsa.gov/hartfordcourthouse. Hard copies are available for review at the Hartford Public Library, Albany Branch located at 1250 Albany Ave, Hartford, CT 06112; Hartford Public Library, Park Street Branch located at 603 Park St, Hartford, CT 06106; and Hartford City Hall located at 550 Main St, Room 001, Hartford, CT 06103.

DATES: The Final EIS Wait Period begins with publication of this NOA in the **Federal Register** and will last until June 9, 2025. Any comments regarding the Final EIS must be postmarked or received by the last day of the 30-day Final EIS Wait Period (see the **ADDRESSES** section of this NOA for how to submit comments). After the Wait Period, GSA will issue the Record of Decision (ROD).

ADDRESSES: Comments on the Final EIS may be submitted by one of the following methods:

- *Email:* HartfordCourthouse@gsa.gov with subject line "Hartford Courthouse Final EIS"
- *Mail:* General Services Administration, Attention: Joseph

Mulligan, Project Manager, JCK Federal Building, 230 S. Dearborn, Suite 3600, Chicago, IL 60604

Comments sent by any other method or to any other address or individual may not be considered by GSA. Comments received or postmarked after the 30-day Final EIS Wait Period may not be considered by GSA. All comments received are part of the public record. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. GSA will accept anonymous comments.

FOR FURTHER INFORMATION CONTACT:

Joseph Mulligan, GSA Project Manager, 312-505-5426, at HartfordCourthouse@gsa.gov.

SUPPLEMENTARY INFORMATION: GSA has considered and incorporated stakeholder input and public comments provided during the scoping and Draft EIS comment periods to develop the Final EIS and determine the Preferred Alternative.

GSA's Preferred Alternative for the site acquisition, and subsequent design, construction and operation of a new federal courthouse in Hartford is Alternative 2, the Allyn Site. Under the Preferred Alternative, GSA would acquire the Allyn Site, consisting of approximately 2.19 acres of land located at 154 Allyn Street. The Allyn Site is bounded by Church Street to the north, High Street to the west, Allyn Street to the south, and mixed-use and religious buildings along its eastern perimeter. It is in the central business district of Hartford and is one block north of Bushnell Park. The Allyn Site currently serves as a surface parking lot. Under the Preferred Alternative, the new federal courthouse would likely contain up to two levels of underground secure parking. The majority of the Allyn Site, approximately 2 acres, would be excavated and graded in preparation for construction, and a small portion, approximately 0.25 acres, would be used as a staging area. GSA may lease a vacant paved lot in the vicinity of the Allyn Site for staging purposes due to the limited space availability at the site. The Project would generate approximately 50,000 to 75,000 cubic yards of excavated materials. A new landscape plan would be developed using native plantings. There appears to be adequate public parking in proximity to the Allyn Site, however, GSA may pursue options to provide additional parking such as entering into a lease with a commercial parking operator.

Background

The Court currently operates at three facilities: the Richard C. Lee U.S. Courthouse in New Haven (its headquarters location), the Brien McMahon Federal Building and U.S. Courthouse in Bridgeport, and the Abraham A. Ribicoff Federal Building and Courthouse in Hartford (Ribicoff Federal Building and Courthouse).

The Ribicoff Federal Building and Courthouse, constructed in 1963, does not have the capacity to accommodate the functions and operations of the Court. The facility is inadequate in size and configuration for the Court's existing operations, including deficiencies in judicial, juror, and detainee circulation and overall facility security. The Court's long-term facilities planning and GSA's feasibility studies concluded that relocating the Court's headquarters to Hartford would provide efficiencies in judicial operations across the State. The results from these studies led to GSA's proposal to locate the Court and related agencies at a new courthouse in Hartford.

GSA has prepared a Final EIS to assess the potential impacts of this project.

Alternatives Considered

GSA evaluated two action alternatives in the Final EIS. Both would involve site acquisition, design, construction, and operation of a new federal courthouse in Hartford: (1) Alternative 1, Woodland Site, located at 61 Woodland Street, and (2) Alternative 2, Allyn Site, located at 154 Allyn Street. Key features of the proposed courthouse include (a) total building gross square footage of up to 281,000; (b) eleven courtrooms and eighteen judges chambers; (c) offices for the Court and related agencies; and (d) sixty-six secure parking spaces. GSA also considered a No Action alternative. The Final EIS describes the purpose and need for the proposed project, the alternatives considered, the existing environment that could be affected, the potential impacts resulting from each of the alternatives, and proposed best management practices and mitigation measures. The resource areas analyzed in the Final EIS include land use; utilities; traffic and transportation; air quality; solid and hazardous waste; socioeconomic; protection of children's health and safety; cultural resources; geology, topography, and soils; water resources; and visual resources. Based on the analysis presented in the Final EIS, impacts from the Preferred Alternative on all resource areas would

be less-than-significant (*i.e.*, negligible, minor, or moderate).

The Final EIS was prepared in compliance with the National Environmental Policy Act (NEPA) NEPA, as amended (42 United States Code [U.S.C.] *et seq.*), which requires federal agencies to examine the impacts of their proposed projects or actions on the human and natural environment and consider alternatives to the proposal before deciding on taking an action. The Final EIS complies with the GSA PBS NEPA Desk Guide and other relevant federal and state laws and regulations and executive orders.

Further information about the project can be viewed at: <http://gsa.gov/hartfordcourthouse>.

Jesse Lafreniere,

Director, Design and Construction Division, U.S. General Services Administration, PBS New England Region.

[FR Doc. 2025-08090 Filed 5-8-25; 8:45 am]

BILLING CODE 6820-RB-P

GENERAL SERVICES ADMINISTRATION

[Notice-P-2025-03; Docket No. 2025-0002; Sequence No. 3]

Notice of Availability for a Final Environmental Impact Statement (EIS) and Floodplain and Wetlands Assessment and Statement of Findings for the Grand Portage Land Port of Entry (LPOE) Modernization and Expansion Project in Grand Portage, Minnesota

AGENCY: Public Buildings Service (PBS), United States (U.S.) General Services Administration (GSA).

ACTION: Notice of Availability (NOA); Public Notice of Floodplain and Wetlands Assessment and Statement of Findings.

SUMMARY: This notice announces the availability of the Final EIS, which examines potential environmental impacts from the modernization and expansion of the Grand Portage LPOE, located within the Grand Portage Reservation of the Grand Portage Band of Lake Superior Chippewa (herein referred to as the Grand Portage Band). The existing Grand Portage LPOE is owned and managed by GSA and is operated by the U.S. Department of Homeland Security's Customs and Border Protection (CBP).

The Final EIS describes the purpose and need for the project; alternatives considered; the existing environment that could be affected; the potential impacts resulting from each of the

alternatives; and proposed best management practices and mitigation measures.

The Final EIS also includes a Floodplain and Wetlands Assessment and Statement of Findings as a result of potential construction in a floodplain and wetlands at the Grand Portage LPOE. Based on impacts analyses and public comments, GSA has identified the Proposed Action as described in the Final EIS as its preferred alternative.

DATES: The Final EIS Wait Period begins with publication of this NOA in the **Federal Register** and will last for 30 days until June 8, 2025. Any final written comments must be received or postmarked by the last day of the Wait Period (see the **ADDRESSES** section of this NOA on how to submit comments). After the Wait Period, GSA will issue the Record of Decision (ROD).

ADDRESSES: A copy of the Final EIS can be found on the GSA website at: <https://www.gsa.gov/about-us/gsa-regions/region-5-great-lakes/buildings-and-facilities/minnesota/grand-portage-land-port-of-entry>. Hard copies are also available at the following locations: Grand Portage Tribal Council Office, 83 Stevens Rd., Grand Portage, MN 55605; Grand Portage Community Center, 73 Upper Rd., Grand Portage, MN 55605; Grand Portage Trust Lands, 27 Store Rd., Grand Portage, MN 55605.

Public Comments

Members of the public may submit comments by any of the following methods. All comments will be considered equally and will be part of the public record.

- Electronic comments should be submitted to the email address listed below.

matthew.heiman@gsa.gov.

Please include 'Grand Portage LPOE Final EIS' in the subject line.

- Written comments should be mailed to: ATTN: Matthew Heiman, Senior Project Manager, Grand Portage LPOE Final EIS, U.S. General Services Administration, c/o Potomac-Hudson Engineering, Inc., 77 Upper Rock Circle, Suite 302, Rockville, MD 20850.

FOR FURTHER INFORMATION CONTACT: Questions and comments on the Final EIS should be directed to: Matthew Heiman, Senior Project Manager, GSA at the following email address: matthew.heiman@gsa.gov.

SUPPLEMENTARY INFORMATION:

Wait Period

The views and comments of the public are necessary in helping GSA in its decision-making process. The public review process will be accomplished

through direct mail correspondence to appropriate federal, state, and local agencies, and to private organizations and citizens who have previously expressed, or are known to have, an interest in the project. The Final EIS has considered previous input provided during the scoping and Draft EIS comment periods.

Background

The existing 5.7-acre LPOE serves vehicles and pedestrians crossing the U.S.-Canada border between the Grand Portage Reservation in the U.S. and Neebing, Ontario in Canada. The Feasibility Study performed in 2019 determined that the existing structures do not contain the necessary square footage as specified by CBP's space and facility requirements (also referred to as Program of Requirements [POR]). In addition, the facility lacks outbound inspection capabilities. Following preparation of the Feasibility Study, a Program Development Study (PDS) was initiated as the next step in the design process to further refine potential alternatives under consideration. From the PDS process, viable alternatives were further refined into the Proposed Action analyzed within the Final EIS, in collaboration with the Grand Portage Band, who is serving as a Cooperating Agency for this EIS.

GSA has prepared this Final EIS for the purpose of analyzing the potential environmental, cultural, and economic impacts resulting from the Proposed Action to modernize and expand the existing Grand Portage LPOE.

Alternatives Under Consideration

The Proposed Action would consist of modernization and expansion of existing Grand Portage LPOE facilities as described in the PDS. Under the Proposed Action, GSA would replace the Grand Portage LPOE with a modernized facility on an expanded footprint, expanding the existing 5.7-acre operational footprint to a total operational footprint of approximately 10.4 acres. GSA would also upgrade the electrical distribution system leading to the LPOE by installing a 7.3-mile buried three-phase power line within Arrowhead Cooperative's existing utility right-of-way along the western side of Highway 61. GSA also considered the No Action Alternative, which assumes that GSA would not expand or modernize the Grand Portage LPOE or install the three-phase power line.

The purpose of the Proposed Action is for GSA to support CBP's mission by modernizing and expanding the Grand Portage LPOE. The existing LPOE does not meet CBP's current needs and does

not allow for expeditious and safe inspection of the traveling public. The deficiencies fall into two broad categories: deficiencies in the overall site layout and substandard building conditions. Therefore, to bring the Grand Portage LPOE operations in line with design standards and operational requirements, implementation of the Proposed Action is needed to (1) address space constraints and inefficient traffic flows; (2) shorten and expedite vehicle processing time, to include improving daily commutes across the U.S.-Canada border; (3) decrease congestion and long wait times during the peak travel season; (4) allow CBP to process a higher volume of vehicles traveling to and from Canada, to include further accommodation of potential future spikes in travelers crossing the U.S.-Canada border; and (5) provide a wider single lane for large semi-trucks hauling wind turbine components from Canada.

The Final EIS analyzes the potential impacts of the proposed alternatives on environmental resources including geology, water, biological resources, air quality, noise, traffic and transportation, land use and visual resources, infrastructure and utilities, socioeconomic, cultural resources, and human health and safety. The Final EIS concludes that impacts to all resource areas would be less-than-significant (*i.e.*, negligible, minor, or moderate). Impact reduction measures are presented in the Final EIS to reduce potential adverse effects.

GSA is currently conducting formal consultation with the Grand Portage Band Tribal Historic Preservation Officer (THPO) as required under Section 106 of the National Historic Preservation Act to determine impacts to historic properties. Mitigation measures may be determined in consultation between GSA, the THPO, and applicable consulting parties.

Under the Endangered Species Act (ESA), GSA coordinated with the U.S. Fish and Wildlife Service (USFWS) per Section 7 requirements to determine effects to federally protected species. GSA determined that there would be no adverse effects to federally threatened or endangered species with implementation of impact avoidance measures; USFWS concurred with these findings. GSA's findings and correspondence with USFWS are incorporated in the Final EIS.

The project area occurs within a region unmapped by the Federal Emergency Management Agency for floodplains and floodways. As information is currently unavailable that definitively indicates the presence or

location of floodplains relative to the project area, GSA has assumed that the project area is located within a 1-percent-annual-chance or 0.2-percent-annual-chance floodplain for purposes of complying with Executive Order 11988 and the GSA Floodplain Management Desk Guide, and until such time that a floodplain hazard study can be conducted. In addition, based on a wetland delineation conducted for the project, approximately 3.3 acres of wetlands occur within the project area. GSA prepared a Floodplain and Wetlands Assessment and Statement of Findings addressing potential impacts on floodplains and wetlands, which is included in the Final EIS. Final design of the Grand Portage LPOE would incorporate standard measures, including those specified in GSA Interim Core Building Standards as well as by the authority having jurisdiction, to reduce or manage stormwater flows as well as any potential impacts to the floodplain if present. GSA would coordinate as necessary with the Grand Portage Band to obtain appropriate permits and approvals related to wetlands disturbance under the Clean Water Act. Further, GSA would consider options to minimize, avoid, or mitigate potential impacts, as required by the U.S. Army Corps of Engineers and/or the Grand Portage Band.

Russell Riberto,

*Regional Commissioner, Great Lakes Region
5, U.S. General Services Administration.*

[FR Doc. 2025-07964 Filed 5-8-25; 8:45 am]

BILLING CODE 6820-CF-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2025-N-0679]

Determination That VOSOL (Acetic Acid, Glacial) 2% Otic Solution/Drops; and Other Drug Products Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to these drug products, and it will allow FDA to continue to approve ANDAs that refer to the products as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT:

Stacy Kane, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6236, Silver Spring, MD 20993-0002, 301-796-8363, Stacy.Kane@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to market a generic version of a previously approved drug product. To obtain approval, the ANDA applicant must show, among other things, that the generic drug product: (1) has the same active ingredient(s), dosage form, route

of administration, strength, conditions of use, and (with certain exceptions) labeling as the listed drug, which is a version of the drug that was previously approved, and (2) is bioequivalent to the listed drug. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the “Approved Drug Products With Therapeutic Equivalence Evaluations,” which is generally known as the “Orange Book.” Under FDA regulations, a drug is removed from the list if the Agency withdraws or suspends approval of the drug’s NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a) (21 CFR 314.161(a)), the Agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness: (1) before an ANDA that refers to that listed drug may be approved, (2) whenever a listed drug is voluntarily withdrawn from sale and ANDAs that refer to the listed drug have been approved, and (3) when a person petitions for such a determination under 21 CFR 10.25(a) and 10.30. Section 314.161(d) provides that if FDA determines that a listed drug was withdrawn from sale for safety or effectiveness reasons, the Agency will initiate proceedings that could result in the withdrawal of approval of the ANDAs that refer to the listed drug.

FDA has become aware that the drug products listed in the table are no longer being marketed.

TABLE 1—DRUG PRODUCTS NOT WITHDRAWN FROM SALE FOR REASONS OF SAFETY OR EFFECTIVENESS

Application No.	Drug name	Active ingredient(s)	Dosage form/route	Strength(s)	Applicant
NDA 012179	VOSOL	Acetic Acid, Glacial	2%	Solution/Drops; Otic	Hikma.
NDA 012836	PERSANTINE	Dipyridamole	25 Milligrams (mg); 50 mg; 75 mg.	Tablet; Oral	Boehringer Ingelheim.
NDA 013790	CORDRAN	Flurandrenolide	0.05%	Lotion; Topical	Almirall.
NDA 016758	NAVANE	Thiothixene Hydrochloride	Equivalent to (EQ) 5 mg Base/Milliliters (mL).	Concentrate; Oral	Pfizer.
NDA 017604	NALFON	Fenoprofen Calcium	EQ 200 mg Base; EQ 400 mg Base.	Capsule; Oral	Key Therapeutics.
NDA 019737	METROGEL	Metronidazole	0.75%	Gel; Topical	Galderma Laboratories LP.
NDA 019909	ZOVIRAX	Acyclovir	200 mg/5 mL	Suspension; Oral	Norvium Bioscience.
NDA 019922	CORLOPAM	Fenoldopam Mesylate	EQ 10 mg Base/mL	Injectable; Injection	Hospira.
NDA 020212	ZINECARD	Dexrazoxane Hydrochloride.	EQ 250 mg Base/Vial; EQ 500 mg Base/Vial.	Injectable; Injection	Pfizer.
NDA 020605	ZOFRAN	Ondansetron Hydrochloride.	EQ 4 mg Base/5 mL	Solution; Oral	Sandoz.
NDA 020636	VIRAMUNE	Nevirapine	200 mg	Tablet; Oral	Boehringer Ingelheim.
NDA 020645	AMMONUL	Sodium Benzoate; Sodium Phenylacetate.	10%; 10% (5 Grams (g)/50 mL; 5 g/50 mL).	Solution; Intravenous	Bausch Health.
NDA 020934	LUXIQ	Betamethasone Valerate	0.12%	Aerosol, Foam; Topical	Norvium Bioscience.

TABLE 1—DRUG PRODUCTS NOT WITHDRAWN FROM SALE FOR REASONS OF SAFETY OR EFFECTIVENESS—Continued

Application No.	Drug name	Active ingredient(s)	Dosage form/route	Strength(s)	Applicant
NDA 021071	AVANDIA	Rosiglitazone Maleate	EQ 2 mg Base; EQ 4 mg Base.	Tablet; Oral	Woodward Pharma Services LLC.
NDA 021160	PHOSLO GELCAPS	Calcium Acetate	667 mg	Capsule; Oral	Fresenius Medical Care.
NDA 021360	SUSTIVA	Efavirenz	600 mg	Tablet; Oral	Bristol Myers Squibb.
NDA 021493	ZYMAR	Gatifloxacin	0.3%	Solution/Drops; Ophthalmic.	Allergan.
NDA 021656	TRICOR	Fenofibrate	48 mg; 145 mg	Tablet; Oral	Abbvie.
NDA 021759	ELOXATIN	Oxaliplatin	50 mg/10 mL (5 mg/mL); 100 mg/20 mL (5 mg/mL).	Injectable; Intravenous	Sanofi Aventis US.
NDA 021779	VENTAVIS	Iloprost	10 Micrograms (mcg)/mL (10 mcg/mL); 20 mcg/mL (20 mcg/mL).	Solution; Inhalation	Actelion.
NDA 021849	ZEGERID	Omeprazole; Sodium Bicarbonate.	20 mg, 1.1 g; 40 mg, 1.1 g.	Capsule; Oral	Salix.
NDA 022428	MOXEZA	Moxifloxacin Hydrochloride.	EQ 0.5% Base	Solution/Drops; Ophthalmic.	Harrow Eye.
NDA 050006	VIBRAMYCIN	Doxycycline	EQ 25 mg Base/5 mL	For Suspension; Oral	Pfizer.
NDA 050541	TOBREX	Tobramycin	0.3%	Solution/Drops; Ophthalmic.	Novartis.
NDA 050808	SOLODYN	Minocycline Hydrochloride	55 mg; 65 mg; 80 mg; 105 mg; 115 mg.	Tablet, Extended Release; Oral.	Bausch.
NDA 207987	ABLYSINOL	Alcohol	99% (1 mL)	Solution; Intra-Arterial	BPI Labs, LLC.
NDA 208183	ULTRAVATE	Halobetasol Propionate	0.05%	Lotion; Topical	Lacer Pharmaceuticals.

FDA has reviewed its records and, under § 314.161, has determined that the drug products listed were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the Agency will continue to list the drug products in the “Discontinued Drug Product List” section of the Orange Book. The “Discontinued Drug Product List” identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness.

Approved ANDAs that refer to the drug products listed are unaffected by the discontinued marketing of the products subject to these applications. Additional ANDAs that refer to these products may also be approved by the Agency if they comply with relevant legal and regulatory requirements. If FDA determines that labeling for these drug products should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: May 6, 2025.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2025-08207 Filed 5-8-25; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2025-N-1090]

Prescription Drug User Fee Act VII; Independent Assessment of Communication Through Product Quality Information Requests During Application Review; Final Report; Availability; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a document entitled “Product Quality Information Request Communications Assessment: Final Report.” This report fulfills a commitment under the recent reauthorization of the Prescription Drug User Fee Act (PDUFA) to assess communication between FDA and applicants through product quality information requests during application review and to identify best practices and areas of improvement. The assessment of FDA and applicants in communicating through product quality information requests was conducted by an independent contractor, as described in the document entitled “PDUFA Reauthorization Performance Goals and Procedures Fiscal Years 2023 Through 2027.” As part of FDA performance commitments described in this document, FDA is publishing the final assessment report and soliciting public comments.

DATES: Submit either electronic or written comments on the final report by July 31, 2025.

ADDRESSES: You may submit either electronic or written comments 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-2025-N-1090 for “Independent Assessment of Communication Through Product Quality Information Requests During Application Review.” 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.

FOR FURTHER INFORMATION CONTACT: Mahesh Ramanadham, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993-0002, 301-796-3272, email: Mahesh.Ramanadham@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

PDUFA provides FDA with a source of stable, consistent funding that has made it possible for the Agency to focus on promoting innovative therapies and help bring to market critical products for patients. When PDUFA was originally authorized in 1992, it had a 5-year term. The program has been subsequently reauthorized every 5 years. To prepare for the reauthorization of PDUFA for years 2023 to 2027, FDA conducted negotiations with the regulated industry and held regular consultations with public stakeholders, including patient advocates, consumer advocates, and healthcare professionals between September 2020 and February 2021.

Following these discussions, related public meetings, and Agency requests for public comment, FDA published the “PDUFA Reauthorization Performance Goals and Procedures Fiscal Years 2023 Through 2027” document, available at <https://www.fda.gov/media/151712/download>, also known as the PDUFA VII “goals letter,” to supplement the statute. The goals letter includes the performance goals, procedures, and commitments that apply to aspects of the human drug review program that are important for facilitating timely access to safe, effective, and innovative new medicines for patients. Several of these commitments aim to continue to enhance communication between FDA and applicants during application review.

FDA and applicants interact in a variety of ways throughout application review. One such way is via a communication called an information request (IR), sent to an applicant as the discipline review occurs. FDA uses IRs to request further information or clarification that is needed or would be helpful to allow completion of the discipline review. IRs may be in the form of letters, emails, or faxes.

FDA uses product quality IRs to request further information or clarification needed for FDA’s assessment of identity, strength, quality, purity, or potency of drug substances or drug products. Ensuring that patients can have confidence in the safety and

effectiveness of their medications is a longstanding priority for FDA. The Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) have worked to address this priority in part by performing Chemistry, Manufacturing, and Controls (CMC) reviews for CDER-regulated and CBER-regulated products. CDER or CBER may issue a product quality, or CMC, IR as a result of CMC assessments conducted in support of the application.

CDER and CBER have established procedures for assessors to use Four-Part Harmony, a framework that describes four key elements that should be included in product quality IRs, specifically: (1) what was provided, (2) what is the issue or deficiency, (3) what is needed, and (4) why it is needed. These procedures can be found in CDER’s Manual of Policies and Procedures (MAPP) 5016.8 Rev. 1, “Using Four-Part Harmony in Quality-Related Assessment Communications” and CBER’s Standard Operating Procedures and Policies (SOPP) 8401.1, “Issuance of and Review of Responses to Information Request Communications to Pending Applications.” The PDUFA VII goals letter includes commitments for FDA to update and conduct training on existing policies and procedures (MAPPs and SOPPs), to reflect Four-Part Harmony. CDER MAPP 5016.8, “Communication Guidelines for Quality-Related Information Requests and Deficiencies” (<https://www.fda.gov/media/171613/download>) was revised in September 2023 and made public. CBER SOPP 8401.1, “Issuance of and Review of Responses to Information Request Communications to Pending Applications” (<https://www.fda.gov/media/85301/download>) was revised in October 2022.

In addition to updating the documents and conducting training, FDA committed to contracting with an independent third party to assess current practices of CDER, CBER, and applicants in communicating through product quality IRs during application review and effectiveness of Four-Part Harmony. This assessment has been completed, and in accordance with the PDUFA VII goals letter, FDA is seeking public comment on this “Product Quality Information Request Communications Assessment: Final Report,” available at <https://www.fda.gov/industry/prescription-drug-user-fee-amendments/pdufa-vii-assessment-fda-and-sponsor-communications-through-product-quality-information-requests>.

II. Request for Comments

FDA is soliciting comments on the “Product Quality Information Request Communications Assessment: Final Report” from interested parties. We request feedback on: (1) the assessment findings and recommendations, (2) whether certain recommendations are more desirable than others, and (3) other actions FDA and applicants should consider and why.

III. Electronic Access

Persons with access to the internet may obtain the report at <https://www.fda.gov/industry/prescription-drug-user-fee-amendments/pdufa-vii-assessment-fda-and-sponsor-communications-through-product-quality-information-requests>.

Dated: May 6, 2025.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2025–08208 Filed 5–8–25; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2025–N–0834]

Prescription Drug User Fee Act; Stakeholder Consultation Meetings on the Prescription Drug User Fee Act Reauthorization; Request for Notification of Stakeholder Intention To Participate

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for notification of participation.

SUMMARY: The Food and Drug Administration (FDA or Agency) is issuing this notice to request that public stakeholders—including patient and consumer advocacy groups, healthcare professionals, and scientific and academic experts—notify FDA of their intent to participate in periodic consultation meetings on the reauthorization of the Prescription Drug User Fee Act (PDUFA). The statutory authority for PDUFA expires in September 2027. At that time, new legislation will be required for FDA to continue collecting user fees for the prescription drug program. The Federal Food, Drug, and Cosmetic Act (FD&C Act) requires that FDA consult with a range of stakeholders in developing recommendations for the next PDUFA program. The FD&C Act also requires that FDA hold discussions (at least

every month) with patient and consumer advocacy groups during FDA’s negotiations with the regulated industry. The purpose of this request for notification is to ensure continuity and progress in these monthly discussions by establishing consistent stakeholder representation.

DATES: Submit notification of intention to participate in these series of meetings by August 4, 2025. Stakeholder meetings will be held monthly. It is anticipated that they will commence in September 2025. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: Submit notification of intention to participate in monthly stakeholder meetings by email to PDUFAReauthorization@fda.hhs.gov. The meetings will be held in person at the FDA White Oak campus, 10903 New Hampshire Ave., Silver Spring, MD 20993 and virtually using the Microsoft Teams platform.

FOR FURTHER INFORMATION CONTACT:

Andrew Kish, Center for Drug Evaluation and Research, Food and Drug Administration, 301–796–5215, Andrew.Kish@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is requesting that public stakeholders—including patient and consumer advocacy groups, healthcare professionals, and scientific and academic experts—notify the Agency of their intent to participate in periodic stakeholder consultation meetings on the reauthorization of PDUFA. PDUFA authorizes FDA to collect user fees from the regulated industry for the process for the review of human drugs. The authorization for the current program (PDUFA VII) expires in September 2027. Without new legislation, FDA will no longer be able to collect user fees for future fiscal years to fund the human drug review process.

Section 736B(f)(1) of the FD&C Act (21 U.S.C. 379h–2(f)(1)) requires that FDA consult with a range of stakeholders, including representatives from patient and consumer groups, healthcare professionals, and scientific and academic experts, in developing recommendations for the next PDUFA program. FDA will initiate the reauthorization process by holding a public meeting on July 14, 2025, where stakeholders and other members of the public will be given an opportunity to present their views on the reauthorization. The FD&C Act further requires that FDA continue meeting with these stakeholders at least once every month during negotiations with

the regulated industry to continue discussions of stakeholder views on the reauthorization. It is anticipated that these monthly stakeholder consultation meetings will commence in September 2025.

FDA is issuing this notice to request that stakeholder representatives from patient and consumer groups, healthcare professional associations, as well as scientific and academic experts, notify FDA of their intent to participate in the periodic stakeholder consultation meetings on PDUFA reauthorization. FDA believes that consistent stakeholder representation at these meetings will be important to ensure progress in these discussions. If you wish to participate in the stakeholder consultation meetings, please designate one or more representatives from your organization who will commit to attending these meetings and preparing for the discussions. Stakeholders who identify themselves through this notice will be included in all stakeholder consultation discussions while FDA negotiates with the regulated industry. If a stakeholder decides to participate in these monthly meetings at a later time, that stakeholder may join the remaining monthly stakeholder consultation meetings after notifying FDA of this intention (see **ADDRESSES**). These stakeholder discussions will satisfy the consultation requirement in section 736B(f)(3) of the FD&C Act.

II. Notification of Intent To Participate in Periodic Stakeholder Consultation Meetings

If you intend to participate in continued periodic stakeholder consultation meetings regarding PDUFA reauthorization, please provide notification by email to PDUFAReauthorization@fda.hhs.gov by August 4, 2025. Your email should contain complete contact information, including name, title, affiliation, address, email address, phone number, and notice of any special accommodations required because of disability. Stakeholders will receive confirmation and additional information about the first meeting after FDA receives this notification.

Dated: May 6, 2025.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2025–08209 Filed 5–8–25; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government Owned Inventions Available for Licensing or Collaboration: Single Source-Detector Separation Approach To Calculate Tissue Oxygen Saturation

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institute of Child Health and Human Development (NICHD), an institute of the National Institutes of Health (NIH), Department of Health and Human Services (HHS), is giving notice of the licensing or collaboration opportunities for the inventions listed below, which are owned by an agency of the U.S. Government and are available for licensing and collaboration to achieve expeditious commercialization of results of federally-funded research and development.

FOR FURTHER INFORMATION CONTACT: Inquiries related to these licensing or collaboration opportunities should be directed to: Zarpheen Jinnah, Ph.D., Technology Transfer Manager, NCI, Technology Transfer Center, email: zarpheen.jinnah@nih.gov or phone: 240-620-0586.

SUPPLEMENTARY INFORMATION: Tissue oxygen saturation (StO₂) is an important parameter to assess oxygen delivery and uptake. Hypoxia, a term used to indicate inadequate StO₂, is often seen in patients with cardiac problems, respiratory infections or pulmonary diseases. Prolonged hypoxia can damage vital organs such as the brain, lungs, and heart and can be fatal. Currently available tissue oximeters to monitor StO₂ are expensive and cumbersome. NICHD has developed a novel method, which uses a single source-detector separation to calculate StO₂. With this technique, a simple tissue oximeter can be made with just a LED and a photodetector, which enables the development of a miniaturized device. As a result, it can be used independently or implemented on existing technologies to measure StO₂ without any hardware modifications. It can be applied in wearable devices, implantable medicines or endoscopies to measure tissue oxygenation in different tissues such as muscle, brain, spinal cord, internal organs, fetus and placenta.

This Notice is in accordance with 35 U.S.C. 209 and 37 CFR part 404.

NIH Reference Number: E-037-2023-0.

Product Type: Device.

Therapeutic Area(s): Respiratory, Neurology or Cardiac.

Potential Commercial Applications:

- Miniaturized tissue oximeter for implantation or endoscopy.

- Measure tissue oxygen saturation.

- Multilayer tissue oximeter.

Competitive Advantages:

- Simpler and more compact as it only requires a single light source such as LED and a single photodetector such as a photodetector to build a tissue oximeter.

- Multilayer measurement.
- Implementation with existing technologies without any hardware modifications.

Publication: Nguyen, T., et al. Application of the Single Source—Detector Separation Algorithm in Wearable Neuroimaging Devices: A Step toward Miniaturized Biosensor for Hypoxia Detection. (PMID 38671806).

Patent Status: PCT Application PCT/US2023/085725 filed on December 22, 2023.

Development Stage: Clinical Phase I.

Dated: May 5, 2025.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2025-08178 Filed 5-8-25; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings 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: Center for Scientific Review Special Emphasis Panel; Program Project: National Center for Biomedical Imaging and Bioengineering.

Date: June 2-4, 2025.

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

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Mark Caprara, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7844, Bethesda, MD 20892, 301-613-5228, capraramg@mail.nih.gov.

Name of Committee: Social and Community Influences on Health Integrated Review Group; Psychosocial Development, Risk and Prevention Study Section.

Date: June 5-6, 2025.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Anna L. Riley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, 301-435-2889, rileyann@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Centers on the Demography and Economics of Aging, including Alzheimer's Disease and Alzheimer's Disease-Related Dementias.

Date: June 5-6, 2025.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Janetta Lun, Ph.D., Scientific Review Officer, SRB, National Institute on Aging, National Institutes of Health, 5601 Fishers Lane, Suite 8B, Bethesda, MD 20892, (301) 827-4588, janetta.lun@nih.gov.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Child Psychopathology and Developmental Disabilities Study Section.

Date: June 9-10, 2025.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Robin Lori Thompson, Ph.D., Scientific Review Officer, The Center for Scientific Review, The National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480-4933, robin.thompson@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Health Services Research: Big Data, Health Information Technology and Clinical Informatics.

Date: June 10-11, 2025.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Debasmita Patra, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1006E, Bethesda, MD 20892, (301) 827-5187, debasmita.patra@nih.gov.

Name of Committee: Infectious Diseases and Immunology A Integrated Review Group; Viral Pathogenesis and Immunity Study Section.

Date: June 10–11, 2025.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Neerja Kaushik-Basu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301) 435-1742, kaushikbasun@csr.nih.gov.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neuroscience of Basic Visual Processes Study Section.

Date: June 10–11, 2025.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Kirk Thompson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301-435-1242, kgt@mail.nih.gov.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Biology Development and Disease Study Section.

Date: June 10–11, 2025.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Vanessa Dawn Sherk, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 801C, Bethesda, MD 20892, (301) 594-3218, sherkv2@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 5, 2025.

Sterlyn H Gibson,

Program Specialist, Office of Federal Advisory Committee Policy.

[FR Doc. 2025-08184 Filed 5-8-25; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7106-N-02]

Privacy Act of 1974; System of Records

AGENCY: Government National Mortgage Association, HUD.

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Housing and Urban Development (HUD), Government National Mortgage Association (GNMA) is modifying a system of records, “Ginnie Mae Master Subservicer System” (MSS). This system of records is being revised to make clarifying changes and general updates to the remaining sections to accurately reflect management of the system of records in accordance with the Office of Management and Budget (OMB) Circular A108, Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act.

DATES: Comments will be accepted on or before June 9, 2025. This SORN becomes effective immediately, while the routine uses become effective after the comment period immediately upon publication except for the routine uses, which will become effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number or by one of the following methods:

Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions provided on that site to submit comments electronically. Fax: 202-619-8365.

Email: privacy@hud.gov.

Mail: Attention: Privacy Office; LaDonne White, Chief Privacy Officer; The Executive Secretariat; 451 Seventh Street SW, Room 10139, Washington, DC 20410-0001.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to [http://](http://www.regulations.gov)

www.regulations.gov including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

LaDonne White; 451 Seventh Street SW, Room 10139, Washington, DC 20410-0001; telephone number 202-708-3054 (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>.

SUPPLEMENTARY INFORMATION: HUD is publishing this revised notice to include additional detail relating to Ginnie Mae’s use of the system of records and its data for market liquidity initiatives. Ginnie Mae has made updates to the SORN to ensure that the template is fully compliant with the agency’s requirements. Furthermore, this modification is making clarifying changes within: System Location, System Manager, Record Authority for Maintenance of the System, Purpose of the System, Routine Uses of Records Maintained in the System, Retrieval of Records, and Retention and Disposal of Records, and Ginnie Mae has modified the language of the ‘Routine Use’ section to provide clear and concise information of the use and collection of the data. The modifications to MSS SORN include these changes:

- “System location” has been updated and brings the information current.
- “System Manager” has been updated and brings the information current.
- “Authority for maintenance” has been updated to include the authority for Social Security Number Collection.
- “Purpose” has been updated to reflect current information.
- “Routine Uses of Records Maintained in the System, Including Categories of Uses and Purpose of Such Uses” is updated to include the applicable routine uses.

SYSTEM NAME AND NUMBER:

Ginnie Mae Master Subservicer System (MSS); HUD/GNMA-02.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at their respective Ginnie Mae Master Subservicer.

SYSTEM MANAGER(S):

System Managers are specified in Ginnie Mae's Master Subservicer contract(s): Ms. Adrienne Brown in the Carrington Group, and Ms. Jacqueline Taylor in the Selene Finance, both reside at 425 3rd Street, 5th Floor, Washington, DC 20024-1000.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 306(g), National Housing Act, 12 U.S.C. 1721(g). 42 U.S.C. 3543 Preventing Fraud and Abuse in HUD programs, and under 24 CFR part 200, subpart U and 24 CFR 203.35.

PURPOSES OF THE SYSTEM:

The information is used to perform a wide range of loan servicing and issuing functions. The data is maintained in a comprehensive loan servicing system that processes transactions relating to the servicing of home and project loans on behalf of Ginnie Mae. The primary purpose of this system of records is to capture borrower, loan, and pool-level data associated with defaulted Issuer portfolios. When Ginnie Mae defaults and extinguishes an issuer, one of Ginnie Mae's functions as guarantor of securities is to service the mortgage loans. This system of records serves as a central back-end repository, on Ginnie Mae's behalf, to house borrower, loan origination, and servicing data associated those defaulted issuer portfolios. Additionally, Ginnie Mae intends to leverage the Master Subservicer System to source data required to support market liquidity initiatives related to its defaulted issuer portfolio.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Borrowers and co-borrowers.

CATEGORIES OF RECORDS IN THE SYSTEM:

May include, but not limited to: Borrower's name, Social Security Number, Date of Birth, co-borrowers' name(s), property address, phone number, email address, income and other financial data; the Federal Housing Administration (FHA), Department of Veterans Affairs (VA), Department of Agriculture Rural Housing Service (RHS), or HUD Office of Public and Indian Housing (PIH) loan number.

RECORD SOURCE CATEGORIES:

Records are established using information received from borrowers and from legal instruments related to

borrowers' loans (*i.e.*, mortgages, notes, and deeds).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

- In
- (a) To the U.S. Treasury—for disbursements, adjustments, collection services.
 - (b) To the Internal Revenue Service and to state and local governments—for reporting payments for mortgage interest, for reporting of discharge indebtedness and real estate taxes.
 - (c) To credit bureaus and other entities for credit reporting purposes.
 - (d) To employers to effect wage garnishment.
 - (e) To third party purchasers or potential purchasers in connection with asset sale transactions.
 - (f) To the National Archives and Records Administration, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures and compliance with the Freedom of Information Act (FOIA), and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.
 - (g) To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual to whom the records pertain.
 - (h) To contractors, grantees, experts, consultants, Federal agencies, and non-Federal entities, including, but not limited to, State and local governments and other research institutions or their parties, and entities and their agents with whom HUD has a contract, service agreement, grant, cooperative agreement, or other agreement for the purposes of statistical analysis and research in support of program operations, management, performance monitoring, evaluation, risk management, and policy development, to otherwise support the Department's mission, or for other research and statistical purposes not otherwise prohibited by law or regulation. Records under this routine use may not be used in whole or in part to make decisions that affect the rights, benefits, or privileges of specific individuals. The results of the matched information may not be disclosed in identifiable form.
 - (i) To contractors, grantees, experts, consultants and their agents, or others performing or working under a contract, service, grant, cooperative agreement, or other agreement with HUD, when necessary to accomplish an agency

function related to a system of records. Disclosure requirements are limited to only those data elements considered relevant to accomplishing an agency function.

(j) To contractors, experts, and consultants with whom HUD has a contract, service agreement, or other assignment of the Department, when necessary to utilize relevant data for the purpose of testing new technology and systems designed to enhance program operations and performance.

(k) To appropriate agencies, entities, and persons when: (1) HUD suspects or has confirmed that there has been a breach of the system of records; (2) HUD has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HUD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HUD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(l) To another Federal agency or Federal entity, when HUD determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to suspected or confirmed breach, or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(m) To appropriate Federal, State, local, tribal, or other governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where HUD determines that the information would assist in the enforcement of civil or criminal laws and when such records, either alone or in conjunction with other information, indicate a violation or potential violation of law.

(n) To a court, magistrate, administrative tribunal, or arbitrator in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, mediation, or settlement negotiations, or in connection with criminal law proceedings; when HUD determines that use of such records is relevant and necessary to the litigation and when any

of the following is a party to the litigation or have an interest in such litigation: (1) HUD, or any component thereof; or (2) any HUD employee in his or her official capacity; or (3) any HUD employee in his or her individual capacity where HUD has agreed to represent the employee; or (4) the United States, or any agency thereof, where HUD determines that litigation is likely to affect HUD or any of its components.

(o) To any component of the Department of Justice or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when HUD determines that the use of such records is relevant and necessary to the litigation and when any of the following is a party to the litigation or have an interest in such litigation: (1) HUD, or any component thereof; or (2) any HUD employee in his or her official capacity; or (3) any HUD employee in his or her individual capacity where the Department of Justice or agency conducting the litigation has agreed to represent the employee; or (4) the United States, or any agency thereof, where HUD determines that litigation is likely to affect HUD or any of its components.

In addition to the routine uses described above, HUD provides notice pursuant to 31 U.S.C. 3711(e) that information contained in this system of records may also be disclosed to a consumer reporting agency when trying to collect a claim owed on behalf of the government.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic and paper records.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by mortgagor/borrower name, Social Security Number, loan number, property address.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Temporary. Destroy upon verification of successful creation of the final document or file. Or when no longer needed for business use, whichever is later. In accordance with HUD records disposition schedule 2225.6, Appendix 20. Records are destroyed upon successful creation of the final document or file, or when no longer needed for business use, whichever is later. Backup and recovery digital media will be destroyed or otherwise rendered irrecoverable per NIST SP 800-88 "Guidelines for Media Sanitization." GRS 5.2, Item 20, DAA-GRS2017-0003-0002.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Administrative Safeguards: All users must agree to the systems "Rules of Behavior" which specify handling of personal information and any physical records.

Technical Safeguards: Controls for the system include, but are not limited to, username identification, password protection, multi-factor authentication, firewalls, virtual private network, encryption, and is limited to authorized users.

Physical Safeguards: Controls to secure the data and protect paper records are maintained and locked in file cabinets. The original collateral documents (hard copy) are stored at the contractor's office site for all open loans and the closed documents are stored at a secured offsite document storage facility. All hard copy files are stored within a secured room within the contractor's secured office suite when not in use. Background screening, limited authorizations, and access, with access limited to authorized personnel and technical restraints employed regarding accessing the records, access to automated systems by authorized users by username and passwords.

RECORD ACCESS PROCEDURES:

Individuals requesting records of themselves should address written inquiries to the Department of Housing Urban and Development 451 7th Street SW, Washington, DC 20410-0001. For verification, individuals should provide their full name, current address, and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made under 24 CFR 16.4.

CONTESTING RECORD PROCEDURES:

The HUD rule for contesting the content of any record pertaining to the individual by the individual concerned is published in 24 CFR 16.8 or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals requesting notification of records of themselves should address written inquiries to the Department of Housing Urban Development, 451 7th Street SW, Washington, DC 20410-0001. For verification purposes, individuals should provide their full name, office or organization where assigned, if applicable, and current address and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made under 24 CFR 16.4.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Docket No. FR-5386-N-07, 75 FR 44803, July 29, 2010.

LaDonne L. White,

Chief Privacy Officer, Office of Administration.

[FR Doc. 2025-08135 Filed 5-8-25; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[PO #4820000251; Order #02412-014-004-047181.0]

Filing of Plats of Survey, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management (BLM), Colorado State Office, Lakewood, Colorado, 30-calendar days from the date of this publication. The surveys, which were executed at the request of the BLM and U.S. Army Corps of Engineers, are necessary for the management of these lands.

DATES: You must submit written protests to the BLM Colorado State Office by June 9, 2025. Unless there are protests of this action, the plats described in this notice will be filed on June 9, 2025.

ADDRESSES: You may submit written protests to the BLM Colorado State Office, Cadastral Survey, P.O. Box 151029, Lakewood, CO 80215.

FOR FURTHER INFORMATION CONTACT:

David W. Ginther, Chief Cadastral Surveyor for Colorado, telephone: (970) 826-5064; email: dginther@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. 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 plat, in two sheets, and field notes of the dependent resurvey and survey in Township 33 South, Range 65 West, Sixth Principal Meridian, Colorado, were accepted on January 13, 2025.

The plat and field notes of the dependent resurvey and subdivision of sections 5 and 6 in Township 49 North, Range 1 West, New Mexico Principal

Meridian, Colorado, were accepted on March 24, 2025.

The supplemental plat of the NW1/4 of section 2 in Township 1 South, Range 1 East, Ute Principal Meridian, Colorado, was accepted on March 25, 2025.

A person or party who wishes to protest any of the above surveys must file a written notice of protest within 30-calendar days from the date of this publication at the address listed in the **ADDRESSES** section of this notice. A statement of reasons for the protest may be filed with the notice of protest and must be filed within 30-calendar days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved.

Before including your address, phone number, email address, or other personal identifying information in your protest, please be aware that your entire protest, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 U.S.C. ch. 3)

David W. Ginther,
Chief Cadastral Surveyor.

[FR Doc. 2025-08099 Filed 5-8-25; 8:45 am]

BILLING CODE 4331-16-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1266
(Rescission)]

Certain Wearable Electronic Devices With ECG Functionality and Components Thereof; Notice of Commission Decision To Dismiss the Complaint as Moot, Institute a Rescission Proceeding, and Rescind the Remedial Orders; Termination of the Rescission Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“the Commission”) has determined to dismiss the complaint in the above-captioned investigation as moot. The Commission has also determined to institute a rescission proceeding and to rescind the limited

exclusion order and cease and desist order issued in the investigation. The rescission proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-3042. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 26, 2021, based on a complaint filed by AliveCor, Inc. of Mountain View, California (“AliveCor”). 86 FR 28382 (May 26, 2021). The complaint alleges a violation of section 337 the Tariff Act, as amended, 19 U.S.C. 1337 (“section 337”), by way of the importation, sale for importation, or sale in the United States after importation of certain wearable electronic devices with ECG functionality and components thereof by reason of infringement of one or more claims of U.S. Patent Nos. 10,595,731 (“the ‘731 patent”); 10,638,941 (“the ‘941 patent”); and 9,572,499 (“the ‘499 patent”) (collectively, “the Asserted Patents”). *Id.* The notice of investigation named Apple, Inc. (“Apple”) of Cupertino, California as a respondent. *Id.* The Office of Unfair Import Investigation was also participating in the investigation. *Id.*

On December 22, 2022, the Commission issued a final determination finding a violation of section 337 based on the infringement of certain claims of the ‘941 patent and the ‘731 patent, but no violation based on the ‘499 patent. Accordingly, the Commission issued a limited exclusion order prohibiting further importation of infringing products and a cease and desist order against Apple (collectively, “the remedial orders”). The Commission, however, suspended enforcement of the orders pending final resolution of the Patent Trial and Appeal Board’s (“PTAB”) Final Written Decisions finding the asserted patent claims unpatentable. *See* 35 U.S.C. 318(b); *Apple, Inc. v. AliveCor, Inc.*, IPR2021-00971, Patent 10,595,731,

Final Written Decision Determining All Challenged Claims Unpatentable (Dec. 6, 2022); *Apple, Inc. v. AliveCor, Inc.*, IPR2021-00972, Patent 10,638,941, Final Written Decision Determining All Challenged Claims Unpatentable (Dec. 6, 2022).

AliveCor filed an appeal from the Commission’s final determination with the U.S. Court of Appeals for the Federal Circuit (“the Federal Circuit”), and Apple cross-appealed. The appeal and cross-appeal were docketed on February 15, 2023, and March 3, 2023, respectively, and consolidated under *AliveCor, Inc. v. ITC*, No. 23-1509 (Fed. Cir.) as the lead appeal.

On March 7, 2025, the Federal Circuit affirmed decisions in companion appeals from the PTAB finding all claims of the Asserted Patents unpatentable. *See AliveCor, Inc. v. Apple Inc.*, 130 F.4th 1006 (Fed. Cir. 2025). In view of that ruling, the Federal Circuit found that “the Commission’s investigation [was] moot.” *AliveCor, Inc. v. ITC*, No. 23-1509, 2025 WL 733105 (Fed. Cir. Mar. 7, 2025). Accordingly, the Federal Circuit vacated the Commission’s final determination and remanded with instructions to dismiss the case as moot. *See id.* The Federal Circuit’s mandate issued on April 28, 2025.

As instructed by the Federal Circuit, the Commission has determined to dismiss the complaint as moot. Accordingly, as stated in the Commission Order issued concurrently herewith, the Commission finds that the conditions which led to the issuance of the remedial orders no longer exist, and therefore, a rescission of the remedial orders is warranted under section 337(k) (19 U.S.C. 1337(k)) and Commission Rule 210.76(a) (19 CFR 210.76(a)). The Commission has thus determined to institute a rescission proceeding and to rescind the remedial orders issued in the underlying investigation. The rescission proceeding is terminated.

The Commission’s notice and order were delivered to the Secretary of the Treasury on the day of their issuance.

The Commission’s vote for this determination took place on May 6, 2025.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission’s Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: May 6, 2025.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2025–08196 Filed 5–8–25; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–758 and 731–TA–1739 (Preliminary)]

Fiberglass Door Panels From China

Determinations

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission (“Commission”) determines, pursuant to the Tariff Act of 1930 (“the Act”), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of fiberglass door panels from China, provided for in subheading 3925.20.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (“LTFV”) and imports of the subject merchandise from China that are alleged to be subsidized by the government of China.²

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission’s rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission’s rules, upon notice from the U.S. Department of Commerce (“Commerce”) of affirmative preliminary determinations in the investigations under §§ 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under §§ 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Any other party may file an entry of appearance for the final phase of the investigations after publication of the final phase notice of scheduling. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative

consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations. As provided in section 207.20 of the Commission’s rules, the Director of the Office of Investigations will circulate draft questionnaires for the final phase of the investigations to parties to the investigations, placing copies on the Commission’s Electronic Document Information System (EDIS, <https://edis.usitc.gov>), for comment.

Background

On March 20, 2025, the American Fiberglass Door Coalition, the members of which are Therma-Tru Corporation, Maumee, Ohio, Plastpro Doors Inc., Los Angeles, California, and Owens Corning, Toledo, Ohio, filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of fiberglass door panels from China and LTFV imports of fiberglass door panels from China. Accordingly, effective March 20, 2025, the Commission instituted countervailing duty investigation No. 701–TA–758 and antidumping duty investigation No. 731–TA–1739 (Preliminary).

Notice of the institution of the Commission’s investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 26, 2025 (90 FR 13778). The Commission conducted its conference on April 10, 2025. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to §§ 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on May 5, 2025. The views of the Commission are contained in USITC Publication 5623 (May 2025), entitled *Fiberglass Door Panels from China: Investigation Nos. 701–TA–758 and 731–TA–1739 (Preliminary)*.

By order of the Commission.

Issued: May 5, 2025.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2025–08103 Filed 5–8–25; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Advisory Committee on Appellate Rules; Meeting of the Judicial Conference

AGENCY: Judicial Conference of the United States.

ACTION: Advisory Committee on Appellate Rules; notice of open meeting.

SUMMARY: The Advisory Committee on Appellate Rules will hold an in-person meeting in hybrid format with remote attendance options on October 15, 2025 in Washington, DC. The meeting is open to the public for observation but not participation. Please see the **SUPPLEMENTARY INFORMATION** section in this notice for instructions on observing the meeting.

DATES: October 15, 2025 (meeting date) and October 8, 2025 (registration deadline for in-person observation).

ADDRESSES: An agenda and supporting materials will be posted at least 7 days in advance of the meeting at: <https://www.uscourts.gov/forms-rules/records-rules-committees/agenda-books>.

FOR FURTHER INFORMATION CONTACT:

Carolyn A. Dubay, Chief Counsel, Rules Committee Staff, Administrative Office of the U.S. Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–300, Washington, DC 20544, Phone (202) 502–1820, RulesCommittee_Secretary@ao.uscourts.gov.

SUPPLEMENTARY INFORMATION: To observe the meeting in person, individuals must contact the office listed above by 5 p.m. (eastern time) on October 8, 2025. After this deadline, only remote observation is permitted. Remote registration is available until the meeting date, provided it is completed before the projected end time.

(Authority: 28 U.S.C. 2073.)

Dated: May 6, 2025.

Shelly L. Cox,

Management Analyst, Rules Committee Staff.

[FR Doc. 2025–08215 Filed 5–8–25; 8:45 am]

BILLING CODE 2210–55–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Advisory Committee on Civil Rules; Meeting of the Judicial Conference

AGENCY: Judicial Conference of the United States.

ACTION: Advisory Committee on Civil Rules; notice of open meeting.

SUMMARY: The Advisory Committee on Civil Rules will hold an in-person

¹ The record is defined in § 207.2(f) of the Commission’s Rules of Practice and Procedure (19 CFR 207.2(f)).

² 90 FR 15684 and 15692 (April 15, 2025).

meeting in hybrid format with remote attendance options on October 24, 2025 in Washington, DC. The meeting is open to the public for observation but not participation. Please see the Supplementary Information section in this notice for instructions on observing the meeting.

DATES: October 24, 2025 (meeting date) and October 17, 2025 (registration deadline for in-person observation).

ADDRESSES: An agenda and supporting materials will be posted at least 7 days in advance of the meeting at: <https://www.uscourts.gov/forms-rules/records-rules-committees/agenda-books>.

FOR FURTHER INFORMATION CONTACT: Carolyn A. Dubay, Chief Counsel, Rules Committee Staff, Administrative Office of the U.S. Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7-300, Washington, DC 20544, Phone (202) 502-1820, RulesCommittee_Secretary@ao.uscourts.gov.

SUPPLEMENTARY INFORMATION: To observe the meeting in person, individuals must contact the office listed above by 5 p.m. (eastern time) on October 17, 2025. After this deadline, only remote observation is permitted. Remote registration is available until the meeting date, provided it is completed before the projected end time.

(Authority: 28 U.S.C. 2073.)

Dated: May 6, 2025.

Shelly L. Cox,

Management Analyst, Rules Committee Staff.

[FR Doc. 2025-08217 Filed 5-8-25; 8:45 am]

BILLING CODE 2210-55-P

JUDICIAL CONFERENCE OF THE UNITED STATES

Advisory Committee on Criminal Rules; Meeting of the Judicial Conference

AGENCY: Judicial Conference of the United States.

ACTION: Advisory Committee on Criminal Rules; notice of open meeting.

SUMMARY: The Advisory Committee on Criminal Rules held an in-person meeting in hybrid format with remote attendance options on April 24, 2025 in Washington, DC. The meeting was open to the public for observation but not participation.

DATES: April 24, 2025.

ADDRESSES: The meeting agenda and supporting materials are available at: <https://www.uscourts.gov/forms-rules/records-rules-committees/agenda-books>.

FOR FURTHER INFORMATION CONTACT: Carolyn A. Dubay, Chief Counsel, Rules Committee Staff, Administrative Office of the U.S. Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7-300, Washington, DC 20544, Phone (202) 502-1820, RulesCommittee_Secretary@ao.uscourts.gov.

(Authority: 28 U.S.C. 2073.)

Dated: May 6, 2025.

Shelly L. Cox,

Management Analyst, Rules Committee Staff.

[FR Doc. 2025-08213 Filed 5-8-25; 8:45 am]

BILLING CODE 2210-55-P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Comment Request; Standard Job Corps Contractor Information Gathering; Correction

ACTION: Notice of availability; correction.

SUMMARY: The Department of Labor (DOL) is correcting a notice that appeared in the **Federal Register** on May 2, 2025. Subsequent to publication of the notice, the DOL discovered that the Office of Management and Budget (OMB) Control Number listed in the **SUPPLEMENTARY INFORMATION** section was listed incorrectly. DOL is issuing this correction to provide the correct OMB Control Number.

DATES: This correction is effective on May 9, 2025.

FOR FURTHER INFORMATION CONTACT: Michael Howell by telephone at 202-693-6782, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: In FR Doc. 2025-07672 appearing at 90 FR 18870 in the **Federal Register** of Friday, May 2, 2025, the following correction is made:

1. On page 18870, in the **SUPPLEMENTARY INFORMATION** section, under the section titled OMB Control Number, the OMB Control Number should list, “1219-0219”.

Michael Howell,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2025-08105 Filed 5-8-25; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

[OMB Control No. 1240-0050]

Proposed Extension of Information Collection; Pharmacy Billing Requirement

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance request for comment to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This request helps to ensure that: requested data can be provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents can be properly assessed. Currently, the OWCP is soliciting comments on the information collection for Pharmacy Billing Requirement.

DATES: All comments must be received on or before July 8, 2025.

ADDRESSES: You may submit comment as follows. Please note that late, untimely filed comments will not be considered.

Electronic Submissions: Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments for WCPO-2025-0006. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket, with no changes. Because your comment will be made public, you are 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 your or anyone else's Social Security number or confidential business information.

- If your comment includes confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission.

Written/Paper Submissions: Submit written/paper submissions in the following way:

- *Mail/Hand Delivery:* Mail or visit DOL-OWCP, Office of Workers'

Compensation Programs, U.S. Department of Labor, 200 Constitution Avenue NW, Room S3215, Washington, DC 20210.

• OWCP will post your comment as well as any attachments, except for information submitted and marked as confidential, in the docket at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Anjanette Suggs, Office of Workers' Compensation Programs, at suggs.anjanette@dol.gov (email) or (202) 354-9660 (voice).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) is the agency responsible for administration of the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.*, the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.*, and the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 *et seq.* These statutes require OWCP to pay for appropriate medical and vocational rehabilitation services provided to beneficiaries. In order for OWCP's billing contractor to pay providers of these services with its automated bill processing system, providers must "enroll" with one or more of the OWCP programs that administer the statutes by submitting certain profile information, including identifying information, tax I.D. information, and whether they possess specialty or sub-specialty training. Form OWCP-1168 is used to obtain this information from each provider. This information collection is currently approved for use through September 30, 2025. All three of these statutes require that OWCP pay for covered medical treatment provided to beneficiaries; this medical treatment can include medicinal drugs dispensed by pharmacies. In order to determine whether amounts billed for drugs are appropriate, OWCP must receive the required data elements, including the name of the patient/beneficiary, the National Drug Code (NDC) number of the drugs prescribed, the quantity provided, the prescription number and the date the prescription was filled. The regulations implementing these statutes require the collection of information needed to enable OWCP to determine if bills for drugs submitted directly by pharmacies, or reimbursement requests submitted by claimants, should be paid. There is no standardized paper form for submission of the billing information collected in this Information Collection Request (ICR). Over the past several

years, almost all pharmacy bills submitted to OWCP have been submitted electronically using one of the industry-wide standard formats for the electronic transmission of billing data through nationwide data clearinghouses devised by the National Council for Prescription Drug Programs (NCPDP). None of the electronic billing formats have been designed by or provided by OWCP; they are billing formats commonly accepted by other Federal programs and in the private health insurance industry for drugs. Nonetheless, the three programs (FECA, BLBA and EEOICPA) provide instructions for the submission of necessary pharmacy bill data elements in provider manuals distributed or made available to all pharmacies enrolled in the programs.

II. Desired Focus of Comments

OWCP is soliciting comments concerning the proposed information collection related to the Pharmacy Billing Requirements. OWCP is particularly interested in comments that:

Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;

Evaluate the accuracy of OWCP's estimate of the burden related to the information collection, including the validity of the methodology and assumptions used in the estimate;

Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and

Minimize the burden of the information collection 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.

Documents related to this information collection request are available at <https://regulations.gov> and at DOL-OWCP located at 200 Constitution Avenue NW, Room S-3215, Washington, DC 20210. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This information collection request concerns Pharmacy Billing Requirements. OWCP has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this

information collection request from the previous information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Office of Workers' Compensation Programs.

OMB Number: 1240-0050.

Affected Public: Private Sector.

Number of Respondents: 874,414.

Number of Responses: 874,414.

Annual Burden Hours: 14,481.

Annual Respondent or Recordkeeper Cost: \$0.00.

OWCP Forms: OWCP Form Pharmacy Billing Requirements.

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at <https://www.reginfo.gov>.

Anjanette Suggs,
Certifying Officer.

[FR Doc. 2025-08104 Filed 5-8-25; 8:45 am]

BILLING CODE 4510-CR-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA-2025-023]

National Industrial Security Program Policy Advisory Committee (NISPPAC) Meeting

AGENCY: Information Security Oversight Office (ISOO), National Archives and Records Administration (NARA).

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: We are announcing an upcoming National Industrial Security Program Policy Advisory Committee (NISPPAC) meeting in accordance with the Federal Advisory Committee Act and implementing regulations.

DATES: The meeting will be on May 28, 2025, 10 a.m.-1 p.m. eastern time.

ADDRESSES: This meeting will be a hybrid of virtual and in person in Washington, DC. See **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Heather Harris Pagán, ISOO Program Analyst, by telephone at 202.357.5351 or by email at ISOO@nara.gov. Contact ISOO at ISOO@nara.gov and the NISPPAC at NISPPAC@nara.gov.

SUPPLEMENTARY INFORMATION: This meeting is open to the public in accordance with the Federal Advisory Committee Act (5 U.S.C. app 2) and implementing regulations at 41 CFR

102–3. The Committee will discuss National Industrial Security Program policy matters.

Procedures: Members of the public must register in advance for the virtual meeting through the Event Services link: <https://events.intellor.com/?do=register&t=7&p=511153> if they wish to attend. NISPPAC members, ISOO employees, and speakers should send an email to NISPPAC@nara.gov for the appropriate registration information instead of registering with the above link.

Merrily Harris,

Committee Management Officer.

[FR Doc. 2025–08127 Filed 5–8–25; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2025–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks May 12, 19, 26, and June 2, 9, 16, 2025. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: <https://www.nrc.gov/public-involve/public-meetings/schedule.html>.

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at Anne.Silk@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at Betty.Thweatt@nrc.gov or Samantha.Miklaszewski@nrc.gov.

MATTERS TO BE CONSIDERED:

Week of May 12, 2025

Tuesday, May 13, 2025

9:00 a.m. Strategic Programmatic Overview of the Fuel Facilities and the Spent Fuel Storage and

Transportation Business Lines (Public Meeting) (Contact: Haile Lindsay: 301–415–0616)

Additional Information: The meeting will be held in the Commissioners' Hearing Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—<https://video.nrc.gov/>.

Week of May 19, 2025—Tentative

There are no meetings scheduled for the week of May 19, 2025.

Week of May 26, 2025—Tentative

There are no meetings scheduled for the week of May 26, 2025.

Week of June 2, 2025—Tentative

Friday, June 6, 2025

10:00 a.m. Meeting with the Advisory Committee on Reactor Safeguards (Public Meeting) (Contact: Rob Krsek: 301–415–1766)

Additional Information: The meeting will be held in the Commissioners' Hearing Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—<https://video.nrc.gov/>.

Week of June 9, 2025—Tentative

There are no meetings scheduled for the week of June 9, 2025.

Week of June 16, 2025—Tentative

Tuesday, June 17, 2025

10:00 a.m. Briefing on Human Capital and Equal Employment Opportunity (Public Meeting) (Contact: Erin Deeds: 301–415–2887)

Additional Information: The meeting will be held in the Commissioners' Hearing Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—<https://video.nrc.gov/>.

CONTACT PERSON FOR MORE INFORMATION:

For more information or to verify the status of meetings, contact Chris Markley at 301–415–6293 or via email at Christopher.Markley@nrc.gov.

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: May 7, 2025.

For the Nuclear Regulatory Commission.

Christopher Markley,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2025–08252 Filed 5–7–25; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 99902117; NRC–2025–0079]

Long Mott Energy, LLC.; Long Mott Generating Station; Construction Permit Application

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; receipt.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is providing public notice each week for four consecutive weeks of receipt and availability of an application from Long Mott Energy, LLC. for a construction permit for a four-unit reactor facility. The application for the construction permit was received on March 31, 2025.

DATES: May 9, 2025.

ADDRESSES: Please refer to Docket ID NRC–2025–0079 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–2025–0079. Address questions about Docket IDs in [Regulations.gov](https://www.regulations.gov) to Bridget Curran; telephone: 301–415–1003; email: Bridget.Curran@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. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- **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:

Adrian Muñiz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-4093; email: Adrian.Muñiz@nrc.gov.

SUPPLEMENTARY INFORMATION: On March 31, 2025, Long Mott Energy, LLC., a wholly owned subsidiary of the Dow Chemical Company, filed an application for a construction permit for a four-unit power reactor facility to be located in Calhoun County, Texas, pursuant to section 103 of the Atomic Energy Act, as amended, and part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), “Domestic Licensing of Production and Utilization Facilities.” The four-unit facility is to be identified as Long Mott Generating Station and would be based on the X-energy Xe-100, high-temperature gas-cooled reactor design. This would be the first application to include this design for NRC review.

The application is available in ADAMS under Package Accession No. ML25090A057. The information submitted by the applicant includes, among other things, the transmittal letter (ADAMS Accession No. ML25090A058), the preliminary safety analysis report (ADAMS Accession No. ML25090A061), the environmental report (ADAMS Accession No. ML25090A063), and certain financial qualification information (ADAMS Accession No. ML25090A059). These notices are being provided in accordance with the requirements in 10 CFR 50.43(a)(3).

The NRC staff is currently undertaking its acceptance review of the application. If the application is accepted for docketing, a subsequent **Federal Register** notice will be issued that addresses the acceptability of the construction permit application for docketing and provisions for participation of the public in the permitting process.

Dated: April 29, 2025.

For the Nuclear Regulatory Commission.

Adrian Muñiz Gonzalez,

Senior Project Manager, Advanced Reactor Licensing Branch 2, Division of Advanced Reactors and Non-Power Production and Utilization Facilities, Office of Nuclear Reactor Regulation.

[FR Doc. 2025-07728 Filed 5-8-25; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-440; NRC-2023-0136]

Vistra Operations Company, LLC.; Perry Nuclear Power Plant, Unit 1; Final Environmental Impact Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has published a final Environmental Impact Statement (EIS), issued as NUREG-1437, Supplement 61, Second Renewal, “Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Subsequent License Renewal for Perry Nuclear Power Plant, Unit 1, Final Report.” This EIS evaluates the environmental impacts of license renewal of Facility Operating License No. NPF-58 for an additional 20 years of operation for Perry Nuclear Power Plant (Perry Plant), Unit 1. Perry Plant is located approximately 35 miles northeast of Cleveland, OH. Alternatives to the proposed action of subsequent license renewal for Perry Plant include the no-action alternative and reasonable replacement power alternatives.

DATES: NUREG-1437, Supplement 61, Second Renewal, is available as of April 30, 2025.

ADDRESSES: Please refer to Docket ID NRC-2023-0136 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2023-0136. Address questions about Docket IDs in *Regulations.gov* to Bridget Curran; telephone: 301-415-1003; email: Bridget.Curran@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 access 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. NUREG-1437, Supplement 61, Second Renewal, is available in ADAMS under Accession No. ML25113A032.

- *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.

- *Public Library:* A copy of the final EIS, NUREG-1437, Supplement 61, Second Renewal, regarding the proposed subsequent renewal of Renewed Facility Operating License No. NPF-58 for an additional 20 years of operation for Perry Plant, will be available for public review at the Perry Public Library, 3753 Main St., Perry, OH 44081.

FOR FURTHER INFORMATION CONTACT:

Lance Rakovan, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2589; email: Lance.Rakovan@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 51.118 of title 10 of the *Code of Federal Regulations* (10 CFR), “Final environmental impact statement—notice of availability,” the NRC is making available for public inspection NUREG-1437, Supplement 61, Second Renewal, regarding the subsequent license renewal of Vistra Operations Company, LLC.; (Vistra), renewed Facility Operating License No. NPF-58 for an additional 20 years of operation for Perry Plant. A notice of availability of the draft EIS (NUREG-1437, Supplement 61, Second Renewal, Draft for Comment) was published in the **Federal Register** on September 6, 2024 (89 FR 72901). The U.S. Environmental Protection Agency (EPA) issued its Notice of Availability on September 6, 2024 (89 FR 72841). The public comment period on the draft EIS ended on October 21, 2024, and the comments received on the draft EIS are addressed in the final EIS (NUREG-1437, Supplement 61, Second Renewal, Final Report).

II. Discussion

The draft EIS (NUREG-1437, Supplement 61, Second Renewal, Draft for Comment) was issued for public comment on September 6, 2024. The final EIS (NUREG-1437, Supplement 61, Second Renewal, Final Report) addresses the comments received on the draft EIS. As discussed in Chapter 4 of the final EIS, the NRC staff has

determined that the adverse environmental impacts of license renewal for Perry Plant (*i.e.*, the continued operation of Perry Plant for a period of 20 years beyond the expiration date of the initial license) are not so great that preserving the option of license renewal for energy-planning decision-makers would be unreasonable. This recommendation is based on: (1) information provided in the environmental report, as supplemented, and other documents submitted by Vistra; (2) consultation with Federal, State, Tribal, and local governmental agencies; (3) the NRC staff's independent environmental review; and (4) consideration of public comments received during the scoping process and on the draft EIS (NUREG-1437, Supplement 61, Second Renewal, Draft for Comment).

Dated: May 6, 2025.

For the Nuclear Regulatory Commission.

John Moses, Deputy Director,

Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2025-08192 Filed 5-8-25; 8:45 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2025-1353 and K2025-1353; MC2025-1354 and K2025-1354; MC2025-1355 and K2025-1355]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 13, 2025.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <https://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

- II. Public Proceeding(s)
- III. Summary Proceeding(s)

I. Introduction

Pursuant to 39 CFR 3041.405, the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to Competitive negotiated service agreement(s). The request(s) may propose the addition of a negotiated service agreement from the Competitive product list or the modification of an existing product currently appearing on the Competitive product list.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

Section II identifies the docket number(s) associated with each Postal Service request, if any, that will be reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each such request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 and 39 CFR 3000.114 (Public Representative). The Public Representative does not represent any individual person, entity or particular point of view, and, when Commission attorneys are appointed, no attorney-client relationship is established. Section II also establishes comment deadline(s) pertaining to each such request.

The Commission invites comments on whether the Postal Service's request(s) identified in Section II, if any, are consistent with the policies of title 39. Applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3041. Comment deadline(s) for each such request, if any, appear in Section II.

Section III identifies the docket number(s) associated with each Postal Service request, if any, to add a standardized distinct product to the Competitive product list or to amend a standardized distinct product, the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. Standardized distinct products are

negotiated service agreements that are variations of one or more Competitive products, and for which financial models, minimum rates, and classification criteria have undergone advance Commission review. *See* 39 CFR 3041.110(n); 39 CFR 3041.205(a). Such requests are reviewed in summary proceedings pursuant to 39 CFR 3041.325(c)(2) and 39 CFR 3041.505(f)(1). Pursuant to 39 CFR 3041.405(c)-(d), the Commission does not appoint a Public Representative or request public comment in proceedings to review such requests.

II. Public Proceeding(s)

1. *Docket No(s).*: MC2025-1353 and K2025-1353; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 728 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 5, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Kenneth Moeller; *Comments Due:* May 13, 2025.

2. *Docket No(s).*: MC2025-1354 and K2025-1354; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 729 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 5, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Samuel Robinson; *Comments Due:* May 13, 2025.

3. *Docket No(s).*: MC2025-1355 and K2025-1355; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 730 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 5, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Almaroof Agoro; *Comments Due:* May 13, 2025.

III. Summary Proceeding(s)

None. *See* Section II for public proceedings.

This Notice will be published in the **Federal Register**.

Jennie L. Jbara,

Primary Certifying Official.

[FR Doc. 2025-08186 Filed 5-8-25; 8:45 am]

BILLING CODE 7710-FW-P

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service.

¹ See Docket No. RM2018-3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19-22 (Order No. 4679).

ACTION: Notice of modified system of records.

SUMMARY: The United States Postal Service (USPS) is proposing to revise a Customer Privacy Act System of Records (SOR), in order to enhance the flexibility needed to support ongoing administrative and compliance activities for the Bank Secrecy Act (BSA), Anti-Money Laundering (AML) and Office of Foreign Assets Control (OFAC) requirements and standards, as determined by the Financial Crimes Enforcement Network (FinCEN).

DATES: These revisions will become effective without further notice on June 9, 2025, unless responses 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, via USPSPrivacyFedRegNotice@usps.gov and by phone at 202–268–2000.

SUPPLEMENTARY INFORMATION: 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 has determined that Customer Privacy Act System of Records, USPS SOR 860.000, Financial Transactions, should be revised to promote transparency and support ongoing administrative and compliance activities to meet BSA, AML and OFAC requirements and standards.

I. Background

The Postal Service is defined as a money services business (MSB) under the BSA as it is a provider of money orders, gift cards, and limited check cashing services to customers throughout the United States. Moreover, the Postal Service is the only entity specifically mentioned in the BSA as being covered by the BSA and therefore, has a legal mandate to detect and deter suspicious activities. In addition, the Postal Service must train those who sell postal financial instruments, products, or services and those who supervise them, along with meeting federal

recordkeeping and reporting requirements and standards.

II. Rationale for Changes to USPS Privacy Act Systems of Records

Transactional limits and thresholds that trigger compliance and reporting activities are determined by FinCEN, a bureau of the U.S. Department of the Treasury. USPS SOR 860.000, Financial Transactions is being modified to increase flexibility to meet changing requirements and standards.

III. Description of the Modified System of Records

The Postal Service is proposing modifications to USPS SOR 860.000, Financial Transactions, as summarized below:

Updated PURPOSES #1 and #2 to include financial instruments.

- Updated PURPOSE #3 to include the BSA, AML and OFAC compliance and reporting standards.
- Updated PURPOSE #4 to include the reporting of potential fraud, crime, or violation of law or regulation.
- Updated PURPOSE #5 to include crime, and violations of law or regulation.

• Updated CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM #2 to include financial instruments, products, and services.

• Updated CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM #4 to be more comprehensive and consistent with other sections of the SOR.

• Updated CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM #1, #2, #3 and #5 to delete fund transfers, international wire transfers, and fixed dollar amounts.

• Updated CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM #5 to further define beneficiaries.

• Updated CATEGORIES OF RECORDS IN THE SYSTEM #8 d. and g. and #9 to delete fixed dollar amounts and Sure Money™/Dinero Seguro.

• Added CATEGORIES OF RECORDS IN THE SYSTEM #10.

• Updated RECORD SOURCE CATEGORIES add beneficiaries.

• Updated Special Routine Use a. for consistency.

• Updated POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS to delete for funds transfers, transaction records are retained 3 years.

• Deleted funds transfers from NOTIFICATION PROCEDURES.

• Updated NOTIFICATION PROCEDURES to include and claims related to other financial instruments, products, or services.

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 has been sent to Congress and to the Office of Management and Budget (OMB) for their evaluations. The Postal Service does not expect this amended system of records to have any adverse effect on individual privacy rights. USPS SOR 860.000, Financial Transactions is displayed below in its entirety:

SYSTEM NAME AND NUMBER:

USPS 860.000 Financial Transactions.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

USPS Headquarters; Integrated Business Solutions Services Centers; Accounting Service Centers; Bank Secrecy Act (BSA) Anti-Money Laundering (AML) Compliance group; and contractor sites.

SYSTEM MANAGER(S):

Chief Financial Officer and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, and 404; 31 U.S.C. 5311 et seq., and 7701.

PURPOSE(S) OF THE SYSTEM:

1. To provide financial instruments, products, and services.
2. To respond to inquiries and claims related to financial instruments, products, and services.
3. To fulfill compliance and reporting standards found in statutes, regulations and guidance under the BSA, AML and Office of Foreign Assets Control (OFAC).
4. To report potential fraud, crime, or violation of law or regulation and to support investigations related to law enforcement for financial transactions.
5. To provide additional verification procedures to combat fraud, crime, and violations of law or regulation in financial transactions.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Customers who use online payment services.
2. Customers who file claims or make inquiries related to online payment services, money orders, stored-value cards, and financial instruments, products, and services.
3. Customers who purchase financial instruments, products, or services including money orders and gift cards.

4. Customers who purchase or redeem money orders, stored value cards, financial instruments, products, or services in a manner raising the possibility of a violation of law or regulation or deemed suspicious expressly including under BSA, AML, or OFAC statutes, regulations, or guidance.

5. Beneficiaries who cash or redeem financial instruments, products, or services.

6. Specially Designated Nationals and Blocked Persons List (SDNs) as defined and mandated by the OFAC.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. *Customer information*: Name, customer ID(s), mail and email address, telephone number, occupation, type of business, Employer Identification Number (EIN), and customer history.

2. *Identity verification information*: Date of birth, username and/or ID, password, Social Security Number (SSN) or tax ID number, and driver's license number (or other type of ID if driver's license is not available, such as Alien Registration Number, Passport Number, Military ID, Tax ID Number). (Note: For online payment services, SSNs are collected, but not retained, in order to verify ID.)

3. *Billers registered for online payment services*: Biller name and contact information, bill detail, and bill summaries.

4. *Transaction information*: Name, address, and phone number of purchaser, payee, and biller; amount, date, and location; credit and/or debit card number, type, and expiration; sales, refunds, and fees; type of service selected and status; sender and recipient bank account and routing number; bill detail and summaries; transaction number, serial number, and/or reference number or other identifying number, pay out agent name and address; type of payment, currency, and exchange rate; Post Office information such as location, phone number, and terminal; employee ID numbers, license number and state, and employee comments.

5. *Information to determine credit-worthiness*: Period at current residence, previous address, and period of time with same phone number.

6. *Information related to claims and inquiries*: Name, address, phone number, signature, SSN, location where product was purchased, date of issue, amount, serial number, and claim number.

7. *Online user information*: Internet Protocol (IP) address, domain name, operating system version, browser version, date and time of connection, and geographic location.

8. Funds Transaction Report (FTR) Postal Service (PS) Form 8105-A:

a. *Type of Transaction (completed by customer)*: on behalf of self, on behalf of another individual, on behalf of a business/organization, law enforcement agent or government representative on behalf of an agency, private courier on behalf of individual, private courier on behalf of a business/organization, armored car service on behalf of a business/individual.

b. *Customer Information (completed by customer)*: last name/first name, address (number, street, box, suite/apt no.), city, state, ZIP Code, country, date of birth (MM/DD/YYYY), SSN, telephone number (include area code); Photo ID: driver's license no. (U.S. only—must indicate state), resident alien/permanent resident ID no., other ID (U.S./state government-issued IDs, including tribal, and Mexican matricular consular), state ID no. (U.S. only—must indicate state), military ID no. (U.S. only), passport no. (must indicate country); Describe other ID: ID number, issuing state, issuing country (passport), occupation (be as specific as possible); (Completed by Postal Service employee): round date stamp.

c. *Other Person/Business/ Organization on Whose Behalf Transaction Is Being Conducted (completed by customer)*: last name/first name or business name or organization name (no acronyms), SSN or employer ID number (EIN), North American Industry Classification System (NAICS) (if business), type of business/organization/occupation, address (number, street, box, suite/apt no.), city, state, ZIP Code, country, date of birth (MM/DD/YYYY), telephone number (include area code), ID type, ID number, issuing state;

d. *Completed by Postal Service Employee*: type of transaction (check one)—amount purchased or amount redeemed/cashed, total face value (excluding fee), transaction date (MM/DD/YYYY), beginning serial no. thru ending serial no. money order ranges 1–2, number of money orders sold, number of money orders redeemed/cashed, number of gift cards sold (provide numbers in section on back of form), signature of USPS employee, Post Office, ZIP Code;

e. *Law Enforcement Agent of Government Representative on Behalf of an Agency (completed by customer)*: last name/first name, date of birth (MM/DD/YYYY), work telephone number (include area code), law enforcement agent/government representative photo ID number (if photo ID does not have a number please use agent/representative driver's license number), type of ID: law

enforcement ID, government representative ID, driver's license number (must note state if using driver's license), state, agency name (no acronyms), address (number, street, box, suite/apt. no.), city, state, ZIP Code, occupation, agency Employer Identification Number (EIN), NAICS;

f. *Armored Car Service Information (completed by customer)*: armored car business name (no acronyms), EIN, telephone number (include area code), address (number, street, box, suite/apt no.), city, state, ZIP Code; and

g. *Completed by Postal Service Employee (Continued)*: type of transaction (check one)—amount purchased or amount redeemed/cashed additional transaction numbers for money orders and gift cards—beginning serial no. thru ending serial no. money order ranges 3–6, and gift card numbers 1–4.

9. *Suspicious Transaction Report (STR) PS Form 8105-B (completed by Postal Service employee)*: activity type—purchased, redeemed/cashed, other (describe in comments section), begin serial no. thru end serial no. money order ranges 1–3, transaction amount, transaction date, transaction time, recorded by camera, check box if a debit/credit card was used in the transaction (do not include any information from the debit/credit card on this form), description of customer(s) 1–4—sex (M/F), approximate age, height, weight, ethnicity, round date stamp, Post Office, ZIP Code, comments (check all that apply), vehicle description (if available)—make, type, color, license number, license state, comments, money order ranges 4–5, gift cards 1–2, business name/customer last name, first name, address (number, street, box, suite/apt. no.), city, state, ZIP Code, country, type of business, date of birth (MM/DD/YYYY), SSN, driver's license no., state, other ID no., type of other ID, mailpiece information (if available)—mailpiece number, mailpiece type, additional comments.

10. Completed Suspicious Activity Reports, Currency Transaction Reports, and currency transaction records under the BSA and supporting documentation and records.

RECORD SOURCE CATEGORIES:

Customers, recipients, beneficiaries, financial institutions, and USPS employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Standard routine uses 1. through 7., 10., and 11. apply. In addition; a. Legally required or permitted

disclosures to agencies for law enforcement purposes include disclosures of information relating to money orders, stored-value cards, financial instruments, products, and services as required or permitted by BSA, OFAC and anti-money laundering statutes, regulations and requirements.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Automated database, computer storage media, microfiche, and paper.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

For online payment, information is retrieved by customer name, customer ID(s), transaction number, or address.

Claim information is retrieved by name of purchaser or payee, claim number, serial number, transaction number, check number, customer ID(s), or ZIP Code.

Information related to BSA, OFAC and AML is retrieved by customer name; SSN; alien registration, passport, or driver's license number; serial number; transaction number; ZIP Code; transaction date; data entry operator number; and employee comments, and individuals that appear on the Specially Designated Nationals and Blocked Persons List (SDNs) as defined and mandated by the OFAC.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

1. Summary records, including bill due date, bill amount, biller information, biller representation of account number, and the various status indicators, are retained 2 years from the date of processing.

2. Records related to claims are retained up to 3 years from date of final action on the claim.

3. Forms related to fulfillment of BSA, anti-money laundering requirements are retained for a 5-year and one-month period.

4. Related automated records are retained the same 5-year and one-month period and purged from the system quarterly after the date of creation.

5. Enrollment records related to online payment services are retained 7 years after the subscriber's account ceases to be active or the service is cancelled.

6. Account banking records, including payment history, Demand Deposit Account (DDA) number, and routing number, are retained 7 years from the date of processing.

7. Online user information may be retained for 6 months.

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. Online data transmissions are protected by encryption.

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 below and Record Access Procedures above.

NOTIFICATION PROCEDURES:

For online payment services, and stored-value cards, individuals wanting to know if information about them is maintained in this system must address inquiries in writing to the Chief Marketing Officer and Executive Vice President. Inquiries must contain name, address, and other identifying information.

For money order claims and claims related to other financial instruments, products, or services, or BSA, OFAC and anti-money laundering documentation, inquiries should be addressed to the Chief Financial Officer and Executive Vice President. Inquiries must include name, address, or other identifying information of the purchaser (such as driver's license, Alien Registration Number, Passport Number, etc.), and serial or transaction number. Information collected for anti-money laundering purposes will only be provided in accordance with Federal BSA, OFAC, anti-money laundering laws, regulations and requirements.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Systems Exempted From Certain Provisions of the Act: USPS has established regulations at 39 CFR 266.9 that exempt information contained in this system of records from various provisions of the Privacy Act in order to conform to the prohibition in the Bank Secrecy Act, 31 U.S.C. 5318(g)(2), against notification of the individual that a suspicious transaction has been reported.

HISTORY:

July 26, 2024, 89 FR 60666, January 4, 2023, 88 FR 374, December 15, 2021, 86 FR 71294; May 8, 2008, 73 FR 26155; April 29, 2005, 70 FR 22516.

Helen E. Vecchione,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2025–08214 Filed 5–8–25; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102993; File No. SR–DTC–2025–008]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Capital Policy and the Capital Replenishment Plan

May 5, 2025.

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 April 25, 2025, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act ³ and Rule 19b–4(f)(3) thereunder. ⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to (i) the Clearing Agency Policy on Capital Requirements (“Capital Policy” or “Policy”) of DTC and its affiliates, National Securities

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b–4(f)(3).

Clearing Corporation (“NSCC”) and Fixed Income Clearing Corporation (“FICC,” and together with DTC and NSCC, the “Clearing Agencies”); and (ii) the Clearing Agency Capital Replenishment Plan (“Capital Replenishment Plan” or “Plan”) of the Clearing Agencies. In particular, the proposed revisions to the Capital Policy and Capital Replenishment Plan would (1) make technical revisions to update, simplify, and clarify statements in the Policy and Plan; and (2) update the Plan to document alternate authorizations in case an authorizing officer is not available.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Clearing Agencies are proposing to revise the Capital Policy and Capital Replenishment Plan, which were adopted by the Clearing Agencies in July 2017⁵ and are maintained by the Clearing Agencies in compliance with Rule 17ad–22(e)(15) under the Act⁶

Overview of the Capital Policy and Capital Replenishment Plan

The Capital Policy sets forth the manner in which each Clearing Agency identifies, monitors, and manages its general business risk with respect to the requirement to hold sufficient liquid net assets (“LNA”) funded by equity to cover potential general business losses so the Clearing Agency can continue operations and services as a going concern if such losses materialize.⁷ The amount of LNA funded by equity to be held by each of the Clearing Agencies for this purpose is defined in the Policy as the General Business Risk Capital Requirement. The Policy provides that

the General Business Risk Requirement is calculated for each Clearing Agency as the greatest of three separate calculations—(1) an amount based on that Clearing Agency’s general business risk profile (“Risk-Based Capital Requirement”), (2) an amount based on the time estimated to execute a recovery or orderly wind-down of the critical operations of that Clearing Agency (“Recovery/Wind-down Capital Requirement”), and (3) an amount based on an analysis of that Clearing Agency’s estimated operating expenses for a six-month period (“Operating Expense Capital Requirement”). On an annual basis, each of these three capital requirements are measured, and the General Business Risk Capital Requirement for each Clearing Agency are determined as the greatest of these calculations.

Currently, the Capital Policy also addresses how each Clearing Agency maintains a portion of retained earnings as LNA funded by equity as its Corporate Contribution, as a part of its management of credit risk⁸ and pursuant to its respective rules.⁹ These resources are maintained to address losses due to a participant default, and are held in addition to the LNA funded by equity held by each of the Clearing Agencies as its General Business Risk Capital Requirement. The Capital Policy describes how each Clearing Agency’s General Business Risk Capital Requirement and Corporate Contribution fit within the Clearing Agencies’ Capital Framework, where the Total Capital Requirement of each Clearing Agency is calculated as the sum of its General Business Risk Capital Requirement and Corporate Contribution.

The Policy also provides a plan for the replenishment of capital through the Capital Replenishment Plan. The Capital Replenishment Plan was adopted by the Clearing Agencies as a plan for the replenishment of capital by each Clearing Agency should its equity fall close to or below the amount being held as its Total Capital Requirement

pursuant to the Capital Policy. The Capital Replenishment Plan identifies the circumstances that would trigger implementation of the Plan; the roles, responsibilities, and guiding principles for implementation of the Plan; and an overview and description of each of the tools that may be used to replenish capital.

Proposed Revisions to the Capital Policy and Capital Replenishment Plan

As described in greater detail herein, the Clearing Agencies are proposing to make certain revisions to the Capital Policy and Capital Replenishment Plan. First, the proposal would make technical revisions to update, simplify, and clarify statements in the Policy and Plan. Second, the proposed revisions would update the Plan to document alternate authorizations in case an authorizing officer is not available. These proposed revisions are designed to enhance the clarity of the Policy and Plan and help ensure that they continue to operate as intended.

1. Technical Revisions

The Clearing Agencies are proposing technical revisions to the descriptions within the Capital Policy and Capital Replenishment Plan that would update, simplify, and clarify statements, including, for example, removing in the Policy the unnecessary reference to the Plan as an Addendum to the Policy, rephrasing certain sentences for clarity without changing the meaning, and relocating language from one sentence or section to another.

Such revisions would also update the documents. For example, in the Policy, the proposed changes would more accurately refer to the Policy as a policy instead of a framework, and refer to the senior most management committee, which reflects the term now used by the Clearing Agencies to refer to the highest-level committee of the Clearing Agencies. In the Plan, these revisions would include removing references to credit risk from the risk scenarios that may trigger the Plan to reflect the Clearing Agencies’ current rules and procedures allowing the Corporate Contribution to be used for both participant default as well as non-participant default losses.

2. Alternate Authorizations

Section 3.2 of the Plan describes the role and responsibilities of the Treasury group (“Treasury”) in the implementation of the Plan in the event the Plan is triggered pursuant to the Policy. This section lists the steps to be taken by Treasury in implementing the plan as well as the relevant internal

⁵ See Securities Exchange Act Release No. 81105 (July 7, 2017), 82 FR 32399 (July 13, 2017) (SR–DTC–2017–003, SR–FICC–2017–007, SR–NSCC–2017–004).

⁶ 17 CFR 240.17ad–22(e)(15).

⁷ *Id.*

⁸ LNA funded by equity held as the Clearing Agencies’ Corporate Contribution is held in addition to resources held by the Clearing Agencies for credit risk in compliance with Rule 17ad–22(e)(4) under the Act and in addition to resources held by the Clearing Agencies for liquidity risk in compliance with Rule 17ad–22(e)(7). 17 CFR 240.17ad–22(e)(4), (7).

⁹ The Rules, By-laws and Organization Certificate of DTC (“DTC Rules”), the Rulebook of the Government Securities Division of FICC (“GSD Rules”), the Clearing Rules of the Mortgage-Backed Securities Division of FICC (“MBSD Rules”), or the Rules & Procedures of NSCC (“NSCC Rules,” and together with the DTC Rules, GSD Rules and MBSD Rules, the “Clearing Agencies’ Rules”), available at www.dtcc.com/legal/rules-and-procedures.

parties within Treasury tasked with providing any required authorizations. The proposed changes would provide alternate stakeholders that may provide any required authorizations in the absence of those already outlined in the steps referenced above. This change would allow for business continuity and timely implementation of the plan in the absence of any specific authorizing party.

2. Statutory Basis

The Clearing Agencies believe that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, the Clearing Agencies believe that the proposed changes to the Capital Policy and Capital Replenishment Plan are both consistent with Section 17A(b)(3)(F) of the Act¹⁰ and Rule 17ad-22(e)(15) under the Act,¹¹ for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of the Clearing Agencies be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to assure the safeguarding of securities and funds which are in the custody or control of the Clearing Agency or for which it is responsible.¹² Together, the Capital Policy and Capital Replenishment Plan are designed to ensure that each of the Clearing Agencies hold sufficient LNA funded by equity to cover potential general business losses so that it can continue the prompt and accurate clearance and settlement of securities transactions, and can continue to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible if those losses materialize. By making technical revisions to update, simplify, and clarify statements in the Policy and Plan, and updating the Plan to document alternate authorizing parties, the proposed revisions would allow the Clearing Agencies to maintain these documents to operate in the way they were intended. Therefore, such proposed revisions would be consistent with the requirements of Section 17A(b)(3)(F) of the Act.¹³

Rule 17ad-22(e)(15) under the Act requires, in part, that the Clearing Agencies establish, implement, maintain and enforce written policies and procedures reasonably designed to

identify, monitor, and manage their respective general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that the Clearing Agencies can continue operations and services as a going concern if those losses materialize.¹⁴ As originally implemented, the Capital Policy and Capital Replenishment Plan were designed to meet the requirements of Rule 17ad-22(e)(15).¹⁵ As stated above, the proposal would make technical revisions to update, simplify, and clarify statements in the Policy and Plan, and would update the Plan to document alternate authorizing parties. In this way, the proposed changes would allow the Clearing Agencies to maintain these documents in a way that meets these requirements. Therefore, such proposed revisions would be consistent with the requirements of Rule 17ad-22(e)(15) under the Act.¹⁶

(B) Clearing Agency's Statement on Burden on Competition

The Clearing Agencies believe that the proposed revisions to the Capital Policy and the Capital Replenishment Plan would not have any impact, or impose any burden, on competition. The Policy and the Plan are maintained by the Clearing Agencies in order to satisfy their regulatory requirements and generally reflect internal tools and procedures. Tools and procedures that have a direct impact on the rights, responsibilities or obligations of members or participants of the Clearing Agencies are reflected in the Clearing Agencies' Rules. Accordingly, the Capital Policy and Capital Replenishment Plan themselves are documents that enhance the Clearing Agencies' regulatory compliance and internal management and do not have any impact, or impose any burden, on competition.

The proposed revisions to update the Capital Policy and Capital Replenishment Plan would not effect any changes on the fundamental purpose or operation of these documents and, as such, would also not have any impact, or impose any burden, on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Clearing Agencies have not received or solicited any written comments relating to this proposed rule

change. If any written comments are received, the Clearing Agencies will amend their respective filings to publicly file such comments as an Exhibit 2 to the filing, as required by Form 19b-4 and the General Instructions thereto.

Persons submitting written comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b-4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on How to Submit Comments, available at www.sec.gov/regulatory-actions/how-to-submit-comments. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at tradingandmarkets@sec.gov or 202-551-5777.

The Clearing Agencies reserve the right to not respond to any comments received.

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)¹⁷ of the Act and paragraph (f)¹⁸ of Rule 19b-4 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

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

¹¹ 17 CFR 240.17ad-22(e)(15).

¹² 15 U.S.C. 78q-1(b)(3)(F).

¹³ *Id.*

¹⁴ 17 CFR 240.17ad-22(e)(15).

¹⁵ See *supra* note 5.

¹⁶ 17 CFR 240.17ad-22(e)(15).

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f).

• Send an email to rule-comments@sec.gov. Please include File Number SR–DTC–2025–008 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–DTC–2025–008. 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 DTC and on DTCC's website (www.dtcc.com/legal/sec-rule-filings). 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–DTC–2025–008 and should be submitted on or before May 30, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2025–08117 Filed 5–8–25; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102991; File No. SR–CboeBZX–2025–059]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change Related to the 2x Long VIX Futures ETF (“UVIX”) and the –1x Short VIX Futures ETF (“SVIX”)

May 5, 2025.

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 March 21, 2025, Cboe BZX Exchange, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“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 BZX Exchange, Inc. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change related to the 2x Long VIX Futures ETF (“UVIX”) and the –1x Short VIX Futures ETF (“SVIX”) (each a “Fund” and, collectively, the “Funds”), shares of which have been approved by the Commission to list and trade on the Exchange as Trust Issued Receipts pursuant to BZX Rule 14.11(f)(4), in order to amend certain representations from the original filings.

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 issued final approval of the rule filings proposing to list and trade shares of SVIX (the “SVIX Filing”)³ and UVIX (the “UVIX Filing”)⁴ and collectively with the SVIX Filing, the “Filings”) on the Exchange pursuant to Exchange Rule 14.11(f)(4), Trust Issued Receipts, on October 1, 2021.⁵

Both Filings include representations that limit the Funds participation in Cboe Volatility Index (“VIX”) futures contracts traded on the Cboe Futures Exchange, Inc. (“CFE”) (hereinafter referred to as “VIX Futures Contracts”) to no more than ten percent (10%) during any “Rebalance Period,” defined as any fifteen minute period of continuous market trading.⁶ The Exchange is not aware of any existing comparable restrictions on market participation for: (i) any other single exchange-traded investment product not registered under the Investment Company Act of 1940 (the “Investment Company Act”) (“ETP”); (ii) any exchange-traded note (“ETN”); or (iii)

³ See Securities Exchange Act Release Nos 91264 (March 5, 2021) 86 FR 13939 (March 11, 2021) (SR–CboeBZX–2020–070) (Notice of Filing of Amendment Nos. 1 and 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 3, To List and Trade Shares of the –1x Short VIX Futures ETF Under BZX Rule 14.11(f)(4) (Trust Issued Receipts)) (the “SVIX Notice and Approval Order”).

⁴ See Securities Exchange Act Release Nos 91265 (March 5, 2021) 86 FR 13922 (March 11, 2021) (SR–CboeBZX–2020–053) (Notice of Filing of Amendment Nos. 2 and 4 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 2 and 4, To List and Trade Shares of the 2x Long VIX Futures ETF Under BZX Rule 14.11(f)(4) (Trust Issued Receipts)) (the “UVIX Notice and Approval Order”).

⁵ See Securities Exchange Act Release Nos. 93230 (October 1, 2021) 89 FR 2387 (January 12, 2024) (SR–CboeBZX–2020–070) (Order Setting Aside Action by Delegated Authority and Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 3, To List and Trade Shares of the –1x Short VIX Futures ETF Under BZX Rule 14.11(f)(4) (Trust Issued Receipts)) (the “SVIX Order Setting Aside Action”); and 93229 (October 1, 2021) 89 FR 3008 (January 17, 2024) (SR–CboeBZX–2020–053) (Order Setting Aside Action by Delegated Authority and Approving a Proposed Rule Change, as Modified by Amendment Nos. 2 and 4, To List and Trade Shares of the 2x Long VIX Futures ETF Under BZX Rule 14.11(f)(4) (Trust Issued Receipts)) (the “UVIX Order Setting Aside Action”).

⁶ This restriction applies “across all exchange traded products based on VIX Futures Contracts (“VIX ETPs”) that Volatility Shares LLC (the “Sponsor”) sponsors.” See note 21 and accompanying text of the Approval Orders.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

¹⁹ 17 CFR 200.30–3(a)(12).

any exchange-traded fund registered under the Investment Company Act (“ETF”), regardless of underlying or reference asset by way of an exchange rule filing, and especially not across numerous existing and future products as is the case under the Approval Orders. More importantly, no competitor ETP, ETN, or ETF nor any sponsor or investment adviser of any such ETP, ETN, or ETF that would or could invest in VIX Futures Contracts, are subject to similar restrictions on VIX Futures Contracts participation.

By way of example, the equivalent rule filings for ProShares Ultra VIX Short-Term Futures ETF (“UVXY”),⁷ ProShares Short VIX Short-Term Futures ETF (“SVXY”),⁸ ProShares VIX Mid-Term Futures ETF (“VIXM”), and ProShares VIX Short-Term Futures ETF (“VIXY”) were approved with no comparable restrictions on market participation, either on a per Fund basis, collective Fund basis or sponsor-wide basis.

UVXY seeks leveraged results of 1.5x whereas UVIX seeks leveraged results of 2x, and that SVXY seeks inverse results of –0.5x whereas SVIX seeks inverse results of –1x. However, it is critical to note that, from a futures market impact perspective, a \$100 million fund with a 1.5x objective will have substantially the same market impact as a \$75 million fund with a 2x objective. Similarly, a \$100 million fund with a –0.5x objective will have substantially the same market impact as a \$50 million fund with a –1x objective. Although asset levels of UVXY and SVXY, when compared with those of UVIX and SVIX, have varied over time, there are periods—including recent periods—when UVXY and SVXY have had larger market impacts on the VIX Futures Contracts market than UVIX and SVIX, respectively. The

Exchange notes that VIXY and VIXM also, though not leveraged or inverse products, buy and sell VIX futures contracts and, therefore, impact those markets.

In addition, ETFs listed generically do not typically require exchange rule filings to list and trade. For example, the Simplify Volatility Premium ETF, which operates pursuant to Rule 6c–11 under the Investment Company Act can operate and approach any size without the kind of participation restrictions imposed by the Notice and Approval Orders. Similarly, ETNs also do not require separate listing rules, and so ETNs such as the iPath Series B S&P 500 VIX Mid-Term Futures ETN, iPath Series B S&P 500 Short-Term Futures ETN, and JP Morgan Chase’s Inverse VIX Short-Term Futures ETN also can operate and approach any size without participation restrictions.⁹

As a result, the Approval Orders have created an unfair playing field by applying restrictions to the Funds and their Sponsor but no other ETP, ETN, or ETF that references or invests in VIX Futures Contracts, or any of their sponsors. The Exchange also believes that these restrictions create potential negative outcomes for the Funds, their shareholders and the Funds’ sponsor, Volatility Shares LLC (the “Sponsor”). For example, since the imposition of the market participation restrictions, the Sponsor has received multiple communications from potential investors and existing shareholders stating that the imposition of the participation limits creates inferior products due to the lack of certainty and confidence in Fund performance at times when the 10% threshold is approached or exceeded. These potential investors and existing shareholders have also stated that they will look to other products for investment instead of the Funds.

Therefore, the Exchange is proposing to modify the following paragraphs from each Notice and Approval Order that prohibits each Fund’s participation in VIX Futures Contracts during the Rebalance Period.

⁹ ETNs are not pooled investment vehicles, but rather debt instruments issued by large financial services companies, and, therefore, do not directly invest in reference assets. However, the issuer of the ETN often will hedge its exposure to the underlying asset referenced by the ETN by purchasing and selling such underlying reference assets. Accordingly, that activity may not only have market impacts but also potential impacts on the market price of the ETN itself. See e.g., Pricing Supplement dated February 26, 2025 of iPath Series B S&P 500 VIX Short-Term Futures ETN, at page PS–21; available at <https://ipathetn.cib.barclays/ipath/details/341408/download-content/7824661>.

Specifically, the UVIX Notice and Approval Order stated:¹⁰

The time and manner in which the Fund will rebalance its portfolio is defined by the Index methodology but may vary from the Index methodology depending upon market conditions and other circumstances including the potential impact of the rebalance on the price of the VIX Futures Contracts. The Sponsor will seek to minimize the market impact of rebalances across all Funds¹¹ on the price of VIX Futures Contracts by limiting the Funds’ participation, on any given day, in VIX Futures Contracts to no more than ten percent (10%) of the VIX Futures Contracts traded on Cboe Futures Exchange, Inc. (“CFE”) during any “Rebalance Period,” defined as any fifteen minute period of continuous market trading.¹² To limit participation during periods of market illiquidity, the Sponsor, on any given day, may vary the manner and period over which all funds it sponsors are rebalanced, and as such, the manner and period over which the Fund is rebalanced. The Sponsor believes that the Fund will enter an Extended Rebalance Period most often during periods of extraordinary market conditions or illiquidity in VIX Futures Contracts. In the event that the Fund participates in an Extended Rebalance Period, the Fund represents that it will notify the Exchange and the Commission of such participation as soon as practicable, but no later than 9:00 a.m. E.T. on the trading day following the event.

The Exchange proposes to replace the above paragraph with the following:

The time and manner in which the Fund will rebalance its portfolio is defined by the Index methodology but may vary from the Index methodology depending upon market conditions and other circumstances including the potential impact of the rebalance on the price of the VIX Futures Contracts. To limit participation during periods of market illiquidity, the Sponsor, on any given day, may vary the manner and period over which all funds it sponsors are rebalanced, and as such, the manner and

¹⁰ See UVIX Approval Order at 13924. See also UVIX Order Setting Aside Action at 55874.

¹¹ For purposes of the filing, the Exchange states that the Funds include the Fund and the –1x Short VIX Futures ETF as proposed in SR–CboeBZX–2020–070, but may in the future include additional VIX ETPs sponsored by the Sponsor or its affiliates. See Securities Exchange Act Release No. 89901 (September 17, 2020), 85 FR 59843 (September 23, 2020).

¹² In the event that the Funds expect to hit the ten percent threshold during the primary Rebalance Period from 3:45 p.m. to 4:00 p.m. E.T., the Funds will extend their respective rebalances into additional Rebalance Periods and the TAS market. It is expected that this extension will provide the Funds with the flexibility to: begin rebalancing in an earlier period, end rebalancing in a later period, and execute contracts in TAS (each an “Extended Rebalance Period” and collectively the “Extended Rebalance Period”) while remaining below the ten percent cap during any fifteen minute period of continuous market trading. The Funds will be allocated executions based on their percentage of notional transaction volume required.

⁷ See Securities Exchange Act Nos. 90685 (December 16, 2020) 85 FR 83650 (December 22, 2020) (SR–CboeBZX–2020–092) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To List and Trade Shares of the ProShares VIX Short-Term Futures ETF and the ProShares VIX Mid-Term Futures ETF, Each a Series of ProShares Trust II, Under Rule 14.11(f)(4) (Trust Issued Receipts); 63317 (November 16, 2010) 75 FR 71158 (November 22, 2010) (SR–NYSEArca–2010–101) (Proposal to list and trade Shares of the ProShares VIX Short-Term Futures ETF and the ProShares VIX Mid-Term Futures ETF); 63610 (December 27, 2010) 76 FR 199 (January 3, 2011) (SR–NYSEArca–2010–101) (Order approving the listing and trading of the ProShares VIX Short-Term Futures ETF and the ProShares VIX Mid-Term Futures ETF).

⁸ See Securities Exchange Act No. 90691 (December 16, 2020) 85 FR 83643 (December 22, 2020) (SR–CboeBZX–2020–093) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To List and Trade Shares of the ProShares Short VIX Short-Term Futures ETF and the ProShares Ultra VIX Short-Term Futures ETF, Each a Series of ProShares Trust II, Under Rule 14.11(f)(4), Trust Issued Receipts).

period over which the Fund is rebalanced. The Sponsor believes that the Fund will enter an Extended Rebalance Period most often during periods of extraordinary market conditions or illiquidity in VIX Futures Contracts.

Similarly, the SVIX Notice and Approval Order stated:¹³

The time and manner in which the Fund will rebalance its portfolio is defined by the Index methodology but may vary from the Index methodology depending upon market conditions and other circumstances including the potential impact of the rebalance on the price of the VIX Futures Contracts. The Sponsor will seek to minimize the market impact of rebalances across all exchange traded products based on VIX Futures Contracts (“VIX ETPs”) that it sponsors (“Funds”) ¹⁴ on the price of VIX Futures Contracts by limiting the Funds’ participation, on any given day, in VIX Futures Contracts to no more than 10% of the VIX Futures Contracts traded on Cboe Futures Exchange, Inc. (“CFE”) during any “Rebalance Period,” defined as any fifteen minute period of continuous market trading.¹⁵ To limit participation during periods of market illiquidity, the Sponsor, on any given day, may vary the manner and period over which all funds it sponsors are rebalanced, and as such, the manner and period over which the Fund is rebalanced. The Sponsor believes that the Fund will enter an Extended Rebalance Period most often during periods of extraordinary market conditions or illiquidity in VIX Futures Contracts. In the event that the Fund participates in an Extended Rebalance Period, the Fund represents that it will notify the Exchange and the Commission of such participation as soon as practicable, but no later than 9:00 a.m. E.T. on the trading day following the event.

The Exchange proposes to replace the above paragraph with the following:

The time and manner in which the Fund will rebalance its portfolio is defined by the Index methodology but may vary from the Index methodology depending upon market conditions and other circumstances including the potential impact of the rebalance on the price of the VIX Futures

Contracts. To limit participation during periods of market illiquidity, the Sponsor, on any given day, may vary the manner and period over which all funds it sponsors are rebalanced, and as such, the manner and period over which the Fund is rebalanced. The Sponsor believes that the Fund will enter an Extended Rebalance Period most often during periods of extraordinary market conditions or illiquidity in VIX Futures Contracts.

The Sponsor will continue to operate each Fund in a manner that seeks to minimize market impact across the Funds. For example, the Sponsor’s products already differ from previous and existing VIX ETPs in their approach to mitigating market impact by using a valuation method that is an average price over a longer time period instead of exclusively at the 4:00 p.m. ET settlement price. The Sponsor owes the Funds a fiduciary duty and operates the Funds accordingly.¹⁶

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.¹⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁸ 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.

As noted above, the Exchange is not aware of any comparable restrictions on market participation for any single ETP, ETN, or ETF regardless of underlying asset that has been implemented by way of an exchange rule filing and especially not across numerous products as is the case for the Funds. More importantly,

¹⁶ The Sponsor, as a commodity pool operator (“CPO”) owes a fiduciary duty to the commodity pools it operates, i.e., the Funds. The U.S. Commodity Futures Trading Commission has recognized that CPOs hold fiduciary relationships in soliciting and advising commodity clients and in handling the funds of commodity pool participants. See generally, *Weinberg v. NFA*, CFTC Dkt. Nos. CRAA 86–1 & CRAA 86–2 (June 6, 1986) (stating that commodity pool operators “held fiduciary relationships in soliciting and advising commodity clients and in handling the money of commodity pool participants”).

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

competitor ETPs, ETNs, or ETFs, or their sponsors or advisers, are not subject to these same restrictions on participation.¹⁹ First, this creates an unfair playing field for the Funds and, by arbitrarily singling out only the Funds and the Sponsor, creates a competitive advantage for their competitors. Second, the cap applying only to the Funds and the Sponsor does not actually provide any of the potential protections that the cap was perhaps intended to provide—regardless of how much and when the Funds are able to execute trades, competitors remain free to execute trades during whichever periods and at whatever size they deem appropriate. The result is that competitors operate with a competitive advantage which potentially leads to greater assets under management than the Funds, which, in turn, results in more volume needing to be executed in a way that is not subject to the caps. Finally, these anti-competitive and ineffective restrictions on executions actually could lead to negative impacts on investors. For example, in a scenario where a rebalance needed to be extended so as not to exceed 10% cap, the investor is likely to experience a deviation from the Funds’ investment objectives.

Based on the foregoing, the Exchange believes that the proposal is consistent with the Act as it would eliminate the status quo—the caps restrict free competition among issuers, cannot accomplish their supposed policy goals because they do not apply uniformly, and ultimately leave investors exposed to potentially negative outcomes.

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 allow the Funds to better compete in the marketplace and to operate more efficiently.

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.

¹⁹ See supra notes 8 and 9.

¹³ See SVIX Approval Order at 13941. See also SVIX Order Setting Aside Action at 55882–55883.

¹⁴ For purposes of the filing, the Exchange states that the Funds include the Fund and the 2x Long VIX Futures ETF (“Long Fund”), but may in the future include additional VIX ETPs sponsored by the Sponsor or its affiliates. See Securities Exchange Act Release No. 93229 (Oct. 1, 2021) (SR–CboeBZX–2020–053) (“Long VIX Approval”).

¹⁵ In the event that the Funds expect to hit the 10% threshold during the primary Rebalance Period from 3:45 p.m. to 4:00 p.m. ET, the Funds will extend their respective rebalances into additional Rebalance Periods and the Trade at Settlement (“TAS”) market. It is expected that this extension will provide the Funds with the flexibility to: begin rebalancing in an earlier period, end rebalancing in a later period, and execute contracts in TAS (each “an Extended Rebalance Period” and collectively “the Extended Rebalance Period”) while remaining below the 10% cap during any 15-minute period of continuous market trading.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be 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-CboeBZX-2025-059 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-2025-059. 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-2025-059 and should be submitted on or before May 30, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2025-08120 Filed 5-8-25; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35566; File No. 812-15779]

Credit Suisse Services AG, et al.; Notice of Application and Temporary Order

May 5, 2025.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 ("Act").

Summary of Application: Applicants (defined below) have applied for a temporary order ("Temporary Order") exempting them from section 9(a) of the Act with respect to a guilty plea entered by Credit Suisse Services AG (the "Pleading Entity" or "CSSAG") in connection with a plea agreement (the "2025 Plea Agreement") between the Pleading Entity and the United States Department of Justice ("DOJ"), until the Commission takes final action on an application for a permanent order (the "Permanent Order," and with the Temporary Order, the "Orders"). Applicants also have applied for a permanent order.

Applicants: CSSAG, UBS Asset Management (Americas) LLC ("UBSAM"), UBS Asset Management (US) Inc. ("UBSAM (US)"), UBS Asset Managers of Puerto Rico ("UBSAM (PR)"), and UBS Financial Services Inc. ("UBSFS") (each, an "Applicant" and, collectively, the "Applicants"), and UBS AG ("UBS AG").¹

²⁰ 17 CFR 200.30-3(a)(12).

¹ UBS AG is a party to the application solely for purposes of making the representations and agreeing to the conditions in the application that apply to it.

Filing Date: The application was filed and amended on May 5, 2025.

Hearing or Notification of Hearing: The Temporary Order will be effective until such time as the Commission takes final action on the application by issuing an order granting the requested relief, unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at Secretarys-Office@sec.gov and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on May 30, 2025, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov*. Applicants: Patrick Shilling, UBS AG, 11 Madison Avenue, New York, New York 10010; Norm Champ, P.C. and Mark Filip, P.C., Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Christopher D. Carlson, Senior Counsel, or Daniele Marchesani, Assistant Chief Counsel, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at <https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html>. You may also call the SEC's Office of Investor Education and Advocacy at (202) 551-8090.

Applicants' Representations

1. CSSAG, a company organized under the laws of Switzerland, provided banking, administrative, legal and

compliance services to Credit Suisse AG (the “CS Bank”).²

2. UBSAM, a limited liability company operating under Delaware law, is registered as an investment adviser under the Investment Advisers Act of 1940 (the “Advisers Act”). UBSAM serves as investment adviser (either as primary investment adviser or as investment sub-adviser) to each Fund³ listed in Part 1 of Appendix A to the application.

3. UBSAM (US), a corporation formed under Delaware law, is registered as a broker-dealer under the Securities Exchange Act of 1934 (the “Exchange Act”). UBSAM (US) serves as principal underwriter and distributor to each open-end RIC (“Open-End Fund”) listed in Part 2 of Appendix A to the application.

4. UBSAM (PR), a division of UBS Trust Company of Puerto Rico, a trust company formed under the Puerto Rico Trust Company Act, is registered as an investment adviser under the Advisers Act. UBSAM (PR) serves as investment adviser to each Fund listed in Part 3 of Appendix A to the application.

5. UBSFS is a corporation organized under the laws of Delaware. UBSFS is registered with the Commission as a broker-dealer under the Exchange Act and is registered as an investment adviser under the Advisers Act. UBSFS serves as principal underwriter to each Fund listed in Part 4 of Appendix A to the application.

6. Each of the above Applicants is an indirect wholly-owned subsidiary of UBS AG (UBS AG, together with its wholly-owned subsidiaries and affiliated entities, “UBS”). UBS AG, a company incorporated under the laws of Switzerland, is a Swiss-based global financial services firm with offices in more than 50 countries. UBS AG, its affiliates, and subsidiaries engage in a full range of financial services activities in Switzerland and globally, including personal banking, commercial banking, investment banking, global wealth management, and asset management.⁴

² The Pleading Entity is an applicant, but does not and will not serve as investment adviser, depositor or principal underwriter to any registered investment company and is not a Covered Person (as defined below).

³ The term “Fund” or “Funds,” as used in the application, refers to any U.S. registered investment company (“RIC”), employees’ securities company (“ESC”), and any investment company that has elected to be treated as a business development company under the Act (“BDC”) for which an Applicant currently provides, or may in the future provide, Fund Servicing Activities (defined below), or a Covered Person (defined below), subject to the terms and conditions of the Orders.

⁴ UBS Group AG (“UBS Group”), the ultimate parent of the Pleading Entity, does not and will not serve as investment adviser, depositor or principal

7. Currently, UBSAM, UBSAM (US), UBSAM (PR) and UBSFS (together, the “Fund Servicing Applicants”), collectively serve as investment adviser or investment sub-adviser to RICs and ESCs and as principal underwriter to Open-End Funds (such activities, collectively, “Fund Servicing Activities”).⁵ The Pleading Entity is an “affiliated person” within the meaning of section 2(a)(3) of the Act (“Affiliated Person”) of each of the Fund Servicing Applicants.⁶

8. While no existing company of which the Pleading Entity is an Affiliated Person (other than the Applicants) currently serves as an investment adviser or depositor of any RIC, ESC or BDC, or as principal underwriter for any Open-End Fund, unit investment trust (“UIT”), or registered face-amount certificate company (“FACC”), the Applicants request that any relief granted by the Commission pursuant to the application also apply to any existing company (with the exception of UBS AG and the 2014 CS Applicants (as defined below)) of which the Pleading Entity is an Affiliated Person and to any other company of which the Pleading Entity may become an Affiliated Person in the future (together with the Applicants other than the Pleading Entity, the “Covered Persons”) with respect to any activity contemplated by section 9(a) of the Act.⁷

9. The 2025 Plea Agreement relates to a one-count criminal information that DOJ filed on May 19, 2014 in the District Court for the Eastern District of Virginia (the “Information”) charging CS Bank with conspiracy to commit tax fraud related to accounts CS Bank established for U.S. cross-border clients in violation of Title 18, United States Code, Section 371. CS Bank waived indictment and pleaded guilty to the charge set out in the Information (the “2014 Plea”) through a plea agreement dated May 19, 2014 (the “2014 Plea Agreement”).

underwriter to any registered investment company and is not a Covered Person.

⁵ The term “Fund Servicing Activities,” as it relates to Covered Persons (defined below), refers to each of the capacities identified in Section 9(a) of the Act in which a Covered Person currently serves or may serve in the future.

⁶ Section 2(a)(3) of the Act defines “affiliated person” to include, among others, any person directly or indirectly controlling, controlled by, or under common control with, the other person.

⁷ Applicants represent that no legacy Credit Suisse entities have provided Fund Servicing Activities since May 1, 2024 and no legacy Credit Suisse entity would rely on the Orders as all the legacy Credit Suisse entities that have engaged in Fund Servicing Activities have transferred their Fund Servicing Activities to the Fund Servicing Applicants.

10. According to the Statement of Facts that served as the basis for the 2014 Plea Agreement (the “2014 Statement of Facts”), CS Bank operated a cross-border banking business that knowingly and willfully aided U.S. clients in opening and maintaining undeclared accounts and concealing their offshore assets and income from the Internal Revenue Service (the “IRS”), assisted U.S. clients in filing false tax returns with the IRS, and failed to develop and implement an effective system of compliance controls to prevent and detect policy violations regarding the proper handling of accounts for U.S. clients, among other admissions.

11. Under the terms of the 2014 Plea Agreement, CS Bank agreed to undertake, among other actions: (i) to close the accounts of recalcitrant account holders (as defined in Section 1471(d)(6) of the Internal Revenue Code); (ii) implement procedures to prevent its employees from assisting recalcitrant account holders to engage in further concealment in connection with closing any account or transferring any funds; (iii) not open any U.S. Related Accounts (as defined in paragraph I.B.9 of the Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks (the “Program”)) except on conditions that ensure the account will be declared to the United States and will be subject to disclosure by the CS Bank; and (iv) promptly disclose all evidence and information described in Sections II.D.1 and II.D.2 of the Program.⁸

12. In May 2025, as part of a global settlement, CSSAG entered into the 2025 Plea Agreement whereby CSSAG agreed to waive indictment and plead guilty to a single-count criminal information charging CSSAG with conspiracy to commit tax evasion in violation of Title 18, United States Code, Section 371 (the “2025 Plea”).

⁸ The Program is included as an attachment to the Joint Statement between the U.S. Department of Justice and the Swiss Federal Department of Finance (Aug. 29, 2013), available at <https://www.justice.gov/tax/file/631356/dl>. On May 19, 2014 and June 16, 2014, Credit Suisse Asset Management, LLC (“CSAM”), Credit Suisse Asset Management Limited (“CSAML”), Credit Suisse Hedging-Griffo Servicios Internacionales S.A., Credit Suisse Securities (USA) LLC (“CSSU”) and CS Bank (collectively, the “2014 CS Applicants”) received temporary and permanent relief, respectively, from the Commission under section 9(c) of the Act exempting such 2014 CS Applicants from section 9(a) as a result of the 2014 Plea and a related Commission settlement announced on February 21, 2014. See *In the Matter of Credit Suisse Group AG*, SEC Rel. Nos. 34–71593 and IA–3782 (Feb. 21, 2024) and *In the Matter of Credit Suisse Asset Management, LLC, et al.*, SEC Rel. Nos. IC–31051 (May 19, 2014) (notice and temporary order) and 31082 (June 16, 2014) (permanent order).

13. According to the Statement of Facts that served as the basis for the 2025 Plea Agreement (the “2025 Statement of Facts”), CSSAG, its former sister entity CS Bank, and certain of its subsidiaries and affiliates at the time of the merger of UBS Group and Credit Suisse Group AG (“Credit Suisse”) on June 12, 2023 (collectively, the “CSSAG Affiliates”) did not adequately identify U.S.-related accounts prior to the 2014 Plea, which partially forms DOJ’s claim that the 2014 Plea was violated.

14. Additionally, the 2025 Statement of Facts stated that the CSSAG Affiliates’ post-plea conduct—through to approximately July 2021—breached the terms of the 2014 Plea Agreement. According to the 2025 Statement of Facts, the CSSAG Affiliates failed to close recalcitrant accounts that they knew to be U.S. accounts in a timely fashion, opened accounts for U.S. persons after the 2014 Plea under circumstances where the accounts were not declared to the U.S., and failed to provide in a timely and complete manner the requisite information about U.S. accounts, which assisted U.S. clients in concealing their offshore assets from the IRS.

15. Following the events that led to 2025 Plea Agreement, on March 23, 2023, UBS Group announced a merger agreement to acquire Credit Suisse, which is ongoing and has occurred in multiple steps (the “Merger”).

16. UBS Group and Credit Suisse completed the step of merging their holding companies on June 12, 2023.⁹ UBS AG and CS Bank, the main operating subsidiaries of UBS Group and Credit Suisse, respectively, merged on May 31, 2024, with CS Bank ceasing to exist and UBS AG as the surviving entity succeeding to all the rights and obligations of CS Bank by operation of law.

⁹ Prior to the first step of the Merger, on June 7, 2023, the Commission simultaneously issued a notice of the filing of the application and a temporary conditional order exempting CSSU, Credit Suisse First Boston Mortgage Securities Corp. (“CSFB”), DLJ Mortgage Capital, Inc. (“DLJ”), and together with CSSU and CSFB, the “Settling Entities”), CSAM and CSAML (collectively with the Settling Entities, the “2023 Fund Servicing Applicants,” and, collectively, with DLJ and CSFB, the “2023 Applicants”), and UBS Covered Persons (as defined in the relevant application) from section 9(a) of the Act with respect to an injunction against the Settling Entities entered on October 24, 2022 by the Superior Court of New Jersey relating to violations of state law in connection with the offer, sale, or purchase of more than a dozen residential mortgage-backed securities between May 2006 and April 2007. *Credit Suisse Asset Management, LLC., et al.*; Release No. IC-34941 (June 7, 2023). On July 5, 2023, the Commission issued the Permanent Order. *Credit Suisse Asset Management, LLC., et al.*; Release No. IC-34956 (July 5, 2023).

17. On May 1, 2024, CSAM was merged with and into UBSAM, with UBSAM as the surviving entity. UBSAM is now the investment adviser to the Funds previously advised by CSAM. Separately, a subadvisory agreement relating to a Fund subadvised by CSAML—one of the 2014 CS Applicants—has been terminated. Additionally, on May 1, 2024, Credit Suisse’s mutual fund underwriting and distribution activity and certain asset management dedicated personnel were transferred from CSSU, an entity within Credit Suisse’s legacy investment bank division, to UBSAM (US). No legacy Credit Suisse entities have provided Fund Servicing Activities since May 1, 2024 and no legacy Credit Suisse entity would rely on the Orders as all the legacy Credit Suisse entities that have engaged in Fund Servicing Activities have transferred their Fund Servicing Activities to the Fund Servicing Applicants.

18. As of September 30, 2024, UBS had approximately \$6.2 trillion of invested assets for clients globally, of which over \$2 trillion was managed in the United States. UBSAM advises approximately \$542 billion as of December 31, 2024, including approximately \$128.9 billion in Fund assets invested by tens of thousands of investors.

Applicants’ Legal Analysis

1. Section 9(a)(1) of the Act provides, in pertinent part, that a person may not serve or act as an investment adviser or depositor of any registered investment company or as principal underwriter for any Open-End Fund, UIT, or FACC, if such person “within 10 years has been convicted of any felony or misdemeanor . . . arising out of such person’s conduct as . . . [a] bank.” Section 2(a)(10) of the Act defines the term “convicted” to include a plea of guilty.¹⁰ Section 9(a)(3) of the Act extends the prohibitions of section 9(a)(1) to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(1). Section 2(a)(3) of the Act defines “affiliated person” to include, among others, any person directly or indirectly controlling, controlled by, or under common control with, the other person.

¹⁰ Section 59 of the Act provides that Section 9 of the Act shall apply to a BDC to the same extent as a registered closed-end investment company. ESCs are not specifically mentioned in section 9 of the Act but are nonetheless required to comply with its requirements under the terms of the exemptive relief under which they operate. *See, e.g., In the Matter of Credit Suisse First Boston, Inc.*, File No. 813-198, Investment Company Act Release Nos. 25670 (July 23, 2002) (notice) and 25702 (Aug. 20, 2002) (order).

The Pleading Entity is an Affiliated Person of each Fund Servicing Applicant within the meaning of section 2(a)(3) of the Act. Therefore, the 2025 Plea would result in a disqualification of Fund Servicing Applicants for ten years under section 9(a)(3) from acting in any of the capacities listed in section 9(a), by effect of a conviction described in section 9(a)(1).

2. Section 9(c) of the Act provides that: “[t]he Commission shall by order grant [an] application [for relief from the prohibitions of subsection 9(a)], either unconditionally or on an appropriate temporary or other conditional basis, if it is established [i] that the prohibitions of subsection [9](a), as applied to such person, are unduly or disproportionately severe or [ii] that the conduct of such person has been such as not to make it against the public interest or protection of investors to grant such application.” Applicants have filed an application pursuant to section 9(c) seeking a Temporary Order and a Permanent Order exempting Fund Servicing Applicants and other Covered Persons from the disqualification provisions of section 9(a) of the Act. The Covered Persons may, if the Orders are granted, in the future act in any of the capacities contemplated by section 9(a) of the Act subject to the applicable terms and conditions of the Orders.

3. Applicants believe they meet the standards for exemption specified in section 9(c). Applicants assert that: (i) the conduct underlying the 2025 Plea Agreement (as described in the 2025 Statement of Facts) (the “Conduct”) did not involve any of the Fund Servicing Applicants acting as an investment adviser, depositor or principal underwriter for any Fund, or any Fund with respect to which Fund Servicing Applicants engage in Fund Servicing Activities; (ii) application of the statutory bar would impose significant hardships on the Funds and their shareholders; (iii) the prohibitions of section 9(a), if applied to Fund Servicing Applicants, would be unduly or disproportionately severe; (iv) the Conduct has not been such that would make it against the public interest or protection of investors to grant the exemption from section 9(a); and (v) the Conduct occurred prior to the completion of CS Bank’s merger with UBS.

4. Applicants argue that it would be against the public interest and protection of investors, and would be unduly and disproportionately severe, to bar the Fund Servicing Applicants (all of which are UBS entities that would be considered Affiliated Persons of CSSAG only as a result of the Merger)

from providing Fund Servicing Activities as a result of Conduct by Credit Suisse's prior banking business that is wholly unrelated to any Fund Servicing Activities.

5. Applicants assert that the inability of the Fund Servicing Applicants to continue providing investment advisory, sub-advisory, and underwriting services to the Funds would result in the Funds and their shareholders facing significant hardships. As a practical matter, disqualifying the Fund Servicing Applicants from engaging in Fund Servicing Activities for the Funds would deprive the Funds of the advisory or sub-advisory and underwriting services that shareholders expected the Funds would receive when they decided to invest in the Funds. In addition, disqualifying the Fund Servicing Applicants could result in substantial costs to the Funds. Transitioning the Funds to another investment adviser (including sub-adviser) and principal underwriter without adequate time for the Fund Servicing Applicants and the boards of the Funds to consider and properly evaluate alternative options could result in substantial costs to, and lost opportunities for, the Funds and their underlying investors. Applicants also state that the effect of a disqualification on the Applicants' businesses and employees would also be severe. The Applicants have committed substantial capital and other resources to fostering highly valued long-term client relationships and establishing expertise in financial advisory and underwriting services. There are currently 79 UBS RICs with over tens of thousands of shareholders and over \$125 billion in total assets. Without the requested relief, UBSAM (US) and UBSFS would lose a significant part of their business, potentially leading to layoffs of personnel. In the case of UBSAM and UBSAM (PR), the effects of a disqualification would be particularly significant, as these investment advisers provide investment advisory services with respect to approximately \$543.8 billion in assets under management in the United States (\$130.7 billion of which constitutes the assets under management of advised and, for UBSAM, sub-advised Funds) as of December 31, 2024. The disqualification of UBSAM from providing investment advisory services to the ESCs without a section 9(c) relief is similarly not in the public interest or in furtherance of the protection of investors, and would frustrate the expectations of the eligible employees who invested in the ESCs.

Because the ESCs have been formed for certain key employees, officers and directors of UBSAM and its affiliates, it would not be consistent with the purposes of the employees' securities company provisions of the Act, and it would be impermissible under the terms and conditions of the ESC exemptive order under which the ESC operates to require another entity not affiliated with UBSAM to manage the ESCs.

6. The Applicants represent that: (i) none of the current or former directors, officers or employees of the Applicants (other than certain current and former personnel of CSSAG who were not, are not and will not be involved in Fund Servicing Activities) had any involvement in the Conduct; (ii) no person who has been or who subsequently may be identified by CSSAG or any U.S. or non-U.S. regulatory or enforcement agencies as having been responsible for the Conduct will be an officer, director, or employee of any Applicant, CSSAG, and of any Covered Person; (iii) no persons who otherwise were involved in the Conduct have had, and will have any future, involvement in the Applicants', CSSAG's or Covered Persons' activities in any capacity described in section 9(a) of the Act; and (iv) because the directors, officers and employees of the Applicants and 2014 CS Applicants (as defined below) (other than certain current and former personnel of CSSAG and CS Bank who were not involved in any Fund Servicing Activities) did not engage in the Conduct, shareholders of the Funds were not affected any differently than if those Funds had received services from any other non-affiliated investment adviser or principal underwriter.

7. In addition, Applicants agree as a condition of the application that the material terms and conditions of the 2025 Plea Agreement will be complied with in all material respects. Applicants will provide written notification to the Chief Counsel of the Commission's Division of Investment Management with a copy to the Chief Counsel of the Commission's Division of Enforcement of a material violation of the terms and conditions of the Orders within 30 days of discovery of the material violation.

8. Applicants note that as part of the Merger, UBS has made integration of Credit Suisse's U.S. compliance framework a top priority. UBS and Credit Suisse have undertaken extensive efforts to accomplish the integration, including through a specific project that covers multiple workstreams staffed with dozens of UBS and Credit Suisse subject matter experts, and is subject to a rigorous governance framework with

senior management oversight. Applicants further state that UBS will undertake certain other remedial measures, as described in greater detail in the application. These remedial measures by UBS include: (i) continuing to incorporate Credit Suisse into its U.S. banking compliance framework; (ii) integrating appropriate enhancements from Credit Suisse's compliance framework, which efforts include detailed side-by-side comparisons of elements of the U.S. compliance framework from both banks, to ensure coverage and identify complementary opportunities for enhancement; (iii) analysis of key compliance lessons learned by Credit Suisse after the 2014 Plea, including from the monitorship, DOJ's investigation, and significant cases of interest; (iv) implementing existing client reviews and remediation to avoid onboarding of unwanted U.S. person client relationships; (v) migration of Credit Suisse accounts onto the UBS platform and IT systems; and (vi) undertaking efforts to ensure CSSAG's compliance with its obligations under the 2025 Plea Agreement and to continue related compliance efforts stemming from the 2014 Plea Agreement, which are expected to include continuing to report and close recalcitrant U.S. accounts held at Credit Suisse, completing work to integrate Credit Suisse's compliance program into the existing UBS framework, submitting quarterly reports to the DOJ regarding the opening of U.S. accounts, the status of existing remediation efforts, including the monitoring and closing of U.S. accounts, and future plans to change, implement, and/or enforce compliance efforts, and providing other cooperation and assistance with tax prosecutions as specified in the 2025 Plea Agreement. After the merger, UBS conducted a risk-based review of Credit Suisse employees who were implicated in the Conduct, and referred certain personnel to UBS's disciplinary and conduct review process, which review remains ongoing. As of the date of the application, employees whose disciplinary review processes have been concluded and were found responsible for the Conduct had either left Credit Suisse prior to the identification of the Conduct or were subsequently terminated by UBS.¹¹ As a

¹¹ For purposes of the application, an employee is deemed responsible for the Conduct if the person: (i) has been or subsequently may be identified by any U.S. or non-U.S. regulatory or enforcement agencies as responsible for the Conduct or (ii) was found by UBS to have knowingly and directly participated (e.g., through their role as a relationship manager and directly interfacing with

result of the foregoing, the Applicants submit that absent relief, the prohibitions of section 9(a) as applied to the Covered Persons would be unduly or disproportionately severe, and that the Conduct did not constitute conduct that would make it against the public interest or protection of investors to grant the exemption.

9. Certain of the Applicants and their affiliates have previously applied for exemptive orders under section 9(c) of the Act, as described in greater detail in the application.

Applicants' Conditions

Applicants agree that any order granted by the Commission pursuant to the application will be subject to the following conditions:

1. Any temporary exemption granted pursuant to the application will be without prejudice to, and will not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including, without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

2. Neither the Applicants, UBS AG, nor any of the other Covered Persons will employ any person who previously has been or who subsequently may be identified by CSSAG or any U.S. or non-U.S. regulatory or enforcement agencies as having been responsible for the Conduct in any capacity without first making a further application to the Commission pursuant to section 9(c).

3. UBS AG, each Applicant and Covered Person will adopt and implement policies and procedures reasonably designed to ensure that it will comply with the terms and conditions of the Orders within 60 days of such Orders or as such later date as may be contemplated by the Commission, as applicable.

4. The material terms and conditions of the 2025 Plea Agreement will be complied with in all material respects.

5. The Applicants will provide written notification to the Chief Counsel

clients) in the Conduct post-2014 Plea, upon the conclusion of UBS's disciplinary and conduct review process. For purposes of UBS's determination of whether a particular employee is deemed responsible for the Conduct, this does not include any employee who did not knowingly participate in the Conduct but may have been deemed responsible due to failure to follow elements of corporate compliance policy (e.g., an employee who did not follow-up on information that may have led to discovery of the misconduct).

of the Commission's Division of Investment Management with a copy to the Chief Counsel of the Commission's Division of Enforcement of a material violation of the terms and conditions of the Orders within 30 days of discovery of the material violation.

Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that the Fund Servicing Applicants and any other Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective as the date of this order, solely with respect to the 2025 Plea entered into pursuant to the 2025 Plea Agreement, subject to the representations and conditions in the application, until the Commission takes final action on the Applicants' application for a permanent order.

By the Commission.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2025-08125 Filed 5-8-25; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35568; File No. 812-15758]

AGTB Fund Manager, LLC, et al.

May 5, 2025.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the "Act") and rule 17d-1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d-1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain business development companies ("BDCs") and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

APPLICANTS: AGTB Fund Manager, LLC, TPG Twin Brook Capital Income Fund, Angelo, Gordon & Co., L.P., and certain of their affiliated entities as described in Appendix A to the application.

FILING DATES: The application was filed on April 17, 2025, and amended on May 2, 2025.

HEARING OR NOTIFICATION OF HEARING:

An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at Secretarys-Office@sec.gov and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on May 30, 2025, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at Secretarys-Office@sec.gov.

ADDRESSES:

The Commission: Secretarys-Office@sec.gov. Applicants: Jenny B. Neslin, TPG Twin Brook Capital Income Fund, 245 Park Avenue, 26th Floor, New York, NY 10167, jneslin@tpg.com; and Rajib Chanda and Steven Grigoriou, Simpson Thacher & Bartlett LLP, 900 G Street NW, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT:

Adam Large, Senior Special Counsel, Kris Easter Guidroz, Senior Counsel, or Daniele Marchesani, Assistant Chief Counsel, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' first amended application, dated May 2, 2025, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system.

The SEC's EDGAR system may be searched at <https://www.sec.gov/edgar/searchedgar/companysearch.html>. You may also call the SEC's Office of Investor Education and Advocacy at (202) 551-8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2025-08101 Filed 5-8-25; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102989; File No. SR-NYSEARCA-2025-34]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 7.35-E (Auctions) Regarding Indicative Match Price

May 5, 2025.

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 on April 22, 2025, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) 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 self-regulatory organization. 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 Rule 7.35-E (Auctions) regarding Indicative Match Price. 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 proposes to amend Rule 7.35-E (Auctions) to restore Rule 7.35-E(a)(8)(F), relating to Indicative Match Price.

Rule 7.35-E(a) sets forth definitions for purposes of Rule 7.35-E. Rule 7.35-E(a)(8) defines Indicative Match Price as the best price at which the maximum volume of shares, including the non-displayed quantity of Reserve Orders, is tradable in the applicable auction, subject to the Auction Collars.

The Exchange previously filed a proposed rule change to include subparagraph (F) under Rule 7.35-E(a)(8), which provided that unless the Indicative Match Price is based on the midpoint of an Auction NBBO, if the Indicative Match Price is not in the MPV for the security, it will be rounded to the nearest price at the applicable MPV.³ The Exchange subsequently filed a proposed rule change in connection with the merger of its former wholly-owned subsidiary NYSE Arca Equities, Inc. with and into the Exchange to, among other things, create a single integrated rulebook.⁴ The Merger Filing inadvertently excluded Rule 7.35-E(a)(8)(F) from the rule text proposed in that filing. Accordingly, the Exchange now proposes to restore Rule 7.35-E(a)(8)(F) as set forth in the Indicative Match Price Filing without any changes.⁵ This proposed change would promote clarity in the Exchange’s rules and ensure that the rules accurately set forth the Exchange’s current process for determining Indicative Match Price.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(5),⁷ in particular, because it

³ See Securities Exchange Act Release No. 78861 (September 16, 2016), 81 FR 65458 (September 22, 2016) (SR-NYSEArca-2016-129) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.35P (Auctions) Regarding Indicative Match Price) (the “Indicative Match Price Filing”).

⁴ See Securities Exchange Act Release No. 81419 (August 17, 2017), 82 FR 40044 (August 23, 2017) (SR-NYSEArca-2017-40) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, in Connection With the Proposed Merger of Its Wholly Owned Subsidiary NYSE Arca Equities, Inc. With and Into the Exchange) (the “Merger Filing”).

⁵ The Exchange notes that Rule 7.35-E(a)(8)(F) would also be identical to Rule 7.35E(a)(8)(F) in the rules of its affiliate, NYSE American LLC.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

is 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 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 that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would restore rule text inadvertently omitted from the Exchange’s rules. The inclusion of Rule 7.35-E(a)(8)(F) in the Exchange’s rules would ensure that the rules accurately set forth the Exchange’s existing process for determining Indicative Match Price, thereby reducing potential confusion and promoting clarity in the Exchange’s rules.

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. The proposed change is not designed to address any competitive issue and would simply serve to enhance the clarity of the Exchange’s rules.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹ 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, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

⁹ 17 CFR 240.19b-4(f)(6).

of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁰ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),¹¹ 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 Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because it will allow the Exchange to make sure that its rules accurately set forth the Exchange's process for determining Indicative Match Price. Accordingly, the Commission designates the proposed rule change to be operative upon filing.¹²

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)¹³ of the Act 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-NYSEARCA-2025-34 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-NYSEARCA-2025-34. 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 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-NYSEARCA-2025-34 and should be submitted on or before May 30, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2025-08111 Filed 5-8-25; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102992; File No. SR-ISE-2025-12]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To Permit FLEX Trading in Options on the iShares Bitcoin Trust ETF

May 5, 2025.

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 May 2, 2025, Nasdaq ISE, LLC ("ISE" or "Exchange") 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. On May 2, 2025, the Exchange filed Amendment No. 1 to the proposal, which replaced and superseded the original filing in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 3A, Section 3, FLEX Option Listings, and Options 3A, Section 18, Position Limits, to permit FLEX Trading in options on the iShares Bitcoin Trust ETF. This Amendment No. 1 supersedes the original filing in its entirety.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/ise/rulefilings>, 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

¹² For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78s(b)(2)(B).

¹⁴ 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 Options 3A, Section 3, FLEX Option Listings, and Options 3A, Section 18, Position Limits, to permit FLEX trading in options on the iShares Bitcoin Trust ETF. This Amendment No. 1 supersedes the original filing in its entirety.

IBIT is an exchange-traded fund ("ETF") that holds bitcoin and is listed on The Nasdaq Stock Market LLC ("Nasdaq").³ On September 20, 2024, Nasdaq ISE, LLC ("ISE") received approval to list options on IBIT.⁴ The position and exercise limits for IBIT options are 25,000 contracts as stated in Options 9, Sections 13 and 15, the lowest limit available in options.⁵ Today, pursuant to Options 3A, Section 3(a), IBIT options are not approved for FLEX trading.⁶ Today, Options 3A, Section 18(b)(1)(A) provides that there shall be no position limits for FLEX Equity Options, other than as set forth in subparagraph (b)(1)(B) and paragraph (c) to Options 3A, Section 18.⁷

³ Nasdaq received approval to list and trade Bitcoin-Based Commodity-Based Trust Shares in IBIT pursuant to Rule 5711(d) of Nasdaq. See Securities Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (SR-NASDAQ-2023-016) (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).

⁴ See Securities Exchange Act Release No. 101128 (September 20, 2024), 89 FR 78942 (September 26, 2024) (SR-ISE-2024-03) (Notice of Filing of Amendment Nos. 4 and 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 4, and 5, To Permit the Listing and Trading of Options on the iShares Bitcoin Trust) ("IBIT Approval Order"). ISE began trading IBIT options on November 19, 2024.

⁵ Options on the Fidelity Wise Origin Bitcoin Fund, the ARK21Shares Bitcoin ETF, the Grayscale Bitcoin Trust (BTC), the Grayscale Bitcoin Mini Trust BTC, the Bitwise Bitcoin ETF, the iShares Ethereum Trust ETF, the Fidelity Ethereum Fund, the Bitwise Ethereum ETF, the Grayscale Ethereum Trust, and the Grayscale Ethereum Mini Trust are also subject to a 25,000 contract position and exercise limit.

⁶ Options 3A, Section 3(a) also does not permit FLEX trading on options on the Fidelity Wise Origin Bitcoin Fund, the ARK21Shares Bitcoin ETF, the Grayscale Bitcoin Trust (BTC), the Grayscale Bitcoin Mini Trust BTC, the Bitwise Bitcoin ETF, the iShares Ethereum Trust ETF, the Fidelity Ethereum Fund, the Bitwise Ethereum ETF, the Grayscale Ethereum Trust, and the Grayscale Ethereum Mini Trust.

⁷ Subparagraph (b)(1)(B) to Options 3A, Section 18 currently provides that position limits for FLEX Equity Options where the underlying security is an ETF that is settled in cash pursuant to Section 3(c)(5)(A)(ii) above shall be subject to the position limits set forth in Options 9, Section 13, and subject to the exercise limits set forth in Options 9, Section 15. Positions in such cash-settled FLEX Equity

Therefore, the 25,000 contract position limit in Options 9, Section 13 and exercise limit in Options 9, Section 15 for IBIT options currently applies to non-FLEX IBIT options and FLEX Equity Options where the underlying security is an ETF that is settled in cash pursuant to Section 3(c)(5)(A)(ii).

At this time, the Exchange proposes to permit IBIT options to transact as FLEX Equity Options subject to position and exercise limits of 25,000 contracts which would be aggregated with non-FLEX IBIT options position and exercise limits in Options 9, Sections 13 and 15. With this proposal, an ETF that is either physically-delivered pursuant to Section 3(c)(5)(A)(i) or settled in cash pursuant to Section 3(c)(5)(A)(ii) would be aggregated with non-FLEX IBIT options position and exercise limits in Options 9, Sections 13 and 15. Specifically, the Exchange proposes to amend Options 3A, Section 3(a) to remove the iShares Bitcoin Trust ETF,⁸ the Exchange also proposes to amend Options 3A, Section 18(b)(1) to add new subparagraph (C) which states,

Notwithstanding the foregoing, the position limit for FLEX equity options on the iShares Bitcoin Trust ETF shall be subject to the position limits set forth in Options 9, Section 13, and subject to the exercise limits set forth in Options 9, Section 15 and shall be aggregated with positions on the same non-FLEX underlying ETF for the purpose of calculating the position limits set forth in Options 9, Section 13, and the exercise limits set forth in Options 9, Section 15.

The Exchange would also amend Options 3A, Section 18(b)(1)(A) to provide, "There shall be no position limits for FLEX Equity Options, other than as set forth in subparagraphs (B) and (C) and paragraph (c) below." Additionally, the Exchange would amend Options 3A, Section 18(c) to state, "For purposes of the position limits and reporting requirements set forth in this Section 18, FLEX Option positions shall not be aggregated with positions in non-FLEX Options other than as provided below and in

Options shall be aggregated with positions in physically settled options on the same underlying ETF for the purpose of calculating the position limits set forth in Options 9, Section 13 and the exercise limits set forth in Options 9, Section 15. Paragraph (c) to Options 3A, Section 18 currently describes the aggregation of FLEX positions and states that for purposes of the position limits and reporting requirements set forth in this Section 18, FLEX Option positions shall not be aggregated with positions in non-FLEX Options other than as provided below and in subparagraph (b)(1)(B) above, and positions in FLEX Index Options on a given index shall not be aggregated with options on any stocks included in the index or with FLEX Index Option positions on another index.

⁸ The Exchange also proposes a technical amendment to change a semicolon to a comma.

subparagraphs (b)(1)(B) and (C) above, and positions in FLEX Index Options on a given index shall not be aggregated with options on any stocks included in the index or with FLEX Index Option positions on another index."

Per the Commission, "rules regarding position and exercise limits are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options positions."⁹ For this reason, the Commission requires that "position and exercise limits must be sufficient to prevent investors from disrupting the market for the underlying security by acquiring and exercising a number of options contracts disproportionate to the deliverable supply and average trading volume of the underlying security."¹⁰ Based on its review of the data and analysis provided by ISE, the Commission concluded that the 25,000 contract position limit for non-FLEX IBIT options satisfied these objectives.¹¹

As proposed, the Exchange will aggregate position (and exercise) limits for all IBIT options, thus limiting positions for options on all IBIT options—FLEX and non-FLEX—to 25,000 contracts. This proposed aggregated limit effectively restricts a market participant from holding positions that could result in the receipt of more than 2,500,000 shares, aggregated for FLEX IBIT and non-FLEX IBIT (if that market participant exercised all its IBIT options). The Exchange believes that capping the aggregated position limit at 25,000 contracts, the lowest limit available in options, would be sufficient to address concerns related to manipulation and the protection of investors. The Exchange notes that this number is conservative for IBIT and therefore appropriate given its liquidity.

While ISE proposed an aggregated 25,000 contract position limit for IBIT options in its rule proposal for IBIT options, it nonetheless believed that evidence existed to support a much higher position limit. Specifically, the Commission has considered and reviewed ISE's analysis that the exercisable risk associated with a position limit of 25,000 contracts represented only 0.4% of the outstanding shares of IBIT.¹² The Commission also has considered and reviewed the ISE's statement that with

⁹ See *supra* note 4, IBIT Approval Order, 89 FR 78946.

¹⁰ See *id.*

¹¹ See *id.*

¹² See *id.*

a position limit of 25,000 contracts on the same side of the market and 611,040,00 shares of IBIT outstanding, 244 market participants would have to simultaneously exercise their positions to place IBIT under stress.¹³ Based on the Commission's review of this information and analysis, the Commission concluded that the proposed position and exercise limits were designed to prevent investors from disrupting the market for the underlying security by acquiring and exercising a number of options contracts disproportionate to the deliverable supply and average trading volume of the underlying security, and to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position.¹⁴ IBIT currently qualifies for a 250,000 contract position limit pursuant to the criteria in Options 9, Section 13(d)(5), which requires that, for the most recent six-month period, trading volume for the underlying security be at least 100,000,000 shares.¹⁵ As of November 26, 2024, the market capitalization for IBIT was \$46,783,480,800¹⁶ with an ADV, for the preceding three months prior to November 26, 2024, of 39,421,877 shares. At a price of \$94,830,¹⁷ that equates to a market capitalization of greater than \$1.876 trillion US.

Despite the addition of FLEX trading in IBIT options, the Exchange would continue to limit the number of IBIT options contracts traded on the exchange in an underlying security that an investor, acting alone or in concert with others directly or indirectly, may control and thereby mitigate potential manipulation. The Exchange believes that it is consistent with the Act to permit FLEX trading in IBIT given FLEX trading is permitted today in other ETFs overlying a commodity such as SPDR Gold Shares ("GLD"), iShares Silver Trust ("SLV"), and ProShares Bitcoin

ETF ("BITO").¹⁸ Additionally, FLEX trading is permitted today in Cboe Bitcoin U.S. ETF Index Options (CBTX) and the Cboe Mini Bitcoin U.S. ETF Index Options (MBTX),¹⁹ which is comprised of multiple bitcoin ETFs of which IBIT is the highest weighted ETF in the index composition at 20%.²⁰ CBTX (and MBTX) are permitted to trade as FLEX Index Options with a 24,000 contract position limit²¹ which limits are aggregated between FLEX and non-FLEX index options in CBTX and MBTX pursuant to Cboe Rule 8.35(a).²²

Further, the Exchange believes that the share creation and redemption process unique to ETFs would mitigate any potential risk of manipulation in FLEX trading in IBIT options. The creation and redemption process is designed to ensure that an ETF's price closely tracks the value of its underlying asset(s). For example, if a market

participant exercised a long call position for 25,000 contracts and purchased 2,500,000 shares of IBIT and this purchase resulted in the value of IBIT shares to trade at a premium to the value of the (underlying) bitcoin held by IBIT, the Exchange believes that other market participants would attempt to arbitrage this price difference by selling short IBIT shares while concurrently purchasing bitcoin. Those market participants (arbitrageurs) would then deliver cash to IBIT and receive shares of IBIT, which would be used to close out any previously established short position in IBIT. Thus, this creation and redemptions process would significantly reduce the potential risk of price dislocation between the value of IBIT shares and the value of bitcoin holdings. The Exchange understands that FLEX Options on ETFs are currently traded in the over-the-counter ("OTC") market by a variety of market participants, e.g., hedge funds, proprietary trading firms, and pension funds. The Exchange believes there is room for significant growth if a comparable FLEX product were introduced for trading on a regulated market. The Exchange expects that users of these OTC products would be among the primary users of FLEX IBIT options. The Exchange also believes that the trading of FLEX IBIT options would allow these same market participants to better manage the risk associated with the volatility of IBIT (the underlying ETF) positions given the enhanced liquidity that an exchange-traded product would bring.

Additionally, the Exchange believes that FLEX IBIT options traded on the Exchange would have three important advantages over the contracts that are traded in the OTC market. First, as a result of greater fungibility, exchange-traded contracts should develop more liquidity because each FLEX contract can be closed with a liquidating transaction as compared to OTC FLEX contracts which must be held until expiration. Second, counterparty credit risk would be mitigated by the fact that the exchange-traded contracts are issued and guaranteed by The Options Clearing Corporation ("OCC"). Finally, the price discovery and dissemination provided by the Exchange and its Members would lead to more transparent markets. The Exchange believes that its ability to offer FLEX IBIT options would aid it in competing with the OTC market and at the same time expand the universe of products available to interested market participants. The Exchange believes that an exchange-traded alternative may provide a useful risk management and

¹⁸ GLD, SLV and BITO each hold one asset in trust similar to IBIT.

¹⁹ MBTX is based on 1/10th the value of the Cboe Bitcoin U.S. ETF Index.

²⁰ See https://www.cboe.com/tradable_products/bitcoin-etf-index-options?utm_source=mcaee&utm_medium=email&utm_campaign=bitcoin_etf_options_launch. Cboe's website provides a product comparison chart indicating that CBTX and MBTX are permitted to trade FLEX as compared to spot bitcoin ETF options. See https://cdn.cboe.com/resources/membership/Cboe_Bitcoin_US ETF_Options_Comparative_Overview.pdf?gl=1*1xnm04c*up*MQ.*ga*MTc0MjU1NzU1Ni4xNzM0NTU2NTky*_ga_5Q99WB9X71*MTczNDU1NjU5MC4xLjAuMTczNDU1NjU5MC4wLjAuMA.

²¹ See Cboe Rule 8.32(a). See also Cboe Rule 8.35(a)(7) that states that for purposes of determining compliance with the position limits under this Rule 8.35, if a FLEX Index Option has a multiplier of one, 100 contracts for that class equal one contract for a FLEX Index Option with a multiplier of 100 with the same underlying index. The Exchange notes that given the multiplier and notional value of CBTX, the index has a position and exercise limit that equates to 1,000,000 contracts of in kind exposure to IBIT, which is more than 40 times greater than the exposure for options on IBIT at the current 25,000 contract position and exercise limit.

²² Cboe Rule 8.35(a)(3) provides that in no event shall the position limits for an industry-based FLEX Index Option class exceed one times the applicable number of Non-FLEX Index Option contracts (whether long or short) of the put class and the call class on the same side of the market, as determined on the basis of the position limits established pursuant to Rule 8.32 provided, however, the position limits for an industry-based FLEX Index Option class shall not exceed four times the applicable position limits established pursuant to Rule 8.32, instead of one times as provided above, for: (1) the Dow Jones Transportation Average or the Dow Jones Utility Average; or (2) an underlying industry-based index that is not a "narrow-based security index," as defined under Section 3(a)(55)(B) of the Exchange Act. See also Cboe Rule 8.35(a)(4) that provides that in no event shall the position limits for a micro narrow-based FLEX Index Option class exceed one times the applicable number of Non-FLEX Index Option contracts (whether long or short) of the class on the same side of the market, as determined on the basis of the position limits established pursuant to Rule 8.33.

¹³ See *id.*

¹⁴ See *id.*

¹⁵ Options 9, Section 13(d), Limits shall be determined in the following manner: . . . To be eligible for the 250,000 contract limit, either the most recent six (6) month trading volume of the underlying security must have totaled at least 100 million shares or the most recent six-month trading volume of the underlying security must have totaled at least seventy-five (75) million shares and the underlying security must have at least 300 million shares currently outstanding.

¹⁶ The market capitalization was determined by multiplying a settlement price of (\$54.02) by the number of shares outstanding (866,040,000). This figure was acquired as of November 26, 2024. See <https://www.ishares.com/us/products/333011/ishares-bitcoin-trust-etf>.

¹⁷ This is the approximate price of bitcoin from 4:00pm ET on November 25, 2024.

trading vehicle for market participants and their customers. Additionally, FLEX options serve two primary client types in the capital markets: (1) ETF and structured return issuers who seek European-style²³ options with bespoke strike and expirations, such that they can tailor their returns more precisely than they could with standard American-style options;²⁴ and (2) with respect to stock lending, certain investors (e.g. banks and hedge funds) may seek to align their contract durations for calls and puts, and thereby prefer European-style exercise, which can be exercised only on its expiration date, as compared to American-style, which can be exercised on any business day prior to its expiration date and on its expiration date.

The Exchange has analyzed its capacity and represents that it and The Options Price Reporting Authority ("OPRA") have the necessary systems capacity to handle the additional traffic associated with the listing of FLEX IBIT options. The Exchange believes any additional traffic that would be generated from the trading of FLEX IBIT options would be manageable. The Exchange believes Members will not have a capacity issue as a result of this proposed rule change. The Exchange also represents that it does not believe this proposed rule change will cause fragmentation of liquidity. The Exchange will monitor the trading volume associated with the additional options series listed as a result of this proposed rule change and the effect (if any) of these additional series on market fragmentation and on the capacity of the Exchange's automated systems. The Exchange represents that the same surveillance procedures applicable to the Exchange's other options products listed and traded on the Exchange, including non-FLEX IBIT options, will apply to FLEX IBIT options, and that it has the necessary systems capacity to support such options. FLEX options products (and their respective symbols) are integrated into the Exchange's existing surveillance system architecture and are thus subject to the

relevant surveillance processes. The Exchange's market surveillance staff (including staff of the Financial Industry Regulatory Authority ("FINRA") who perform surveillance and investigative work on behalf of the Exchange pursuant a regulatory services agreement) conducts surveillances with respect to IBIT (the underlying ETF) and, as appropriate, would review activity in IBIT when conducting surveillances for market abuse or manipulation in IBIT options.²⁵ The Exchange does not believe that allowing FLEX IBIT options would render the marketplace for non-FLEX IBIT options, or equity options in general, more susceptible to manipulative practices.

The Exchange represents that its existing trading surveillances are adequate to monitor the trading in IBIT (as well as FLEX IBIT) on the Exchange. Additionally, the Exchange is a member of the Intermarket Surveillance Group ("ISG") under the Intermarket Surveillance Group Agreement. ISG members work together to coordinate surveillance and investigative information sharing in the stock, options, and futures markets. For surveillance purposes, the Exchange would therefore have access to information regarding trading activity in the pertinent underlying securities. In addition, and as referenced above, the Exchange has a regulatory services agreement with FINRA, pursuant to which FINRA conducts certain surveillances on behalf of the Exchange. Further, pursuant to a multi-party 17d-2 joint plan, all options exchanges allocate regulatory responsibilities to FINRA to conduct certain options-related market surveillances.²⁶ The Exchange will implement any additional surveillance procedures it deems necessary to effectively monitor the trading of IBIT options.

The proposed rule change is designed to allow investors seeking to trade options on IBIT to utilize FLEX IBIT

options. The Exchange believes that offering innovative products flows to the benefit of the investing public. A robust and competitive market requires that exchanges respond to members' evolving needs by constantly improving their offerings. Such efforts would be stymied if exchanges were prohibited from offering innovative products such as the proposed FLEX IBIT options. The Exchange believes that introducing FLEX IBIT options would further broaden the base of investors that use FLEX Options (and options on IBIT in general) to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options. The proposed rule change is also designed to encourage market makers to shift liquidity from the OTC market on the Exchange, which, it believes, will enhance the process of price discovery conducted on the Exchange through increased order flow.

Finally, as discussed herein, the Exchange does not believe that this proposed rule change raises any unique regulatory concerns because the proposal to aggregate FLEX and non-FLEX IBIT options at the (most conservative) 25,000 contract position limit, which currently applies solely to non-FLEX IBIT options, should provide an adequate safeguard.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁸ in particular, in that it is 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)²⁹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Specifically, the Exchange believes that introducing FLEX IBIT options will increase order flow to the Exchange, increase the variety of options products available for trading, and provide a valuable tool for investors to manage

²³ The term "European-style option" means an options contract that, subject to the provisions of Options 6B, Section 1 (relating to the cutoff time for exercise instructions) and to the Rules of the Clearing Corporation, can be exercised only on its expiration date. See Options 1, Section 1(a)(15).

²⁴ The term "American-style option" means an options contract that, subject to the provisions of Options 6B, Section 1 (relating to the cutoff time for exercise instructions) and to the Rules of the Clearing Corporation, can be exercised on any business day prior to its expiration date and on its expiration date. Today, non-FLEX equity options settle American-style. See Options 1, Section 1(a)(3).

²⁵ See IBIT Approval Order, 89 FR 78947.

²⁶ Section 19(g)(1) of the Act, among other things, requires every SRO registered as a national securities exchange or national securities association to comply with the Act, the rules, and regulations thereunder, and the SRO's own rules, and, absent reasonable justification or excuse enforce compliance by its members and persons associated with its members. See 15 U.S.C. 78q(d)(1) and 17 CFR 240.17d-2. Section 17(d)(1) of the Act allows the Commission to relieve an SRO of certain responsibilities with respect to members of the SRO who are also members of another SRO. Specifically, Section 17(d)(1) allows the Commission to relieve an SRO of its responsibilities to: (i) receive regulatory reports from such members; (ii) examine such members for compliance with the Act and the rules and regulations thereunder, and the rules of the SRO; or (iii) carry out other specified regulatory responsibilities with respect to such members.

²⁷ 15 U.S.C. 78f(b).

²⁸ 15 U.S.C. 78f(b)(5).

²⁹ 15 U.S.C. 78f(b)(5).

risk. The proposed rule change is designed to allow investors seeking to trade options on IBIT to utilize FLEX IBIT options.

The Exchange believes that the proposal to permit FLEX IBIT options would remove impediments to and perfect the mechanism of a free and open market. The Exchange believes that offering FLEX IBIT options will benefit investors by providing them with an additional, relatively lower cost investing tool to gain exposure to the price of bitcoin and provide a hedging vehicle to meet their investment needs in connection with a bitcoin-related product. Moreover, the proposal would broaden the base of investors that use FLEX Options to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options. By trading a product in an exchange-traded environment (that is currently being used in the OTC market), the Exchange would be able to compete more effectively with the OTC market. The Exchange believes the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that it would lead to the migration of options currently trading in the OTC market to trading to the Exchange. Also, any migration to the Exchange from the OTC market would result in increased market transparency and enhance the process of price discovery conducted on the Exchange through increased order flow. The Exchange also believes that offering FLEX IBIT options may open up the market for options on IBIT to more retail investors. Additionally, offering FLEX would serve two primary client types in the capital markets by permitting ETF and structured return issuers to more precisely tailor their settlement style and allow other investors to align their contract durations for calls and puts, as well as settlement-style.

Additionally, the Exchange believes the proposed rule change is designed to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest in that it should create greater trading and hedging opportunities and flexibility. The proposed rule change should also result in enhanced efficiency in initiating and closing out positions and heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of FLEX IBIT options. Further, the proposed rule change would result in increased competition by permitting the Exchange to offer products that are currently used in the OTC market.

The Exchange does not believe that this proposed rule change raises any unique regulatory concerns because the proposal to aggregate FLEX and non-FLEX IBIT options at the (most conservative) 25,000 contract limit should provide an adequate safeguard. The purpose of position limits is to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. The Exchange believes the proposal will benefit investors and public interest because the aggregated position limit for all options on IBIT (FLEX and non-FLEX) at 25,000 contracts, the lowest limit available in options, would address concerns related to manipulation and protection of investors as this number is conservative for IBIT and therefore appropriate given its liquidity.

The Exchange believes that offering innovative products flows to the benefit of the investing public. A robust and competitive market requires that exchanges respond to evolving needs in the market by constantly improving their offerings. Such efforts would be stymied if exchanges were prohibited from offering innovative products such as the proposed FLEX IBIT options. The Exchange does not believe that allowing FLEX IBIT options would render the marketplace for equity options more susceptible to manipulative practices.

Finally, the Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in FLEX IBIT options. Regarding the proposed FLEX IBIT options, the Exchange would use the same surveillance procedures currently utilized for FLEX Options listed on the Exchange (as well as for non-FLEX IBIT options). For surveillance purposes, the Exchange would have access to information regarding trading activity in IBIT (the underlying ETF).³⁰ In light of surveillance measures related to both options and IBIT (the underlying ETF), the Exchange believes that existing surveillance procedures are designed to deter and detect possible manipulative behavior which might potentially arise from listing and trading the proposed FLEX IBIT options.

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.

The Exchange does not believe that its proposed rule change will impose any burden on intra-market competition as all market participants would have the option of utilizing the FLEX IBIT options. The proposed rule change is designed to allow investors seeking option exposure to bitcoin to trade FLEX IBIT options. Moreover, the Exchange believes that the proposal to permit FLEX IBIT options would broaden the base of investors that use FLEX Options to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options.

The Exchange does not believe that its proposed rule change will impose any burden on intermarket competition as all market participants would have the option of utilizing the FLEX IBIT options. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues. The proposed rule change would support that intermarket competition by allowing the Exchange to offer additional functionality to Members. The Exchange believes that the proposed FLEX IBIT options will increase the variety of options products available for trading in general and bitcoin-related products in particular and, as such, will provide a valuable tool for investors to manage risk.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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, as modified by Amendment No. 1, is consistent with the Act. Comments

³⁰ See IBIT Approval Order, 89 FR at 78947.

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-2025-12 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-2025-12. This file number should be included on the subject line if email is used. To help with 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-2025-12 and should be submitted on or before May 30, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2025-08113 Filed 5-8-25; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102986; File No. SR-FICC-2025-005]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Adopt an Intraday Mark-To-Market Charge at GSD

May 5, 2025.

On March 14, 2025, Fixed Income Clearing Corporation ("FICC"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-FICC-2025-005 ("Proposed Rule Change"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder to adopt an Intraday Mark-to-Market Charge at FICC's Government Securities Division ("GSD").³ The Proposed Rule Change was published for public comment in the **Federal Register** on March 27, 2025.⁴ The Commission has received comments regarding the substance of the changes proposed in the Proposed Rule Change.⁵

Section 19(b)(2) of the Exchange Act⁶ provides that, within 45 days of the publication of notice of the filing of a proposed rule change, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved unless the Commission extends the period within which it must act as provided in Section 19(b)(2)(ii) of the Exchange Act.⁷ Section 19(b)(2)(ii) of the Exchange Act allows the Commission to designate a longer period for review (up to 90 days from the publication of notice of the filing of a proposed rule change) 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.⁸

The 45th day after publication of the Notice of Filing is May 11, 2025. To provide the Commission with sufficient

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Notice of Filing, *infra* note 4, at 90 FR 13965.

⁴ Securities Exchange Act Release No. 102705 (Mar. 21, 2025), 90 FR 13965 (Mar. 27, 2025) (File No. SR-FICC-2025-005) ("Notice of Filing").

⁵ Comments on the Proposed Rule Change are available at <https://www.sec.gov/comments/sr-ficc-2025-005/srficc2025005.htm>.

⁶ 15 U.S.C. 78s(b)(2).

⁷ 15 U.S.C. 78s(b)(2)(ii).

⁸ *Id.*

time to consider the Proposed Rule Change, the Commission finds that it is appropriate to designate a longer period within which to act on the Proposed Rule Change and therefore is extending this 45-day time period.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Exchange Act,⁹ designates June 25, 2025, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove proposed rule change SR-FICC-2025-005.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2025-08116 Filed 5-8-25; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35567; File No. 812-15759]

Blackstone Private Credit Fund, et al.

May 5, 2025.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").
ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the "Act") and rule 17d-1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d-1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain business development companies ("BDCs") and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

APPLICANTS: Blackstone Private Credit Fund, Blackstone Secured Lending Fund, Blackstone Private Multi-Asset Credit and Income Fund, Blackstone Long-Short Credit Income Fund, Blackstone Senior Floating Rate 2027 Term Fund, Blackstone Strategic Credit 2027 Term Fund, Blackstone Private Real Estate Credit and Income Fund, Blackstone Alternative Investment Advisors LLC, Blackstone CLO Management LLC, Blackstone Credit BDC Advisors LLC, Blackstone

⁹ See note 6, *supra*.

¹⁰ 17 CFR 200.30-3(a)(12).

³¹ 17 CFR 200.30-3(a)(12).

Infrastructure Advisors L.L.C., Blackstone Ireland Fund Management Limited, Blackstone Ireland Limited, Blackstone Liquid Credit Advisors I LLC, Blackstone Liquid Credit Strategies LLC, Blackstone Private Credit Strategies LLC, Blackstone Private Investments Advisors L.L.C., Blackstone Real Estate Special Situations Advisors L.L.C., BX REIT Advisors L.L.C., BXMT Advisors L.L.C., Clarus Ventures, LLC, certain of their wholly-owned subsidiaries, joint ventures and BDC-downstream funds as described in Appendix A to the application and certain of their affiliated entities as described in Appendix B to the application.

FILING DATES: The application was filed on March 14, 2025, and amended on April 11, 2025, and April 24, 2025.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at Secretarys-Office@sec.gov and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on May 30, 2025, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at Secretarys-Office@sec.gov.

ADDRESSES: The Commission: Secretarys-Office@sec.gov. Applicants: Leon Volchyok, Esq., Blackstone Inc., Leon.Volchyok@blackstone.com; Oran Ebel, Esq., Blackstone Inc., Oran.Ebel@blackstone.com; Rajib Chanda, Rajib.Chanda@stblaw.com; Kenneth Burdon, Kenneth.Burdon@stblaw.com; and Jonathan Gaines, Jonathan.Gaines@stblaw.com.

FOR FURTHER INFORMATION CONTACT: Adam Large, Senior Special Counsel, Laura Solomon, Senior Counsel, or Daniele Marchesani, Assistant Chief Counsel, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal

analysis, and conditions, please refer to Applicants' second amended application, dated April 24, 2025, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at <https://www.sec.gov/edgar/searchedgar/companysearch.html>. You may also call the SEC's Office of Investor Education and Advocacy at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2025–08100 Filed 5–8–25; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102996; File No. SR–NYSEAMER–2024–78]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Certain Rules Related to Flexible Exchange Options

May 5, 2025.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 (“Act”) ² and Rule 19b–4 thereunder, ³ notice is hereby given that, on April 25, 2025, NYSE American LLC (“NYSE American” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons. ⁴

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 903G and 906G to permit Flexible Exchange (“FLEX”) Options on certain Exchange-Traded Funds (or ETFs) that hold bitcoin. This Amendment No. 1

supersedes and replaces the original filing in its entirety. ⁵ 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes amend Rules 903G (Terms of FLEX Options) and 906G (Position Limits) to permit options the Grayscale Bitcoin Trust (BTC) (“GBTC”), the Grayscale Bitcoin Mini Trust ETF (“BTC”), and the Bitwise Bitcoin ETF (“BITB”) (each a “Fund” and, collectively, the “Funds”) to trade as FLEX Equity Options and to require the aggregation of any FLEX and non-FLEX positions on the same underlying Fund for purposes of calculating position and exercise limits as set forth in Rules 904 and 905. ⁶

The Exchange notes that this proposal is competitive given that Nasdaq Phlx, LLC (“Phlx”) recently filed a proposal to permit FLEX trading on options on iShares Bitcoin Trust ETF (“IBIT”), with an aggregated position and exercise limit for IBIT options of 25,000-contracts. ⁷

⁵ This Amendment No. 1 modifies the scope of the original filing to include (i) the Grayscale Bitcoin Mini Trust ETF and (ii) the Bitwise Bitcoin ETF. The Exchange also proposes to update existing rule text references to make technical corrections, including to update the name of the Grayscale Bitcoin Mini Trust (BTC) to the Grayscale Bitcoin Mini Trust ETF.

⁶ FLEX Options are customized equity or index contracts that allow investors to tailor contract terms for exchange-listed equity and index options. See generally Section 15 (Flexible Exchange (“FLEX”) Options). A “FLEX Equity Option” is an option on a specified underlying equity security that is subject to the rules of Section 15. See Rule 900G(b)(10).

⁷ See Securities Exchange Act Release No. 102132 (Jan. 7, 2025), 90 FR 3266 (Jan. 14, 2025) (SR–Phlx–2024–72) (Notice of Filing of Proposed Rule Change

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

⁴ The initial proposed rule change was filed with the Commission on December 13, 2024. See Securities Exchange Act Release No. 102014 (Dec. 20, 2024), 89 FR 105669 (Dec. 27, 2024).

Background

Each Fund is ETF that holds bitcoin and is listed on NYSE Arca, Inc. (“NYSE Arca”), the Exchange’s affiliated equities exchange.⁸ Recently, the Commission approved options trading on the Funds.⁹ For each Fund, the position and exercise limits are 25,000 contracts, as set forth in Rule 904, Commentary .07(f), the lowest available limit.¹⁰

FLEX Equity Options are not generally subject to position or exercise limits.¹¹ Today, pursuant to Rule 903G(a)(1), Fund options are not approved for FLEX trading.¹² Therefore, the 25,000-contract limit applicable to options on each Fund currently applies solely to non-FLEX Fund options.

Proposal

The Exchange proposes to permit options on each Fund to trade as FLEX Equity Options and would require the aggregation of any FLEX and non-FLEX positions in the same underlying Fund for purposes of calculating the 25,000-contract position and exercise limits applicable to each Fund.¹³

To Permit FLEX Trading in the iShares Bitcoin Trust ETF (“Phlx FLEX IBIT Proposal”). Like each of the Funds, IBIT is an ETF that holds bitcoin.

⁸NYSE Arca received approval to list and trade Bitcoin-Based Commodity-Based Trust Shares in GBTC, BTC, and BITB pursuant to NYSE Arca Rule 8.201–E(c)(1). See Securities Exchange Act Release Nos. 99306 (January 10, 2024) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to list and trade options in GBTC and BITB), 89 FR 3008 (January 17, 2024) (SR–NYSEARCA–2021–90); 100610 (July 26, 2024) (Order Granting Approval of Proposed Rule Changes, as Modified by Amendment No. 1, to permit the listing and trading of options on BTC), 89 FR 62821 (August 1, 2024) (SR–NYSEARCA–2023–45).

⁹ See Securities Exchange Act Release No. 101386 (October 18, 2024), 89 FR 84960 (October 24, 2024) (SR–NYSEAMER–2024–49) (Order approving the listing and trading of options on GBTC, BTC, and BITB, pursuant to Rule 915, Commentary .10(a) (the “Fund Options Approval Order”).

¹⁰ Per Rule 905(a)(i), the exercise limit for options on each Fund is the same as the position limit for that Fund as determined by Rule 904. The following ETFs are also subject to a 25,000-contract position and exercise limit: IBIT, Fidelity Wise Origin Bitcoin Fund (“FBTC”), and ARK 21Shares Bitcoin (“ARKB”). See Rules 904, Commentary .07(f) and 905(a)(i).

¹¹ See Rule 906G(b) (subject to the exceptions enumerated in the rule “there shall be no position limits for FLEX Equity options.”)

¹² Rule 903G(a)(1) also does not permit FLEX trading on options on IBIT, FBTC, and ARKB.

¹³ See proposed Rules 5.32–O(f)(1) (excluding GBTC, BTC, and BITB options from the prohibition against FLEX trading); and 5.35–O(b)(iii) (adopting the requirement that, for options on each Fund, the Exchange will aggregate any FLEX and non-FLEX positions in the same underlying Fund for purposes

Per the Commission “rules regarding position and exercise limits are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options positions.”¹⁴ For this reason, the Commission requires that “position and exercise limits must be sufficient to prevent investors from disrupting the market for the underlying security by acquiring and exercising a number of options contracts disproportionate to the deliverable supply and average trading volume of the underlying security.”¹⁵ Based on its review of the data and analysis provided by the Exchange, the Commission concluded that the 25,000-contract position (and exercise) limit for non-FLEX options on each Fund satisfied these objectives.¹⁶

As proposed, for options on each Fund, the Exchange will aggregate any FLEX and non-FLEX positions in the same underlying Fund for purposes of calculating the 25,000-contract position and exercise limits. For each Fund, this proposed aggregated limit effectively restricts a market participant from holding positions that could result in the receipt of more than 2,500,000 shares, aggregated for FLEX and non-FLEX in the same underlying Fund (if that market participant exercised all its options). The Exchange believes that capping the aggregated position and exercise limits at 25,000 contracts, the lowest available limit, would be sufficient to address concerns related to manipulation and the protection of investors. The Exchange notes that this number is conservative given the liquidity of each Fund.¹⁷

While the Exchange proposes an aggregated 25,000-contract position and exercise limit for options on each Fund, it nonetheless believes that, for the reasons set forth below, evidence exists to support a much higher position limit.¹⁸

of calculating the position and exercise limits for that Fund, as set forth in Rules 904 and 905.

¹⁴ See *supra* note 9, Fund Options Approval Order, 89 FR, at 84971.

¹⁵ See *id.*

¹⁶ See *id.*

¹⁷ See *id.*

¹⁸ The Exchange may file a subsequent rule change to increase the position and exercise limit for options on the Funds based on additional data regarding trading activity, to continue to balance any concerns regarding manipulation. A higher position and exercise limit would allow institutional investors to utilize Fund options for prudent risk management purposes. In this regard,

Specifically, in approving the options on each Fund, the Commission considered and reviewed the Exchange’s analysis that the exercisable risk associated with a position limit of 25,000 contracts represented only 0.9%, 0.7%, and 3.6% of the outstanding shares of GBTC, BTC and BITB, respectively.¹⁹ The Commission also considered and reviewed the Exchange’s arguments that with a 25,000-contract limit for each Fund: (i) the 284,570,100 GBTC shares outstanding, 114 market participants would have to simultaneously exercise their positions to place GBTC under stress; (ii) the 366,950,100 BTC shares outstanding, meant that 147 market participants would have to simultaneously exercise their same-side positions to place BTC under stress; and (iii) the 68,690,000 BITB shares outstanding, meant that 27 market participants would have to simultaneously exercise their same-side positions to place BITB under stress.²⁰ Based on the Commission’s review of this information and analysis, the Commission concluded that the 25,000-contract position and exercise limit for options on each Fund would address concerns related to manipulation and investor protection and deemed this limit conservative and therefore appropriate given the liquidity of each Fund.²¹

Each Fund qualifies a 250,000-contract limit, pursuant to Rule 904, Commentary .06(e), which requires that, for the most recent six-month period, trading volume for the underlying security is at least 100,000,000 shares.²² The following table sets forth the trading data for each Fund, as of November 25, 2024, for the preceding six months and the average daily volume (“ADV”) for the preceding three months.

the Exchange would address the impact of higher position (and exercise) limits on the proposed FLEX Fund options.

¹⁹ See *id.* Data represents figures from FactSet as of August 30, 2024.

²⁰ See *supra* note 9, Fund Options Approval Order, 89 FR, at 84971.

²¹ *Id.*

²² See Rule 904, Commentary .06 (providing at subparagraph (e) that the position limit shall be 250,000 contracts for options: (i) on underlying stock or Exchange-Traded Fund Share that had trading volume of at least 100,000,000 shares during the most recent six-month trading period; or (ii) on an underlying stock or Exchange-Traded Fund Share that had trading volume of at least 75,000,000 shares during the most recent six-month trading period and has at least 300,000,000 shares currently outstanding).

Fund	Trading volume (shares)	Market capitalization	ADV (shares)
GBTC	550,687,400	*\$20,661,316,542	3,829,597
BTC	163,712,700	†\$3,496,748,882	2,036,369
BITB	288,800,860	‡4,095,157,000	2,480,478

* The market capitalization was determined by multiplying a settlement price (\$75.42) by the number of shares outstanding (273,950,100). Data represents figures from FactSet as of November 25, 2024.

† The market capitalization of BTC was determined by multiplying a settlement price (\$42.16) by the number of shares outstanding (82,939,964). Data represents figures from FactSet as of November 25, 2024.

‡ The market capitalization of BITB was determined by multiplying a settlement price (\$51.70) by the number of shares outstanding (79,950,100). Data represents figures from FactSet as of November 25, 2024.

Also, as of November 25, 2024, there were 19,787,762 bitcoins in circulation.²³ At a price of \$94,830 per bitcoin,²⁴ that equates to a market capitalization of greater than \$1.876 trillion. If a position and exercise limit of 250,000 contracts were considered for each Fund, the exercisable risk would represent 9.13%²⁵ of the GBTC shares outstanding; 30.14%²⁶ of BTC shares outstanding; and 31.27%²⁷ of BITB shares outstanding. Given the liquidity of BTC and BITB, the current 25,000 position and exercise limit appears extremely conservative.

Despite the proposed addition of FLEX trading in options on GBTC, BTC, and BITB (collectively, “FLEX Fund Options”), the Exchange would continue to limit to 25,000 the number of options on each Fund traded on the Exchange that an investor, acting alone or in concert with others directly or indirectly, may control and thereby mitigate potential manipulation. The Exchange believes that allowing FLEX Fund Options it consistent with the Act given FLEX trading is permitted today in other ETFs overlying a commodity such as SPDR Gold Shares (“GLD”) and iShares Silver Trust (“SLV”).²⁸

Further, the Exchange believes that the share creation and redemption process unique to ETFs would mitigate any potential risk of manipulation in FLEX Fund Options. The creation and redemption process is designed to ensure that an ETF’s price closely tracks the value of its underlying asset(s). For example, if a market participant exercised a long call position for 25,000 contracts and purchased 2,500,000

shares of GBTC and this purchase resulted in the value of GBTC shares to trade at a premium to the value of the (underlying) bitcoin held by GBTC, the Exchange believes that other market participants would attempt to arbitrage this price difference by selling short GBTC shares while concurrently purchasing bitcoin. Those market participants (arbitrageurs) would then deliver cash to GBTC and receive shares of GBTC, which would be used to close out any previously established short position in GBTC. Thus, this creation and redemptions process would significantly reduce the potential risk of price dislocation between the value of shares in each Fund and the value of bitcoin holdings.

The Exchange understands that FLEX Equity Options on ETFs are currently traded in the over-the-counter (“OTC”) market by a variety of market participants, *e.g.*, hedge funds, proprietary trading firms, and pension funds, to name a few. The Exchange believes there is room for significant growth if a comparable product were introduced for trading on a regulated market. The Exchange expects that users of these OTC products would be among the primary users of FLEX Fund Options. The Exchange also believes that the trading of FLEX Fund Options would allow these same market participants to better manage the risk associated with the volatility of positions in the underlying ETF (*i.e.*, GBTC, BTC, or BITB) given the enhanced liquidity that an exchange-traded product would bring.

Additionally, the Exchange believes that FLEX Fund Options traded on the Exchange would have three important advantages over the contracts that are traded in the OTC market. First, as a result of greater standardization of contract terms, exchange-traded contracts should develop more liquidity. Second, counter-party credit risk would be mitigated by the fact that the contracts are issued and guaranteed by The Options Clearing Corporation (“OCC”). Finally, the price discovery and dissemination provided by the Exchange and its members would lead

to more transparent markets. The Exchange believes that its ability to offer FLEX Fund Options would aid it in competing with the OTC market and at the same time expand the universe of products available to interested market participants. The Exchange believes that an exchange-traded alternative may provide a useful risk management and trading vehicle for market participants and their customers.

The Exchange has analyzed its capacity and represents that it and The Options Price Reporting Authority (“OPRA”) have the necessary systems capacity to handle the additional traffic associated with the listing of FLEX Fund Options. The Exchange believes any additional traffic that would be generated from the trading of FLEX Fund Options would be manageable. The Exchange believes ATP Holders will not have a capacity issue as a result of this proposed rule change. The Exchange also represents that it does not believe this proposed rule change will cause fragmentation of liquidity. The Exchange will monitor the trading volume associated with the additional options series listed as a result of this proposed rule change and the effect (if any) of these additional series on market fragmentation and on the capacity of the Exchange’s automated systems.

The Exchange represents that the same surveillance procedures applicable to the Exchange’s other options products listed and traded on the Exchange, including non-FLEX options in each Fund, will apply to FLEX Fund Options, and that it has the necessary systems capacity to support such options. FLEX options products (and their respective symbols) are integrated into the Exchange’s existing surveillance system architecture and are thus subject to the relevant surveillance processes. The Exchange’s market surveillance staff (including staff of the Financial Industry Regulatory Authority (“FINRA”) who perform surveillance and investigative work on behalf of the Exchange pursuant a regulatory services agreement) conducts surveillances with respect to GBTC, BTC, and BITB (*i.e.*, the underlying ETFs) and, as

²³ See <https://www.coingecko.com/en/coins/bitcoin>.

²⁴ This is the approximate price of bitcoin from 4:00 p.m. ET on November 25, 2024.

²⁵ This percentage is arrived at with this equation: (250,000 contract limit * 100 shares per option / 273,950,100 GBTC shares outstanding).

²⁶ This percentage is arrived at with this equation: (250,000 contract limit * 100 shares per option / 82,939,964 BTC shares outstanding).

²⁷ This percentage is arrived at with this equation: (250,000 contract limit * 100 shares per option / 79,950,100 BITB shares outstanding).

²⁸ GLD and SLV, like the each of the Funds, holds one asset in trust.

appropriate, would review activity in applicable ETF when conducting surveillances for market abuse or manipulation in the FLEX Fund Options.²⁹ The Exchange does not believe that allowing FLEX Fund Options would render the marketplace for non-FLEX options in any of the Funds, or equity options in general, more susceptible to manipulative practices.

The Exchange represents that its existing trading surveillances are adequate to monitor the trading in GBTC, BTC, and BITB, as well as any subsequent trading of FLEX Fund Options on the Exchange. Additionally, the Exchange is a member of the Intermarket Surveillance Group (“ISG”) under the ISG Agreement. ISG members work together to coordinate surveillance and investigative information sharing in the stock, options, and futures markets. For surveillance purposes, the Exchange would therefore have access to information regarding trading activity in GBTC, BTC, and BITB and in other pertinent underlying securities on other exchanges through ISG. In addition, and as referenced above, the Exchange has a regulatory services agreement with FINRA, pursuant to which FINRA conducts certain surveillances on behalf of the Exchange. Further, pursuant to a multi-party 17d–2 joint plan, all options exchanges allocate regulatory responsibilities to FINRA to conduct certain options-related market surveillances.³⁰ The Exchange will implement any additional surveillance procedures it deems necessary to effectively monitor the trading of FLEX Fund Options.

The proposed rule change is designed to allow investors seeking to trade options on the Funds to utilize FLEX Fund Options. The Exchange believes that offering innovative products flows to the benefit of the investing public. A

robust and competitive market requires that exchanges respond to members’ evolving needs by constantly improving their offerings. Such efforts would be stymied if exchanges were prohibited from offering innovative products such as the proposed FLEX Fund Options. The Exchange believes that introducing FLEX Fund Options would further broaden the base of investors that use FLEX Equity Options (and options on the Funds in general) to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options. The proposed rule change is also designed to encourage market makers to shift liquidity from the OTC market on the Exchange, which, it believes, will enhance the process of price discovery conducted on the Exchange through increased order flow.

As discussed herein, the Exchange does not believe that this proposed rule change raises any unique regulatory concerns because the proposal to aggregate FLEX and non-FLEX option positions in each Fund at the (most conservative) 25,000-contract position and exercise limit, which currently applies solely to non-FLEX options on each Fund, should provide an adequate safeguard.

Finally, the Exchange proposes to make technical changes to Rule 904, Commentary .07(f) to update the name of the Grayscale Bitcoin Mini Trust ETF (previously known as the Grayscale Bitcoin Mini Trust (BTC)) and to correct the symbol associated with Fidelity Ethereum Fund, which changes will add accuracy and internal consistency to Exchange rules making them easier to comprehend and understand.³¹

Implementation

The Exchange will announce the implementation date by Trader Update within sixty (60) days of the rule approval.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),³² in general, and furthers the objectives of Section 6(b)(5) of the Act,³³ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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. Specifically, the Exchange believes that introducing FLEX Fund Options will increase order flow to the Exchange, increase the variety of options products available for trading, and provide a valuable tool for investors to manage risk. The proposed rule change is designed to allow investors seeking to trade options on any of the Funds to utilize FLEX Fund Options.

The Exchange believes that the proposal to permit FLEX Fund Options would remove impediments to and perfect the mechanism of a free and open market. The Exchange believes that offering FLEX Fund Options will benefit investors by providing them with an additional, relatively lower cost investing tool to gain exposure to the price of bitcoin and provide a hedging vehicle to meet their investment needs in connection with a bitcoin-related product. Moreover, the proposal would broaden the base of investors that use FLEX Options to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options. By trading a product in an exchange-traded environment (that is currently being used in the OTC market), the Exchange would be able to compete more effectively with the OTC market. The Exchange believes the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that it would lead to the migration of options currently trading in the OTC market to trading to the Exchange. Also, any migration to the Exchange from the OTC market would result in increased market transparency and enhance the process of price discovery conducted on the Exchange through increased order flow. The Exchange also believes that offering FLEX Fund Options may appeal to retail investors interested in options trading (both FLEX and non-FLEX) on GBTC, BTC, and BITB.

Additionally, the Exchange believes the proposed rule change is designed to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest in that it should create greater trading and hedging opportunities and flexibility. The proposed rule change should also result in enhanced efficiency in initiating and closing out positions and heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of FLEX Fund Options. Further, the

²⁹ See *supra* note 9, Fund Options Approval Order, 89 FR 84966–68 (regarding surveillance procedures applicable to GBTC, BTC, and BITB).

³⁰ Section 19(g)(1) of the Act, among other things, requires every SRO registered as a national securities exchange or national securities association to comply with the Act, the rules and regulations thereunder, and the SRO’s own rules, and, absent reasonable justification or excuse, enforce compliance by its members and persons associated with its members. See 15 U.S.C. 78q(d)(1) and 17 CFR 240.17d–2. Section 17(d)(1) of the Act allows the Commission to relieve an SRO of certain responsibilities with respect to members of the SRO who are also members of another SRO. Specifically, Section 17(d)(1) allows the Commission to relieve an SRO of its responsibilities to: (i) receive regulatory reports from such members; (ii) examine such members for compliance with the Act and the rules and regulations thereunder, and the rules of the SRO; or (iii) carry out other specified regulatory responsibilities with respect to such members.

³¹ See proposed Rule 904, Commentary .07(f) (updating the name of the Grayscale Bitcoin Mini Trust (BTC) to Grayscale Bitcoin Mini Trust ETF and correcting the trading symbol for the Fidelity Ethereum Fund from “ETH” to “FETH”).

³² 15 U.S.C. 78f(b).

³³ 15 U.S.C. 78f(b)(5).

proposed rule change would result in increased competition by permitting the Exchange to offer products that are currently used in the OTC market.

The Exchange does not believe that this proposed rule change raises any unique regulatory concerns because the proposal to aggregate any FLEX and non-FLEX options in each Fund at the current (and most conservative) 25,000-contract limit should provide an adequate safeguard. As noted herein, the purpose of position (and exercise) limits is to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. The Exchange believes the proposal will benefit investors and public interest because the aggregated position and exercise limits for (FLEX and non-FLEX) options on the same underlying Fund at 25,000 contracts, the lowest limit available in options, would address concerns related to manipulation and protection of investors as this number is conservative and therefore appropriate given the sufficient liquidity in each Fund.

The Exchange believes that offering innovative products benefits the investing public. A robust and competitive market requires that exchanges respond to the evolving needs of their members by constantly improving their offerings. Such efforts would be stymied if exchanges were prohibited from offering innovative products such as the proposed FLEX Fund Options. The Exchange does not believe that allowing FLEX Fund Options would render the marketplace for equity options more susceptible to manipulative practices.

Finally, the Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in FLEX Fund Options. Regarding the proposed FLEX Fund Options, the Exchange would use the same surveillance procedures utilized for FLEX Options currently listed on the Exchange (as well as for non-FLEX options on each Fund). For surveillance purposes, the Exchange would have access to information regarding trading activity in the underlying Funds (*i.e.*, GBTC, BTC, and BITB).³⁴ In light of surveillance measures related to both options and the underlying Funds, the Exchange believes that existing surveillance procedures are designed to deter and detect possible manipulative behavior which might potentially arise

from listing and trading the proposed FLEX Fund Options.

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.

Intra-market competition. The Exchange does not believe that its proposed rule change will impose any burden on intra-market competition as all market participants would have the option of utilizing the FLEX Fund Options. The proposed rule change is designed to allow investors seeking option exposure to bitcoin to trade FLEX Fund Options. Moreover, the Exchange believes that the proposal to permit FLEX Fund Options would broaden the base of investors that use FLEX Options to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options.

Inter-market competition. The Exchange does not believe that its proposed rule change will impose any burden on inter-market competition as all market participants would have the option of utilizing the FLEX Fund Options. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues. The proposed rule change would support that intermarket competition by allowing the Exchange to offer additional functionality to ATP Holders. The Exchange believes that the proposed FLEX Fund Options will increase the variety of options products available for trading in general and bitcoin-related products in particular and, as such, will provide a valuable tool for investors to manage risk.

As such, the Exchange believes that this proposal does not create an undue burden on intermarket competition. Rather, the Exchange believes that the proposed rule would bolster intermarket competition by promoting fair competition among individual markets. The Exchange notes that, upon approval of this proposal, competing options exchanges will be free to offer products like the proposed FLEX Fund Options.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period *up to 90 days* (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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-NYSEAMER-2024-78 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-NYSEAMER-2024-78. 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

³⁴ See *supra* note 9, Fund Options Approval Order, 89 FR at 84966-68 (regarding surveillance procedures applicable to GBTC, BTC, and BITB).

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–NYSEAMER–2024–78 and should be submitted on or before May 30, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁵

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2025–08115 Filed 5–8–25; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102994; File No. SR–FICC–2025–011]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Capital Policy and the Capital Replenishment Plan

May 5, 2025.

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 April 25, 2025, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b–4(f)(3) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to (i) the Clearing Agency Policy on Capital Requirements (“Capital Policy” or “Policy”) of FICC and its affiliates, The Depository Trust Company (“DTC”) and National Securities Clearing Corporation

(“NSCC,” and together with DTC and FICC, the “Clearing Agencies”); and (ii) the Clearing Agency Capital Replenishment Plan (“Capital Replenishment Plan” or “Plan”) of the Clearing Agencies. In particular, the proposed revisions to the Capital Policy and Capital Replenishment Plan would (1) make technical revisions to update, simplify, and clarify statements in the Policy and Plan; and (2) update the Plan to document alternate authorizations in case an authorizing officer is not available.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Clearing Agencies are proposing to revise the Capital Policy and Capital Replenishment Plan, which were adopted by the Clearing Agencies in July 2017⁵ and are maintained by the Clearing Agencies in compliance with Rule 17ad–22(e)(15) under the Act.⁶

Overview of the Capital Policy and Capital Replenishment Plan

The Capital Policy sets forth the manner in which each Clearing Agency identifies, monitors, and manages its general business risk with respect to the requirement to hold sufficient liquid net assets (“LNA”) funded by equity to cover potential general business losses so the Clearing Agency can continue operations and services as a going concern if such losses materialize.⁷ The amount of LNA funded by equity to be held by each of the Clearing Agencies for this purpose is defined in the Policy as the General Business Risk Capital Requirement. The Policy provides that the General Business Risk Requirement is calculated for each Clearing Agency

as the greatest of three separate calculations—(1) an amount based on that Clearing Agency’s general business risk profile (“Risk-Based Capital Requirement”), (2) an amount based on the time estimated to execute a recovery or orderly wind-down of the critical operations of that Clearing Agency (“Recovery/Wind-down Capital Requirement”), and (3) an amount based on an analysis of that Clearing Agency’s estimated operating expenses for a six-month period (“Operating Expense Capital Requirement”). On an annual basis, each of these three capital requirements are measured, and the General Business Risk Capital Requirement for each Clearing Agency are determined as the greatest of these calculations.

Currently, the Capital Policy also addresses how each Clearing Agency maintains a portion of retained earnings as LNA funded by equity as its Corporate Contribution, as a part of its management of credit risk⁸ and pursuant to its respective rules.⁹ These resources are maintained to address losses due to a participant default, and are held in addition to the LNA funded by equity held by each of the Clearing Agencies as its General Business Risk Capital Requirement. The Capital Policy describes how each Clearing Agency’s General Business Risk Capital Requirement and Corporate Contribution fit within the Clearing Agencies’ Capital Framework, where the Total Capital Requirement of each Clearing Agency is calculated as the sum of its General Business Risk Capital Requirement and Corporate Contribution.

The Policy also provides a plan for the replenishment of capital through the Capital Replenishment Plan. The Capital Replenishment Plan was adopted by the Clearing Agencies as a plan for the replenishment of capital by each Clearing Agency should its equity fall close to or below the amount being held as its Total Capital Requirement pursuant to the Capital Policy. The Capital Replenishment Plan identifies

⁸ LNA funded by equity held as the Clearing Agencies’ Corporate Contribution is held in addition to resources held by the Clearing Agencies for credit risk in compliance with Rule 17ad–22(e)(4) under the Act and in addition to resources held by the Clearing Agencies for liquidity risk in compliance with Rule 17ad–22(e)(7). 17 CFR 240.17ad–22(e)(4), (7).

⁹ The Rules, By-laws and Organization Certificate of DTC (“DTC Rules”), the Rulebook of the Government Securities Division of FICC (“GSD Rules”), the Clearing Rules of the Mortgage-Backed Securities Division of FICC (“MBS Rules”), or the Rules & Procedures of NSCC (“NSCC Rules,” and together with the DTC Rules, GSD Rules and MBS Rules, the “Clearing Agencies’ Rules”), available at www.dtcc.com/legal/rules-and-procedures.

³⁵ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b–4(f)(3).

⁵ See Securities Exchange Act Release No. 81105 (July 7, 2017), 82 FR 32399 (July 13, 2017) (SR–DTC–2017–003, SR–FICC–2017–007, SR–NSCC–2017–004).

⁶ 17 CFR 240.17ad–22(e)(15).

⁷ *Id.*

the circumstances that would trigger implementation of the Plan; the roles, responsibilities, and guiding principles for implementation of the Plan; and an overview and description of each of the tools that may be used to replenish capital.

Proposed Revisions to the Capital Policy and Capital Replenishment Plan

As described in greater detail herein, the Clearing Agencies are proposing to make certain revisions to the Capital Policy and Capital Replenishment Plan. First, the proposal would make technical revisions to update, simplify, and clarify statements in the Policy and Plan. Second, the proposed revisions would update the Plan to document alternate authorizations in case an authorizing officer is not available. These proposed revisions are designed to enhance the clarity of the Policy and Plan and help ensure that they continue to operate as intended.

1. Technical Revisions

The Clearing Agencies are proposing technical revisions to the descriptions within the Capital Policy and Capital Replenishment Plan that would update, simplify, and clarify statements, including, for example, removing in the Policy the unnecessary reference to the Plan as an Addendum to the Policy, rephrasing certain sentences for clarity without changing the meaning, and relocating language from one sentence or section to another.

Such revisions would also update the documents. For example, in the Policy, the proposed changes would more accurately refer to the Policy as a policy instead of a framework, and refer to the senior most management committee, which reflects the term now used by the Clearing Agencies to refer to the highest-level committee of the Clearing Agencies. In the Plan, these revisions would include removing references to credit risk from the risk scenarios that may trigger the Plan to reflect the Clearing Agencies' current rules and procedures allowing the Corporate Contribution to be used for both participant default as well as non-participant default losses.

2. Alternate Authorizations

Section 3.2 of the Plan describes the role and responsibilities of the Treasury group ("Treasury") in the implementation of the Plan in the event the Plan is triggered pursuant to the Policy. This section lists the steps to be taken by Treasury in implementing the plan as well as the relevant internal parties within Treasury tasked with providing any required authorizations.

The proposed changes would provide alternate stakeholders that may provide any required authorizations in the absence of those already outlined in the steps referenced above. This change would allow for business continuity and timely implementation of the plan in the absence of any specific authorizing party.

2. Statutory Basis

The Clearing Agencies believe that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, the Clearing Agencies believe that the proposed changes to the Capital Policy and Capital Replenishment Plan are both consistent with Section 17A(b)(3)(F) of the Act¹⁰ and Rule 17ad-22(e)(15) under the Act,¹¹ for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of the Clearing Agencies be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to assure the safeguarding of securities and funds which are in the custody or control of the Clearing Agency or for which it is responsible.¹² Together, the Capital Policy and Capital Replenishment Plan are designed to ensure that each of the Clearing Agencies hold sufficient LNA funded by equity to cover potential general business losses so that it can continue the prompt and accurate clearance and settlement of securities transactions, and can continue to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible if those losses materialize. By making technical revisions to update, simplify, and clarify statements in the Policy and Plan, and updating the Plan to document alternate authorizing parties, the proposed revisions would allow the Clearing Agencies to maintain these documents to operate in the way they were intended. Therefore, such proposed revisions would be consistent with the requirements of Section 17A(b)(3)(F) of the Act.¹³

Rule 17ad-22(e)(15) under the Act requires, in part, that the Clearing Agencies establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage their respective general business risk and

hold sufficient liquid net assets funded by equity to cover potential general business losses so that the Clearing Agencies can continue operations and services as a going concern if those losses materialize.¹⁴ As originally implemented, the Capital Policy and Capital Replenishment Plan were designed to meet the requirements of Rule 17ad-22(e)(15).¹⁵ As stated above, the proposal would make technical revisions to update, simplify, and clarify statements in the Policy and Plan, and would update the Plan to document alternate authorizing parties. In this way, the proposed changes would allow the Clearing Agencies to maintain these documents in a way that meets these requirements. Therefore, such proposed revisions would be consistent with the requirements of Rule 17ad-22(e)(15) under the Act.¹⁶

(B) Clearing Agency's Statement on Burden on Competition

The Clearing Agencies believe that the proposed revisions to the Capital Policy and the Capital Replenishment Plan would not have any impact, or impose any burden, on competition. The Policy and the Plan are maintained by the Clearing Agencies in order to satisfy their regulatory requirements and generally reflect internal tools and procedures. Tools and procedures that have a direct impact on the rights, responsibilities or obligations of members or participants of the Clearing Agencies are reflected in the Clearing Agencies' Rules. Accordingly, the Capital Policy and Capital Replenishment Plan themselves are documents that enhance the Clearing Agencies' regulatory compliance and internal management and do not have any impact, or impose any burden, on competition.

The proposed revisions to update the Capital Policy and Capital Replenishment Plan would not effect any changes on the fundamental purpose or operation of these documents and, as such, would also not have any impact, or impose any burden, on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Clearing Agencies have not received or solicited any written comments relating to this proposed rule change. If any written comments are received, the Clearing Agencies will

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

¹¹ 17 CFR 240.17ad-22(e)(15).

¹² 15 U.S.C. 78q-1(b)(3)(F).

¹³ *Id.*

¹⁴ 17 CFR 240.17ad-22(e)(15).

¹⁵ See *supra* note 5.

¹⁶ 17 CFR 240.17ad-22(e)(15).

amend their respective filings to publicly file such comments as an Exhibit 2 to the filing, as required by Form 19b-4 and the General Instructions thereto.

Persons submitting written comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b-4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on How to Submit Comments, available at www.sec.gov/regulatory-actions/how-to-submit-comments. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at tradingandmarkets@sec.gov or 202-551-5777.

The Clearing Agencies reserve the right to not respond to any comments received.

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)¹⁷ of the Act and paragraph (f)¹⁸ of Rule 19b-4 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-FICC-2025-011 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR-FICC-2025-011. 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 (<http://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 FICC and on DTCC's website (www.dtcc.com/legal/sec-rule-filings). 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-FICC-2025-011 and should be submitted on or before May 30, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2025-08119 Filed 5-8-25; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35569; File No. 812-15754]

First Eagle Private Credit Fund, et al.

May 5, 2025.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the "Act") and rule 17d-1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d-1 under the Act.

Summary of Application: Applicants request an order to permit certain business development companies ("BDCs") and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

Applicants: First Eagle Private Credit Fund, First Eagle Private Credit Fund SPV, LLC, First Eagle Credit Opportunities Fund, First Eagle Credit Opportunities Fund SPV, LLC, First Eagle Real Estate Debt Fund, First Eagle Tactical Municipal Opportunities Fund, First Eagle Investment Management, LLC, First Eagle Alternative Credit, LLC, First Eagle Alternative Credit EU, LLC, Napier Park Global Capital (US) LP, and certain of their affiliated entities as described in Appendix A to the application.

Filing Dates: The application was filed on April 11, 2025, and amended on May 1, 2025.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at Secretaries-Office@sec.gov and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on May 30, 2025, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at Secretaries-Office@sec.gov.

ADDRESSES: The Commission: Secretaries-Office@sec.gov. Applicants: Sabrina Rusnak-Carlson, Esq., First Eagle Alternative Credit, LLC, 500 Boylston Street, Suite 1200, Boston, MA

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f).

¹⁹ 17 CFR 200.30-3(a)(12).

02116; Christopher Healey, Esq., Christopher.Healey@davispolk.com, Davis Polk & Wardwell LLP, 1050 17th Street NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT:

Adam Large, Senior Special Counsel, Toyin Momoh, Senior Counsel, or Daniele Marchesani, Assistant Chief Counsel, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' amended application, dated May 1, 2025, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at <https://www.sec.gov/edgar/searchedgar/companysearch.html>. You may also call the SEC's Office of Investor Education and Advocacy at (202) 551-8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2025-08102 Filed 5-8-25; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102990; File No. SR-CboeBZX-2025-058]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.23 Regarding the Closing Auction

May 5, 2025.

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 April 25, 2025, 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 Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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. (the "Exchange" or "BZX") proposes to (i) amend Rule 11.23(c)(1)(A) to change the Market-On-Close time from 3:59 p.m. Eastern Time to 3:55 p.m. Eastern Time; (ii) amend Rule 11.23(c)(1)(B) to provide that Market-On-Close orders cannot be modified after 3:55 p.m. Eastern Time, and that Limit-On-Close ("LOC") and Late-Limit-On-Close ("LLOC") orders cannot be modified after 3:59 p.m. Eastern Time; and (iii) amend Rule 11.23(c)(2)(A) to change the frequency with which the Exchange publishes BZX Closing Auction information. 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://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

Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") proposes to (i) amend Rule 11.23(c)(1)(A) to change the Market-On-Close ("MOC")⁵ cutoff time from 3:59 p.m. Eastern Time to 3:55 p.m. Eastern Time ("ET");⁶ (ii) amend Rule 11.23(c)(1)(B) to provide that MOC orders cannot be modified after 3:55 p.m., and that Limit-On-Close ("LOC")⁷

and Late-Limit-On-Close ("LLOC")⁸ orders cannot be modified after 3:59 p.m.; and (iii) amend Rule 11.23(c)(2)(A) to change the frequency with which the Exchange publishes BZX Closing Auction⁹ information.

Existing Closing Auction Process

Pursuant to Rule 11.23(c), Closing Auction, Users may submit orders to the BZX Closing Auction as set forth in Rule 11.23(c)(1)(A)–(C). Eligible Auction Orders,¹⁰ as defined in Rule 11.23(a)(8), designated for the Closing Auction are queued until 4:00 p.m. at which time they are eligible to be executed in the Closing Auction. Users may submit LOC and MOC orders until 3:59 p.m., at which point any additional LOC and MOC orders submitted will be rejected. Users may also submit Continuous Book¹¹ Regular Hours Only ("RHO")¹² orders until immediately prior to the Closing Auction. Users may also submit LLOC orders between 3:59 p.m. and 4:00 p.m. Eligible Auction Orders designated for the Closing Auction may not be cancelled between 3:59 p.m. and 4:00 p.m. Orders eligible for execution

execution only in the Closing Auction. *See* Rule 11.23(a)(13).

⁸ The term "Late-Limit-On-Close" or "LLOC" shall mean a BZX limit order that is designated for execution only in the Closing Auction. To the extent a LLOC bid or offer received by the Exchange has a limit price that is more aggressive than the NBB or NBO, the price of such bid or offer is adjusted to be equal to the NBB or NBO, respectively, at the time of receipt by the Exchange. Where the NBB or NBO becomes more aggressive, the limit price of the LLOC bid or offer will be adjusted to the more aggressive price, only to the extent that the more aggressive price is not more aggressive than the original User entered limit price. The limit price will not be adjusted to a less aggressive price, unless otherwise provided by Exchange Rules. If there is no NBB or NBO, the LLOC bid or offer, respectively, will assume its entered limit price. *See* Rule 11.23(a)(11).

⁹ *See* Rule 11.23(c).

¹⁰ The term "Eligible Auction Order" shall mean any MOO, LOO, LLOC, MOC, LOC, or LLOC order that is entered in compliance with its respective cutoff for an Opening or Closing Auction, any RHO order prior to the Opening Auction, any limit or market order not designated to exclusively participate in the Closing Auction entered during the Quote-Only Period of an IPO Auction subject to the below restrictions, and any limit or market order not designated to exclusively participate in the Opening or Closing Auction entered during the Quote-Only Period of a Halt Auction. *See* Rule 11.23(a)(8).

¹¹ The term "Continuous Book" shall mean all orders on the BZX Book that are not eligible Auction Orders. *See* Rule 11.23(a)(7).

¹² Regular Hours Only ("RHO") means a limit or market order that is designated for execution only during Regular Trading Hours, which includes the Opening Auction, the Closing Auction, and IPO/Halt Auctions for BZX listed securities and the Opening Process for non-BZX-listed securities (as such terms are defined in Rule 11.23 and 11.24). Any portion of a market RHO order will be cancelled immediately following any auction in which it is not executed. *See* Rule 11.9(b)(7).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The term "Market-On-Close" or "MOC" shall mean a BZX market order that is designated for execution only in the Closing Auction or Cboe Market Close. *See* Rule 11.23(a)(15).

⁶ Hereinafter, all times are in Eastern Time.

⁷ The term "Limit-On-Close" or "LOC" shall mean a BZX limit order that is designated for

during Regular Trading Hours¹³ may be cancelled at any time prior to execution, including immediately prior to the Closing Auction. Additionally, publication of BZX Auction Information begins at 3:00 p.m. and updates every five seconds thereafter. BZX Auction Information includes the Reference Price,¹⁴ Indicative Price,¹⁵ Auction Only Price,¹⁶ Reference Buy Shares,¹⁷ and Reference Sell Shares¹⁸ associated with the Closing Auction, which is disseminated via electronic means. The Closing Auction information is available to subscribers of Cboe PITCH data feeds and Cboe Auction Feed and is also made available to other market participants by various market data vendors, maximizing transparency for all investors.

Per Rule 11.23(c)(1)(A), Users¹⁹ may submit LOC and MOC orders onto the Exchange until 3:59 p.m., after which time any additional LOC and MOC order submitted by a User will be rejected. Additionally, LLOC orders may be submitted between 3:59 p.m. and 4:00 p.m. The current 3:59 p.m. MOC

cutoff time was proposed²⁰ by the Exchange in March 2021 (“2021 Proposal”). In that filing, the Exchange proposed to extend the MOC and LOC cutoff times from 3:55 p.m. to 3:59 p.m., and the LLOC cutoff time to 3:59 p.m. to 4:00 p.m. The Exchange reasoned that “[a]s the equities markets continue to evolve and become more efficient and automated . . . the current Closing Auction Cutoff is overly restrictive to market participants that wish to participate in the Exchange’s Closing Auction and that typically have to tie up on close interest for five minutes or more at the end of the trading day to participate in the Closing Auction.” The Exchange further noted that the proposed later MOC cutoff time “would give [Users] greater control over their on close orders while still leaving enough time at the end of the trading day for market participants to react to and offset balances.” This proposal was approved by the Commission on May 18, 2021 (“Approval Order”).²¹

Proposed MOC Cutoff Time

As noted, the Exchange now seeks to move the MOC cutoff time from 3:59 p.m., back to BZX’s original MOC cutoff time of 3:55 p.m., after which time the entry of any new MOCs will be rejected, and MOCs may not be modified or canceled (as opposed to existing Rule text, providing only that MOCs may not be *cancelled* after 3:59 p.m.). In evaluating the Closing Auction process, the Exchange’s various Lead Market Makers (“LMMs”) ²² have indicated that moving the MOC cutoff time back four minutes would provide them with additional time to react to and offset imbalances created by the late entry (*i.e.*, currently, one minute before the close) of MOC orders by Users. At this time, the Exchange does not propose to change the cutoff times for the entry of LOC and LLOC orders,²³ and Users will still be able to enter these orders until 3:59 p.m. (LOC orders), and from 3:59 p.m. to 4:00 p.m. (LLOC orders). However, in addition to the current rule text that prohibits the cancellation of LOC and LLOC orders between 3:59 p.m. and 4:00 p.m., the Exchange now

seeks to add rule text that also prohibits Users from *modifying* LOC or LLOC orders between 3:59 and 4:00 p.m.

The difference in cutoff times between MOC and LOC/LLOC orders is due to the fact that the Exchange’s LMM in BZX’s corporate listing believes that a MOC cutoff time further away from market close would enable both the LMM, and other BZX Users²⁴ to better react to and respond to closing auction imbalances created by the entry of MOC orders in such close proximity to market close (*i.e.*, 3:59 p.m.). In contrast, various LMMs for BZX’s listed exchange traded products (“ETPs”) stated they prefer that a 3:59 p.m. cutoff time remain in effect for at least one of the closing order types—*i.e.*, MOC, LOC, or LLOC orders. These LMMs noted that moving up the cutoff times for all closing order types could lead to wider spreads going into market close, particularly in ETPs where the LMM is performing creation²⁵ or redemption²⁶ transactions.

As noted further above, the Exchange reasoned in its 2021 Proposal that a 3:59 p.m. MOC cutoff time struck an appropriate balance of providing Users with greater control over their Closing Auction orders for a longer period of time, while also affording Users enough time to react to and respond to any potential Closing Auction imbalances. Importantly, the Exchange believes that the proposed 3:55 p.m. MOC cutoff time is still consistent with the rationale expressed by the Exchange in its 2021 Proposal. Based on feedback from LMMs and other Exchange Users, as well as its four years of experience in operating the Closing Auction process with a 3:59 p.m. MOC cutoff time, the Exchange now believes that 3:55 p.m. MOC cutoff time is better suited to strike the appropriate balance between enabling Users to control their closing order flow for a longer period of time, and providing Users with ample time to react to and respond to any potential

²⁴ The Exchange notes that while it did not confer with all Users, BZX did consult with several of the Exchange’s largest Members, including large institutional trading firms and bulge-bracket broker-dealers that typically trade heavily into the Closing Auction and would be most impacted by the proposed changes. Importantly, these Users confirmed that these proposed changes to the MOC cutoff time would not cause them any technological, operational, or risk issues.

²⁵ In general, creation involves the buying of all the underlying securities and wrapping them into the exchange traded fund structure. *See generally* “Investor Bulletin: Exchange-Traded Funds (ETFs)”, available at: <https://www.sec.gov/investor/alerts/etfs.pdf>.

²⁶ In general, redemption is the process whereby the ETF is ‘unwrapped’ back into the individual securities. *See generally* “Investor Bulletin: Exchange-Traded Funds (ETFs)”, available at: <https://www.sec.gov/investor/alerts/etfs.pdf>.

¹³ The term “Regular Trading Hours” means the time between 9:30 a.m. and 4:00 p.m. Eastern Time. *See* Rule 1.5(w).

¹⁴ The term “Reference Price” shall mean the price within the Reference Price Range that maximizes the number of Eligible Auction Order shares associated with the lesser of the Reference Buy Shares and the Reference Sell Shares as determined at each price level within the Reference Price Range, that minimizes the absolute difference between Reference Buy Shares and Reference Sell Shares, and minimizes the distance from the Volume Based Tie Breaker. *See* Rule 11.23(a)(19).

¹⁵ The term “Indicative Price” shall mean the price at which the most shares from the Auction Book and the Continuous Book would match. In the event of a volume based tie at multiple price levels, the Indicative Price will be the price which results in the minimum total imbalance. In the event of a volume based tie and a tie in minimum total imbalance at multiple price levels, the Indicative Price will be the price closest to the Volume Based Tie Breaker. *See* Rule 11.23 (a)(10).

¹⁶ The term “Auction Only Price” shall mean the price at which the most shares from the Auction Book would match. In the event of a volume based tie at multiple price levels, the Auction Only Price will be the price which results in the minimum total imbalance. In the event of a volume based tie and a tie in minimum total imbalance at multiple price levels, the Auction Only Price will be the price closest to the Volume Based Tie Breaker. *See* Rule 11.23(a)(2).

¹⁷ The term “Reference Buy Shares” shall mean the total number of shares associated with buy-side Eligible Auction Orders that are priced equal to or greater than the Reference Price. *See* Rule 11.23(a)(18).

¹⁸ The term “Reference Sell Shares” shall mean the total number of shares associated with sell-side Eligible Auction Orders that are priced equal to or less than the Reference Price. *See* Rule 11.23(a)(21).

¹⁹ The term “User” shall mean any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3. *See* Rule 1.5(cc).

²⁰ Securities Exchange Act Release No. Release No. 34–91479 (April 5, 2021), 86 FR 18580 (April 9, 2021) (SR–CboeBZX–2021–023).

²¹ Securities Exchange Act Release No. Release No. 34–91921 (May 18, 2021), 86 FR 27905 (May 24, 2021) (SR–CboeBZX–2021–023).

²² The term “LMM” means a Market Maker registered with the Exchange for a particular LMM Security that has committed to maintain Minimum Performance Standards in the LMM Security. *See* Rule 11.8(e).

²³ The Exchange notes that it plans to submit a proposal amending the entry and handling of LOC and LLOC orders at a later date.

Closing Auction imbalances created by MOC orders. Specifically, LMMs in BZX-listed ETPs and other BZX Users can still enter LOC orders until 3:59 p.m. and LLOC orders between 3:59 p.m. to 4:00 p.m., as well as Continuous Book RHO orders, which will continue to be accepted immediately prior to the Closing Auction.

Notably, the use of LOC and LLOC orders, rather than MOC orders, may be more beneficial for LMMs and other Exchange Users, as LOC and LLOC orders have a limit price and therefore have a greater impact on price formation than unpriced MOC orders. Moreover, as previously noted, the Exchange discussed these changes with its LMMs and other BZX Users and confirmed that changing the MOC cutoff would not present them with any issues with maintaining a market in their designated ETPs. Furthermore, in today's marketplace each of BZX, the New York Stock Exchange ("NYSE"), NYSE Arca, and Nasdaq Stock Market LLC ("Nasdaq"), as well as various off-exchange venues, maintain different MOC cutoff times. Therefore, the Exchange believes that market participants are well-accustomed to such variation and should not be unduly burdened by BZX's new MOC cutoff time. Indeed, BZX Users are likely well accustomed to a 3:55 MOC cutoff time, as Nasdaq²⁷ currently has in place a 3:55 MOC cutoff time, making it less likely that the proposed amendment will provide Users with any new or novel issues.

From a technical perspective, the Exchange notes that the System²⁸ handles the cancellation or modification of MOC orders in the same manner, treating the modification of an MOC order as a cancellation of such order. The Exchange believes that adding language to the rule text regarding modifications will make clearer to Members that even modifications to their MOC orders past 3:55 p.m., or their LOC and LLOC orders past 3:59 p.m., will also not be permitted. Notably, these proposed amendments will not alter the manner in which Users modify

their MOC, LOC, or LLOC orders on the Exchange. As such, this amendment will not raise any new or novel issues for BZX Users. Together, the prohibition of the cancellation and modification of MOC, LOC, and LLOC orders past 3:55 p.m. and 3:59 p.m., respectively, will help to mitigate the potential for large imbalances being created near (for MOC orders) or immediately prior to the Closing Auction (for LOC and LLOC orders) due to the cancellation or modification of such orders.

Proposed Dissemination of BZX Auction Information

To increase transparency leading up to market close, the Exchange proposes to amend Rule 11.23(c)(2)(A). The proposed amendment will increase the frequency with which the Exchange disseminates Closing Auction information. Specifically, the Exchange will continue to disseminate Closing Auction information every five seconds from 3:00 p.m. to 3:59 p.m., but proposes to increase the frequency of dissemination of Closing Auction information to every one second from 3:59 p.m. to 4:00 p.m.

While MOCs will be rejected after 3:55 p.m. and can no longer be cancelled or modified after 3:55 p.m., the LOC cutoff will remain 3:59 p.m., and Users will still be able to enter LLOCs between 3:59 p.m. and 4:00 p.m., as well as enter/cancel Continuous Book²⁹ orders immediately prior to the close, each of which can impact the Closing Auction price. In this regard, the proposed dissemination of Closing Auction information will benefit LMMs and other Users that may be entering LOC and LLOC orders, as well as Continuous Book orders just prior to the Closing Auction, by providing them more imbalance information heading into the close more frequently and enabling them to better assess what a potential imbalance may have on a security's Indicative Price during the last minute of the trading day and allow them to react accordingly. In this regard, the Exchange believes that the increased frequency with which Closing Auction information is disseminated will thereby lead to an even more efficient and orderly Closing Auction process.

The Exchange also believes that the dissemination of Closing Auction information every one second between 3:59 p.m. and 4:00 p.m. will not present Users with any new or novel issues, as it is likely that Users are already well accustomed to ingesting information

with such frequency, as Nasdaq³⁰ currently disseminates its closing auction information beginning at 3:55 p.m., every one second. Moreover, given the high-speed technology³¹ utilized by most market participants today, the updated frequency of the Closing Auction information should not present Users with any technological issues or constraints.

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.³² Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)³³ 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

³⁰ See Nasdaq Rule 4754(b)(1)(B), Nasdaq Closing Cross ("Beginning at 3:55 p.m., or five minutes prior to the early closing time on a day when Nasdaq closes early, Nasdaq shall disseminate by electronic means an Order Imbalance Indicator every second until market close."); see also Securities Exchange Act Release No. 34-84454 (October 19, 2018), 83 FR 53923 (October 25, 2018) (SR-Nasdaq-2018-068) (Order Approving Proposed Rule Change, as Modified by Amendment No. 1, to Extend the Cutoff Times for Accepting On Close Orders Entered for Participation in the Nasdaq Closing Cross and to Make Related Changes)(The Commission approved a proposal by Nasdaq to begin disseminating its Order Imbalance Indicator every one second, beginning at 3:55 p.m.).

³¹ The Exchange notes that today's equities markets involve the widespread use of automated trading algorithms and routing solutions, as well as market connectivity options with speeds often measured in microseconds. See generally "Staff Report on Algorithmic Trading in U.S. Capital Markets" (August 5, 2020), available at https://www.sec.gov/tm/reports-and-publications/special-studies/algo_t_report_2020 ("Algorithmic Trading Report") ("Over the past decade, the 'manual' handling of institutional orders is increasingly rare and has been replaced by sophisticated institutional order execution algorithms and smart order routing systems.") ("The secondary market for U.S.-listed equity securities that has developed within this structure is now primarily automated. The process of trading has changed dramatically primarily as a result of developments in technologies for generating, routing, and executing orders, as well as by the requirement imposed by law and regulation.") ("Modern equity markets are connected in part by the data flowing between market centers. An enormous volume of data is available to market participants. In recent years, there has been an exponential growth in the amount of market data available, the speed with which it is disseminated, and the computer power used to analyze and react to price movements.").

³² 15 U.S.C. 78f(b).

³³ 15 U.S.C. 78f(b)(5).

²⁷ Securities Exchange Act Release No. 34-84454 (October 19, 2018), 83 FR 53923 (October 25, 2018) (SR-Nasdaq-2018-068) (Order Approving Proposed Rule Change, as Modified by Amendment No. 1, to Extend the Cutoff Times for Accepting On Close Orders Entered for Participation in the Nasdaq Closing Cross and to Make Related Changes)(The Commission approved a rule change by Nasdaq to move the cut-off times for the entry of MOC and LOC orders from 3:50 p.m. to 3:55 p.m.).

²⁸ The term "System" shall mean the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away. See Rule 1.5(aa).

²⁹ The term "Continuous Book" shall mean all orders on the BZX Book that are not Eligible Auction Orders. See Rule 11.23(a)(7).

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)³⁴ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that moving the MOC cutoff time to 3:55 p.m. will help to facilitate transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system, by providing the Exchange's listing LMMs and other Users with additional time to react to and respond to any potential closing auction imbalances resulting from the entry of MOC orders. In turn, mitigating imbalances will help to ensure a smoother Closing Auction process. While market participants today are generally well equipped with high-speed trading technologies and can enter orders in sub-second latencies, the addition of four extra minutes to react to and respond to closing auction imbalances will only make it more feasible for all market participants to do so.

Importantly, in speaking with the Exchange's listing LMMs and various non-LMM Users³⁵ they did not object to the amendment of the MOC cutoff time, as they would still have the ability to enter LOC orders until 3:59 p.m., LLOC orders between 3:59 p.m. and 4:00 p.m., and Continuous Book orders until immediately prior to the Closing Auction. Together, these orders provide LMMs and other Users with useful tools in helping them maintain markets in their securities. Notably, the use of LOC and LLOC orders, rather than MOC orders, may be more beneficial for LMMs and other Exchange Users, as LOC and LLOC orders have a limit price and therefore have a greater impact on price formation than unpriced MOC orders. Together, the cutoff times for MOCs and LOC/LLOCs will contribute to a more efficient Closing Auction process and more orderly price formation approaching the market close, thereby protecting investors and the public interest. Furthermore, the proposed MOC cutoff time is identical to that used by the Nasdaq for its closing auction.³⁶ In this regard, the proposed MOC cutoff time should not present BZX Users with any new or novel issues, and make it less likely that Users

will need to make drastic system changes in order to comply with the new MOC cutoff time. Moreover, as noted further above, prior to extending the MOC cutoff time to 3:59 p.m., BZX utilized a 3:55 p.m. MOC cutoff time. Therefore, the Exchange believes Users are familiar with trading on BZX with a 3:55 MOC cutoff time and should not encounter any new or novel issues upon approval of this proposal.

From a technical perspective, the Exchange handles the cancellation or modification of MOC orders in the same manner, treating the modification of an MOC order as a cancellation of such order. The Exchange believes that adding language to the rule text regarding modifications will make clearer to Members that even modifications to their MOC orders past 3:55 p.m., or their LOC and LLOC orders past 3:59 p.m., will also not be permitted. Importantly, this proposed amendment will not alter how Users interact with the Exchange or how they modify their MOC, LOC, LLOC, orders on the Exchange. As such, this amendment will not raise any new or novel issues for BZX Users.

The Exchange also believes that updating the frequency of the dissemination of Closing Auction information between 3:59 p.m. to 4:00 p.m., from every five seconds to every one second, will help to facilitate transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as contribute to the protection of investors and the public interest. By providing both LMMs and other market participants with more timely Closing Auction information—*i.e.*, every one second rather than every five seconds—market participants, including LMMs in BZX-listed securities, will be better able to react to and respond to imbalances heading into the close. While MOCs and LOCs will be cut off at 3:55 p.m. and 3:59 p.m., respectively, market participants can still enter or cancel Continuous Book orders, or enter LLOC orders, which may impact the indicative price heading into market close. By having this information with increased frequency, all Users can better react to and respond to imbalances by entering additional Continuous Book orders or LLOC orders in efforts to offset such imbalances, which should in turn, lead to an even more efficient and orderly Closing Auction process which benefits all Exchange Users.

In today's high-speed marketplace, receiving information every one second is extremely valuable, and increases the likelihood that market participants or an

LMM can take action to address any closing auction imbalances. The Exchange also notes that its proposed dissemination of Closing Auction information is essentially identical to what Users are accustomed to today. Specifically, Users are already familiar with ingesting Closing Auction information, updated every five seconds, between 3:00 p.m. and 4:00 p.m. Going forward, they will be provided with more information between 3:59 p.m. and 4:00 p.m., which they can choose to utilize or not. Given the technological capabilities of today's market participants, this should not present Users with any new or novel issues. Similarly, the technological capabilities of today's market participants should also make ingesting Closing Auction information every one second (instead of the previous five seconds) from 3:59 p.m. to 4:00 p.m. quite feasible. Moreover, market participants likely already possess this capability today, as Nasdaq also disseminates its closing cross information in one second intervals.³⁷

Altogether, the Exchange is simply moving its MOC cutoff time from 3:59 p.m. to 3:55 p.m., and disseminating updated Closing Auction information at the same duration at it does today, aside from 3:59 p.m. to 4:00 p.m. where information will be provided more frequently. In all other aspects, the Closing Auction will continue to operate identical to how it does so today, but with a 3:55 p.m. MOC cutoff time. Users of the BZX Closing Auction will not have to consider any other changes aside from needing to send their MOC orders to BZX four minutes earlier, and ingesting Closing Auction information more frequently during the last minute of the trading day. Furthermore, as noted above, Nasdaq's closing cross is similar in construct to the Exchange's current proposal. Specifically, Nasdaq accepts MOC orders up until 3:55 p.m. MOC cutoff,³⁸ accepts LOC orders up until 3:58 p.m., and accepts Imbalance Orders only up until 4:00 p.m. As such, the Exchange believes that its Users are well versed in trading into the close with a 3:55 p.m. MOC cutoff time.

The Exchange's proposals are also not unfairly discriminatory. The proposed MOC cutoff time applies to all Users, regardless of their size, type, or trading volume. Prior to submitting this proposal, the Exchange talked with Exchange Members, LMMs, and issuers of BZX-listed ETPs, and did not receive feedback that moving the MOC cutoff

³⁴ *Id.*

³⁵ *Supra* note 24.

³⁶ *Supra* note 29.

³⁷ *Supra* note 29.

³⁸ *Supra* note 27.

time to 3:55 p.m. was undesirable or that doing so would cause them undue burden. Market participants are still free to trade past 3:55 p.m. and into the close through the entry of regular Continuous Book orders, LOC orders, or LLOC orders. MOC orders are not the singular manner in which to participate in the BZX closing auction. Indeed, as noted above, LOC and LLOC orders, and even some Continuous Book orders, are entered with limit prices, which have a greater impact on price formation than unpriced MOC orders, which are merely recipients of price formation.

Furthermore, the proposal to update the frequency with which Closing Auction data is disseminated between 3:59 p.m. and 4:00 p.m., also applies to all Users equally, regardless of their size, type, or trading volume. Each User that wishes to ingest Closing Auction information may do so, and all Users will receive the information in the same frequency via electronic means. If a User chooses not to receive the BZX Closing Auction information, the User will simply not receive the information on an updated frequency.

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. Rather, the Exchange believes that its proposed changes will help to foster competition by further improving BZX's well-functioning Closing Auction process, making BZX a more attractive venue for closing order types. By moving up the time at which MOCs are no longer accepted, and by amending the modification cutoff time for MOC, LOC, and LLOC orders, the Exchange believes that the size of any potential Closing Auction imbalance will be reduced as market participants will be unable to send in MOC orders in such close proximity to 4:00 p.m. As such, market participants will have more time to react to imbalances by entering contra-side orders, thereby helping to contribute to a more efficient Closing Auction process. Additionally, the proposed increase in frequency of the dissemination of Closing Auction information from 3:59 to 4:00 p.m. will better enable market participants to react to and respond to the impact that any entry/cancellation of Continuous Book orders or the entry of LOC or LLOC orders may have on a security's indicative price, and related imbalances, and enable them to trade accordingly. In this regard, this proposed change will help to foster competition by

incentivizing market participants to enter their closing orders onto BZX.

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) of the Act³⁹ and Rule 19b-4(f)(6)⁴⁰ thereunder. 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, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁴¹ and Rule 19b-4(f)(6) thereunder.⁴²

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)⁴³ of the Act 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:

³⁹ 15 U.S.C. 78s(b)(3)(A).

⁴⁰ 17 CFR 240.19b-4(f)(6).

⁴¹ 15 U.S.C. 78s(b)(3)(A).

⁴² 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. *See id.* The Exchange has satisfied this requirement.

⁴³ 15 U.S.C. 78s(b)(2)(B).

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-2025-058 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-2025-058. 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-2025-058 and should be submitted on or before May 30, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁴

Sherry R. Haywood,
Assistant Secretary.

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⁴⁴ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102995; File No. SR–NSCC–2025–008]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Capital Policy and the Capital Replenishment Plan

May 5, 2025.

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 April 25, 2025, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b–4(f)(3) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to (i) the Clearing Agency Policy on Capital Requirements (“Capital Policy” or “Policy”) of NSCC and its affiliates, The Depository Trust Company (“DTC”) and Fixed Income Clearing Corporation (“FICC,” and together with DTC and NSCC, the “Clearing Agencies”); and (ii) the Clearing Agency Capital Replenishment Plan (“Capital Replenishment Plan” or “Plan”) of the Clearing Agencies. In particular, the proposed revisions to the Capital Policy and Capital Replenishment Plan would (1) make technical revisions to update, simplify, and clarify statements in the Policy and Plan; and (2) update the Plan to document alternate authorizations in case an authorizing officer is not available.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Clearing Agencies are proposing to revise the Capital Policy and Capital Replenishment Plan, which were adopted by the Clearing Agencies in July 2017⁵ and are maintained by the Clearing Agencies in compliance with Rule 17ad–22(e)(15) under the Act.⁶

Overview of the Capital Policy and Capital Replenishment Plan

The Capital Policy sets forth the manner in which each Clearing Agency identifies, monitors, and manages its general business risk with respect to the requirement to hold sufficient liquid net assets (“LNA”) funded by equity to cover potential general business losses so the Clearing Agency can continue operations and services as a going concern if such losses materialize.⁷ The amount of LNA funded by equity to be held by each of the Clearing Agencies for this purpose is defined in the Policy as the General Business Risk Capital Requirement. The Policy provides that the General Business Risk Requirement is calculated for each Clearing Agency as the greatest of three separate calculations—(1) an amount based on that Clearing Agency’s general business risk profile (“Risk-Based Capital Requirement”), (2) an amount based on the time estimated to execute a recovery or orderly wind-down of the critical operations of that Clearing Agency (“Recovery/Wind-down Capital Requirement”), and (3) an amount based on an analysis of that Clearing Agency’s estimated operating expenses for a six-month period (“Operating Expense Capital Requirement”). On an annual basis, each of these three capital requirements are measured, and the General Business Risk Capital Requirement for each Clearing Agency are determined as the greatest of these calculations.

Currently, the Capital Policy also addresses how each Clearing Agency

maintains a portion of retained earnings as LNA funded by equity as its Corporate Contribution, as a part of its management of credit risk⁸ and pursuant to its respective rules.⁹ These resources are maintained to address losses due to a participant default, and are held in addition to the LNA funded by equity held by each of the Clearing Agencies as its General Business Risk Capital Requirement. The Capital Policy describes how each Clearing Agency’s General Business Risk Capital Requirement and Corporate Contribution fit within the Clearing Agencies’ Capital Framework, where the Total Capital Requirement of each Clearing Agency is calculated as the sum of its General Business Risk Capital Requirement and Corporate Contribution.

The Policy also provides a plan for the replenishment of capital through the Capital Replenishment Plan. The Capital Replenishment Plan was adopted by the Clearing Agencies as a plan for the replenishment of capital by each Clearing Agency should its equity fall close to or below the amount being held as its Total Capital Requirement pursuant to the Capital Policy. The Capital Replenishment Plan identifies the circumstances that would trigger implementation of the Plan; the roles, responsibilities, and guiding principles for implementation of the Plan; and an overview and description of each of the tools that may be used to replenish capital.

Proposed Revisions to the Capital Policy and Capital Replenishment Plan

As described in greater detail herein, the Clearing Agencies are proposing to make certain revisions to the Capital Policy and Capital Replenishment Plan. First, the proposal would make technical revisions to update, simplify, and clarify statements in the Policy and Plan. Second, the proposed revisions would update the Plan to document alternate authorizations in case an authorizing officer is not available. These proposed revisions are designed

⁸ LNA funded by equity held as the Clearing Agencies’ Corporate Contribution is held in addition to resources held by the Clearing Agencies for credit risk in compliance with Rule 17ad–22(e)(4) under the Act and in addition to resources held by the Clearing Agencies for liquidity risk in compliance with Rule 17ad–22(e)(7). 17 CFR 240.17ad–22(e)(4), (7).

⁹ The Rules, By-laws and Organization Certificate of DTC (“DTC Rules”), the Rulebook of the Government Securities Division of FICC (“GSD Rules”), the Clearing Rules of the Mortgage-Backed Securities Division of FICC (“MBSD Rules”), or the Rules & Procedures of NSCC (“NSCC Rules,” and together with the DTC Rules, GSD Rules and MBSD Rules, the “Clearing Agencies’ Rules”), available at www.dtcc.com/legal/rules-and-procedures.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b–4(f)(3).

⁵ See Securities Exchange Act Release No. 81105 (July 7, 2017), 82 FR 32399 (July 13, 2017) (SR–DTC–2017–003, SR–FICC–2017–007, SR–NSCC–2017–004).

⁶ 17 CFR 240.17ad–22(e)(15).

⁷ *Id.*

to enhance the clarity of the Policy and Plan and help ensure that they continue to operate as intended.

1. Technical Revisions

The Clearing Agencies are proposing technical revisions to the descriptions within the Capital Policy and Capital Replenishment Plan that would update, simplify, and clarify statements, including, for example, removing in the Policy the unnecessary reference to the Plan as an Addendum to the Policy, rephrasing certain sentences for clarity without changing the meaning, and relocating language from one sentence or section to another.

Such revisions would also update the documents. For example, in the Policy, the proposed changes would more accurately refer to the Policy as a policy instead of a framework, and refer to the senior most management committee, which reflects the term now used by the Clearing Agencies to refer to the highest-level committee of the Clearing Agencies. In the Plan, these revisions would include removing references to credit risk from the risk scenarios that may trigger the Plan to reflect the Clearing Agencies' current rules and procedures allowing the Corporate Contribution to be used for both participant default as well as non-participant default losses.

2. Alternate Authorizations

Section 3.2 of the Plan describes the role and responsibilities of the Treasury group ("Treasury") in the implementation of the Plan in the event the Plan is triggered pursuant to the Policy. This section lists the steps to be taken by Treasury in implementing the plan as well as the relevant internal parties within Treasury tasked with providing any required authorizations. The proposed changes would provide alternate stakeholders that may provide any required authorizations in the absence of those already outlined in the steps referenced above. This change would allow for business continuity and timely implementation of the plan in the absence of any specific authorizing party.

2. Statutory Basis

The Clearing Agencies believe that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, the Clearing Agencies believe that the proposed changes to the Capital Policy and Capital Replenishment Plan are both consistent with Section 17A(b)(3)(F) of

the Act¹⁰ and Rule 17ad-22(e)(15) under the Act,¹¹ for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of the Clearing Agencies be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to assure the safeguarding of securities and funds which are in the custody or control of the Clearing Agency or for which it is responsible.¹² Together, the Capital Policy and Capital Replenishment Plan are designed to ensure that each of the Clearing Agencies hold sufficient LNA funded by equity to cover potential general business losses so that it can continue the prompt and accurate clearance and settlement of securities transactions, and can continue to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible if those losses materialize. By making technical revisions to update, simplify, and clarify statements in the Policy and Plan, and updating the Plan to document alternate authorizing parties, the proposed revisions would allow the Clearing Agencies to maintain these documents to operate in the way they were intended. Therefore, such proposed revisions would be consistent with the requirements of Section 17A(b)(3)(F) of the Act.¹³

Rule 17ad-22(e)(15) under the Act requires, in part, that the Clearing Agencies establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage their respective general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that the Clearing Agencies can continue operations and services as a going concern if those losses materialize.¹⁴ As originally implemented, the Capital Policy and Capital Replenishment Plan were designed to meet the requirements of Rule 17ad-22(e)(15).¹⁵ As stated above, the proposal would make technical revisions to update, simplify, and clarify statements in the Policy and Plan, and would update the Plan to document alternate authorizing parties. In this way, the proposed changes would allow the Clearing Agencies to maintain these documents in a way that meets these requirements. Therefore, such proposed

revisions would be consistent with the requirements of Rule 17ad-22(e)(15) under the Act.¹⁶

(B) Clearing Agency's Statement on Burden on Competition

The Clearing Agencies believe that the proposed revisions to the Capital Policy and the Capital Replenishment Plan would not have any impact, or impose any burden, on competition. The Policy and the Plan are maintained by the Clearing Agencies in order to satisfy their regulatory requirements and generally reflect internal tools and procedures. Tools and procedures that have a direct impact on the rights, responsibilities or obligations of members or participants of the Clearing Agencies are reflected in the Clearing Agencies' Rules. Accordingly, the Capital Policy and Capital Replenishment Plan themselves are documents that enhance the Clearing Agencies' regulatory compliance and internal management and do not have any impact, or impose any burden, on competition.

The proposed revisions to update the Capital Policy and Capital Replenishment Plan would not effect any changes on the fundamental purpose or operation of these documents and, as such, would also not have any impact, or impose any burden, on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Clearing Agencies have not received or solicited any written comments relating to this proposed rule change. If any written comments are received, the Clearing Agencies will amend their respective filings to publicly file such comments as an Exhibit 2 to the filing, as required by Form 19b-4 and the General Instructions thereto.

Persons submitting written comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b-4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on How to Submit Comments, available at www.sec.gov/regulatory-actions/how-to

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

¹¹ 17 CFR 240.17ad-22(e)(15).

¹² 15 U.S.C. 78q-1(b)(3)(F).

¹³ *Id.*

¹⁴ 17 CFR 240.17ad-22(e)(15).

¹⁵ See *supra* note 5.

¹⁶ 17 CFR 240.17ad-22(e)(15).

submit-comments. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202-551-5777.

The Clearing Agencies reserve the right to not respond to any comments received.

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) ¹⁷ of the Act and paragraph (f) ¹⁸ of Rule 19b-4 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-regulations/self-regulatory-organization-rulemaking>); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR-NSCC-2025-008 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.
- All submissions should refer to File Number SR-NSCC-2025-008. 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-regulations/self-regulatory-organization-rulemaking>). 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 NSCC and on DTCC's website (www.dtcc.com/legal/sec-rule-filings). 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-NSCC-2025-008 and should be submitted on or before May 30, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2025-08112 Filed 5-8-25; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235-0727]

Submission for OMB Review; Comment Request; Extension: Rules 400-404 of Regulation Crowdfunding (Funding Portals)

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for in Rules 400-404 of Regulation Crowdfunding¹ (17 CFR 227.400-227.404) under the Securities Exchange

Act of 1934 ("Exchange Act") (15 U.S.C. 78a *et seq.*).

The collections of information required under Rules 400 through 404 is mandatory for all funding portals. Form Funding Portal helps ensure that the Commission can make information about funding portals transparent and easily accessible to the investing public, including issuers and obligated persons who engage funding portals; investors who may purchase securities through offerings on funding portals; and other regulators. Further, the information provided on Form Funding Portal expands the amount of publicly available information about funding portals, including disciplinary history. Consequently, the rules and forms allow issuers and the investing public, as well as others, to become more fully informed about funding portals in a more efficient manner.

Rule 400 requires each person applying for registration with the Commission as a funding portal to file electronically with the Commission Form Funding Portal. Rule 400(a) requires a funding portal to become a member of a national securities association registered under Section 15A of the Exchange Act. Rule 400(b) requires a funding portal to file an amendment to Form Funding Portal if any information previously submitted on Form Funding Portal becomes inaccurate for any reason. Rule 400(c) provides that a funding portal can succeed to the business of a predecessor funding portal upon the successor filing a registration on Form Funding Portal and the predecessor filing a withdrawal on Form Funding Portal.

Rule 400(d) requires a funding portal to promptly file a withdrawal of registration on Form Funding Portal upon ceasing to operate as a funding portal. Rule 400(e) states that duplicate originals of the applications and reports provided for in this section must be filed with surveillance personnel designated by any registered national securities association of which the funding portal is a member. Rule 400(f) requires a nonresident funding portal to: (1) obtain a written consent and power of attorney appointing an agent for service of process in the United States; (2) furnish the Commission with the name and address of its agent for services of process on Schedule C of Form Funding Portal; (3) certify that it can, as a matter of law, and will provide the Commission and any registered national securities association of which it becomes a member with prompt access to its books and records and can, as a matter of law, and will submit to onsite inspection and examination by

¹⁹ 17 CFR 200.30-3(a)(12).

¹ See *Regulation Crowdfunding*, Exchange Act Release No. 76324 (Oct. 30, 2015), 80 FR 71387 (Nov. 16, 2015) (Final Rule) ("Regulation Crowdfunding").

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f).

the Commission and any registered national securities association of which it becomes a member; and (4) provide the Commission with an opinion of counsel and certify on Schedule C on Form Funding Portal that the firm can, as a matter of law, provide the Commission and registered national securities association of which it becomes a member with prompt access to its books and records and can, as a matter of law, submit to onsite inspection and examination by the Commission and any registered national securities association of which it becomes a member.²

Rule 403(a) requires a funding portal to implement written policies and procedures reasonably designed to achieve compliance with the federal securities laws and the rules and regulations thereunder relating to its business as a funding portal. Rule 403(b) provides that a funding portal must comply with privacy rules. Rule 404 requires all registered funding portals to maintain certain books and records relating to their funding portal activities, for not less than five years, the first two in an easily accessible place. Rule 404(e) requires funding portals to furnish promptly to the Commission, its representatives, and the registered national securities association of which the funding portal is a member true, correct, complete and current copies of such records of the funding portal that are requested by the representatives of the Commission and the registered national securities association.

The Commission staff estimates that the annual industry time burden to comply with Rules 400–404 is approximately 36,315 hours per year. The Commission staff estimates that the annual industry cost burden to comply with Rules 400–404 is approximately \$618,293 per year.

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.

Written comments are invited on: (a) whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and

(d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

The public may view and comment on this information collection request at: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202412-3235-002 or send an email comment to MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov within 30 days of the day after publication of this notice by June 9, 2025.

Dated: May 5, 2025.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2025–08122 Filed 5–8–25; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102988; File No. SR–NASDAQ–2025–005]

Self-Regulatory Organizations; Nasdaq Stock Market LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the Canary Litecoin ETF Under Nasdaq Rule 5711(d) (Commodity-Based Trust Shares)

May 5, 2025.

I. Introduction

On January 15, 2025, The Nasdaq Stock Market LLC (“Nasdaq”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b–4 thereunder, ² a proposed rule change to list and trade shares (“Shares”) of the Canary Litecoin ETF (“Trust”) under Nasdaq Rule 5711(d). The proposed rule change was published for comment in the **Federal Register** on February 4, 2025.³

On March 11, 2025, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ This order

institutes proceedings under Section 19(b)(2)(B) of the Act ⁶ to determine whether to approve or disapprove the proposed rule change.

II. Summary of the Proposal

As described in more detail in the Notice,⁷ the Exchange proposes to list and trade the Shares of the Trust under Nasdaq Rule 5711(d), which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.

According to the Exchange, the investment objective of the Trust is for the Shares to seek to track the performance of Litecoin (“LTC”),⁸ as measured by the CoinDesk Litecoin Price Index (LTX)(“Index”), adjusted for the Trust’s expenses and other liabilities.⁹ In seeking to achieve its investment objective, the Trust will hold LTC and will value its Shares daily as of 4:00 p.m. Eastern time (“ET”) using the same methodology used to calculate the Index.¹⁰ The Trust’s assets will consist only of LTC and cash.¹¹ When the Trust sells or redeems its Shares, it will do so in cash transactions with authorized participants in blocks of 10,000 Shares.¹²

III. Proceedings To Determine Whether To Approve or Disapprove SR–NASDAQ–2025–005 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act ¹³ to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings

Commission designated May 5, 2025, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Notice, *supra* note 3.

⁸ The Exchange states that LTC is a digital asset that is created and transmitted through the operations of the peer-to-peer, decentralized network of computers that operates on cryptographic protocols, known as the Litecoin Network. *See id.* at 8950.

⁹ *See id.* Canary Capital Group LLC is the sponsor of the Trust and CSC Delaware Trust Company is the trustee of the Trust. BitGo Trust Company, Inc. and Coinbase Custody Trust Company, LLC will be responsible for the custody of the Trust’s LTC. U.S. Bancorp Fund Services, LLC will be the administrator of the Trust. *See id.* at 8949–50.

¹⁰ *See id.* at 8950. The Index is calculated by applying a weighting algorithm to the price and trading volume data for the immediately preceding 24-hour period as of 4:00 p.m., New York time, derived from the selected digital asset trading platforms. CoinDesk Indices, Inc. publishes the Index. *See id.* at 8951.

¹¹ *See id.* at 8950.

¹² *See id.*

¹³ 15 U.S.C. 78s(b)(2)(B).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 102303 (Jan. 29, 2025), 90 FR 8949 (“Notice”). Comments received on the proposed rule change are available at: <https://www.sec.gov/comments/sr-nasdaq-2025-005/srnasdaq2025005.htm>.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 102585, 90 FR 12384 (Mar. 17, 2025). The

² Exchange Act Section 3(h)(1)(C) permits us to impose, as part of our authority to exempt funding portals from broker registration, “such other requirements under [the Exchange Act] as the Commission determines appropriate.”

does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,¹⁴ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices" and "to protect investors and the public interest."¹⁵

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on whether the proposal to list and trade Shares of the Trust, which would hold LTC, is designed to prevent fraudulent and manipulative acts and practices or raises any new or novel concerns not previously contemplated by the Commission.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.¹⁶

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by May 30, 2025. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by June 13, 2025.

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-2025-005 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-2025-005. 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-2025-005 and should be

organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

submitted on or before May 30, 2025. Rebuttal comments should be submitted by June 13, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2025-08118 Filed 5-8-25; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF STATE

[Public Notice 12726]

60-Day Notice of Proposed Information Collection: Foreign Diplomatic Services Application

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to July 8, 2025.

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

- **Web:** Persons with access to the internet may comment on this notice by going to www.Regulations.gov. You can search for the document by entering "Docket Number: DOS-2025-0006" in the Search field. Then click the "Comment Now" button and complete the comment form.

- **Email:** OFM-EX@groups.state.gov.
- **Regular Mail:** Send written comments to: Office of Foreign Missions, Office of the Executive Director, 3507 International Place NW, Washington, DC 20008.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Adriana Spain, Office of Foreign Missions, Office of the Executive

¹⁴ *Id.*

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory

¹⁷ 17 CFR 200.30-3(a)(57).

Director, who may be reached at (771) 205-7066 or OFM-EX@groups.state.gov.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Foreign Diplomatic Services Applications.

- *OMB Control Number:* 1405-0105.

- *Type of Request:* insert the type of request. Revision of a Currently Approved Collection.

- *Originating Office:* Office of Foreign Missions/OFM.

- *Form Number:* DS-98, DS-99, DS-100, DS-101, DS-102, DS-104, DS-1504, DS-1972D, DS-1972T, DS-2003, DS-2004, DS-2005, DS-2006, DS-2008, DS-4138, DS-4139, DS-4140, DS-4284, DS-4285, DS-7675.

- *Respondents:* Foreign Mission Members.

- *Estimated Number of Respondents:* 121,729.

- *Estimated Number of Responses:* 121,729.

- *Average Time per Response:* 12.5 minutes.

- *Total Estimated Burden Time:* 23,500 hours.

- *Frequency:* annually.

- *Obligation to Respond:* Mandatory and/or Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

- 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.

- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

Information collection tools for gathering data from foreign missions, including electronic data collection (e-Gov), have been combined into one request called the “Foreign Diplomatic Services Applications.” These tools help the Office of Foreign Missions and the Office of the Chief of Protocol gather the information they need to manage benefits, privileges, and immunities for

foreign missions and eligible applicants. This program allows them to apply for benefits from the U.S. Department of State, as provided by the Foreign Missions Act.

Methodology

Information may be received via Email or electronic submission through eGov at <https://egov.ofm.state.gov/>.

Adriana E. Spain,

Executive Director, Office of Foreign Missions, Department of State.

[FR Doc. 2025-08126 Filed 5-8-25; 8:45 am]

BILLING CODE 4710-43-P

DEPARTMENT OF STATE

[Public Notice: 12725]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: “Now Showing: Youssef Nabil’s I Saved My Belly Dancer” 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 “Now Showing: Youssef Nabil’s I Saved My Belly Dancer” at the Los Angeles County Museum of Art, Los Angeles, California, 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/PA, 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. 574 of March 4, 2025.

Mary C. Miner,

Managing Director for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2025-08216 Filed 5-8-25; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice: 12722]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: “Northern Lights” 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 “Northern Lights” at the Buffalo AKG Art Museum, Buffalo, New York, 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/PA, 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. 574 of March 4, 2025.

Mary C. Miner,

Managing Director for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2025-08128 Filed 5-8-25; 8:45 am]

BILLING CODE 4710-05-P

SURFACE TRANSPORTATION BOARD**[Docket No. FD 36850]****Portland & Western Railroad, Inc.—
Acquisition and Operation
Exemption—Port of Tillamook Bay**

Portland & Western Railroad, Inc. (PNWR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from Port of Tillamook Bay (POTB) and operate approximately 1.01 miles of rail line near Banks, Or., between milepost 774.0 and milepost 775.01 in Washington County, Or. (the Line).

The verified notice states that PNWR and POTB have entered into a purchase agreement dated April 9, 2025. PNWR states that it holds incidental overhead trackage rights over a portion of the Line from approximately milepost 774.0 to milepost 774.7, which it acquired in connection with the unrelated purchase of a parallel line. *See Portland & W. R.R.—Trackage Rts. Exemption—Burlington N. R.R.*, FD 32765 (STB served Oct. 13, 1995). PNWR states that, after the transaction, it will operate the Line (and the parallel line) and will no longer need to exercise the incidental trackage rights. The verified notice also states that there are currently no customers on the Line and that POTB no longer has any railroad operating employees.

PNWR certifies that its projected annual revenues as a result this transaction will not exceed those that would qualify it as a Class III carrier and that its annual revenues currently exceed \$5 million. Pursuant to 49 CFR 1150.42(e), if a carrier's projected annual revenues will exceed \$5 million, it must, at least 60 days before the exemption becomes effective, post a notice of its intent to undertake the proposed transaction at the workplace of the employees on the affected lines, serve a copy of the notice on the national offices of the labor unions with employees on the affected lines, and certify to the Board that it has done so. However, PNWR has requested a waiver of the 60-day advance labor notice requirement. PNWR's waiver request will be addressed in a separate decision. The Board will establish the effective date of the exemption in its decision on the waiver request.

PNWR also certifies that the proposed acquisition and operation of the Line does not involve a provision or agreement that may limit future interchange with a third-party connecting carrier.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the

exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than May 16, 2025.

All pleadings, referring to Docket No. FD 36850, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423-0001. In addition, a copy of each pleading must be served on PNWR's representative, Justin J. Marks, Clark Hill PLC, 1001 Pennsylvania Ave. NW, Suite 1300 South, Washington, DC 20004.

According to PNWR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: May 6, 2025.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Eden Besera,

Clearance Clerk.

[FR Doc. 2025-08161 Filed 5-8-25; 8:45 am]

BILLING CODE 4915-01-P

SURFACE TRANSPORTATION BOARD**[Docket No. AB 534 (Sub-No. 4X)]****Lake State Railway Company—
Abandonment Exemption—in Saginaw
County, Michigan**

Lake State Railway Company (LSRC) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon approximately 6,805 feet of rail line extending from Sta. 9+00 approximately 270 feet northeast of the intersection of Carrollton Road and Ellsworth Road to the end of line at Sta. 77+05 approximately 1,000 feet southwest of the North Niagara Street at-grade railroad crossing of the Huron & Eastern Railway Company, in Saginaw County, Mich. (the Line).¹ The Line traverses

¹ The verified notice states that LSRC is a Class III rail carrier that owns or operates approximately 350 miles of rail line in the Lower Peninsula of Michigan. *See, e.g., Lake State Ry.—Lease & Operation Exemption—Detroit & Mackinac Ry.*, FD 32012 (ICC served Feb. 27, 1992). LSRC also states that it leases and operates approximately four miles of track in Port Huron, Mich., which is disconnected from the remainder of its rail system. *See Lake State Ry.—Lease Exemption—Line of Grand Trunk W. R.R.*, FD 36179 (STB served May 25, 2018).

U.S. Postal Service Zip Codes 48604 and 48602.

LSRC has certified that: (1) no local traffic has moved over the Line for at least two years; (2) no overhead traffic could be or was previously handled on the stub-ended Line; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government on behalf of such user) regarding cessation of service over the Line is pending with either the Surface Transportation Board (Board) or any U.S. District Court or has been decided in favor of a complainant within the past two years; and (4) the requirements at 49 CFR 1105.7(b) and 1105.8(c) (notice of environmental and historic reports), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received,² this exemption will be effective on June 8, 2025, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,³ formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2), and interim trail use/railbanking requests under 49 CFR 1152.29 must be filed by May 19, 2025.⁴ Petitions to reopen and requests for public use conditions under 49 CFR 1152.28 must be filed May 29, 2025.

All pleadings, referring to Docket No. AB 534 (Sub-No. 4X), must be filed with the Surface Transportation Board either

² Persons interested in submitting an OFA must first file a formal expression of intent to file an offer, indicating the type of financial assistance they wish to provide (*i.e.*, subsidy or purchase) and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

³ The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

⁴ Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423-0001. In addition, a copy of each pleading must be served on LSRC's representative, Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Dr., Suite 800, Chicago, IL 60606-3208.

If the verified notice contains false or misleading information, the exemption is void ab initio.

LSRC has filed a combined environmental and historic report that addresses the potential effects, if any, of the abandonment on the environment and historic resources. OEA will issue a Draft Environmental Assessment (Draft EA) by May 16, 2025. The Draft EA will be available to interested persons on the Board's website, by writing to OEA, or by calling OEA at (202) 245-0294. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245-0245. Comments on environmental or historic preservation matters must be filed within 15 days after the Draft EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/railbanking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), LSRC shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by LSRC's filing of a notice of consummation by May 9, 2026, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available at www.stb.gov.

Decided: May 6, 2025.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Tammy Lowery,
Clearance Clerk.

[FR Doc. 2025-08182 Filed 5-8-25; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Federal Site Providing Ground Safety Services and Oversight for Launch or Reentry Activities Conducted From a Commercial Site Located on Land Owned by a Federal Site

AGENCY: Federal Aviation Administration (FAA), Department of Transportation.

ACTION: General notice.

SUMMARY: This document clarifies that, in instances where launch or reentry activities are conducted from an FAA-licensed commercial site located on land that is owned by a Federal site that the commercial site uses pursuant to an agreement with the Federal site, and the Federal site provides ground safety services and oversight, the vehicle operator may be able to demonstrate an equivalent level of safety to the FAA's ground safety requirements.

FOR FURTHER INFORMATION CONTACT: For additional information concerning this action, contact Katie Cranor, Acting Executive Director, Office of Operational Safety, 800 Independence Ave. SW, Washington, DC 20591; (202) 267-9525; 9-AST-Inquiries@faa.gov.

SUPPLEMENTARY INFORMATION:

I. Authority

The Commercial Space Launch Act of 1984, as amended and codified at 51 U.S.C. 50901 through 50923, authorizes the DOT, and the FAA through delegation,¹ to oversee, license, and regulate commercial launch and reentry activities, and the operation of launch and reentry sites² as carried out by U.S. citizens or within the United States. The FAA exercises these responsibilities consistent with public health and safety, safety of property, and the national security and foreign policy interests of the United States. *See* 51 U.S.C. 50905.

II. Background

As defined in § 401.7 of title 14 of the Code of Federal Regulations (CFR), a "Federal site" is "a launch or reentry site, from which launches routinely take place, that is owned and operated by the government of the United States."

This document also references a "commercial site." For the purposes of this document, a commercial site is a launch or reentry site operated³ under an FAA license in accordance with 14 CFR part 420 or part 433. Unlike a

¹ *See* 49 CFR 1.83(b).

² For definitions of the terms "launch," "reentry," "launch site," or "reentry site," *see* 14 CFR 401.7.

³ The FAA issues licenses to the operators of commercial launch or reentry sites. Any natural or legal person that meets any of the conditions set forth in paragraphs (b)(2), (c)(2), or (d) of 14 CFR 413.3 and intends to offer its launch site to others is required to obtain a commercial launch site license in accordance with the procedures set forth in 14 CFR part 420. *See* 14 CFR 413.1(b), .3(b)(2), .3(c)(2), and .3(d). Natural or legal persons meeting any of the conditions set forth in paragraphs (b)(4), (c)(4), or (e) of 14 CFR 413.3 and intending to offer a reentry site to others are required to obtain a commercial reentry site license in accordance with the procedures set forth in 14 CFR part 433. *See* 14 CFR 413.1(b), .3(b)(4), .3(c)(4), and .3(e). Licenses to operate a launch or reentry site authorize the license holder to host vehicle activities in accordance with the terms of the license. *See* 14 CFR 420.41(b) and 433.3(b).

Federal site, a commercial site is not owned and operated by the government of the United States. In operating a commercial site, the site license holder is required to, among other things, prevent unauthorized public access to the site; schedule and coordinate hazardous activities conducted by customers; issue all necessary notifications prior to a launch from the launch site, including notifications to all adjacent property owners and local jurisdictions of the pending flight of a launch vehicle; and follow the requirements and procedures of the site's explosive site plan. *See* 14 CFR part 420, subpart D. A site operator license authorizes the operation of a site but does not include an authorization for an operator to conduct a launch or reentry. Any vehicle operators seeking to conduct launch or reentry from a launch or reentry site must obtain a separate vehicle operator license in accordance with the applicable regulations in 14 CFR chapter III.

A. Ground Safety Requirements Exemption for Launch and Reentry Activities From Federal Sites

Under certain circumstances, vehicle operators conducting launch or reentry activities from a Federal site need not demonstrate compliance with the ground safety requirements in 14 CFR 450.181 through 450.189. Examples of Federal sites include the Cape Canaveral Space Force Station (CCSFS), Vandenberg Space Force Base (VSFB), Wallops Flight Facility (WFF), and Kennedy Space Center (KSC).

Specifically, for activities licensed under 14 CFR part 450, § 450.179(b) exempts a vehicle operator from demonstrating compliance with the ground safety requirements in §§ 450.181 through 450.189 if: (1) the launch or reentry is being conducted from a Federal launch or reentry site; (2) the operator has a written agreement with the Federal launch or reentry site for the provision of ground safety services and oversight; and (3) the FAA has determined that the Federal launch or reentry site's ground safety processes, requirements, and oversight are not inconsistent with the FAA's statutory authority (through delegation) over commercial space activities. *See* 14 CFR 450.179(b).

For the purpose of establishing that the ground safety requirements exemption in § 450.179(b) applies, the Federal site may seek a determination from the FAA that the condition in of § 450.179(b)(3) has been met—that is, the determination that the Federal site's ground safety processes, requirements, and oversight are not inconsistent with

the FAA's statutory authority over commercial space activities. In making the § 450.179(b)(3) determination, the FAA will consider the nature and frequency of launch and reentry activities conducted from the Federal launch or reentry site, coordination between the FAA and the Federal launch or reentry site safety personnel, and the Administrator's knowledge of the Federal launch or reentry site's requirements. *See* 14 CFR 450.179(c). Upon the issuance of the § 450.179(b)(3) determination for a particular Federal site, the FAA will develop a Memorandum of Agreement (MOA), or similar agreement, with that Federal site and publish it on the FAA's website. These agreements and related documents memorialize the FAA's findings related to the oversight and services provided at the corresponding Federal site. Together with documentation demonstrating that the conditions in §§ 450.179(b)(1) through (b)(2) are met, a vehicle operator may then use the MOA or similar agreement to demonstrate compliance with § 450.179(b) rather than the ground safety requirements in §§ 450.181 through 450.189. *See* 14 CFR 450.179(b).

B. Availability of Equivalent Level of Safety Determination To Ground Safety Requirements for Some Launch or Reentry Activities From Commercial Sites

In some instances, commercial sites, which hold launch and/or reentry site operator licenses that are issued by the FAA under 14 CFR part 420 or part 433, are located on land owned by a Federal site.⁴ The Mid-Atlantic Regional Spaceport (MARS) at WFF, Space Florida (SPFL) LC-46 at CCSFS, and the Shuttle Landing Facility (SLF) at KSC are examples of commercial sites located on land owned by a Federal site but not operated by the U.S. Government because the site license holders have a lease or agreement with a Federal site to operate their commercial site within the boundaries of the Federal site.

Even in instances when the Federal site leasing the land to the commercial site has obtained a § 450.179(b)(3) determination, and per agreement with either the commercial site or vehicle operator, is providing ground safety services equivalent to those for which

the Federal site obtained a § 450.179(b)(3) determination, commercial vehicle operators conducting launch or reentry activities from the commercial site are unable to qualify for the ground safety requirements exemption in 14 CFR 450.179(b). This is due to the fact that the ground safety requirements exemption in 14 CFR 450.179(b) is only available when the proposed launch or reentry activity will be conducted from a Federal launch or reentry site (rather than a commercial site operating its site within the boundaries of a Federal site through a lease or similar agreement).

However, subject to the requirements discussed below, vehicle operators operating from a commercial site can obtain an Equivalent Level of Safety Determination (ELOS Determination) to the ground safety requirements of §§ 450.181 through 450.189 when (1) the proposed launch or reentry activity will be conducted from a commercial site that is located on land owned by a Federal site, (2) the Federal site has obtained a § 450.179(b)(3) determination for the ground safety services provided at the Federal site, and (3) the vehicle operator or site operator⁵ and the Federal site have agreed in writing that the Federal site will provide ground safety services and oversight for the proposed launch or reentry activity equivalent to those at the Federal site.

III. Rationale for Availability of ELOS Determination

For the majority of requirements in 14 CFR part 450, an applicant can propose an alternative approach that does not satisfy the requirement if the applicant clearly and convincingly demonstrates that the alternative approach provides an equivalent level of safety to the requirement. *See* 14 CFR 450.37. Under § 401.7, the phrase "equivalent level of safety" is defined as "an approximately equal level of safety as determined by qualitative or quantitative means."

A vehicle operator may demonstrate an ELOS with part 450's ground safety requirements when the following conditions are met: (1) the licensed activity occurs at a commercial site located on land owned by a Federal site; (2) the Federal site has obtained a § 450.179(b)(3) determination; and (3) there is a written agreement for the

Federal site to provide ground safety services and oversight for the vehicle operator. This is because the FAA has found that a Federal site that has obtained a § 450.179(b)(3) determination has ground safety processes, requirements, and oversight that are not inconsistent with the FAA's statutory authority over commercial space activities. As a result, vehicle operators conducting launch or reentry from such Federal sites may not be required to comply with the part 450 ground safety requirements. Because the ground safety services offered to a vehicle operator conducting launch or reentry activities from a commercial site located on land owned by a Federal site are equivalent to the services offered on the Federal site itself; and because the Federal entity providing ground safety services and oversight to the commercial site is familiar with the site and its facilities, safety personnel, and operations, the FAA finds that the vehicle operator may demonstrate an ELOS to the part 450 ground safety requirements. Further, when the commercial site is located on land owned by a Federal site pursuant to a lease or similar agreement, the Federal site generally has more familiarity with or oversight of the commercial site because of the physical proximity of the two sites. This proximity facilitates coordination among the two sites, such as when the Federal site's personnel are able to physically access the commercial site or the commercial site uses the Federal site's infrastructure and resources. Thus, at this time, the FAA finds a vehicle operator using a Federal site for ground safety services and oversight may demonstrate an equivalent level of safety to the FAA's ground safety requirements only when the commercial site is also located on land that is owned by the Federal site.

IV. Implementation

An applicant proposing to conduct launch or reentry from a commercial site located on land that is owned by a Federal site may be able to demonstrate an equivalent level of safety with the ground safety requirements of §§ 450.181 through 450.189. Such an applicant should request an equivalent level of safety determination during pre-application consultation. In particular, if an applicant proposes to conduct launch or reentry activities from a commercial site that is located on land that is owned by a Federal site and the Federal site has obtained a § 450.179(b)(3) determination for ground safety services provided at the Federal site, the applicant may be able to demonstrate an equivalent level of

⁴ For the purposes of this document, references to the fact that a commercial site is located on land that is owned by a Federal site are used as a shorthand to indicate that the land on which the commercial site is located is owned by the Federal site but used and/or occupied by the commercial site pursuant to a lease or similar agreement with the Federal site.

⁵ A vehicle operator may only have an agreement with a commercial site operator to conduct launch or reentry operations at that commercial site. If this is the case, the commercial site and the Federal site may have a contractual arrangement in place according to which the Federal site provides ground safety services and oversight to vehicle operators conducting launch or reentry activities from the commercial site.

safety with the ground safety requirements of §§ 450.181 through 450.189. The applicant would need to demonstrate that the Federal site has agreed, in writing, to provide ground safety services and oversight for launch or reentry activities conducted at the commercial site equivalent to those for which the Federal site obtained a § 450.179(b)(3) determination. In order to assess whether the Federal site has obtained a § 450.179(b)(3) determination for ground safety services provided at the Federal site, the FAA will look to whether a MOA, or similar agreement, with that site has been developed and published on the FAA's website. The existence of such documentation assures the FAA that the Federal site's ground safety services are not inconsistent with the FAA's statutory authority over commercial space activities.

In order to demonstrate that the Federal site will provide to the commercial site ground safety services and oversight equivalent to those for which it obtained a § 450.179(b)(3) determination, a vehicle operator would also need to demonstrate in its license application that the Federal site has contractually agreed to provide ground safety services and oversight for the purpose of the proposed launch or reentry activity. If the vehicle operator has directly contracted with the Federal site for the provision of the ground safety services and oversight, that agreement is likely sufficient to demonstrate that the Federal site has contractually agreed to provide ground safety services and oversight for the purpose of the proposed launch or reentry activity. However, if there is not a direct contractual relationship between the vehicle operator and the Federal site, the vehicle operator could demonstrate that the Federal site has contractually agreed to provide ground safety services and oversight for the purpose of the proposed launch or reentry activity by including both its agreement with the commercial site and the agreement between the commercial site and the Federal site for the provision of ground safety services and oversight. A comparison of the obligations and responsibilities outlined in the agreements with the services for which the Federal site obtained a § 450.179(b)(3) determination will also allow the FAA to assess whether the ground safety services, and oversight provided at the commercial site will be equivalent to the ground safety services and oversight available at the corresponding Federal site.

V. Existing § 450.179(b)(3) Determinations

At the time of this Notice, § 450.179(b)(3) determinations have been obtained for ground safety services at the following Federal sites:

Memorandum of Agreement (MOA) Between the Department of the Air Force (DAF) and the FAA for Launch and Reentry Activity on Department of the Air Force Ranges and Installations (specifically CCSFS and VSFB), Agreement Number: FAA-DAF-SLR-2021.01.

- This MOA states that the DAF will provide ground safety services and oversight for activity on a USSF installation consistent with the FAA Ground Safety Policy, 3 November, 2020, and 14 CFR 450.179(b). The DAF will ensure its ground safety requirements and process protect the public health and safety, safety of property, and national security and foreign policy interests of the U.S.

Notice of Determination on KSC Ground Safety Services and Oversight, dated December 12, 2024.

- This document establishes that, in accordance with 14 CFR 450.179(b)(3) and (c), the FAA has determined that the NASA KSC ground safety processes, requirements, and oversight are not inconsistent with the FAA's statutory authority over commercial space activities conducted at NASA KSC.

Non-reimbursable Umbrella Interagency Agreement (IAA) Between the NASA and FAA for Commercial Launch and Reentry Activities on NASA Ranges and Installations, signed January 10, 2025.

- This IAA states that for licensed launch and reentry operations from a Federal launch site, the FAA will accept NASA ground safety processes and procedures performed in accordance with the appropriate Annex of this Umbrella IAA. The FAA and NASA will execute Annexes focused on the most utilized NASA installations at NASA KSC and WFF.

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. It is intended only to provide clarity to the public regarding existing requirements under the law and agency policies.

Issued in Washington, DC.

Katie Cranor,

Director, Office of Operational Safety (Acting), Commercial Space Transportation, Federal Aviation Administration.

[FR Doc. 2025-08097 Filed 5-8-25; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA-2025-0906]

Experimental Aircraft "All Makes and Models" Program

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice; request for comment.

SUMMARY: This notice informs operators of certain experimental aircraft of a new program that enables certain pilots to receive authorization to act as pilot in command (PIC) of certain experimental aircraft by completing aircraft-specific ground and flight training without taking a practical test. The FAA implements this program in accordance with section 806 of the FAA Reauthorization Act of 2024. While the Experimental Aircraft All Makes and Models Program is effective upon the date of this notice, FAA seeks comments on the implementing guidance for future consideration.

DATES: Comments on this petition must identify the petition docket number and must be received on or before June 9, 2025.

ADDRESSES: Send comments identified by docket number FAA-2025-0906 using any of the following methods:

Federal eRulemaking Portal: Go to <https://www.regulations.gov> and follow the online instructions for sending your comments electronically.

Mail: Send comments to Docket Operations, M-30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

Hand Delivery or Courier: Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Fax: Fax comments to Docket Operations at (202) 493-2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <https://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <https://www.dot.gov/privacy>.

Docket: Background documents or comments received may be read at

<https://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

David Menzimer at (202) 267-1100, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Background

Some experimental aircraft operating limitations require a pilot to hold an authorization to act as PIC; a type rating, an Authorized Experimental Aircraft (AEA) authorization (formerly called a letter of authorization (LOA)), or a temporary LOA.¹ AEA's can be obtained by completing specialized training and testing, similar to that required to obtain a type rating, which authorizes a pilot to act as PIC of a specific make and model experimental aircraft. In section 806 of the FAA Reauthorization Act of 2024 (Public Law (Pub. L.) 118-63), Congress mandated that the Federal Aviation Administration (FAA) take such action as may be necessary to authorize pilots who hold three AEA's in high-performance single- or multi-engine piston aircraft to act as PIC of these aircraft by completing aircraft specific ground and flight training, only, without completing a practical test in the subsequent aircraft. FAA will facilitate this through FAA Order 8900.1; therefore, this publication serves as notice that volume 5, chapter 9, section 7 of FAA Order 8900.1 now sets forth the parameters and related information pertaining to the Experimental Aircraft "All Makes and Models" Program.

Prior policy allowed for an "All Makes and Models" authorization and subsequent AEA's to be issued on a person's pilot certificate after submitting an FAA Form 8710-1, Airman Certificate and/or Rating Application, and documentation of the completed training requirements to the FAA. However, to reduce the burden and increase efficiency for the regulated community, and to reduce costs to the FAA, pilots who hold three AEA's on their pilot certificate and seek to operate additional experimental aircraft in accordance with this program will no longer send an application or

documentation to the FAA. Additional authorizations issued in accordance with this program will no longer be listed on the pilot certificate.

Instead, authorizations added in accordance with this program will be issued in the form of a logbook endorsement by the authorized instructor who provided the training.

Pilots who do not yet hold the requisite three AEA's on their pilot certificate will continue to reference the process outlined in FAA Order 8900.1, volume 5, chapter 9, section 2, Airman Qualification Requirements for Aircraft for Which the Operating Limitations Require an FAA-Issued Authorization to Act as Pilot in Command, to obtain an AEA. Likewise, pilots may continue to add additional AEA's in accordance with that process and are not required to utilize this new program.

Relatedly, FAA is simultaneously updating the aforementioned operating limitation to add an endorsement as a means of compliance to meet the operating limitation, as appropriate. In other words, currently, the operating limitation explicitly recognizes the AEA as a pilot authorization; FAA simultaneously revises the operating limitation through a deviation memo to FAA Order 8130.2K to include an endorsement as a pilot authorization. FAA notes that because previously-issued airworthiness certificate operating limitations specify that pilots must hold a model-specific type rating, AEA, or temporary LOA, persons seeking to utilize this new program (*i.e.*, procure the aforementioned endorsement) must first apply for an amended airworthiness certificate with an operating limitation that allows for such endorsement.²

Summary of Program

As specified in volume 5, chapter 9, section 7 of FAA Order 8900.1, for authorizations issued in accordance with this program, the trainee must:

- Hold at least three AEA's in high-performance single-engine piston or high-performance multi-engine piston aircraft (as appropriate to the endorsement sought).
- Receive the same ground and flight training required to obtain an AEA from an authorized instructor (see volume 5, chapter 9, section 2, subparagraph 5-1582B, Training Requirements).

² Persons seeking an amended airworthiness certificate may reach out to their local Flight Standards District Office, Certificate Management Section, or Designee, as appropriate. Issuers will utilize FAA Order 8130.2, *Airworthiness Certification of Aircraft*, for issuance of an amended airworthiness certificate.

- Receive a logbook endorsement from the authorized instructor who provided the training stating the following: "I certify that [John Doe, certificate number] holds at least three [high-performance single-engine piston or high-performance multi-engine piston (instructors must choose the option appropriate to the endorsement sought)] Authorized Experimental Aircraft (AEA) authorizations, has received the required ground and flight training, and is proficient to act as PIC of [make/model] experimental aircraft."

Pilots seeking an endorsement in accordance with this program must hold an instrument rating. If the aircraft used for the training is not equipped such that the applicant can demonstrate instrument skills, the instructor will place a limitation on the endorsement noting "VFR ONLY."

Inviting Comments

The FAA is requesting comments on the new program described herein. A copy of the associated guidance is being posted for review to Docket No.: FAA-2025-0906. The new program may be revised based on comments received.

Issued in Washington, DC.

Robert M. Ruiz,

Deputy Executive Director, Flight Standards Service.

[FR Doc. 2025-08167 Filed 5-8-25; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on a Land Release Request at Malden Regional Airport & Industrial Park (MAW), Malden, MO

AGENCY: Federal Aviation Administration (FAA), Department of Transportation.

ACTION: Notice of request to release airport land.

SUMMARY: The FAA proposes to rule and invites public comment on the request to release and sell a 10.59 acre parcel of federally obligated airport property at the Malden Regional Airport & Industrial Park (MAW), Malden, Missouri.

DATES: Comments must be received on or before June 9, 2025.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Amy J. Walter, Airports Land Specialist, Federal Aviation Administration, Airports Division, ACE-620G, 901

¹ See Operation Limitation #8 of FAA Order 8130.2K.

Locust, Room 364, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to: David Blalock, Airport Manager, City of Malden Regional Airport & Industrial Park, 3077 Mitchell Drive, P.O. Box 411, Malden, MO 63863-0411, (573) 276-2279.

FOR FURTHER INFORMATION CONTACT:

Amy J. Walter, Airports Land Specialist, Federal Aviation Administration, Airports Division, ACE-620G, 901 Locust, Room 364, Kansas City, MO 64106, (816) 329-2603, amy.walter@faa.gov. The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release a 10.59-acre parcel of airport property at the Malden Regional Airport & Industrial Park (MAW) under the provisions of 49 U.S.C. 47107(h)(2). This is a Surplus Property Airport. The City of Malden requested a release from the FAA to sell the parcel to Aycorp, LLC, which proposes to develop the parcel. The FAA determined this request to release and sell property at the Malden Regional Airport & Industrial Park (MAW) submitted by the Sponsor meets the procedural requirements of the FAA and the release and sale of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this notice.

The following is a brief overview of the request:

The Malden Regional Airport & Industrial Park (MAW) is proposing the release and sale of a parcel of airport property containing 10.59 acres. The release of land is necessary to comply with Federal Aviation Administration Grant Assurances that do not allow federally acquired airport property to be used for non-aviation purposes. The sale of the subject property will result in the land at the Malden Regional Airport & Industrial Park (M) being changed from aeronautical to non-aeronautical use and release the lands from the conditions of the Airport Improvement Program Grant Agreement Grant Assurances in order to sell the land. In accordance with 49 U.S.C. 47107(c)(2)(B)(i) and (iii), the airport will receive fair market value for the property, which will be subsequently reinvested in another eligible airport improvement project for general aviation use.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may request an appointment to inspect the application, notice and other documents determined by the FAA to be related to the application in person at the Malden City Hall.

Issued in Kansas City, MO, on May 5, 2025.

Rodney N. Joel,

Director, FAA Central Region, Airports Division.

[FR Doc. 2025-08121 Filed 5-8-25; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA-2024-2216]

Agency Information Collection Activities: Requests for Comments; Clearance of Approval of Information Collection To Provide for the Amount of Aqueous Film Forming Foam (AFFF) Located at Part 139 Airports

AGENCY: Federal Aviation Administration (FAA), Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for an information collection. The collection involves S. 4319—*A bill to provide for progress reports on the national transition plan related to a fluorine-free firefighting foam* that requires that the FAA provide progress reports on the status of part 139 airports transition to fluorine-free firefighting foam no later than 180 days after the date of enactment of this Act, and every 180 days thereafter until the progress report termination date. *Within this report, a comprehensive list of the amount of AFFF at each part 139 airport has as of the date of the submission of the progress report, including the amount of such firefighting foam held in firefighting equipment and the number of gallons regularly kept in reserve at each such airport.* These progress reports on the development and implementation of a national transition plan related to a fluorine-free firefighting foam that meets the performance standards referenced in Chapter 3—*Agent Compatibility, Substitutions, and Performance Requirements* of Advisory Circular 150/

5210.6E—*Aircraft Fire Extinguishing Agents for Airports* (AC 150/5210.62) issued on November 27, 2023 shall be submitted to the appropriate committees of Congress.

DATES: Written comments should be submitted by July 8, 2025.

ADDRESSES: Please send written comments:

By Electronic Docket:

www.regulations.gov.

Enter docket number: FAA-2024-2216 into search field.

By email: anthony.butters@faa.gov.

FOR FURTHER INFORMATION CONTACT:

Anthony Butters by email at: anthony.butters@faa.gov; phone: 202-267-9616.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2024-2216.

Title: Collection for Progress Reports related to the National Transition Plan for fluorine-free firefighting foam.

Form Numbers: N/A.

Type of Review: New information collection.

The required respondents to this new information request are civilian U.S. part 139 airport certificate holders who operate airports that serve scheduled and unscheduled operations of air carrier aircraft with more than 10 passenger seats (approximately 517 airports). These airport operators already hold an AOC and comply with all current information collection requirements.

Operators of certificated airports are permitted to choose the methodology to report information and can design their own recordkeeping system. As airports vary in size, operations and complexities, the FAA has determined this method of information collection allows airport operators greater flexibility and convenience to comply with reporting and recordkeeping requirements. 100% of the information may be submitted electronically.

The FAA Reauthorization Act of 2024, sec. 762 requires the FAA to provide a progress report on the national transition plan related to a fluorine free

firefighting foam, every 180 days on the transition from fluorine-free firefighting foam until transition is complete.

This Act requires that the FAA provide progress reports on the status of part 139 airports transition to fluorine-free firefighting foam no later than 180 days after the date of enactment of this Act, and every 180 days thereafter until the progress report termination date. These progress reports on the development and implementation of a national transition plan related to a fluorine-free firefighting foam that meets the performance standards referenced in Chapter 3—Agent Compatibility, Substitutions, and Performance Requirements of Advisory Circular 150/5210.6E—Aircraft Fire Extinguishing Agents for Airports (AC 150/5210.62) issued on November 27, 2023, shall be submitted to the appropriate committees of Congress. These reports will also contain a comprehensive list of the amount of aqueous filmforming firefighting foam at each part 139 airport has as of the date of the submission of the progress report, including the amount of such firefighting foam held in firefighting equipment and the number of gallons regularly kept in reserve at each such airports. In order to provide congress an accurate accounting to AFFF, the FAA must contact all 518 airports to ascertain the amount at each airport.

Respondents: Approximately 518 airports.

Frequency: Information collected once.

Estimated Average Burden per Response: 3 hours.

Estimated Total Annual Burden: 1,554 hours.

Issued in Washington, DC, on May 6, 2025.

Anthony M. Butters,
Manager (acting), Airport Safety and
Operations Division (AAS-300).

[FR Doc. 2025-08136 Filed 5-8-25; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2020-0033]

Notice of Petition for Extension of Waiver of Compliance

AGENCY: Federal Railroad
Administration (FRA), Department of
Transportation (DOT).

ACTION: Notice.

SUMMARY: This document provides the public notice that BNSF Railway Company (BNSF) petitioned FRA for relief from certain regulations

concerning inspections when combining and separating trains.

DATES: FRA must receive comments on the petition by June 9, 2025. FRA will consider comments received after that date to the extent practicable.

ADDRESSES:

Comments: Comments related to this docket may be submitted by going to <https://www.regulations.gov> and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number. All comments received will be posted without change to <https://www.regulations.gov>; this includes any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> and follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT:

Steven Zuiderveen, Railroad Safety Specialist, FRA Motive Power & Equipment Division, telephone: 202-493-6337, email: steven.zuiderveen@dot.gov.

SUPPLEMENTARY INFORMATION: Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by letter received March 11, 2025, BNSF petitioned FRA for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 215 (Railroad Freight Car Safety Standards). FRA assigned the petition Docket Number FRA-2020-0033.

BNSF requests relief from 49 CFR 215.13, *Pre-departure inspection*, which requires an inspection when combining two separate consists including one or more cars and one or more locomotives that have been properly inspected and tested in compliance with all applicable regulations, meaning that both consists have had a Class I brake test (§ 232.205), Class IA brake test (§ 232.207), or have been designated as extended haul trains and are compliant with all requirements of § 232.213. BNSF states that the requested relief will allow combining two existing and operating trains without additional inspections, besides a Class III brake test. BNSF further explains that the relief will allow subsequent separation of one train into two trains without additional

inspections, besides a Class III brake test, provided that a record of the original consist remains intact.

In support of its petition, BNSF states that “data gathered over the course of the waiver period to date shows that trains operating under the waiver experience at least equivalent safety outcomes as similarly situated trains.” BNSF explains that an additional part 215 inspection when combining trains is redundant because each train to be combined has had a brake test and inspection and a § 215.13 pre-departure inspection. Further, BNSF notes that the requested relief will reduce exposure to potential walking hazards faced by train crews or mechanical inspectors and opportunities for an employee to inadvertently foul a track. Finally, BNSF suggests that “the waiver encourages greater utilization of Distributed Power (DP), which reduces in-train forces and improves braking performance.”

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

Communications received by June 9, 2025 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Privacy Act

Anyone can search the electronic form of any written communications and comments received into any of FRA's dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to inform its processes. 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 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacy-notice> for the privacy notice of [regulations.gov](https://www.regulations.gov).

Issued in Washington, DC.

John Karl Alexy,

*Associate Administrator for Railroad Safety,
Chief Safety Officer.*

[FR Doc. 2025-08197 Filed 5-8-25; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2025-0059]

Notice of Petition for Waiver of Compliance

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This document provides the public notice that the Association of American Railroads (AAR) petitioned FRA for relief from certain regulations concerning track inspections.

DATES: FRA must receive comments on the petition by June 9, 2025. FRA will consider comments received after that date to the extent practicable.

ADDRESSES:

Comments: Comments related to this docket may be submitted by going to <https://www.regulations.gov> and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number. All comments received will be posted without change to <https://www.regulations.gov>; this includes any personal information. Please see the Privacy Act heading in the

SUPPLEMENTARY INFORMATION section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> and follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT:

Yujang Zhang, Staff Director, FRA Track & Structures Division, telephone: 202-493-6460, email: yujang.zhang@dot.gov.

SUPPLEMENTARY INFORMATION: Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by letter received April 24, 2025, AAR, on behalf of its members, petitioned FRA for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 213 (Track Safety Standards). FRA

assigned the petition Docket Number FRA-2025-0059.

AAR seeks relief from § 213.233(b) and (c), Visual track inspections, which specifies the method and frequency in which railroads must conduct visual track inspections. AAR requests that its members instead be permitted to use a combination of track geometry measurement system (TGMS) and visual track inspection methods, which AAR states “will result in earlier detection and remediation of track defects, reduce visual inspections that are a potential source of injury, and improve operational efficiency.” Further, AAR believes that the relief would allow railroads to build on their existing successful TGMS programs and provide FRA additional data for use in possible future regulations. In support of its request, AAR also cites that automated track inspection technologies enable earlier detection of track defects and preventative maintenance practices, rather than reactive operations.

FRA notes that other non-AAR member railroads, including New Jersey Transit (NJT) (Docket Number FRA-2003-15196), the Southeastern Pennsylvania Transportation Authority (SEPTA) (Docket Number FRA-1999-5102), and the Long Island Rail Road (LIRR) (Docket Number RST-74-1),¹ have previously received conditional waivers from certain visual track inspection requirements through use of TGMS.² FRA is providing notice that concurrently with consideration of AAR’s request, FRA may consider the utility of aligning these previous grants of relief with any grant of relief that may result in this docket.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

Communications received by June 9, 2025 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

¹ 41 FR 15360 (Apr. 12, 1976).

² The relief issued to both NJT and SEPTA has expired and LIRR’s relief remains in effect.

Privacy Act

Anyone can search the electronic form of any written communications and comments received into any of FRA’s dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to inform its processes. 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 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacy-notice> for the privacy notice of www.regulations.gov.

Issued in Washington, DC.

John Karl Alexy,

*Associate Administrator for Railroad Safety,
Chief Safety Officer.*

[FR Doc. 2025-08199 Filed 5-8-25; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2025-0034]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This document provides the public notice that Florida Gulf & Atlantic Railroad (FGA) petitioned FRA seeking approval to discontinue or modify a signal system. FRA is reissuing this notice because of an incorrect docket number given in the previous notice.

DATES: FRA must receive comments on the petition by June 9, 2025. FRA will consider comments received after that date to the extent practicable.

ADDRESSES:

Comments: Comments related to this docket may be submitted by going to <https://www.regulations.gov> and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number. All comments received will be posted without change to <https://www.regulations.gov>; this includes any personal information. Please see the Privacy Act heading in the

SUPPLEMENTARY INFORMATION section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> and follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Scott Johnson, Railroad Safety Specialist, FRA Signal, Train Control, and Crossings Division, telephone: 406–210–3608, email: scott.j.johnson@dot.gov.

SUPPLEMENTARY INFORMATION: Under part 235 of title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that by letter dated February 26, 2025, FGA petitioned FRA seeking approval to discontinue or modify a signal system. FRA assigned the petition Docket Number FRA–2025–0034.¹

Specifically, FGA requests to discontinue the centralized traffic control (CTC) system on the Tallahassee Subdivision, from milepost (MP) 693.3 to MP 802.0. FGA intends to remove the “outdated” CTC system and install “switch point approach signal indicators, DTMF Systems, and self-restoring switches at five siding locations between Baldwin and Tallahassee, as well as the switch accessing the Bainbridge Line at Tallahassee.” Train operation would then use track warrant control, which is used on FGA’s other two subdivisions.

In support of the request, FGA states that it is difficult to find parts for the current CTC system, as the relays required are no longer produced, and the system frequently fails. Further, the CTC system sometimes “hinders operations by slowing down the switching operations when blocking or organizing interchange traffic.” FGA adds that the new DTMF system will provide broken rail protection and there is no potential for head-on or rear-end collisions at either interlocking in the subject area.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov.

Interested parties are invited to participate in these proceedings by

submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

Communications received by June 9, 2025 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Privacy Act

Anyone can search the electronic form of any written communications and comments received into any of FRA’s dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. 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 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacy-notice> for the privacy notice of www.regulations.gov.

Issued in Washington, DC.

John Karl Alexy,
Associate Administrator for Railroad Safety,
Chief Safety Officer.

[FR Doc. 2025–08198 Filed 5–8–25; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2025–0063]

Request Notice: Use of Foreign-Built Small Passenger Vessel in United States Coastwise Trade, M/V My Three Girls

AGENCY: Maritime Administration, DOT.
ACTION: Notice and request for comments.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to make determinations regarding the coastwise use of foreign built; certain U.S. built; and U.S. and foreign rebuilt vessels that solely carry no more than twelve passengers for hire. MARAD has received such a

determination request and is publishing this notice to solicit comments to assist with determining whether the proposed use of the vessel set forth in the request would have an adverse effect on U.S. vessel builders or U.S. coastwise trade businesses that use U.S.-built vessels in those businesses. Information about the requestor’s vessel, including a description of the proposed service, is in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Submit comments on or before June 9, 2025.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2025–0063 by any one of the following methods:

- **Federal eRulemaking Portal:** Go to <https://www.regulations.gov>. Search MARAD–2025–0063 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–2025–0063, 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, Mail Stop 2, MAR–620, Washington, DC 20590. Telephone: (202) 366–5400. Email: smallvessels@dot.gov.

SUPPLEMENTARY INFORMATION: Pursuant to 46 U.S.C. 12121(b), the U.S. Coast Guard may issue a certificate of documentation with a coastwise trade endorsement for eligible, small passenger vessels authorized to carry no more than 12 passengers for hire if the

¹ FRA erroneously cited Docket Number FRA–2025–0024 in a previous public notice announcing FGA’s request. See 90 FR 19244 (May 6, 2025), available at <https://www.federalregister.gov/documents/2025/05/06/2025-07829/notice-of-application-for-approval-of-discontinuance-or-modification-of-a-railroad-signal-system>. The correct Docket Number is FRA–2025–0034.

Maritime Administration (MARAD), after notice and an opportunity for public comment, determines the use of the small passenger vessel in the coastwise trade will not adversely affect United States vessel builders or the coastwise trade business of any person that employs vessels built in the United States in that business.¹

MARAD has received an eligibility determination request. Further details about the requester's vessel and its proposed operations may be found in the determination request posted in the DOT docket as MARAD-2025-0063 at <https://www.regulations.gov>. Interested parties may comment on the undue adverse effect this action may have on U.S. vessel builders or coastwise trade businesses in the U.S. that employ U.S.-built vessels in those businesses. Comments should refer to the vessel name, state the commenter's interest in the request, and demonstrate, with supporting documentation, the undue adverse effect on U.S. vessel builders and coastwise trade businesses.

Public Participation

How do I submit comments?

Please submit comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. It may take a few hours or even days for comments to be reflected on the docket. Comments must be written in English. Provide concise comments and 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?

The docket online is located at <https://www.regulations.gov>, keyword search MARAD-2025-0063 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). Please periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

You may request that MARAD treat your comments as commercially confidential by submitting them 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 treatment highlighting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

If 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. 12121)

By Order of the Maritime Administration.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2025-08175 Filed 5-8-25; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2025-0064]

Request Notice: Use of Foreign-Built Small Passenger Vessel in United States Coastwise Trade, S/V FRIDA

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to make determinations regarding the coastwise use of foreign built; certain U.S. built; and U.S. and foreign rebuilt vessels that solely carry no more than twelve passengers for hire. MARAD has received such a determination request and is publishing this notice to solicit comments to assist with determining whether the proposed use of the vessel set forth in the request would have an adverse effect on U.S. vessel builders or U.S. coastwise trade businesses that use U.S.-built vessels in those businesses. Information about the

requestor's vessel, including a description of the proposed service, is in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Submit comments on or before June 9, 2025.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2025-0064 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Search MARAD-2025-0064 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-2025-0064, 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, Mail Stop 2, MAR-620, Washington, DC 20590. Telephone: (202) 366-5400. Email: smallvessels@dot.gov.

SUPPLEMENTARY INFORMATION: Pursuant to 46 U.S.C. 12121(b), the U.S. Coast Guard may issue a certificate of documentation with a coastwise trade endorsement for eligible, small passenger vessels authorized to carry no more than 12 passengers for hire if the Maritime Administration (MARAD), after notice and an opportunity for public comment, determines the use of the small passenger vessel in the coastwise trade will not adversely affect United States vessel builders or the coastwise trade business of any person

¹ The U.S. Coast Guard and MARAD have authority under 46 U.S.C. 12121(b) through the Secretary of the Department of Homeland Security and the Secretary of the Department of Transportation, respectively.

that employs vessels built in the United States in that business.¹

MARAD has received an eligibility determination request. Further details about the requester's vessel and its proposed operations may be found in the determination request posted in the DOT docket as MARAD–2025–0064 at <https://www.regulations.gov>. Interested parties may comment on the undue adverse effect this action may have on U.S. vessel builders or coastwise trade businesses in the U.S. that employ U.S.-built vessels in those businesses. Comments should refer to the vessel name, state the commenter's interest in the request, and demonstrate, with supporting documentation, the undue adverse effect on U.S. vessel builders and coastwise trade businesses.

Public Participation

How do I submit comments?

Please submit comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. It may take a few hours or even days for comments to be reflected on the docket. Comments must be written in English. Provide concise comments and 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?

The docket online is located at <https://www.regulations.gov>, keyword search MARAD–2025–0064 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). Please periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

You may request that MARAD treat your comments as commercially confidential by submitting them 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 treatment highlighting the CCI portions. If possible, please provide a summary of

your submission that can be made available to the public.

If 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. 12121)

By Order of the Maritime Administration.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2025–08174 Filed 5–8–25; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2025–0065]

Request Notice: Use of Foreign-Built Small Passenger Vessel in United States Coastwise Trade, S/V Goodnight Moon

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to make determinations regarding the coastwise use of foreign built; certain U.S. built; and U.S. and foreign rebuilt vessels that solely carry no more than twelve passengers for hire. MARAD has received such a determination request and is publishing this notice to solicit comments to assist with determining whether the proposed use of the vessel set forth in the request would have an adverse effect on U.S. vessel builders or U.S. coastwise trade businesses that use U.S.-built vessels in those businesses. Information about the requestor's vessel, including a description of the proposed service, is in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Submit comments on or before June 9, 2025.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2025–0065 by any one of the following methods:

- **Federal eRulemaking Portal:** Go to <https://www.regulations.gov>. Search MARAD–2025–0065 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–2025–0065, 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, Mail Stop 2, MAR–620, Washington, DC 20590. Telephone: (202) 366–5400. Email: smallvessels@dot.gov.

SUPPLEMENTARY INFORMATION: Pursuant to 46 U.S.C. 12121(b), the U.S. Coast Guard may issue a certificate of documentation with a coastwise trade endorsement for eligible, small passenger vessels authorized to carry no more than 12 passengers for hire if the Maritime Administration (MARAD), after notice and an opportunity for public comment, determines the use of the small passenger vessel in the coastwise trade will not adversely affect United States vessel builders or the coastwise trade business of any person that employs vessels built in the United States in that business.¹

¹ The U.S. Coast Guard and MARAD have authority under 46 U.S.C. 12121(b) through the Secretary of the Department of Homeland Security and the Secretary of the Department of Transportation, respectively.

¹ The U.S. Coast Guard and MARAD have authority under 46 U.S.C. 12121(b) through the Secretary of the Department of Homeland Security and the Secretary of the Department of Transportation, respectively.

MARAD has received an eligibility determination request. Further details about the requester's vessel and its proposed operations may be found in the determination request posted in the DOT docket as MARAD–2025–0065 at <https://www.regulations.gov>. Interested parties may comment on the undue adverse effect this action may have on U.S. vessel builders or coastwise trade businesses in the U.S. that employ U.S.-built vessels in those businesses. Comments should refer to the vessel name, state the commenter's interest in the request, and demonstrate, with supporting documentation, the undue adverse effect on U.S. vessel builders and coastwise trade businesses.

Public Participation

How do I submit comments?

Please submit comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. It may take a few hours or even days for comments to be reflected on the docket. Comments must be written in English. Provide concise comments and 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?

The docket online is located at <https://www.regulations.gov>, keyword search MARAD–2025–0065 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). Please periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

You may request that MARAD treat your comments as commercially confidential by submitting them 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 treatment highlighting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

If 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. 12121)

By Order of the Maritime Administration.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2025–08171 Filed 5–8–25; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2025–0066]

Request Notice: Use of Foreign-Built Small Passenger Vessel in United States Coastwise Trade, M/V Almeda

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to make determinations regarding the coastwise use of foreign built; certain U.S. built; and U.S. and foreign rebuilt vessels that solely carry no more than twelve passengers for hire. MARAD has received such a determination request and is publishing this notice to solicit comments to assist with determining whether the proposed use of the vessel set forth in the request would have an adverse effect on U.S. vessel builders or U.S. coastwise trade businesses that use U.S.-built vessels in those businesses. Information about the requestor's vessel, including a description of the proposed service, is in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Submit comments on or before June 9, 2025.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2025–0066 by any one of the following methods:

- **Federal eRulemaking Portal:** Go to <https://www.regulations.gov>. Search MARAD–2025–0066 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–2025–0066, 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, Mail Stop 2, MAR–620, Washington, DC 20590. Telephone: (202) 366–5400. Email: smallvessels@dot.gov.

SUPPLEMENTARY INFORMATION: Pursuant to 46 U.S.C. 12121(b), the U.S. Coast Guard may issue a certificate of documentation with a coastwise trade endorsement for eligible, small passenger vessels authorized to carry no more than 12 passengers for hire if the Maritime Administration (MARAD), after notice and an opportunity for public comment, determines the use of the small passenger vessel in the coastwise trade will not adversely affect United States vessel builders or the coastwise trade business of any person that employs vessels built in the United States in that business.¹

MARAD has received an eligibility determination request. Further details about the requester's vessel and its proposed operations may be found in the determination request posted in the DOT docket as MARAD–2025–0066 at <https://www.regulations.gov>. Interested parties may comment on the undue adverse effect this action may have on

¹ The U.S. Coast Guard and MARAD have authority under 46 U.S.C. 12121(b) through the Secretary of the Department of Homeland Security and the Secretary of the Department of Transportation, respectively.

U.S. vessel builders or coastwise trade businesses in the U.S. that employ U.S.-built vessels in those businesses. Comments should refer to the vessel name, state the commenter's interest in the request, and demonstrate, with supporting documentation, the undue adverse effect on U.S. vessel builders and coastwise trade businesses.

Public Participation

How do I submit comments?

Please submit comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. It may take a few hours or even days for comments to be reflected on the docket. Comments must be written in English. Provide concise comments and 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?

The docket online is located at <https://www.regulations.gov>, keyword search MARAD-2025-0066 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). Please periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

You may request that MARAD treat your comments as commercially confidential by submitting them 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 treatment highlighting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

If 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. 12121).

By Order of the Maritime Administration.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2025-08173 Filed 5-8-25; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2025-0062]

Request Notice: Use of Foreign-Built Small Passenger Vessel in United States Coastwise Trade, M/V Above Average

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to make determinations regarding the coastwise use of foreign built; certain U.S. built; and U.S. and foreign rebuilt vessels that solely carry no more than twelve passengers for hire. MARAD has received such a determination request and is publishing this notice to solicit comments to assist with determining whether the proposed use of the vessel set forth in the request would have an adverse effect on U.S. vessel builders or U.S. coastwise trade businesses that use U.S.-built vessels in those businesses. Information about the requestor's vessel, including a description of the proposed service, is in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Submit comments on or before June 9, 2025.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2025-0062 by any one of the following methods:

- **Federal eRulemaking Portal:** Go to <https://www.regulations.gov>. Search MARAD-2025-0062 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-2025-0062, 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, Mail Stop 2, MAR-620, Washington, DC 20590. Telephone: (202) 366-5400. Email: smallvessels@dot.gov.

SUPPLEMENTARY INFORMATION: Pursuant to 46 U.S.C. 12121(b), the U.S. Coast Guard may issue a certificate of documentation with a coastwise trade endorsement for eligible, small passenger vessels authorized to carry no more than 12 passengers for hire if the Maritime Administration (MARAD), after notice and an opportunity for public comment, determines the use of the small passenger vessel in the coastwise trade will not adversely affect United States vessel builders or the coastwise trade business of any person that employs vessels built in the United States in that business.¹

MARAD has received an eligibility determination request. Further details about the requester's vessel and its proposed operations may be found in the determination request posted in the DOT docket as MARAD-2025-0062 at <https://www.regulations.gov>. Interested parties may comment on the undue adverse effect this action may have on U.S. vessel builders or coastwise trade businesses in the U.S. that employ U.S.-built vessels in those businesses. Comments should refer to the vessel name, state the commenter's interest in the request, and demonstrate, with supporting documentation, the undue adverse effect on U.S. vessel builders and coastwise trade businesses.

¹ The U.S. Coast Guard and MARAD have authority under 46 U.S.C. 12121(b) through the Secretary of the Department of Homeland Security and the Secretary of the Department of Transportation, respectively.

Public Participation

How do I submit comments?

Please submit comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. It may take a few hours or even days for comments to be reflected on the docket. Comments must be written in English. Provide concise comments and 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?

The docket online is located at <https://www.regulations.gov>, keyword search MARAD-2025-0062 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). Please periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

You may request that MARAD treat your comments as commercially confidential by submitting them 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 treatment highlighting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

If 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. 12121)

By Order of the Maritime Administration.
T. Mitchell Hudson, Jr.,
 Secretary, Maritime Administration.
 [FR Doc. 2025-08172 Filed 5-8-25; 8:45 am]
BILLING CODE 4910-81-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency Agency Information Collection Activities: Information Collection Renewal; Comment Request; Consumer Protections for Depository Institution Sales of Insurance

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning renewal of its information collection titled "Consumer Protections for Depository Institution Sales of Insurance."

DATES: Comments must be received by July 8, 2025.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email:* prainfo@occ.treas.gov.
- *Mail:* Chief Counsel's Office,

Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557-0220, 400 7th Street SW, Suite 3E-218, Washington, DC 20219.

- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E-218, Washington, DC 20219.

- *Fax:* (571) 293-4835.

Instructions: You must include "OCC" as the agency name and "1557-0220" in your comment. In general, the OCC will publish comments on www.reginfo.gov without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any

information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period. You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection by the method set forth in the next bullet.

- *Viewing Comments Electronically:* Go to www.reginfo.gov. Hover over the "Information Collection Review" tab and click on "Information Collection Review" from the drop-down menu. From the "Currently under Review" drop-down menu, select "Department of Treasury" and then click "submit." This information collection can be located by searching OMB control number "1557-0220" or "Consumer Protections for Depository Institution Sales of Insurance." Upon finding the appropriate information collection, click on the related "ICR Reference Number." On the next screen, select "View Supporting Statement and Other Documents" and then click on the link to any comment listed at the bottom of the screen.

- For assistance in navigating www.reginfo.gov, please contact the Regulatory Information Service Center at (202) 482-7340.

FOR FURTHER INFORMATION CONTACT:

Shaquita Merritt, Clearance Officer, (202) 649-5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include 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 title 44 generally requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC

is publishing notice of the renewal of this collection.

Title: Consumer Protections for Depository Institution Sales of Insurance.

OMB Control No.: 1557–0220.

Type of Review: Extension, without revision, of a currently approved collection.

Description: This information collection is required under section 305 of the Gramm-Leach-Bliley Act (GLB Act), 12 U.S.C. 1831x. Section 305 of the GLB Act requires the OCC, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the Agencies) to prescribe joint consumer protection regulations that apply to retail sales practices, solicitations, advertising, and offers of any insurance product by a depository institution or by other persons performing these activities at an office of the institution or on behalf of the institution (other covered persons). Section 305 also requires those performing such activities to disclose certain information to consumers (e.g., that insurance products and annuities are not FDIC-insured).

This information collection requires national banks, Federal savings associations, and other covered persons involved in insurance sales, as defined in 12 CFR 14.20(f), to make two separate disclosures to consumers. Under 12 CFR 14.40, a national bank, Federal savings association, or other covered person must prepare and provide orally and in writing: (1) certain insurance disclosures to consumers before the completion of the initial sale of an insurance product or annuity to a consumer and (2) certain credit disclosures at the time of application for the extension of credit (if insurance products or annuities are sold, solicited, advertised, or offered in connection with an extension of credit). The insurance disclosures are required in advertisements and promotional material for insurance products or annuities unless the advertisements and promotional materials are of a general nature describing or listing the services or products offered by the national bank or Federal savings association.

Consumers use the disclosures to understand the risks associated with insurance products and annuities and to understand that they are not required to purchase, and may refrain from purchasing, certain insurance products or annuities in order to qualify for an extension of credit.

Affected Public: Businesses or other for-profit.

Frequency: On occasion.

Estimated Burden:

Estimated Number of Respondents: 315.

Total Estimated Burden Hours: 1,575.

Comments: Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of the operation, maintenance, and purchase of services necessary to provide the required information.

Patrick T. Tierney,

Assistant Director, Office of the Comptroller of the Currency.

[FR Doc. 2025–08206 Filed 5–8–25; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Agency Information Collection Activities: Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the OCC, the Board, and the FDIC (the agencies) may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control

number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of a proposal to extend for three years, without revision, the Country Exposure Report (FFIEC 009) and the Country Exposure Information Report (FFIEC 009a), which are currently approved collections of information. At the end of the comment period for this notice, the FFIEC and the agencies will review any comments received to determine whether to modify the proposal in response to comments. As required by the PRA, the agencies will then publish a second **Federal Register** notice for a 30-day comment period and submit the final FFIEC 009 and FFIEC 009a to OMB for review and approval.

DATES: Comments must be submitted on or before July 8, 2025.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments will be shared among the agencies.

OCC: You may submit comments, which should refer to "FFIEC 009 and FFIEC 009a," by any of the following methods:

- **Email:** prainfo@occ.treas.gov.
- **Mail:** Chief Counsel's Office, Office of the Comptroller of the Currency, Attention: 1557–0100, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

- **Hand Delivery/Courier:** 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

- **Fax:** (571) 293–4835.

Instructions: You must include "OCC" as the agency name and "1557–0100" in your comment. In general, the OCC will publish comments on www.reginfo.gov without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection by the following method:

- **Viewing Comments Electronically:** Go to www.reginfo.gov. Hover over the "Information Collection Review" drop down menu and select "Information

Collection Review.” Underneath the “Currently under Review” section heading, from the drop-down menu select “Department of Treasury” and then click “submit.” This information collection can be located by searching by OMB control number “1557–0100.” Upon finding the appropriate information collection, click on the related “ICR Reference Number.” On the next screen, select “View Supporting Statement and Other Documents” and then click on the link to any comment listed at the bottom of the screen.

For assistance in navigating www.reginfo.gov, please contact the Regulatory Information Service Center at (202) 482–7340.

Board: You may submit comments, which should refer to “FFIEC 009 and FFIEC 009a” by any of the following methods:

- **Agency Website:** <http://www.federalreserve.gov>. Follow the instructions for submitting comments at: <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- **Email:** regs.comments@federalreserve.gov. Include “FFIEC 009 and FFIEC 009a” in the subject line of the message.

- **Fax:** (202) 395–6974.

- **Mail:** Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available on the Board’s website at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information.

FDIC: You may submit comments, which should refer to “FFIEC 009 and FFIEC 009a,” by any of the following methods:

- **Agency Website:** <https://www.fdic.gov/resources/regulations/federal-register-publications/>. Follow the instructions for submitting comments on the FDIC’s website.

- **Email:** comments@FDIC.gov. Include “FFIEC 009 and FFIEC 009a Extension” in the subject line of the message.

- **Mail:** Manuel E. Cabeza, Counsel, Attn: Comments, Room MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

- **Hand Delivery:** Comments may be hand delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street NW) on business days between 7 a.m. and 5 p.m.

- **Public Inspection:** All comments received, including any personal information provided, will be posted without change to <https://www.fdic.gov/resources/regulations/federal-register-publications/>. Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this document will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

Additionally, commenters may send a copy of their comments to the OMB desk officers for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503; by fax to (202) 395–6974; or by email to oira_submission@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: For further information about the proposed FFIEC report discussed in this notice, please contact any of the agency staff whose names appear below. In addition, a copy of the proposed FFIEC 009 and FFIEC 009a report forms can be obtained at the FFIEC’s website (https://www.ffiec.gov/ffiec_report_forms.htm).

OCC: Shaquita Merritt, Clearance Officer, (202) 649–5490, Chief Counsel’s Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

Board: Nuha Elmaghrabi, Federal Reserve Board Clearance Officer, (202) 452–3884, Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Manuel E. Cabeza, Counsel, (202) 898–3767, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The agencies are proposing to extend for three years, without revision, the FFIEC 009 and FFIEC 009a, which are currently approved collections of information for each agency.

Report Titles: Country Exposure Report and Country Exposure Information Report.

Form Numbers: FFIEC 009 and FFIEC 009a.

Frequency of Response: Quarterly.

Affected Public: Business or other for profit.

OCC

OMB Number: 1557–0100.

Estimated Number of Respondents: 10 national banks (FFIEC 009), 3 (FFIEC 009a).

Estimated Average Time per Response: 131 hours (FFIEC 009), 6 hours (FFIEC 009a).

Estimated Total Annual Burden: 5,240 hours (FFIEC 009), 72 hours (FFIEC 009a).

Board

OMB Number: 7100–0035.

Estimated Number of Respondents: 48 bank holding companies, edge and/or agreement corporations, financial holding companies, intermediate holding companies, and state member banks (FFIEC 009), 36 (FFIEC 009a).

Estimated Average Time per Response: 135 hours (FFIEC 009), 6.5 hours (FFIEC 009a).

Estimated Total Annual Burden: 25,920 hours (FFIEC 009), 936 hours (FFIEC 009a).

FDIC

OMB Number: 3064–0017.

Estimated Number of Respondents: 11 nonmember banks (FFIEC 009), 8 (FFIEC 009a).

Estimated Average Time per Response: 131 hours (FFIEC 009), 6 hours (FFIEC 009a).

Estimated Total Annual Burden: 5,764 hours (FFIEC 009), 192 hours (FFIEC 009a).

I. General Description of Reports

The Country Exposure Report (FFIEC 009) is filed quarterly with the agencies and provides information on international claims of U.S. banks, savings associations, Edge and/or Agreement corporations, bank holding companies, savings and loan holding companies, and intermediate holding companies (U.S. banking organizations) that is used for supervisory and analytical purposes. The information is used to monitor the foreign country exposures of reporting institutions to determine the degree of risk in their

portfolios and assess the potential risk of loss. The Country Exposure Information Report (FFIEC 009a) is a supplement to the FFIEC 009 and provides publicly available information on material foreign country exposures of U.S. banking organizations that file the FFIEC 009 report. On the FFIEC 009a, reporting institutions provide a list of countries in which they have lending exposures above 0.75 percent of their total assets or 15 percent of their total capital, whichever is less.

Legal Basis and Need for Collection

These information collections are mandatory under the following statutes: 12 U.S.C. 161 and 1817 (national banks), 12 U.S.C. 1464 (federal savings associations), 12 U.S.C. 248(a)(1) and (2), 1844(c), and 3906 (state member banks and bank holding companies); 12 U.S.C. 1467a(b)(2)(A) (savings and loan holding companies); 12 U.S.C. 5365(a) (intermediate holding companies); and 12 U.S.C. 1817 and 1820 (insured state nonmember commercial and savings banks and insured state savings associations). The FFIEC 009 information collection is given confidential treatment (5 U.S.C. 552(b)(4) and (b)(8)). The FFIEC 009a information collection is not given confidential treatment.

II. Current Actions

The FFIEC has approved issuing for public comment a proposal to extend without revision for three years the FFIEC 009 and FFIEC 009a. On April 11, 2024, the agencies received an unsolicited comment from a trade association regarding the reporting of securities financing transactions (SFTs) compared to the reporting for other collateralized claims on the FFIEC 009. This comment is under review by the agencies.

IV. Request for Comment

Public comment is requested on all aspects of this joint notice. Comment is specifically invited on:

(a) Whether the proposed revisions to the collections of information that are the subject of this notice are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies.

Patrick T. Tierney,

Assistant Director, Office of the Comptroller of the Currency.

Benjamin W. McDonough,

Deputy Secretary and Ombuds of the Board.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on April 30, 2025.

Jennifer M. Jones,

Deputy Executive Secretary.

[FR Doc. 2025-08159 Filed 5-8-25; 8:45 am]

BILLING CODE 4810-33-P; 6210-01-P; 6714-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning information collection requirements related to guidance for qualification as an acceptance agent, and execution of an agreement between an acceptance agent and the Internal Revenue Service relating to the issuance of certain taxpayer identifying numbers.

DATES: Written comments should be received on or before July 8, 2025 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to pra.comments@irs.gov. Include OMB control number 1545-1499, Guidance for qualification as an acceptance agent, and execution of an agreement between an acceptance agent and the Internal Revenue Service relating to the issuance of certain

taxpayer identifying numbers, in the subject line of the message.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the revenue procedure should be directed to Kerry Dennis at (202) 317-5751, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at Kerry.L.Dennis@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Guidance for qualification as an acceptance agent, and execution of an agreement between an acceptance agent and the Internal Revenue Service relating to the issuance of certain taxpayer identifying numbers.

OMB Number: 1545-1499.

Revenue Procedure Number: 2006-10.

Abstract: Revenue Procedure 2006-10 describes application procedures for becoming an acceptance agent and the requisite agreement that an agent must execute with the Internal Revenue Service.

Current Actions: There are no changes to the paperwork burden previously approved by OMB. This revenue procedure is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, not-for-profit institutions, Federal Government, and state, local or tribal governments.

Estimated Number of Respondents: 4,422.

Estimated Time per Respondent: 3.12 hrs.

Estimated Total Annual Burden Hours: 13,797 hours.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have

practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 5, 2025.

Kerry L. Dennis,
Tax Analyst.

[FR Doc. 2025-08096 Filed 5-8-25; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Proposed Collection; Comment Request; Homeowner Assistance Fund (HAF) Program Quarterly and Annual Report Forms

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to comment on the proposed information collections listed below, in accordance with the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before July 8, 2025.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8100, Washington, DC 20220, or email at PRA@treasury.gov.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Spencer W. Clark by emailing PRA@treasury.gov, calling (202) 927-5331, or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

Title: HAF Quarterly and Annual Reports, instructions and Treasury's Portal User Guide.

OMB Control Number: 1505-0269.

Type of Review: Extension without change of a currently approved collection.

Description: The Homeowner Assistance Fund (HAF) authorized by the American Rescue Plan Act, provides \$9.961 billion to support homeowners facing financial hardship associated with COVID-19. HAF funds were distributed to states, U.S. Territories, and Indian Tribes. Funds from HAF may be used for assistance with mortgage payments, homeowner's insurance, utility payments, and other specified purposes. HAF grantees must submit quarterly and annual report forms on their utilization of HAF award funds. The information can be submitted electronically via Treasury's Portal. The information collection will permit Treasury to effectively monitor the HAF grantees' compliance with the requirements of the HAF Award Terms.

Form: None.

Affected Public: State, Tribal and Territorial Governments.

Estimated Number of Respondents: 360.

Frequency of Response: States, Territories, and Tribes >\$5M Allocation: five responses annually; Tribes <\$5M Allocation: two responses annually.

Estimated Total Number of Annual Responses: 927.

Estimated Time per Response: Varies from 2-4 hours per report.

Estimated Total Annual Burden Hours: 3,171 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Authority: 44 U.S.C. 3501 *et seq.*

Kendra N. Young-Freeman,

Acting Director, Housing Programs.

[FR Doc. 2025-08107 Filed 5-8-25; 8:45 am]

BILLING CODE 4810-AK-P

DEPARTMENT OF VETERANS AFFAIRS

Solicitation of Nominations for Appointment to the Veterans and Community Oversight and Engagement Board

AGENCY: Department of Veterans Affairs.

ACTION: Notice of solicitation for nominations.

SUMMARY: The Department of Veterans Affairs (VA) is seeking nominations of qualified candidates to be considered for appointment as a member of the Veterans and Community Oversight and Engagement Board (herein-after referred to in this section to as "the Board") for the VA West Los Angeles Campus ("Campus") in Los Angeles, California.

DATES: Nominations for membership on the Board must be received no later than 5 p.m. EST on June 15, 2025.

ADDRESSES: All nominations should be mailed to the Veterans Experience Office, Department of Veterans Affairs, 810 Vermont Avenue NW, (30), Washington, DC 20420; or sent electronically to the Advisory Committee Management Office mailbox at vaadvisorycmt@va.gov with a subject line: Nomination to VCOEB.

FOR FURTHER INFORMATION CONTACT: Chihung Szeto, Alternate Designated Federal Officer, Veterans Experience Office, Department of Veterans Affairs, 810 Vermont Avenue NW, (30), Washington, DC 20420, telephone 562-708-9959 or via email at Chihung.szeto@va.gov.

SUPPLEMENTARY INFORMATION: In carrying out the duties set forth in the West Los Angeles Leasing Act of 2016, Public Law 114-226 (the West LA Leasing Act), the Board shall:

(1) Provide the community with opportunities to collaborate and communicate by conducting public forums; and

(2) Focus on local issues regarding the Department that are identified by the community with respect to health care, implementation of the Master Plan, and any subsequent plans, benefits, and memorial services at the Campus. Information on the Master Plan can be found at <https://www.losangeles.va.gov/masterplan/>.

Authority: The Board is a statutory committee established as required by section 2(i) of the West LA Leasing Act.

The Board operates in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. ch. 10. The Board is established to coordinate locally with the VA to identify the goals of the

community and Veteran partnership; provide advice and recommendations to the Secretary to improve services and outcomes for Veterans, members of the Armed Forces, and the families of such Veterans and members; and provide advice and recommendations on the implementation of the Draft Master Plan approved by the Secretary on January 28, 2016, and on the creation and implementation of any other successor master plans.

Membership Criteria and Qualifications: VA is seeking nominations for Board membership. The Board is composed of 15 voting members and five non-voting members; and several ex-officio members. The Board meets up to four times annually; and it is important that Board members attend meetings to achieve a quorum so that Board can effectively carry out its duties.

The members of the Board are appointed by the Secretary of Veterans Affairs from the general public, from various sectors and organizations, and shall meet the following qualifications, as set forth in the West LA Leasing Act:

- (1) Not less than 50% of members shall be Veterans; and
- (2) Non-Veteran members shall be:
 - a. Family members of Veterans,
 - b. Veteran advocates,
 - c. Service providers,
 - d. Real estate professionals familiar with housing development projects, or
 - e. Stakeholders.

The Board members may also serve as Subcommittee members.

In accordance with the Board Charter, the Secretary shall determine the number, terms of service, and pay and allowances of Board members, except that a term of service of any such member may not exceed two years. The Secretary may reappoint any Board member for additional terms of service.

To the extent possible, the Secretary seeks members who have requisite professional and personal qualifications including, but not limited to, subject matter expertise in the areas described above. VA strives to develop a Committee membership that includes variety in military services, ranks, and deployments, military service, military deployments, working with Veterans, committee subject matter expertise, geographical background, and profession. We ask that nominations include any relevant experience and information so that VA can ensure effective expert advice, ideas, and opinions, are provided by the Board.

Requirements for Nomination Submission:

Nominations should be typewritten (one nomination per nominator). Nomination packages should include:

- (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (i.e. specific attributes which qualify the nominee for service in this capacity), and a statement from the nominee indicating a willingness to serve as a member of the Board;

- (2) The nominee's contact information, including name, mailing address, telephone numbers, and email address;

- (3) The nominee's curriculum vitae, not to exceed three pages and a one-page cover letter;

- (4) A summary of the nominee's experience and qualifications relative to the membership criteria and professional qualifications criteria listed above;

- (5) letters of recommendation are accepted, but not required; and

- (6) a statement from the nominee confirming that they are not a federally registered lobbyist.

The Department strives to fairly balance committee membership through consideration of points of view represented and functions to be performed by the advisory committee, consistent with section 1004(b)(2), title 5, U.S.C. Nominations must state that the nominee is willing to serve as a member of the Committee and appears to have no conflict of interest that would preclude membership. An ethics review is conducted for each selected nominee.

Dated: May 6, 2025.

Jelessa M. Burney,
Federal Advisory Committee Management Officer.

[FR Doc. 2025-08153 Filed 5-8-25; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

Solicitation of Nominations for Appointment to the Advisory Committee on Minority Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Notice of solicitation for nominations.

SUMMARY: The Department of Veterans Affairs (VA), Center for Minority Veterans (CMV), is seeking nominations of qualified candidates to be considered for appointment as a member of the Advisory Committee on Minority Veterans ("the Committee").

DATES: Nominations for membership on the Committee must be received no later than 5 p.m. EST on June 15, 2025.

ADDRESSES: All nomination packages should be emailed to vacocmv@va.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Dwayne Campbell, Dwayne.Campbell3@va.gov, and Mr. Ronald Sagudan, Ronald.Sagudan@va.gov, Center for Minority Veterans (00M), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, Telephone (202) 461-6191. A copy of the Committee charter and list of the current membership can be obtained by contacting Mr. Campbell or Mr. Sagudan, or by accessing the website managed by CMV at <https://www.va.gov/centerforminorityveterans/acmv/index.asp>.

SUPPLEMENTARY INFORMATION: In carrying out the duties set forth, the Committee responsibilities include, but are not limited to:

- (1) Advising the Secretary and Congress on VA's administration of benefits and provisions of healthcare, benefits, and services to "minority group member" Veterans, defined in 38 U.S.C. 544 as: (1) Asian American; (2) Black; (3) Hispanic; (4) Native American (including American Indian, Alaskan Native, and Native Hawaiian); or (5) Pacific Islander.

- (2) Providing a biennial report to Congress outlining recommendations, concerns and observations on VA's delivery of services to "minority group member" Veterans.

- (3) Meeting with VA officials, Veteran Service Organizations, and other stakeholders to assess the Department's efforts in providing benefits and outreach to "minority group member" Veterans.

Making periodic site visits and holding town hall meetings with "minority group member" Veterans to address their concerns.

Management and support services for the Committee are provided by CMV.

Authority: The Committee was established in accordance with 38 U.S.C. 544 (Pub. L. 103-446, sec. 510). In accordance with 38 U.S.C. 544, the Committee advises the Secretary on the administration of VA benefits and services to "minority group member" Veterans; assesses the needs of "minority group member" Veterans with respect to such benefits; and evaluates whether VA compensation, medical and rehabilitation services, outreach and other programs are meeting those needs. The Committee makes recommendations to the Secretary regarding such activities. Nominations of qualified candidates are

being sought to fill upcoming vacancies on the Committee.

Membership Criteria: CMV is requesting nominations for upcoming vacancies on the Committee. The Committee is currently composed of 12 members, in addition to ex-officio members. As required by statute, the members of the Committee are appointed by the Secretary from the general public, including:

- (1) Representatives of Veterans who are “minority group members”;
- (2) Individuals who are recognized authorities in fields pertinent to the needs of Veterans who are “minority group members”;
- (3) Veterans who are “minority group members” and who have experience in a military theater of operations;
- (4) Veterans who are “minority group members” and who do not have such experience and;
- (5) Veterans who are “minority group members recently” separated from active military service.

In accordance with § 544, the Secretary determines the number, terms of service, pay, and allowances of members of the Committee appointed by the Secretary, except that a term of service of any such member may not exceed three years. The Secretary may reappoint any member for additional terms of service.

Professional Qualifications: In addition to the criteria above, VA seeks—

- (1) Professional and personal qualifications relevant to the functions and tasks to be performed by the committee.
- (2) Experience in military service and military deployments (please identify your Branch of Service and Rank).
- (3) Current work with Veterans.
- (4) Committee subject matter expertise.
- (5) Emphasis on experience using VA Service and Benefits.

Requirements for Nomination Submission:

Nominations should be type written (one nomination per nominator). Nomination package should include: (1) a letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.*, specific attributes which qualify the nominee for service in this capacity), and a statement from the nominee indicating a willingness to serve as a member of the Committee; (2) the nominee’s contact information including name, mailing address, telephone number(s), and email address; (3) the nominee’s curriculum vitae or resume, and (4) a summary of the nominee’s experience and qualification

relative to the *professional qualifications* criteria listed above.

Individuals selected for appointment to the Committee shall be invited to serve a two-year term. Committee members will receive a stipend for attending Committee meetings including per diem and reimbursement for travel expenses incurred.

The Department strives to fairly balance committee membership through consideration of points of view represented and functions to be performed by the advisory committee, consistent with section 1004(b)(2), title 5, U.S.C., and the FACA Final Rule, section 102–3.60, title 41, CFR. Nominations must state that the nominee is willing to serve as a member of the Committee and appears to have no conflict of interest that would preclude membership. An ethics review is conducted for each selected nominee.

Dated: May 6, 2025.

Jelessa M. Burney,
Federal Advisory Committee Management
Officer.

[FR Doc. 2025–08156 Filed 5–8–25; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0909]

Agency Information Collection Activity: Guaranteed or Insured Loan Reporting Requirements

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Comments must be received on or before July 8, 2025.

ADDRESSES: Comments must be submitted through www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Program-Specific information: Nancy Kessinger, 202–632–8934, Nancy.Kessinger@va.gov.

VA PRA information: Dorothy Glasgow, 202–461–1084, VAPRA@va.gov.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA’s functions, including whether the information will have practical utility; (2) the accuracy of VBA’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 respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Guaranteed or Insured Loan Reporting Requirements.

OMB Control Number: 2900–0909. <https://www.reginfo.gov/public/do/PRASearch> (Once at this link, you can enter the OMB Control Number to find the historical versions of this Information Collection).

Type of Review: Revision of a currently approved collection.

Abstract: The Department of Veterans Affairs (VA) is submitting this revised information collection. VA statute requires lenders to report a guaranteed or insured loan to VA in such detail as the Secretary may prescribe under 38 U.S.C. 3702(c). In cases where the loan is guaranteed, the Secretary shall provide the lender with a loan guaranty certificate or other evidence of the guaranty. Regulations codified at 38 CFR 36.4303 and 38 CFR 36.4209 detail the requirements of lenders to report loans to VA in order to obtain evidence of the guaranty. VA is also updating the electronic form by changing the term “Gender” to “Sex” and changing the listing order of “Male” and “Female” to comply with the Executive Order and Office of Management and Budget guidance for defending women. In addition, adjustments were made to the burden hours from the previous submission. The change is due to a correction in the prior estimate. The adjustments made attributed to the current market conditions, including higher interest rates.

Affected Public: Individuals and households.

Estimated Annual Burden: 80,813 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 488,775.

Authority: 44 U.S.C. 3501 *et seq.*

Shunda Willis,

*Acting, VA PRA Clearance Officer, (Alt.)
Office of Enterprise and Integration/Data
Governance Analytics, Department of
Veterans Affairs.*

[FR Doc. 2025–08158 Filed 5–8–25; 8:45 am]

BILLING CODE 8320–01–P



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Part II

United States Sentencing Commission

Sentencing Guidelines for United States Courts; Notice

UNITED STATES SENTENCING COMMISSION**Sentencing Guidelines for United States Courts**

AGENCY: United States Sentencing Commission.

ACTION: Notice of submission to Congress of amendments to the sentencing guidelines effective November 1, 2025, and request for comment.

SUMMARY: The United States Sentencing Commission hereby gives notice that the Commission has promulgated amendments to the sentencing guidelines, policy statements, and commentary; and the Commission requests comment regarding whether it should include in the *Guidelines Manual* as changes that may be applied retroactively to previously sentenced defendants any or all of the following amendments: Parts A and B of Amendment 1; and Subparts 1 and 2 of Part A of Amendment 2. This notice sets forth the text of the amendments and the reason for each amendment, and the request for comment regarding possible retroactive application of the amendments listed above.

DATES:

Effective Date of Amendments. The Commission has specified an effective date of November 1, 2025, for the amendments set forth in this notice.

Written Public Comment. Written public comment regarding possible retroactive application of Parts A and B of Amendment 1, and Subparts 1 and 2 of Part A of Amendment 2, should be received by the Commission not later than June 2, 2025. Any public comment received after the close of the comment period may not be considered.

ADDRESSES: There are two methods for submitting written public comment.

Electronic Submission of Comments. Comments may be submitted electronically via the Commission's Public Comment Submission Portal at <https://comment.ussc.gov>. Follow the online instructions for submitting comments.

Submission of Comments by Mail. Comments may be submitted by mail to the following address: United States Sentencing Commission, One Columbus Circle NE, Suite 2-500, Washington, DC 20002-8002, Attention: Public Affairs—Issue for Comment on Retroactivity.

FOR FURTHER INFORMATION CONTACT: Jennifer Dukes, Senior Public Affairs Specialist, (202) 502-4597.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is

an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p). Absent action of the Congress to the contrary, submitted amendments become effective by operation of law on the date specified by the Commission (generally November 1 of the year in which the amendments are submitted to Congress).

(1) Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary

Pursuant to its authority under 28 U.S.C. 994(p), the Commission has promulgated amendments to the sentencing guidelines, policy statements, and commentary. Notices of proposed amendments were published in the **Federal Register** on January 2, 2025 (see 90 FR 128) and February 4, 2025 (see 90 FR 8968). The Commission held public hearings on the proposed amendments in Washington, DC, on February 12, 2025, and March 12–13, 2025. On April 30, 2025, the Commission submitted the promulgated amendments to the Congress and specified an effective date of November 1, 2025.

The text of the amendments to the sentencing guidelines, policy statements, and commentary, and the reason for each amendment, is set forth below. Additional information pertaining to the amendments described in this notice may be accessed through the Commission's website at www.ussc.gov.

(2) Request for Comment on Possible Retroactive Application of Parts A and B of Amendment 1, and Subparts 1 and 2 of Part A of Amendment 2

This notice sets forth a request for comment regarding whether the Commission should list in subsection (d) of § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) as an amendment that may be applied retroactively to previously sentenced defendants any or all of the following subparts or parts of these amendments: Part A (Circuit Conflict Relating to “Physically Restrained” Enhancements) and Part B (Circuit Conflict Relating to the Meaning of “Intervening Arrest” in § 4A1.2(a)(2)) of Amendment 1, and

Subpart 1 (Mitigating Role Provisions at § 2D1.1(a)(5)) and Subpart 2 (Special Instruction Relating to § 3B1.2) of Part A of Amendment 2.

The Background Commentary to § 1B1.10 lists the purpose of the amendment, the magnitude of the change in the guideline range made by the amendment, and the difficulty of applying the amendment retroactively to determine an amended guideline range under § 1B1.10(b) as among the factors the Commission considers in selecting the amendments included in § 1B1.10(d). To the extent practicable, public comment should address each of these factors.

Authority: 28 U.S.C. 994(a), (o), (p), and (u); USSC Rules of Practice and Procedure 2.2, 4.1, and 4.1A.

Carlton W. Reeves,
Chair.

(1) Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary**1. Amendment***Part A (Circuit Conflict Concerning “Physically Restrained” Enhancements)*

Section 2B3.1(b)(2)(B) is amended by striking “if a firearm was otherwise used” and inserting “if a firearm was used to convey a specific (not general) threat of harm (e.g., pointing the firearm at a specific victim or victims; directing the movement of a specific victim or victims with the firearm) or to make physical contact with a victim (e.g., pistol whip; firearm placed against victim's body)”.

Section 2B3.1(b)(4)(B) is amended by striking “if any person was physically restrained” and inserting “if any person's freedom of movement was restricted through physical contact or confinement, such as by being tied, bound, or locked up”.

The Commentary to § 2B3.1 captioned “Application Notes” is amended in Note 1 by striking “‘abducted,’ and ‘physically restrained’ are defined” and inserting “and ‘abducted’ have the meaning given such terms”.

The Commentary to § 2B3.1 captioned “Background” is amended by striking “was physically restrained by being tied, bound, or lock up” and inserting “a victim's freedom of movement was restricted through physical contact or confinement, such as by being tied, bound, or locked up”.

Section 2B3.2(b)(3)(A)(ii) is amended by striking “if a firearm was otherwise used” and inserting “if a firearm was used to convey a specific (not general) threat of harm (e.g., pointing the firearm at a specific victim or victims; directing

the movement of a specific victim or victims with the firearm) or to make physical contact with a victim (*e.g.*, pistol whip; firearm placed against victim's body)".

Section 2B3.2(b)(5)(B) is amended by striking "if any person was physically restrained" and inserting "if any person's freedom of movement was restricted through physical contact or confinement, such as by being tied, bound, or locked up,".

The Commentary to § 2B3.2 captioned "Application Notes" is amended in Note 1 by striking " 'physically restrained,' ".

Section 2E2.1(b)(1)(B) is amended by striking "if a dangerous weapon (including a firearm) was otherwise used" and inserting "if a dangerous weapon (including a firearm) was used to convey a specific (not general) threat of harm (*e.g.*, pointing the weapon at a specific victim or victims; directing the movement of a specific victim or victims with the weapon) or to make physical contact with a victim (*e.g.*, pistol whip; weapon placed against victim's body)".

Section 2E2.1(b)(3)(B) is amended by striking "if any person was physically restrained" and inserting "if any person's freedom of movement was restricted through physical contact or confinement, such as by being tied, bound, or locked up,".

The Commentary to § 2E2.1 captioned "Application Notes" is amended in Note 1 by striking "'otherwise used,'" and by striking "'abducted,' and 'physically restrained'" and inserting "and 'abducted'".

The Commentary to § 2X1.1 captioned "Application Notes" is amended in Note 2 by striking "the defendants actually intended to physically restrain the teller, the specific offense characteristic for physical restraint would be added" and inserting "the defendants actually intended to restrict the teller's freedom of movement through physical contact or confinement, the specific offense characteristic for such restriction would be added".

Part B (Circuit Conflict Concerning Meaning of "Intervening Arrest" in § 4A1.2(a)(2))

Section 4A1.2(a)(2) is amended in the paragraph that begins "If the defendant" by inserting after "the second offense)." the following: "For purposes of this provision, a traffic stop is not an intervening arrest."

Reason for Amendment: This two-part amendment addresses circuit conflicts involving § 2B3.1 (Robbery) and § 4A1.2

(Definitions and Instructions for Computing Criminal History).

Part A—Circuit Conflict Concerning "Physically Restrained" Enhancements

Part A of the amendment responds to a circuit conflict over whether § 2B3.1(b)(4)(B)—which provides for a 2-level increase "if any person was physically restrained to facilitate commission of the offense or to facilitate escape"—applies where a robbery victim is restricted from moving at gunpoint but is not otherwise immobilized through measures like those in the definition of "physically restrained" in Application Note 1 to § 1B1.1 (Application Instructions) (*i.e.*, "by being tied, bound, or locked up").

The Second, Third, Fifth, Seventh, and Ninth Circuits have largely agreed that the psychological coercion of pointing a gun at a victim, without more, does not qualify, and that a restraint must be "physical" for the enhancement to apply. *See, e.g., United States v. Anglin*, 169 F.3d 154, 164 (2d Cir. 1999); *United States v. Bell*, 947 F.3d 49, 57 (3d Cir. 2020); *United States v. Garcia*, 857 F.3d 708, 713–14 (5th Cir. 2017); *United States v. Herman*, 930 F.3d 872, 877 (7th Cir. 2019); *United States v. Parker*, 241 F.3d 1114, 1118–19 (9th Cir. 2001). By contrast, the First, Fourth, Sixth, Tenth, and Eleventh Circuits have held that restricting a victim's movement at gunpoint suffices for the enhancement. *See, e.g., United States v. Wallace*, 461 F.3d 15, 34–35 (1st Cir. 2006); *United States v. Dimache*, 665 F.3d 603, 608 (4th Cir. 2011); *United States v. Howell*, 17F.4th 673, 692 (6th Cir. 2021); *United States v. Miera*, 539 F.3d 1232, 1235–36 (10th Cir. 2008); *United States v. Deleon*, 116 F.4th 1260, 1264 (11th Cir. 2024).

The Commission received public comment and testimony indicating that the conduct at issue in the circuit split (pointing a gun at a victim during a robbery) is treated differently not only under § 2B3.1(b)(4)(B) but also under the separate § 2B3.1(b)(2) enhancement. Section 2B3.1(b)(2) provides for tiered offense level increases for threats and weapon involvement in a robbery, including a 5-level enhancement "if a firearm was brandished or possessed" and a 6-level enhancement "if a firearm was otherwise used." The terms "brandished" and "otherwise used" are defined in Application Note 1 to § 1B1.1.

Circuits that have considered the difference between these definitions generally agree that while "brandished" covers the general display of a weapon, a firearm is "otherwise used" where it is employed for a specific threat. *See,*

e.g., United States v. Jordan, 945 F.3d 245, 264 (5th Cir. 2019) ("While brandishing 'can mean as little as displaying part of a firearm or making the presence of the firearm known in order to intimidate,' otherwise using a weapon includes pointing the weapon at an individual in a specifically threatening manner." (citation omitted)); *United States v. Johnson*, 803 F.3d 610, 616 (11th Cir. 2015) ("[T]he 'otherwise use[]' of a firearm includes the use of the firearm to make an explicit or implicit threat against a specific person.").

Commission data shows, however, that pointing a gun at a victim during a robbery has resulted in the 5-level "brandished" increase in some cases and the 6-level "otherwise used" increase in others. The combination of these differing applications of the firearms enhancement and the conflict among the circuits regarding the 2-level "physically restrained" enhancement has led to disparities: the total resulting enhancements have ranged from five to eight levels for pointing a gun at a victim during a robbery.

To promote uniformity and consistency in guideline application, Part A of the amendment generally adopts the approach of the Second, Third, Fifth, Seventh, and Ninth Circuits that § 2B3.1(b)(4)(B) does not apply solely based on the coercion of using a firearm to restrict a victim's movement. Rather, the increase applies only "if any person's freedom of movement was restricted through physical contact or confinement, such as by being tied, bound, or locked up, to facilitate commission of the offense or to facilitate escape."

Part A of the amendment also revises § 2B3.1(b)(2) to ensure that use of a firearm during a robbery is accounted for under this enhancement with more uniformity. It amends § 2B3.1(b)(2)(B) to state that the 6-level increase applies "if a firearm was used to convey a specific (not general) threat of harm (*e.g.*, pointing the firearm at a specific victim or victims; directing the movement of a specific victim or victims with the firearm) or to make physical contact with a victim (*e.g.*, pistol whip; firearm placed against victim's body)."

To further promote consistency in application of offense guidelines with similar specific offense characteristics, the amendment makes parallel changes to two Chapter Two guidelines with "physically restrained" and "otherwise used" enhancements: §§ 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage) and 2E2.1 (Making or Financing an Extortionate Extension of Credit; Collecting an Extension of

Credit by Extortionate Means). The amendment does not make parallel changes to § 3A1.3 (Restraint of Victim), which also uses the term “physically restrained” but differs from § 2B3.1(b)(4)(B) in other respects. No inferences as to the scope of that Chapter Three adjustment should be drawn from this amendment.

Part B—Circuit Conflict Concerning Meaning of “Intervening Arrest” in § 4A1.2(a)(2)

Part B of the amendment addresses a circuit conflict over whether a traffic stop is an “intervening arrest” for purposes of determining whether multiple prior sentences should be “counted separately or treated as a single sentence” when assigning criminal history points (“single-sentence rule”) under § 4A1.2(a)(2).

The Third, Sixth, Ninth, and Eleventh Circuits have held that a formal, custodial arrest is required, and that a citation or summons following a traffic stop does not qualify. *See United States v. Ley*, 876 F.3d 103, 109 (3d Cir. 2017); *United States v. Rogers*, 86 F.4th 259, 264–65 (6th Cir. 2023); *United States v. Leal-Felix*, 665 F.3d 1037, 1041–42 (9th Cir. 2011) (en banc); *United States v. Wright*, 862 F.3d 1265, 1282 (11th Cir. 2017). By contrast, the Seventh Circuit has adopted a broad view of the term, holding that a traffic stop amounts to an intervening arrest. *See United States v. Morgan*, 354 F.3d 621, 624 (7th Cir. 2003).

After reviewing public comment and testimony, the Commission determined that a traffic stop should not be considered an “intervening arrest” for purposes of the single-sentence rule. The amendment revises § 4A1.2(a)(2) to include that clarification.

2. Amendment

Part A (Application of Mitigating Role Adjustment in Drug Trafficking Cases)

Subpart 1 (Mitigating Role Provisions at § 2D1.1(a)(5))

Section 2D1.1(a)(5) is amended by striking “the offense level specified in the Drug Quantity Table set forth in subsection (c), except that if (A) the defendant receives an adjustment under § 3B1.2 (Mitigating Role); and (B) the base offense level under subsection (c) is (i) level 32, decrease by 2 levels; (ii) level 34 or level 36, decrease by 3 levels; or (iii) level 38, decrease by 4 levels. If the resulting offense level is greater than level 32 and the defendant receives the 4-level (‘minimal participant’) reduction in § 3B1.2(a), decrease to level 32” and inserting “the offense level specified in the Drug Quantity Table set forth in

subsection (c), except that if (A) the defendant receives an adjustment under § 3B1.2 (Mitigating Role); and (B) the base offense level under subsection (c) is (i) level 32, decrease by 2 levels; (ii) level 34, decrease by 3 levels; or (iii) above level 34, decrease to level 32. If the resulting offense level is greater than level 30 and the defendant receives the 4-level reduction in § 3B1.2(a), decrease to level 30”.

Section 2D1.1(b)(17) is amended by striking “(‘minimal participant’)”.

Subpart 2 (Special Instruction Relating to § 3B1.2)

Section 2D1.1(e) is amended—in the heading by striking “Instruction” and inserting “Instructions”;

and by inserting at the end the following new paragraph (2):

“(2) Application of § 3B1.2 (Mitigating Role) to § 2D1.1 Cases

(A) Determine whether an adjustment under § 3B1.2 (Mitigating Role) applies.

(B) In addition to the circumstances identified in § 3B1.2, an adjustment under § 3B1.2 is generally warranted if the defendant’s primary function in the offense was performing a low-level trafficking function.

(i) An adjustment under § 3B1.2(a) is generally warranted if the defendant’s primary function in the offense was plainly among the lowest level of drug trafficking functions, such as serving as a courier, running errands, sending or receiving phone calls or messages, or acting as a lookout; or

(ii) an adjustment under § 3B1.2(b) is generally warranted if the defendant’s primary function in the offense was performing another low-level trafficking function, such as distributing controlled substances in user-level quantities for little or no monetary compensation or with a primary motivation other than profit (e.g., the defendant was otherwise unlikely to commit such an offense and was motivated by an intimate or familial relationship, or by threats or fear to commit the offense).

For purposes of subsection (e)(2)(B), the provisions of § 3B1.2 apply in determining whether a mitigating role adjustment is warranted, except that the adjustment shall apply regardless of whether the offense involved other participants in addition to the defendant, and regardless of whether the defendant was substantially less culpable than the average participant in the criminal activity. The extent of the adjustment shall be based on the totality of the circumstances and involves a determination that is heavily dependent upon the facts of the particular case.

(C) The mitigating role provisions at subsection (a)(5) and the 2-level reduction at subsection (b)(17) apply regardless of whether the defendant receives the required adjustment from § 3B1.2 (Mitigating Role) by direct application of § 3B1.2 or by use of the special instruction in subsection (e)(2)(B).”.

The Commentary to § 3B1.2 captioned “Application Notes” is amended in Note 3(A) by striking the following:

“A defendant who is accountable under § 1B1.3 (Relevant Conduct) only for the conduct in which the defendant personally was involved and who performs a limited function in the criminal activity may receive an adjustment under this guideline. For example, a defendant who is convicted of a drug trafficking offense, whose participation in that offense was limited to transporting or storing drugs and who is accountable under § 1B1.3 only for the quantity of drugs the defendant personally transported or stored may receive an adjustment under this guideline.

Likewise, a defendant who is accountable under § 1B1.3 for a loss amount under § 2B1.1 (Theft, Property Destruction, and Fraud) that greatly exceeds the defendant’s personal gain from a fraud offense or who had limited knowledge of the scope of the scheme may receive an adjustment under this guideline. For example, a defendant in a health care fraud scheme, whose participation in the scheme was limited to serving as a nominee owner and who received little personal gain relative to the loss amount, may receive an adjustment under this guideline.”;

and inserting the following:

“A defendant who is accountable under § 1B1.3 (Relevant Conduct) only for the conduct in which the defendant personally was involved and who performs a limited function in the criminal activity may receive an adjustment under this guideline. For example, a defendant who is accountable under § 1B1.3 for a loss amount under § 2B1.1 (Theft, Property Destruction, and Fraud) that greatly exceeds the defendant’s personal gain from a fraud offense or who had limited knowledge of the scope of the scheme may receive an adjustment under this guideline. For example, a defendant in a health care fraud scheme, whose participation in the scheme was limited to serving as a nominee owner and who received little personal gain relative to the loss amount, may receive an adjustment under this guideline.”.

Part B (Representing or Marketing Fentanyl or a Fentanyl Analogue as a Legitimately Manufactured Drug)

Section 2D1.1(b)(13)(B) is amended by striking “and acted with willful blindness or conscious avoidance of knowledge that such mixture or substance was not the legitimately manufactured drug” and inserting “with reckless disregard that such mixture or substance was not the legitimately manufactured drug”.

Reason for Amendment: This two-part amendment is the result of Commission study on the operation of § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy). As part of its study, the Commission considered feedback from the field, including at a roundtable discussion on drug sentencing, a public hearing, and public comment. The Commission also analyzed a range of drug trafficking sentencing data, including data on sentences imposed at the highest base offense levels, the application of the “mitigating role cap” and mitigating role adjustment, sentences imposed based on function, and the application of enhancements in fentanyl and fentanyl analogue cases. The Commission determined that targeted changes were warranted to ensure appropriate penalties commensurate with an individual’s function in a drug trafficking offense and to better address the harms of representing or marketing fentanyl or a fentanyl analogue as a legitimately manufactured drug.

Part A—Application of Mitigating Role Adjustment in Drug Trafficking Cases

Part A of the amendment contains two subparts to address concerns that § 2D1.1 and § 3B1.2 (Mitigating Role) as they currently apply in tandem do not adequately account for the lower culpability of individuals performing low-level functions in a drug trafficking offense.

Subpart 1 (Mitigating Role Provisions at § 2D1.1(a)(5))

Subpart 1 of Part A amends the mitigating role provisions in § 2D1.1(a)(5) to refine the drug trafficking guideline in cases where an individual receives an adjustment under § 3B1.2. The Commission initially added the mitigating role cap to “somewhat limit[] the sentencing impact of drug quantity for offenders who perform relatively low level trafficking functions.” USSG App. C, amend. 640 (effective Nov. 1, 2002). As previously amended, § 2D1.1(a)(5)

provided a graduated 2-, 3-, or 4-level decrease, depending on the base offense level under § 2D1.1(c), when a defendant received a mitigating role adjustment under § 3B1.2. USSG App. C, amend. 668 (effective Nov. 1, 2004).

This amendment maintains the approach of graduated decreases depending on the base offense level but amends § 2D1.1(a)(5) in two ways. First, it sets a mitigating role cap at level 32 if the defendant receives an adjustment under § 3B1.2 and has a base offense level above 34. Second, if the defendant has a resulting offense level greater than 30 and receives a 4-level adjustment under § 3B1.2(a), then a mitigating role cap of 30 applies.

As explained further below in Subpart 2, the mitigating role provisions in § 2D1.1(a)(5) and the 2-level reduction at § 2D1.1(b)(17) apply regardless of whether the defendant receives the required adjustment from § 3B1.2 by direct application of § 3B1.2 or by use of the new special instruction in § 2D1.1(e)(2)(B). Thus, the amendment deletes the phrase “minimal participant” from § 2D1.1(a)(5) and § 2D1.1(b)(17) to clarify that those provisions are triggered regardless of whether a defendant receives a 4-level reduction by direct application of § 3B1.2(a) or by use of the new special instruction in § 2D1.1(e)(2)(B).

Subpart 2 (Special Instruction Relating to § 3B1.2)

Subpart 2 of Part A adds a new special instruction at § 2D1.1(e) to address the inconsistent application of § 3B1.2 in § 2D1.1 cases and to encourage broader use of § 3B1.2 in these cases.

Section 3B1.2 provides a range of reductions depending on the defendant’s role in the criminal activity. Subsection (a) sets forth a 4-level reduction if the defendant was a “minimal participant in any criminal activity.” Subsection (b) sets forth a 2-level reduction if the defendant was “a minor participant in any criminal activity.” Section 3B1.2 also provides for a 3-level reduction where the case “fall[s] between (a) and (b).”

The Commission previously amended the Commentary to § 3B1.2 to increase its usage (*see, e.g.*, USSG App. C, amend. 794 (effective Nov. 1, 2015)). However, Commission data shows that the prior amendment did not result in a sustained increase in application of the mitigating role adjustment in § 2D1.1 cases. Commission data show that when § 3B1.2 is applied in § 2D1.1 cases, the vast majority of these cases receive only a 2-level reduction; 3- and 4-level reductions are rarely applied.

Furthermore, Commission data shows variations across districts in application of § 3B1.2 to § 2D1.1 cases. The new special instruction at § 2D1.1(e) addresses the application of § 3B1.2 to § 2D1.1 cases as follows.

The amendment expands the circumstances in which an adjustment under § 3B1.2 is warranted in § 2D1.1 cases by instructing courts that an adjustment is generally warranted if the defendant’s “primary function” in the offense was performing a low-level trafficking function. Section 2D1.1(e)(2)(A) directs the court to determine whether an adjustment under § 3B1.2 applies as a court already does under the *Guidelines Manual*. Section 2D1.1(e)(2)(B) then provides that, in addition to the circumstances identified in § 3B1.2, an adjustment under § 3B1.2 is generally warranted if the defendant’s primary function in the offense was performing a low-level trafficking function. Thus, a defendant sentenced under § 2D1.1 may qualify for a mitigating role adjustment under § 3B1.2 by direct application of that adjustment or by use of the special instruction in § 2D1.1(e)(2)(B).

To ensure courts focus on a defendant’s predominant trafficking-related activities, the Commission selected “primary function” to guide courts in determining whether an adjustment is appropriate. Due to the wide variety of functions performed by individuals in drug trafficking offenses, the examples listed in § 2D1.1(e)(2)(B) are illustrative rather than a definitive list.

To assist courts in determining the appropriate level of reduction, the amendment provides examples of functions generally warranting an adjustment under § 3B1.2(a) and (b). Section 2D1.1(e)(2)(B)(i) states that a four-level adjustment under § 3B1.2(a) is generally warranted if the defendant’s primary function in the offense was plainly among the lowest level of drug trafficking functions. It lists as examples serving as a courier, running errands, sending or receiving phone calls or messages, or acting as a lookout. Section 2D1.1(e)(2)(B)(ii) states that a two-level adjustment under § 3B1.2(b) is generally warranted if the defendant’s primary function in the offense was another low-level trafficking function. It lists as examples distributing controlled substances in user-level quantities for little or no monetary compensation or with a primary motivation other than profit (*e.g.*, the defendant was otherwise unlikely to commit such an offense and was motivated by an intimate or familial relationship or by threats or fear to commit the offense).

The amendment places the special instruction in § 2D1.1 instead of § 3B1.2 to highlight that the rules for determining § 3B1.2 eligibility are different in § 2D1.1 cases. For purposes of the special instruction at § 2D1.1(e)(2)(B), the provisions of § 3B1.2 apply in determining whether a mitigating role adjustment is warranted, with two exceptions: the amendment provides that the adjustment shall apply regardless of whether the offense involved other participants in addition to the defendant, and also regardless of whether the defendant was substantially less culpable than the average participant in the criminal activity. The Commission determined that these two provisions in the Commentary to § 3B1.2 may discourage a court from applying a mitigating role adjustment in single-defendant drug trafficking cases or drug trafficking cases where the defendant performed a similar low-level function as other participants in the criminal activity, but an adjustment may nevertheless be appropriate. Accordingly, the Commission concluded that these provisions shall not apply in assessing whether a mitigating role adjustment is warranted based on a defendant's low-level function in a drug trafficking offense.

The amendment specifies that the mitigating role provisions in § 2D1.1(a)(5) and the 2-level reduction at § 2D1.1(b)(17) apply regardless of whether the defendant receives the § 3B1.2 adjustment by direct application of § 3B1.2 or by use of the special instruction in § 2D1.1(e)(2)(B). This instruction ensures that any individual who receives a mitigating role adjustment, regardless of the mechanism, may also receive the reductions in § 2D1.1(a)(5) and § 2D1.1(b)(17).

Part B—Representing or Marketing Fentanyl or a Fentanyl Analogue as a Legitimately Manufactured Drug

Part B of the amendment changes the *mens rea* requirement in § 2D1.1(b)(13)(B). In light of the continuing danger associated with the misrepresentation of fake prescription pills containing fentanyl or a fentanyl analogue, the Commission addressed concerns that the *mens rea* requirement was vague and difficult to apply.

Section 2D1.1(b)(13)(A) provides a 4-level increase when the defendant knowingly misrepresented or knowingly marketed as another substance a mixture or substance containing fentanyl or a fentanyl analogue. The Commission added this specific offense characteristic in 2018 in response to rising numbers of fentanyl and fentanyl

analogue cases. *See* USSG, App. C. amend. 807 (effective Nov. 1, 2018). In 2023, the Commission added an alternative 2-level enhancement at § 2D1.1(b)(13)(B) for offenses where the defendant represented or marketed as a legitimately manufactured drug another mixture or substance containing fentanyl or a fentanyl analogue, and acted with willful blindness or conscious avoidance of knowledge that such mixture or substance was not the legitimately manufactured drug. The Commission added this specific offense characteristic based on the continued increase in fentanyl and fentanyl analogue distribution and data showing that most fake prescription pills seized containing fentanyl had a potentially lethal dose of the substance. *See* USSG, App. C. amend. 818 (effective Nov. 1, 2023).

The Commission received comment that § 2D1.1(b)(13)(B) is being applied inconsistently, in part, because the current *mens rea* requirement has generated confusion. In particular, commenters have urged the Commission to revise § 2D1.1(b)(13)(B) because the mental state of “willful blindness or conscious avoidance of knowledge” is vague, and cases construe willful blindness as legally equivalent to knowledge, causing uncertainty over when the enhancement should be applied. The Commission further heard concerns about the continuing dangers associated with representing or marketing fentanyl or a fentanyl analogue as a legitimately manufactured drug.

Informed by those concerns, the amendment changes the *mens rea* requirement in § 2D1.1(b)(13)(B) from “willful blindness or conscious avoidance of knowledge” to “reckless disregard.”

3. Amendment: Section 2K2.1(b) is amended—

in paragraph (3)(B) by striking “subdivision” and inserting “paragraph”;

by redesignating paragraphs (5) through (9) as paragraphs (6) through (10), respectively;

by inserting after paragraph (4) the following new paragraph (5):

“(5) (Apply the Greatest) If the defendant—

(A)(i) possessed four or more machinegun conversion devices; or (ii) transferred or sold any machinegun conversion device to another person, or attempted or conspired to commit such a transfer or sale, increase by 2 levels; or

(B) possessed 30 or more machinegun conversion devices, increase by 4 levels.

For purposes of subsection (b)(5), ‘machinegun conversion device’ means any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun (*i.e.*, any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger).’;

in the paragraph that begins “The cumulative offense level” by striking “(b)(4)” and inserting “(b)(5)”;

in paragraph (6) (as so redesignated), in the subparagraph that begins “*Provided, however,*” by striking “(b)(5)(C)(i)(I)” and inserting “(b)(6)(C)(i)(I)”;

in paragraph (9)(A) (as so redesignated) by striking “(b)(5)” and inserting “(b)(6)”;

and in paragraph (10)(A) (as so redesignated) by striking “(b)(5)” and inserting “(b)(6)”.

The Commentary to § 2K2.1 captioned “Application Notes” is amended—

in Note 1, in the paragraph that begins “‘Firearm’ has the meaning” by inserting after “18 U.S.C. 921(a)(3)” the following: “, unless otherwise specified”;

in Note 3 by striking “(b)(5)” and inserting “(b)(6)”;

in Note 9 by striking “*Application of Subsection (b)(7)*.”—Under subsection (b)(7), if a record-keeping offense” and inserting “*Application of Subsection (b)(8)*.”—Under subsection (b)(8), if a recordkeeping offense”;

in Note 13—

in the heading by striking “(b)(5)” and inserting “(b)(6)”;

and in subparagraph (C) by striking “(b)(5)” and inserting “(b)(6)”;

and by striking “(b)(6)(B)” and inserting “(b)(7)(B)”;

and in Note 14—

in the heading by striking “(b)(6)(B)” and inserting “(b)(7)(B)”;

in subparagraph (A) by striking “(b)(6)(B)” and inserting “(b)(7)(B)”;

in subparagraph (B) by striking “(b)(6)(B)” both places it appears and inserting “(b)(7)(B)”;

in subparagraph (C) by striking “(b)(6)(B)” and inserting “(b)(7)(B)”;

and in subparagraph (E) by striking “(b)(6)(B)” each place it appears and inserting “(b)(7)(B)”.

The Commentary to § 2K2.4 captioned “Application Notes” is amended in Note 4(A) in the paragraph that begins “If the explosive” by striking “§ 2K2.1(b)(6)(B)” both places it appears and inserting “§ 2K2.1(b)(7)(B)”.

Reason for Amendment: This amendment revises § 2K2.1 (Unlawful

Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition), the primary firearms guideline, to more fully account for machinegun conversion devices (MCDs).

Commonly referred to as “Glock switches” and “auto sears,” MCDs are devices designed to convert semi-automatic firearms into fully automatic weapons. Under the National Firearms Act (NFA), the definition of “machinegun” includes “any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun.” 26 U.S.C. 5845(b). An MCD therefore qualifies as a machinegun under federal law, and—as in the case of other machineguns—federal law generally prohibits the possession and transfer of such devices, with limited exceptions. *See* 18 U.S.C. 922(o).

As a technical matter, the definition of “firearm” is not uniform throughout federal law. Because the NFA defines “firearm” to include machineguns—and “machinegun” to include MCDs—MCDs qualify as “firearms” under the NFA definition at 26 U.S.C. 5845(a). By contrast, MCDs are not firearms under the definition of that term provided in the Gun Control Act (GCA), which is limited (as relevant) to a weapon “which will or is designed to or may readily be converted to expel a projectile by the action of an explosive” and “the frame or receiver of any such weapon.” 18 U.S.C. 921(a)(3).

Prior to this amendment, § 2K2.1 accounted for MCDs solely through base offense levels. It provided certain enhanced base offense levels for offenses involving NFA firearms, including MCDs. *See* USSG § 2K2.1(a)(1), (3), (4), (5). Although § 2K2.1’s base offense levels specifically incorporated the NFA definition of firearm, the remainder of § 2K2.1 used the GCA definition. *See* USSG § 2K2.1, comment. (n.1). Therefore, MCDs did not trigger the specific offense characteristics in § 2K2.1. For example, if an individual were convicted of a firearms offense in which he possessed one semi-automatic firearm and five MCDs, an enhanced base offense level would apply because the offense involved a firearm described in 26 U.S.C. 5845(a), *see* USSG § 2K2.1(a)(1), (3), (4), (5), but there would be no enhancement under the specific offense characteristic at § 2K2.1(b)(1) for the number of MCDs possessed because MCDs are not firearms under the GCA definition. *See* USSG § 2K2.1(b)(1). For

the same reason, if the individual transferred the MCDs to another person, this conduct would not support a trafficking enhancement under the specific offense characteristic at § 2K2.1(b)(5) the way the transfer of a GCA firearm (or ammunition) would. *See* USSG § 2K2.1(b)(5).

The Commission’s amendment responds to concerns by the Department of Justice and other commenters about the proliferation of MCDs, which pose a heightened danger to the public because a weapon equipped with an MCD fires more rapidly and with less control than an identical weapon without an MCD. Of note, the Department of Justice pointed to a 570% rise in MCD recoveries in 2021 as compared to 2017 and to the growing involvement of automatic gunfire reported in shootings. Commission data similarly reflects a recent rise in firearms cases involving MCDs. In fiscal year 2023, 4.5 percent of cases sentenced under § 2K2.1 involved an MCD—an increase from one percent of § 2K2.1 cases in fiscal year 2019. While most cases involving MCDs in fiscal year 2023 involved a single MCD, more than 18 percent involved four or more devices. In addition, in more than 25 percent of § 2K2.1 cases involving MCDs, the sentenced individual transferred at least one MCD to another person.

To address these concerns and in recognition that MCDs pose different risks than functional firearms, the amendment establishes a new tiered specific offense characteristic at § 2K2.1(b)(5) for cases involving MCDs. New subsection (b)(5)(A) provides a two-level enhancement when a defendant (i) possessed four or more MCDs or (ii) transferred or sold an MCD or attempted or conspired to commit such a transfer or sale. New subsection (b)(5)(B) provides a four-level enhancement when a defendant possessed 30 or more MCDs. The amendment includes a definition of “machinegun conversion device” consistent with the NFA’s statutory definition at 26 U.S.C. 5845(b). To tailor the enhancement to the most culpable conduct, the Commission determined that it should apply only to the acts of the defendant. The Commission also concluded that the new specific offense characteristic should be subject to the offense level cap in § 2K2.1. The amendment revises the cap to provide that the cumulative offense level may not exceed level 29 after application of subsections (b)(1) through the new subsection (b)(5), unless subsection (b)(3)(A) applies.

The amendment also includes conforming changes, including to the

Commentary to § 2K2.1 and § 2K2.4 (Use of Firearm, Armor-Piercing Ammunition, or Explosive During or in Relation to Certain Crimes), to address the renumbering of the prior § 2K2.1(b)(5) through (9).

4. *Amendment:* The Commentary to § 1B1.10 captioned “Application Notes” is amended in Note 8(B) by inserting after “18 U.S.C. 3583(e)(1),” the following: “*See* § 5D1.4 (Modification, Early Termination, and Extension of Supervised Release (Policy Statement)).”.

The Commentary to § 4B1.5 captioned “Application Notes” is amended in Note 5 by striking the following:

“*Treatment and Monitoring.*—

(A) *Recommended Maximum Term of Supervised Release.*—The statutory maximum term of supervised release is recommended for offenders sentenced under this guideline.

(B) *Recommended Conditions of Probation and Supervised Release.*—Treatment and monitoring are important tools for supervising offenders and should be considered as special conditions of any term of probation or supervised release that is imposed.”;

and by inserting the following:

“*Treatment and Monitoring.*—Treatment and monitoring are important tools for supervising offenders and should be considered as special conditions of any term of probation or supervised release that is imposed.”.

Section 5B1.3(d)(7) is amended by striking “, as defined in Application Note 1 of the Commentary to § 5D1.2 (Term of Supervised Release)”.

The Commentary to § 5B1.3 captioned “Application Note” is amended—in the caption by striking “Note” and inserting “Notes”;

and by inserting at the end the following new Note 2:

“2. *Application of Subsection (d)(7).*—For purposes of subsection (d)(7):

‘Sex offense’ means (A) an offense, perpetrated against a minor, under (i) chapter 109A of title 18, United States Code; (ii) chapter 110 of such title, not including a recordkeeping offense; (iii) chapter 117 of such title, not including transmitting information about a minor or filing a factual statement about an alien individual; (iv) an offense under 18 U.S.C. 1201; or (v) an offense under 18 U.S.C. 1591; or (B) an attempt or a conspiracy to commit any offense described in subparagraphs (A)(i) through (v) of this note. Such term does not include an offense under 18 U.S.C. 2250 (Failure to register).

‘Minor’ means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer

represented to a participant (i) had not attained the age of 18 years; and (ii) could be provided for the purposes of engaging in sexually explicit conduct; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.”.

Chapter Five, Part D is amended by inserting at the beginning the following new Introductory Commentary:

“Introductory Commentary

The Sentencing Reform Act of 1984 requires the court to assess a wide range of factors ‘in determining whether to include a term of supervised release, and, if a term of supervised release is to be included, in determining the length of the term and the conditions of supervised release.’ 18 U.S.C. 3583(c). These determinations aim to make the imposition and scope of supervised release ‘dependent on the needs of the defendant for supervision.’ See S. Rep. No. 225, 98th Cong., 1st Sess. 124 (1983). In conducting such an individualized assessment, the court can ‘assure that [those] who will need post-release supervision will receive it’ while ‘prevent[ing] probation system resources from being wasted on supervisory services for releasees who do not need them.’ *Id.* at 54; see also *Johnson v. United States*, 529 U.S. 694, 709 (2000) (‘Supervised release departed from the parole system it replaced by giving district courts the freedom to provide postrelease supervision for those, and only those, who needed it . . . Congress aimed, then, to use the district courts’ discretionary judgment to allocate supervision to those releasees who needed it most.’). Supervised release ‘fulfills rehabilitative ends, distinct from those served by incarceration.’ *United States v. Johnson*, 529 U.S. 53, 59 (2000). Accordingly, a court should consider whether the defendant needs supervision in order to ease transition into the community or to provide further rehabilitation and whether supervision will promote public safety. See 18 U.S.C. 3583(c), 3553(a)(2)(C)); see also S. Rep. No. 225, 98th Cong., 1st Sess. 124 (1983) (indicating that a ‘primary goal of [a term of supervised release] is to ease the defendant’s transition into the community after the service of a long prison term for a particularly serious offense, or to provide rehabilitation to a defendant who has spent a fairly short period in prison for punishment or other purposes but still needs supervision and training programs after release’).”.

Section 5D1.1 is amended—

by striking subsections (a) and (b) as follows:

“(a) The court shall order a term of supervised release to follow imprisonment—

(1) when required by statute (see 18 U.S.C. 3583(a)); or

(2) except as provided in subsection (c), when a sentence of imprisonment of more than one year is imposed.

(b) The court may order a term of supervised release to follow imprisonment in any other case. See 18 U.S.C. 3583(a).”;

and inserting the following new subsections (a) and (b):

“(a) The court shall order a term of supervised release to follow imprisonment when required by statute (see 18 U.S.C. 3583(a)).

(b) When a term of supervised release is not required by statute, the court should order a term of supervised release to follow imprisonment when warranted by an individualized assessment of the need for supervision.”;

and by inserting at the end the following new subsection (d):

“(d) The court should state in open court the reasons for imposing or not imposing a term of supervised release. See 18 U.S.C. 3553(c).”.

The Commentary to § 5D1.1 captioned “Application Notes” is amended—

by striking Notes 1, 2, and 3 as follows:

“1. *Application of Subsection (a).*—Under subsection (a), the court is required to impose a term of supervised release to follow imprisonment when supervised release is required by statute or, except as provided in subsection (c), when a sentence of imprisonment of more than one year is imposed. The court may depart from this guideline and not impose a term of supervised release if supervised release is not required by statute and the court determines, after considering the factors set forth in Note 3, that supervised release is not necessary.

2. *Application of Subsection (b).*—Under subsection (b), the court may impose a term of supervised release to follow a term of imprisonment in any other case, after considering the factors set forth in Note 3.

3. *Factors to Be Considered.*—

(A) *Statutory Factors.*—In determining whether to impose a term of supervised release, the court is required by statute to consider, among other factors:

(i) the nature and circumstances of the offense and the history and characteristics of the defendant;

(ii) the need to afford adequate deterrence to criminal conduct, to protect the public from further crimes of the defendant, and to provide the

defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(iii) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(iv) the need to provide restitution to any victims of the offense.

See 18 U.S.C. 3583(c).

(B) *Criminal History.*—The court should give particular consideration to the defendant’s criminal history (which is one aspect of the ‘history and characteristics of the defendant’ in subparagraph (A)(i), above). In general, the more serious the defendant’s criminal history, the greater the need for supervised release.

(C) *Substance Abuse.*—In a case in which a defendant sentenced to imprisonment is an abuser of controlled substances or alcohol, it is highly recommended that a term of supervised release also be imposed. See § 5H1.4 (Physical Condition, Including Drug or Alcohol Dependence or Abuse; Gambling Addiction).

(D) *Domestic Violence.*—If the defendant is convicted for the first time of a domestic violence crime as defined in 18 U.S.C. 3561(b), a term of supervised release is required by statute. See 18 U.S.C. 3583(a). Such a defendant is also required by statute to attend an approved rehabilitation program, if available within a 50-mile radius of the legal residence of the defendant. See 18 U.S.C. 3583(d); § 5D1.3(a)(3). In any other case involving domestic violence or stalking in which the defendant is sentenced to imprisonment, it is highly recommended that a term of supervised release also be imposed.”;

by redesignating Notes 4 and 5 as Notes 5 and 6, respectively;

by inserting at the beginning the following new Notes 1, 2, 3, and 4:

“1. *Individualized Assessment.*—The statutory framework of supervised release aims to ‘assure that [those] who will need post-release supervision will receive it’ while ‘prevent[ing] probation system resources from being wasted on supervisory services for releasees who do not need them.’ See S. Rep. No. 225, 98th Cong., 1st Sess. 54 (1983). To that end, 18 U.S.C. 3583(c) requires the court to, ‘in determining whether to include a term of supervised release, and, if a term of supervised release is to be included, in determining the length of the term and the conditions of supervised release,’ consider the following:

(A) the nature and circumstances of the offense and the history and characteristics of the defendant (18 U.S.C. 3553(a)(1));

(B) the need to afford adequate deterrence to criminal conduct, to protect the public from further crimes of the defendant, and to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner (18 U.S.C. 3553(a)(2)(B)–(D));

(C) the kinds of sentence and the sentencing range established for the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines (18 U.S.C. 3553(a)(4));

(D) any pertinent policy statement issued by the Sentencing Commission (18 U.S.C. 3553(a)(5));

(E) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct (18 U.S.C. 3553(a)(6)); and

(F) the need to provide restitution to any victims of the offense (18 U.S.C. 3553(a)(7)).

See 18 U.S.C. 3583(c).

2. *Criminal History*.—The court should give particular consideration to the defendant's criminal history (which is one aspect of the 'history and characteristics of the defendant' in Application Note 1(A) above). In general, the more serious the defendant's criminal history, the greater the need for supervised release.

3. *Substance Abuse*.—In a case in which a defendant sentenced to imprisonment is an abuser of controlled substances or alcohol, it is highly recommended that a term of supervised release also be imposed. See § 5H1.4 (Physical Condition, Including Drug or Alcohol Dependence or Abuse; Gambling Addiction).

4. *Domestic Violence*.—If the defendant is convicted for the first time of a domestic violence crime as defined in 18 U.S.C. 3561(b), a term of supervised release is required by statute. See 18 U.S.C. 3583(a). Such a defendant is also required by statute to attend an approved rehabilitation program, if available within a 50-mile radius of the legal residence of the defendant. See 18 U.S.C. 3583(d); § 5D1.3(a)(3). In any other case involving domestic violence or stalking in which the defendant is sentenced to imprisonment, it is highly recommended that a term of supervised release also be imposed.”;

and by inserting at the end the following new Note 7:

“7. *Evidence-Based Recidivism Reduction Programming*.—Whether a defendant's sentence includes a term of supervised release may impact the application of time credits earned by the defendant under the First Step Act of

2018, Pub. L. 115–391. The First Step Act of 2018 allows individuals in custody who successfully complete evidence-based recidivism reduction programming or productive activities to earn time credits. See 18 U.S.C. 3632(d)(4)(A). Regarding the application of those time credits, the First Step Act of 2018 provides: ‘If the sentencing court included as a part of the prisoner's sentence a requirement that the prisoner be placed on a term of supervised release after imprisonment pursuant to [18 U.S.C. 3583], the Director of the Bureau of Prisons may transfer the prisoner to begin any such term of supervised release at an earlier date, not to exceed 12 months, based on the application of time credits under [18 U.S.C. 3632].’ 18 U.S.C. 3624(g)(3).”.

Section 5D1.2 is amended—
by striking subsections (a), (b), and (c) as follows:

“(a) Except as provided in subsections (b) and (c), if a term of supervised release is ordered, the length of the term shall be:

(1) At least two years but not more than five years for a defendant convicted of a Class A or B felony. See 18 U.S.C. 3583(b)(1).

(2) At least one year but not more than three years for a defendant convicted of a Class C or D felony. See 18 U.S.C. 3583(b)(2).

(3) One year for a defendant convicted of a Class E felony or a Class A misdemeanor. See 18 U.S.C. 3583(b)(3).

(b) Notwithstanding subdivisions (a)(1) through (3), the length of the term of supervised release shall be not less than the minimum term of years specified for the offense under subdivisions (a)(1) through (3) and may be up to life, if the offense is—

(1) any offense listed in 18 U.S.C. 2332b(g)(5)(B), the commission of which resulted in, or created a foreseeable risk of, death or serious bodily injury to another person; or

(2) a sex offense.

(Policy Statement) If the instant offense of conviction is a sex offense, however, the statutory maximum term of supervised release is recommended.

(c) The term of supervised release imposed shall be not less than any statutorily required term of supervised release.”;

and by inserting the following new subsections (a) and (b):

“(a) If a term of supervised release is ordered, the court shall conduct an individualized assessment to determine the length of the term, which shall not be less than any statutorily required minimum term. Except as otherwise provided by statute, the maximum term of supervised release is as follows:

(1) Not more than five years for a defendant convicted of a Class A or B felony. See 18 U.S.C. 3583(b)(1).

(2) Not more than three years for a defendant convicted of a Class C or D felony. See 18 U.S.C. 3583(b)(2).

(3) Not more than one year for a defendant convicted of a Class E felony or a misdemeanor (other than a petty offense). See 18 U.S.C. 3583(b)(3).

(b) The court should state in open court the reasons for the length of the term imposed. See 18 U.S.C. 3553(c).”.

The Commentary to § 5D1.2 captioned “Application Notes” is amended—
by striking Note 1 as follows:

“1. *Definitions*.—For purposes of this guideline:

‘Sex offense’ means (A) an offense, perpetrated against a minor, under (i) chapter 109A of title 18, United States Code; (ii) chapter 110 of such title, not including a recordkeeping offense; (iii) chapter 117 of such title, not including transmitting information about a minor or filing a factual statement about an alien individual; (iv) an offense under 18 U.S.C. 1201; or (v) an offense under 18 U.S.C. 1591; or (B) an attempt or a conspiracy to commit any offense described in subdivisions (A)(i) through (v) of this note. Such term does not include an offense under 18 U.S.C. 2250 (Failure to register).

‘Minor’ means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years; and (ii) could be provided for the purposes of engaging in sexually explicit conduct; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.”;

by striking Notes 4, 5, and 6 as follows:

“4. *Factors Considered*.—The factors to be considered in determining the length of a term of supervised release are the same as the factors considered in determining whether to impose such a term. See 18 U.S.C. 3583(c); Application Note 3 to § 5D1.1 (Imposition of a Term of Supervised Release). The court should ensure that the term imposed on the defendant is long enough to address the purposes of imposing supervised release on the defendant.

5. *Early Termination and Extension*.—The court has authority to terminate or extend a term of supervised release. See 18 U.S.C. 3583(e)(1), (2). The court is encouraged to exercise this authority in appropriate cases. The prospect of exercising this authority is a factor the court may wish to consider in determining the length of a term of

supervised release. For example, the court may wish to consider early termination of supervised release if the defendant is an abuser of narcotics, other controlled substances, or alcohol who, while on supervised release, successfully completes a treatment program, thereby reducing the risk to the public from further crimes of the defendant.

6. Application of Subsection (c).— Subsection (c) specifies how a statutorily required minimum term of supervised release may affect the minimum term of supervised release provided by the guidelines.

For example, if subsection (a) provides a range of two years to five years, but the relevant statute requires a minimum term of supervised release of three years and a maximum term of life, the term of supervised release provided by the guidelines is restricted by subsection (c) to three years to five years. Similarly, if subsection (a) provides a range of two years to five years, but the relevant statute requires a minimum term of supervised release of five years and a maximum term of life, the term of supervised release provided by the guidelines is five years.

The following example illustrates the interaction of subsections (a) and (c) when subsection (b) is also involved. In this example, subsection (a) provides a range of two years to five years; the relevant statute requires a minimum term of supervised release of five years and a maximum term of life; and the offense is a sex offense under subsection (b). The effect of subsection (b) is to raise the maximum term of supervised release from five years (as provided by subsection (a)) to life, yielding a range of two years to life. The term of supervised release provided by the guidelines is then restricted by subsection (c) to five years to life. In this example, a term of supervised release of more than five years would be a guideline sentence. In addition, subsection (b) contains a policy statement recommending that the maximum—a life term of supervised release—be imposed.”;

by redesignating Notes 2 and 3 as Notes 4 and 5, respectively;

by inserting at the beginning the following new Notes 1, 2, and 3:

“1. *Individualized Assessment.*—When conducting an individualized assessment to determine the length of a term of supervised release, the factors to be considered are the same as the factors considered in determining whether to impose such a term. See 18 U.S.C. 3583(c); Application Note 1 to § 5D1.1 (Imposition of a Term of Supervised Release). The court should ensure that

the term imposed on the defendant is sufficient, but not greater than necessary, to address the purposes of imposing supervised release on the defendant.

2. *Terrorism and Sex Offenses.*—Congress has authorized a term of supervised release that exceeds the maximum terms described in subsection (a) for certain serious offenses. See 18 U.S.C. 3583(j), (k). For certain terrorism offenses, the authorized term of supervised release is any term of years or life. 18 U.S.C. 3583(j). For certain sex offenses, the authorized term of supervised release is any term of years not less than five, or up to life. 18 U.S.C. 3583(k).

3. *Drug Offenses.*—For certain drug offenses, Congress has established statutory minimum terms of supervised release. See, e.g., 21 U.S.C. 841(b), 960(b) (providing minimum terms of supervised release depending on drug type and quantity and criminal history).”;

in Note 4 (as so redesignated) by striking “shall be determined” and inserting “is determined”;

in Note 5 (as so redesignated) by striking “or the guidelines”;

and by inserting at the end the following new Note 6:

“6. *Early Termination and Extension.*—The court has authority to terminate or extend a term of supervised release. See 18 U.S.C. 3583(e)(1), (2); § 5D1.4 (Modification, Early Termination, and Extension of Supervised Release (Policy Statement)).”.

The Commentary to § 5D1.2 is amended by striking the Commentary captioned “Background” in its entirety as follows:

“*Background:* This section specifies the length of a term of supervised release that is to be imposed. Subsection (c) applies to statutes, such as the Anti-Drug Abuse Act of 1986, that require imposition of a specific minimum term of supervised release.”.

Section 5D1.3 is amended—by striking subsections (b), (c), (d), and (e) as follows:

“(b) *Discretionary Conditions*

The court may impose other conditions of supervised release to the extent that such conditions (1) are reasonably related to (A) the nature and circumstances of the offense and the history and characteristics of the defendant; (B) the need for the sentence imposed to afford adequate deterrence to criminal conduct; (C) the need to protect the public from further crimes of the defendant; and (D) the need to provide the defendant with needed educational or vocational training,

medical care, or other correctional treatment in the most effective manner; and (2) involve no greater deprivation of liberty than is reasonably necessary for the purposes set forth above and are consistent with any pertinent policy statements issued by the Sentencing Commission.

(c) *‘Standard’ Conditions (Policy Statement)*

The following ‘standard’ conditions are recommended for supervised release. Several of the conditions are expansions of the conditions required by statute:

(1) The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.

(2) After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed.

(3) The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer.

(4) The defendant shall answer truthfully the questions asked by the probation officer.

(5) The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.

(6) The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant’s supervision that he or she observes in plain view.

(7) The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the

defendant plans to change where the defendant works or anything about his or her work (such as the position or the job responsibilities), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.

(8) The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer.

(9) If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours.

(10) The defendant shall not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (*i.e.*, anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person, such as nunchakus or tasers).

(11) The defendant shall not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.

(12) If the probation officer determines that the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk.

(13) The defendant shall follow the instructions of the probation officer related to the conditions of supervision.

(d) 'Special' Conditions (Policy Statement)

The following 'special' conditions of supervised release are recommended in the circumstances described and, in addition, may otherwise be appropriate in particular cases:

(1) Support of Dependents

(A) If the defendant has one or more dependents—a condition specifying that the defendant shall support his or her dependents.

(B) If the defendant is ordered by the government to make child support payments or to make payments to support a person caring for a child—a condition specifying that the defendant

shall make the payments and comply with the other terms of the order.

(2) Debt Obligations

If an installment schedule of payment of restitution or a fine is imposed—a condition prohibiting the defendant from incurring new credit charges or opening additional lines of credit without approval of the probation officer unless the defendant is in compliance with the payment schedule.

(3) Access to Financial Information

If the court imposes an order of restitution, forfeiture, or notice to victims, or orders the defendant to pay a fine—a condition requiring the defendant to provide the probation officer access to any requested financial information.

(4) Substance Abuse

If the court has reason to believe that the defendant is an abuser of narcotics, other controlled substances or alcohol—(A) a condition requiring the defendant to participate in a program approved by the United States Probation Office for substance abuse, which program may include testing to determine whether the defendant has reverted to the use of drugs or alcohol; and (B) a condition specifying that the defendant shall not use or possess alcohol.

(5) Mental Health Program Participation

If the court has reason to believe that the defendant is in need of psychological or psychiatric treatment—a condition requiring that the defendant participate in a mental health program approved by the United States Probation Office.

(6) Deportation

If (A) the defendant and the United States entered into a stipulation of deportation pursuant to section 238(c)(5) of the Immigration and Nationality Act (8 U.S.C. 1228(c)(5)*); or (B) in the absence of a stipulation of deportation, if, after notice and hearing pursuant to such section, the Attorney General demonstrates by clear and convincing evidence that the alien is deportable—a condition ordering deportation by a United States district court or a United States magistrate judge.

* So in original. Probably should be 8 U.S.C. 1228(d)(5).

(7) Sex Offenses

If the instant offense of conviction is a sex offense, as defined in Application Note 1 of the Commentary to § 5D1.2 (Term of Supervised Release)—

(A) A condition requiring the defendant to participate in a program approved by the United States Probation Office for the treatment and monitoring of sex offenders.

(B) A condition limiting the use of a computer or an interactive computer service in cases in which the defendant used such items.

(C) A condition requiring the defendant to submit to a search, at any time, with or without a warrant, and by any law enforcement or probation officer, of the defendant's person and any property, house, residence, vehicle, papers, computer, other electronic communication or data storage devices or media, and effects upon reasonable suspicion concerning a violation of a condition of supervised release or unlawful conduct by the defendant, or by any probation officer in the lawful discharge of the officer's supervision functions.

(8) Unpaid Restitution, Fines, or Special Assessments

If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.

(e) Additional Conditions (Policy Statement)

The following 'special conditions' may be appropriate on a case-by-case basis:

(1) Community Confinement

Residence in a community treatment center, halfway house or similar facility may be imposed as a condition of supervised release. *See* § 5F1.1 (Community Confinement).

(2) Home Detention

Home detention may be imposed as a condition of supervised release, but only as a substitute for imprisonment. *See* § 5F1.2 (Home Detention).

(3) Community Service

Community service may be imposed as a condition of supervised release. *See* § 5F1.3 (Community Service).

(4) Occupational Restrictions

Occupational restrictions may be imposed as a condition of supervised release. *See* § 5F1.5 (Occupational Restrictions).

(5) Curfew

A condition imposing a curfew may be imposed if the court concludes that restricting the defendant to his place of residence during evening and nighttime hours is necessary to protect the public from crimes that the defendant might commit during those hours, or to assist in the rehabilitation of the defendant. Electronic monitoring may be used as a means of surveillance to ensure compliance with a curfew order.

(6) Intermittent Confinement

Intermittent confinement (custody for intervals of time) may be ordered as a condition of supervised release during

the first year of supervised release, but only for a violation of a condition of supervised release in accordance with 18 U.S.C. 3583(e)(2) and only when facilities are available. *See* § 5F1.8 (Intermittent Confinement).”;

and inserting at the end the following new subsection (b):

“(b) *Discretionary Conditions*

(1) *In General.*—The court should conduct an individualized assessment to determine what, if any, other conditions of supervised release are warranted.

Such conditions are warranted to the extent that they (A) are reasonably related to (i) the nature and circumstances of the offense and the history and characteristics of the defendant; (ii) the need for the sentence imposed to afford adequate deterrence to criminal conduct; (iii) the need to protect the public from further crimes of the defendant; and (iv) the need to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; and (B) involve no greater deprivation of liberty than is reasonably necessary for the purposes set forth above and are consistent with any pertinent policy statements issued by the Sentencing Commission. *See* 18 U.S.C. 3583(d).

(2) *‘Standard’ Conditions (Policy Statement)*

The following are ‘standard’ conditions of supervised release, which the court may modify, expand, or omit in appropriate cases:

(A) The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.

(B) After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed.

(C) The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer.

(D) The defendant shall answer truthfully the questions asked by the probation officer.

(E) The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant

shall notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.

(F) The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant’s supervision that he or she observes in plain view.

(G) The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her work (such as the position or the job responsibilities), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.

(H) The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer.

(I) If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours.

(J) The defendant shall not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (*i.e.*, anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person, such as nunchakus or tasers).

(K) The defendant shall not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.

(L) If the probation officer determines that the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the

person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk.

(M) The defendant shall follow the instructions of the probation officer related to the conditions of supervision.

(3) *‘Special’ Conditions (Policy Statement)*

One or more conditions from the following non-exhaustive list of ‘special’ conditions of supervised release may be appropriate in a particular case, including in the circumstances described therein:

(A) *Support of Dependents*

(i) If the defendant has one or more dependents—a condition specifying that the defendant shall support his or her dependents.

(ii) If the defendant is ordered by the government to make child support payments or to make payments to support a person caring for a child—a condition specifying that the defendant shall make the payments and comply with the other terms of the order.

(B) *Debt Obligations*

If an installment schedule of payment of restitution or a fine is imposed—a condition prohibiting the defendant from incurring new credit charges or opening additional lines of credit without approval of the probation officer unless the defendant is in compliance with the payment schedule.

(C) *Access to Financial Information*

If the court imposes an order of restitution, forfeiture, or notice to victims, or orders the defendant to pay a fine—a condition requiring the defendant to provide the probation officer access to any requested financial information.

(D) *Substance Abuse*

If the court has reason to believe that the defendant is an abuser of narcotics, other controlled substances or alcohol—(i) a condition requiring the defendant to participate in a program approved by the United States Probation Office for substance abuse, which program may include testing to determine whether the defendant has reverted to the use of drugs or alcohol; and (ii) a condition specifying that the defendant shall not use or possess alcohol.

(E) *Mental Health Program Participation*

If the court has reason to believe that the defendant is in need of psychological or psychiatric treatment—a condition requiring that the defendant participate in a mental health program approved by the United States Probation Office.

(F) *Deportation*

If (i) the defendant and the United States entered into a stipulation of

deportation pursuant to section 238(c)(5) of the Immigration and Nationality Act (8 U.S.C. 1228(c)(5)*); or (ii) in the absence of a stipulation of deportation, if, after notice and hearing pursuant to such section, the Attorney General demonstrates by clear and convincing evidence that the alien is deportable—a condition ordering deportation by a United States district court or a United States magistrate judge.

* So in original. Probably should be 8 U.S.C. 1228(d)(5).

(G) *Sex Offenses*

If the instant offense of conviction is a sex offense—

(i) A condition requiring the defendant to participate in a program approved by the United States Probation Office for the treatment and monitoring of sex offenders.

(ii) A condition limiting the use of a computer or an interactive computer service in cases in which the defendant used such items.

(iii) A condition requiring the defendant to submit to a search, at any time, with or without a warrant, and by any law enforcement or probation officer, of the defendant's person and any property, house, residence, vehicle, papers, computer, other electronic communication or data storage devices or media, and effects upon reasonable suspicion concerning a violation of a condition of supervised release or unlawful conduct by the defendant, or by any probation officer in the lawful discharge of the officer's supervision functions.

(iv) A condition prohibiting the defendant from communicating, or otherwise interacting, with any victim of the offense, either directly or through someone else.

(H) *Unpaid Restitution, Fines, or Special Assessments*

If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.

(I) *Educational or Vocational Training*

If the court has reason to believe that a course of study or vocational training would be appropriate and would equip the defendant for suitable employment, a condition specifying that the defendant participate in a General Education Development (or similar) program, vocational training, or skills training, unless the probation officer excuses the defendant from doing so.

(J) *Victim Contact*

If there is an identifiable victim of the offense, a condition prohibiting the

defendant from communicating, or otherwise interacting, with any of the victims, either directly or through someone else.

(K) *Community Confinement*

Residence in a community treatment center, halfway house or similar facility may be imposed as a condition of supervised release. *See* § 5F1.1 (Community Confinement).

(L) *Home Detention*

Home detention may be imposed as a condition of supervised release, but only as a substitute for imprisonment. *See* § 5F1.2 (Home Detention).

(M) *Community Service*

Community service may be imposed as a condition of supervised release. *See* § 5F1.3 (Community Service).

(N) *Occupational Restrictions*

Occupational restrictions may be imposed as a condition of supervised release. *See* § 5F1.5 (Occupational Restrictions).

(O) *Curfew*

A condition imposing a curfew may be imposed if the court concludes that restricting the defendant to his place of residence during evening and nighttime hours is necessary to protect the public from crimes that the defendant might commit during those hours, or to assist in the rehabilitation of the defendant. Electronic monitoring may be used as a means of surveillance to ensure compliance with a curfew order.

(P) *Intermittent Confinement*

Intermittent confinement (custody for intervals of time) may be ordered as a condition of supervised release during the first year of supervised release, but only for a violation of a condition of supervised release in accordance with 18 U.S.C. 3583(e)(2) and only when facilities are available. *See* § 5F1.8 (Intermittent Confinement)."

The Commentary to § 5D1.3 captioned "Applications Note" is amended—in the caption by striking "Note" and inserting "Notes";

by redesignating Note 1 as Note 2;

by inserting at the beginning the following new Note 1:

"1. *Individualized Assessment.*—

When conducting an individualized assessment under this section, the court must consider the same factors used to determine whether to impose a term of supervised release, and shall impose conditions of supervision not required by statute only to the extent such conditions meet the requirements listed at 18 U.S.C. 3583(d). *See* 18 U.S.C. 3583(c), (d); Application Note 1 to § 5D1.1 (Imposition of a Term of Supervised Release).";

in Note 2 (as so redesignated) by striking "(c)(4)" both places it appears and inserting "(b)(2)(D)";

and by inserting at the end the following new Note 3:

"3. *Application of Subsection*

(b)(3)(G).— For purposes of subsection (b)(3)(G):

'Sex offense' means (A) an offense, perpetrated against a minor, under (i) chapter 109A of title 18, United States Code; (ii) chapter 110 of such title, not including a recordkeeping offense; (iii) chapter 117 of such title, not including transmitting information about a minor or filing a factual statement about an alien individual; (iv) an offense under 18 U.S.C. 1201; or (v) an offense under 18 U.S.C. 1591; or (B) an attempt or a conspiracy to commit any offense described in subparagraphs (A)(i) through (v) of this note. Such term does not include an offense under 18 U.S.C. 2250 (Failure to register).

'Minor' means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years; and (ii) could be provided for the purposes of engaging in sexually explicit conduct; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years."

Chapter Five, Part D is amended by inserting at the end the following new § 5D1.4:

"§ 5D1.4. *Modification, Early Termination, and Extension of Supervised Release (Policy Statement)*

(a) *Modification of Conditions.*—At any time prior to the expiration or termination of the term of supervised release, the court may modify, reduce, or enlarge the conditions of supervised release whenever warranted by an individualized assessment of the appropriateness of existing conditions. *See* 18 U.S.C. 3583(e)(2). The court is encouraged to conduct such an assessment in consultation with the probation officer after the defendant's release from imprisonment.

(b) *Early Termination.*—Any time after the expiration of one year of supervised release and after an individualized assessment of the need for ongoing supervision, the court may terminate the remaining term of supervision and discharge the defendant if the court determines, following consultation with the government and the probation officer, that the termination is warranted by the conduct of the defendant and in the interest of justice. *See* 18 U.S.C. 3583(e)(1).

(c) *Extending a Term of Supervised Release.*—The court may, at any time prior to the expiration or termination of

a term of supervised release, extend the term of supervised release if less than the maximum authorized term of supervised release was previously imposed and the extension is warranted by an individualized assessment of the need for further supervision. *See* 18 U.S.C. 3583(e)(2).

Commentary

Application Notes:

1. *Individualized Assessment.*—

(A) *In General.*—When making an individualized assessment under this section, the factors to be considered are the same factors used to determine whether to impose a term of supervised release. *See* 18 U.S.C. 3583(c), (e); Application Note 1 to § 5D1.1 (Imposition of a Term of Supervised Release).

(B) *Early Termination.*—When determining whether to terminate the remaining term of supervised release under subsection (b), the court may wish to consider such factors as:

(i) any history of court-reported violations over the term of supervision;

(ii) the ability of the defendant to lawfully self-manage (e.g., the ability to problem-solve and avoid situations that may result in a violation of a condition of supervised release or new criminal charges);

(iii) the defendant's substantial compliance with all conditions of supervision;

(iv) the defendant's engagement in appropriate prosocial activities and the existence or lack of prosocial support to remain lawful beyond the period of supervision;

(v) a demonstrated reduction in risk level or maintenance of the lowest category of risk over the period of supervision; and

(vi) whether termination will jeopardize public safety, as evidenced by the nature of the defendant's offense, the defendant's criminal history, the defendant's record while incarcerated, the defendant's efforts to reintegrate into the community and avoid recidivism, any statements or information provided by the victims of the offense, and other factors the court finds relevant.

2. *Notification of Victims.*—When determining whether to modify any condition of supervised release that would be relevant to a victim or to terminate the remaining term of supervised release, the Commission encourages the court, in coordination with the government, to ensure that any victim of the offense is reasonably, accurately, and timely notified, and provided, to the extent practicable, with an opportunity to be reasonably heard,

unless any such victim previously requested not to be notified.

3. *Application of Subsection (c).*—Subsection (c) addresses a court's authority to extend a term of supervised release. In some cases, extending a term may be more appropriate than taking other measures, such as revoking the term of supervised release.”

The Commentary to § 5G1.3 captioned “Application Notes” is amended in Note 4(C) by striking “Application Note 4 and subsection (f) of § 7B1.3 (Revocation of Probation or Supervised Release)” and inserting “Application Note 3 and subsection (f) of § 7B1.3 (Revocation of Probation)”.

Section 5H1.3 is amended in the paragraph that begins “Mental and emotional conditions may be relevant in determining the conditions” by striking “5D1.3(d)(5)” and inserting “5D1.3(b)(3)(E)”.

Section 5H1.4 is amended in the paragraph that begins “Drug or alcohol dependence or abuse” by striking “§ 5D1.3(d)(4)” and inserting “§ 5D1.3(b)(3)(D)”.

Chapter Seven, Part A is amended—
in Subpart 1 by striking the following: “Under 28 U.S.C. 994(a)(3), the

Sentencing Commission is required to issue guidelines or policy statements applicable to the revocation of probation and supervised release. At this time, the Commission has chosen to promulgate policy statements only. These policy statements will provide guidance while allowing for the identification of any substantive or procedural issues that require further review. The Commission views these policy statements as evolutionary and will review relevant data and materials concerning revocation determinations under these policy statements. Revocation guidelines will be issued after federal judges, probation officers, practitioners, and others have the opportunity to evaluate and comment on these policy statements.”;

and inserting the following:

“Under 28 U.S.C. 994(a)(3), the Sentencing Commission is required to issue guidelines or policy statements applicable to the revocation of probation and supervised release. The Commission chose to promulgate policy statements only. These policy statements were intended to provide guidance and allow for the identification of any substantive or procedural issues that require further review. The Commission viewed these policy statements as evolutionary and intended to review relevant data and materials concerning revocation determinations under these policy statements. Updated policies would be

issued after federal judges, probation officers, practitioners, and others had the opportunity to evaluate and comment on these policy statements.”;

in Subpart 3(a), in the paragraph that begins “Moreover, the Commission” by striking “anticipates” and inserting “anticipated”; by striking “will provide” and inserting “would provide”; by striking “represent” and inserting “represented”; and by striking “intends to promulgate revocation guidelines” and inserting “intended to promulgate updated revocation policies”;

in Subpart 3(b)—

in the paragraph that begins “The Commission debated” by striking “debated” and inserting “initially debated”;

and in the paragraph that begins “Given the relatively narrow ranges” by striking “this time” and inserting “that time”;

in Subpart 4—

in the paragraph that begins “The revocation policy statements” by striking “categorize” and inserting “categorized”; and by striking “fix” and inserting “fixed”;

and in the paragraph that begins “The Commission” by striking “has elected” and inserting “initially elected”; by striking “the Commission determined” and inserting “the Commission had determined”; and by striking “the Commission has initially concluded” and inserting “the Commission initially concluded”;

by striking Subpart 5 as follows:

“5. *A Concluding Note*

The Commission views these policy statements for revocation of probation and supervised release as the first step in an evolutionary process. The Commission expects to issue revocation guidelines after judges, probation officers, and practitioners have had an opportunity to apply and comment on the policy statements.

In developing these policy statements, the Commission assembled two outside working groups of experienced probation officers representing every circuit in the nation, officials from the Probation Division of the Administrative Office of the U.S. Courts, the General Counsel's office at the Administrative Office of the U.S. Courts, and the U.S. Parole Commission. In addition, a number of federal judges, members of the Criminal Law and Probation Administration Committee of the Judicial Conference, and representatives from the Department of Justice and federal and community defenders provided considerable input into this effort.”;

and by inserting at the end the following new Subpart 5:

“5. Updating the Approach

The Commission viewed the original policy statements for revocation of probation and supervised release as the first step in an evolutionary process. The Commission intended to revise its approach after judges, probation officers, and practitioners had an opportunity to apply and comment on the policy statements. Since the promulgation of those policy statements, a broad array of stakeholders has identified the need for more flexible, individualized responses to violations of supervised release.

In response, the Commission updated the policy statements in this chapter to ensure judges have the discretion necessary to properly manage supervised release. The revised policy statements encourage judges to take an individualized approach in: (1) responding to reports of non-compliance before initiating revocation proceedings; (2) addressing violations found during revocation proceedings; and (3) imposing a sentence of imprisonment upon revocation. These changes are intended to better allocate taxpayer dollars and probation resources, encourage compliance and improve public safety, and facilitate the reentry and rehabilitation of defendants.

This chapter proceeds in two parts: Part B addresses violations of probation, and Part C addresses violations of supervised release. Both parts maintain an approach in which the court addresses primarily the defendant's failure to comply with court-ordered conditions, while reflecting, to a limited degree, the seriousness of the underlying violation and the criminal history of the individual. The Commission determined that violations of probation and supervised release should be addressed separately to reflect their different purposes. While probation serves all the goals of sentencing, including punishment, supervised release primarily ‘fulfills rehabilitative ends, distinct from those served by incarceration.’ *United States v. Johnson*, 529 U.S. 53, 59 (2000). In light of these differences, Part B continues to recommend revocation for most probation violations. Part C encourages courts to consider a graduated response to a violation of supervised release, including considering all available options focused on facilitating a defendant's transition into the community and promoting public safety. Parts B and C both recognize the important role of the court, which is best situated to consider the individual defendant's risks and

needs and respond accordingly within its broad discretion.”.

Chapter Seven, Part B is amended—in the heading by striking “Probation and Supervised Release Violations” and inserting “Violations of Probation”; and in the Introductory

Commentary—

in the paragraph that begins “The policy statements” by striking “chapter” and inserting “part”; and by striking “supervision” and inserting “probation”;

by striking the following paragraph: “Because these policy statements focus on the violation of the court-ordered supervision, this chapter, to the extent permitted by law, treats violations of the conditions of probation and supervised release as functionally equivalent.”;

by striking the last paragraph as follows:

“This chapter is applicable in the case of a defendant under supervision for a felony or Class A misdemeanor. Consistent with § 1B1.9 (Class B or C Misdemeanors and Infractions), this chapter does not apply in the case of a defendant under supervision for a Class B or C misdemeanor or an infraction.”; and by inserting at the end the following new paragraph:

“This part is applicable in the case of a defendant on probation for a felony or Class A misdemeanor. Consistent with § 1B1.9 (Class B or C Misdemeanors and Infractions), this part does not apply in the case of a defendant on probation for a Class B or C misdemeanor or an infraction.”.

Section 7B1.1 is amended—in subsection (a) by striking “and supervised release”;

in subsection (a)(3) by striking “supervision” and inserting “probation”;

and in subsection (b) by striking “supervision” and inserting “probation”.

The Commentary to § 7B1.1 captioned “Application Notes” is amended—in Note 1 by striking “18 U.S.C. 3563(a)(1) and 3583(d), a mandatory condition of probation and supervised release” and inserting “18 U.S.C. 3563(a)(1), a mandatory condition of probation”;

and in Note 5 by striking “under supervision” and inserting “on probation”.

Section 7B1.2 is amended in the heading by striking “and Supervised Release”.

Section 7B1.3 is amended—in the heading by striking “or Supervised Release”;

in subsection (a)(1) by striking “or supervised release”;

in subsection (a)(2) by striking “(A) revoke probation or supervised release; or (B) extend the term of probation or supervised release and/or modify the conditions of supervision” and inserting “(A) revoke probation; or (B) extend the term of probation and/or modify the conditions thereof”;

in subsection (b) by striking “or supervised release”;

in subsection (e) by striking “or supervised release” both places such phrase appears;

in subsection (f) by striking “or supervised release” both places such phrase appears;

in subsection (g) by striking the following:

“(1) If probation is revoked and a term of imprisonment is imposed, the provisions of §§ 5D1.1–1.3 shall apply to the imposition of a term of supervised release.

(2) If supervised release is revoked, the court may include a requirement that the defendant be placed on a term of supervised release upon release from imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release. 18 U.S.C. 3583(h).”;

and inserting the following:

“If probation is revoked and a term of imprisonment is imposed, the provisions of §§ 5D1.1–1.3 shall apply to the imposition of a term of supervised release.”.

The Commentary to § 7B1.3 captioned “Application Notes” is amended—

in Note 1 by striking “or supervised release”; and by striking “supervision” both places such term appears and inserting “probation”;

by striking Note 2 as follows:

“2. The provisions for the revocation, as well as early termination and extension, of a term of supervised release are found in 18 U.S.C. 3583(e), (g)–(i). Under 18 U.S.C. 3583(h) (effective September 13, 1994), the court, in the case of revocation of supervised release, may order an additional period of supervised release to follow imprisonment.”;

by redesignating Notes 3, 4, and 5 as Notes 2, 3, and 4, respectively;

in Note 2 (as so redesignated) by striking “or supervised release”; and by striking “Bureau of Prisons” and inserting “Federal Bureau of Prisons”;

in Note 3 (as so redesignated) by striking “or supervised release” both places such phrase appears;

and in Note 4 (as so redesignated) by striking “. Intermittent confinement is

authorized as a condition of supervised release during the first year of supervised release, but only for a violation of a condition of supervised release in accordance with 18 U.S.C. 3583(e)(2) and only when facilities are available. *See* § 5F1.8 (Intermittent Confinement)” and inserting “; *see also* § 5F1.8 (Intermittent Confinement)”.

Section 7B1.4 is amended in the heading by striking “*Imprisonment*” and inserting “*Imprisonment—Probation*”.

Section 7B1.4(a) is amended in the Table—

in the heading by striking “*Revocation Table*” and inserting “*Probation Revocation Table*”; and by striking the following:

“*Grade A (1)* Except as provided in subdivision (2) below:

12–18 15–21 18–24 24–30 30–37 33–41.

(2) Where the defendant was on probation or supervised release as a result of a sentence for a Class A felony: 24–30 27–33 30–37 37–46 46–57 51–63.

* The criminal history category is the category applicable at the time the defendant originally was sentenced to a term of supervision.”;

and inserting the following:

“*Grade A* 12–18 15–21 18–24 24–30 30–37 33–41.

* The criminal history category is the category applicable at the time the defendant originally was sentenced to a term of probation.”.

The Commentary to § 7B1.4 captioned “*Application Notes*” is amended—

in Note 1 by striking the following:

“The criminal history category to be used in determining the applicable range of imprisonment in the Revocation Table is the category determined at the time the defendant originally was sentenced to the term of supervision. The criminal history category is not to be recalculated because the ranges set forth in the Revocation Table have been designed to take into account that the defendant violated supervision. In the rare case in which no criminal history category was determined when the defendant originally was sentenced to the term of supervision being revoked, the court shall determine the criminal history category that would have been applicable at the time the defendant originally was sentenced to the term of supervision. (*See* the criminal history provisions of §§ 4A1.1–4B1.4.)”;

and inserting the following:

“The criminal history category to be used in determining the applicable range of imprisonment in the Probation Revocation Table is the category

determined at the time the defendant originally was sentenced to the term of probation. The criminal history category is not to be recalculated because the ranges set forth in the Probation Revocation Table have been designed to take into account that the defendant violated probation. *Example:* A defendant, who was originally sentenced in 2022, was determined to have a criminal history category of II due in part to having committed the offense ‘while under any criminal justice sentence.’ *See* § 4A1.1(d) (Criminal History Category) (Nov. 2021). For purposes of determining the applicable range of imprisonment in the Probation Revocation Table, the defendant’s criminal history category is category II, regardless of whether the defendant’s criminal history category would be reduced for other purposes based on the retroactive application of Part A of Amendment 821 pursuant to § 1B1.10 (Reduction of Imprisonment as a Result of Amended Guideline Range (Policy Statement)). *See* USSG App. C, Amendment 825 (effective November 1, 2023).

In the rare case in which no criminal history category was determined when the defendant originally was sentenced to the term of probation being revoked, the court shall determine the criminal history category that would have been applicable at the time the defendant originally was sentenced to the term of probation. (*See* the criminal history provisions of §§ 4A1.1–4B1.4.)”;

in Note 2 by striking “*Revocation Table*” and inserting “*Probation Revocation Table*”; and by striking “*supervision*” both places such term appears and inserting “*probation*”;

in Note 3 by striking “*under supervision*” and inserting “*on probation*”;

in Note 5 by striking “*or supervised release*” both places such phrase appears; and by striking “18 U.S.C. 3565(b), 3583(g)” and inserting “18 U.S.C. 3565(b)”;

and in Note 6 by striking “*under* 18 U.S.C. 3565(b) and 3583(g). 18 U.S.C. 3563(a), 3583(d)” and inserting “*under* 18 U.S.C. 3565(b). 18 U.S.C. 3563(a)”.

Section 7B1.5 is amended—

in the heading by striking “*Under Supervision*” and inserting “*on Probation*”;

by striking subsections (a), (b), and (c) as follows:

“(a) Upon revocation of probation, no credit shall be given (toward any sentence of imprisonment imposed) for any portion of the term of probation served prior to revocation.

(b) Upon revocation of supervised release, no credit shall be given (toward

any term of imprisonment ordered) for time previously served on post-release supervision.

(c) *Provided*, that in the case of a person serving a period of supervised release on a foreign sentence under the provisions of 18 U.S.C. 4106A, credit shall be given for time on supervision prior to revocation, except that no credit shall be given for any time in escape or absconder status.”;

and inserting the following:

“Upon revocation of probation, no credit shall be given (toward any sentence of imprisonment imposed) for any portion of the term of probation served prior to revocation.”.

The Commentary to § 7B1.5 is amended by striking the Commentary captioned “*Application Note*” in its entirety as follows:

“*Application Note:*

1. Subsection (c) implements 18 U.S.C. 4106A(b)(1)(C), which provides that the combined periods of imprisonment and supervised release in transfer treaty cases shall not exceed the term of imprisonment imposed by the foreign court.”.

The Commentary to § 7B1.5 captioned “*Background*” is amended by striking “*or supervised release*”; by striking “*with supervision*” and inserting “*with probation*”; and by striking “*under supervision*” and inserting “*on probation*”.

Chapter Seven is amended by inserting at the end the following new Part C:

“Part C—Violations of Supervised Release

Introductory Commentary

At the time of original sentencing, the court may—and in some cases, must—impose a term of supervised release to follow the sentence of imprisonment. *See* 18 U.S.C. 3583(a). During that term, the court may receive allegations that the defendant has violated a condition of supervision. In responding to such allegations, addressing a violation found during revocation proceedings, and imposing a sentence upon revocation, the court should conduct the same kind of individualized assessment used ‘in determining whether to include a term of supervised release, and, if a term of supervised release is to be included, in determining the length of the term and the conditions of supervised release.’ *See* 18 U.S.C. 3583(c), (e); Application Note 1 to § 5D1.1 (Imposition of a Term of Supervised Release).

If the court finds that the defendant violated a condition of supervised release, it may continue the defendant on supervised release under existing

conditions, modify the conditions, extend the term, or revoke supervised release and impose a term of imprisonment. *See* 18 U.S.C. 3583(e)(3). The court also has authority to terminate a term of supervised release and discharge the defendant at any time after the expiration of one year of supervised release if it is satisfied that such action is warranted by the conduct of the defendant and the interest of justice. 18 U.S.C. 3583(e)(1).

Because supervised release is intended to promote rehabilitation and ease the defendant's transition back into the community, the Commission encourages courts—where possible—to consider a wide array of options to respond to non-compliant behavior and violations of the conditions of supervised release. These interim steps before revocation are intended to allow courts to address the defendant's failure to comply with court-imposed conditions and to better address the needs of the defendant while also maintaining public safety. If revocation is mandated by statute or the court otherwise determines revocation to be appropriate, the sentence imposed upon revocation should be tailored to address the failure to abide by the conditions of the court-ordered supervision; imposition of an appropriate punishment for new criminal conduct is not the primary goal of a revocation sentence. The determination of the appropriate sentence on any new criminal conviction that is also a basis of the violation should be a separate determination for the court having jurisdiction over such conviction.

§ 7C1.1. *Classification of Violations (Policy Statement)*

(a) There are four grades of supervised release violations:

(1) *Grade A Violations*—conduct constituting (A) a federal, state, or local offense punishable by a term of imprisonment exceeding one year that (i) is a crime of violence, (ii) is a controlled substance offense, or (iii) involves possession of a firearm or destructive device of a type described in 26 U.S.C. 5845(a); or (B) any other federal, state, or local offense punishable by a term of imprisonment exceeding twenty years;

(2) *Grade B Violations*—conduct constituting any other federal, state, or local offense punishable by a term of imprisonment exceeding one year;

(3) *Grade C Violations*—conduct constituting (A) a federal, state, or local offense punishable by a term of imprisonment of one year or less; or (B) a violation of any other condition of supervised release.

(b) Where there is more than one violation of the conditions of supervised release, or the violation includes conduct that constitutes more than one offense, the grade of the violation is determined by the violation having the most serious grade.

Commentary

Application Notes:

1. Under 18 U.S.C. § 3583(d), a mandatory condition of supervised release is that the defendant not commit another federal, state, or local crime. A violation of this condition may be charged whether or not the defendant has been the subject of a separate federal, state, or local prosecution for such conduct. The grade of violation does not depend upon the conduct that is the subject of criminal charges or of which the defendant is convicted in a criminal proceeding. Rather, the grade of the violation is to be based on the defendant's actual conduct.

2. 'Crime of violence' is defined in § 4B1.2 (Definitions of Terms Used in Section 4B1.1). *See* § 4B1.2(a) and Application Note 1 of the Commentary to § 4B1.2.

3. 'Controlled substance offense' is defined in § 4B1.2 (Definitions of Terms Used in Section 4B1.1). *See* § 4B1.2(b) and Application Note 1 of the Commentary to § 4B1.2.

4. A 'firearm or destructive device of a type described in 26 U.S.C. 5845(a)' includes a shotgun, or a weapon made from a shotgun, with a barrel or barrels of less than 18 inches in length; a weapon made from a shotgun or rifle with an overall length of less than 26 inches; a rifle, or a weapon made from a rifle, with a barrel or barrels of less than 16 inches in length; a machine gun; a muffler or silencer for a firearm; a destructive device; and certain large bore weapons.

5. Where the defendant is on supervised release in connection with a felony conviction, or has a prior felony conviction, possession of a firearm (other than a firearm of a type described in 26 U.S.C. 5845(a)) will generally constitute a Grade B violation, because 18 U.S.C. 922(g) prohibits a convicted felon from possessing a firearm. The term 'generally' is used in the preceding sentence, however, because there are certain limited exceptions to the applicability of 18 U.S.C. 922(g). *See, e.g.,* 18 U.S.C. 925(c).

§ 7C1.2. *Reporting of Violations of Supervised Release (Policy Statement)*

(a) The probation officer shall promptly report to the court any alleged Grade A or B violation.

(b) The probation officer shall promptly report to the court any alleged

Grade C violation unless the officer determines: (1) that such violation is minor, and not part of a continuing pattern of violations; and (2) that non-reporting will not present an undue risk to an individual or the public or be inconsistent with any directive of the court relative to the reporting of violations.

Commentary

Application Note:

1. Under subsection (b), a Grade C violation must be promptly reported to the court unless the probation officer makes an affirmative determination that the alleged violation meets the criteria for non-reporting. For example, an isolated failure to file a monthly report or a minor traffic infraction generally would not require reporting.

§ 7C1.3. *Responses to Violations of Supervised Release (Policy Statement)*

(a) *Report of Non-Compliance*.—Upon receiving a report that the defendant is in non-compliance with a condition of supervised release, the court should conduct an individualized assessment to determine what response, if any, is appropriate.

(b) *Finding of a Violation*.—Upon a finding of a violation for which revocation is required by statute (*see* 18 U.S.C. 3583(g)), the court shall revoke supervised release. Upon a finding of any other violation, the court should conduct an individualized assessment, taking into consideration the grade of the violation, to determine whether to revoke supervised release. Revocation is generally appropriate for a Grade A violation, often appropriate for a Grade B violation, and may be appropriate for a Grade C violation.

Commentary

Application Notes:

1. *Individualized Assessment*.—When making an individualized assessment under this section, the factors to be considered are the same as the factors considered in determining whether to impose a term of supervised release. *See* 18 U.S.C. 3583(c), (e); Application Note 1 to § 5D1.1 (Imposition of a Term of Supervised Release).

2. *Responses*.—Upon a report of non-compliance or a finding of a violation, the court may take any appropriate action provided under 18 U.S.C. § 3583, which includes extension, modification, revocation, or termination of supervised release. If revocation is not statutorily required, the court may also consider an informal response, such as issuing a warning while maintaining supervised release without modification, continuing the violation hearing to

provide the defendant time to come into compliance, or directing the defendant to additional resources needed to come into compliance.

3. *Issuing Summons.*—If the defendant's presence in court is required to address a report of non-compliance, the court should consider issuing a summons rather than an arrest warrant where appropriate.

§ 7C1.4. Revocation of Supervised Release (Policy Statement)

(a) In the case of a revocation of supervised release, the court shall conduct an individualized assessment to determine the appropriate length of the term of imprisonment, given the recommended range of imprisonment set forth in § 7C1.5 (Term of Imprisonment—Supervised Release (Policy Statement)).

(b) Any term of imprisonment imposed upon the revocation of supervised release generally should be ordered to be served consecutively to any sentence of imprisonment that the defendant is serving, whether or not the sentence of imprisonment being served resulted from the conduct that is the basis of the revocation of supervised release.

(c) If supervised release is revoked, the court may include a requirement that the defendant be placed on a term

of supervised release upon release from imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release. 18 U.S.C. 3583(h).

Commentary

Application Notes:

1. *Individualized Assessment.*—When making an individualized assessment under subsection (a), the factors to be considered are the same as the factors considered in determining whether to impose a term of supervised release. *See* 18 U.S.C. 3583(c), (e); Application Note 1 to § 5D1.1 (Imposition of a Term of Supervised Release).

2. The provisions for the revocation, as well as early termination and extension, of a term of supervised release are found in 18 U.S.C. 3583(e), (g)–(i). Under 18 U.S.C. 3583(h) (effective September 13, 1994), the court, in the case of revocation of supervised release, may order an additional period of supervised release to follow imprisonment.

3. In the case of a revocation based, at least in part, on a violation of a

condition specifically pertaining to community confinement, intermittent confinement, or home detention, use of the same or a less restrictive sanction is not recommended.

4. Any restitution, fine, community confinement, home detention, or intermittent confinement previously imposed in connection with the sentence for which revocation is ordered that remains unpaid or unserved at the time of revocation shall be ordered to be paid or served in addition to the sanction determined under § 7C1.5 (Term of Imprisonment—Supervised Release), and any such unserved period of community confinement, home detention, or intermittent confinement may be converted to an equivalent period of imprisonment.

§ 7C1.5. Term of Imprisonment—Supervised Release (Policy Statement)

Unless otherwise required by statute, and subject to an individualized assessment, the recommended range of imprisonment applicable upon revocation is set forth in the following table:

Supervised Release Revocation Table (In Months of Imprisonment)

CRIMINAL HISTORY CATEGORY *

Grade of violation	I	II	III	IV	V	VI
Grade C	3–9	4–10	5–11	6–12	7–13	8–14
Grade B	4–10	6–12	8–14	12–18	18–24	21–27
Grade A	(1) Except as provided in subdivision (2) below:					
	12–18	15–21	18–24	24–30	30–37	33–41
	(2) Where the defendant was on supervised release as a result of a sentence for a Class A felony:					
	24–30	27–33	30–37	37–46	46–57	51–63.

* The criminal history category is the category applicable at the time the defendant originally was sentenced to a term of supervised release.

Commentary

Application Notes:

1. The criminal history category to be used in determining the applicable range of imprisonment in the Supervised Release Revocation Table is the category determined at the time the defendant originally was sentenced to the term of supervision. The criminal history category is not to be recalculated because the ranges set forth in the Supervised Release Revocation Table have been designed to take into account that the defendant violated supervision. *Example:* A defendant, who was originally sentenced in 2022, was determined to have a criminal history

category of II due in part to having committed the offense ‘while under any criminal justice sentence.’ *See* § 4A1.1(d) (Criminal History Category) (Nov. 2021). For purposes of determining the applicable range of imprisonment in the Supervised Release Revocation Table, the defendant's criminal history category is category II, regardless of whether the defendant's criminal history category would be reduced for other purposes based on the retroactive application of Part A of Amendment 821 pursuant to § 1B1.10 (Reduction of Imprisonment as a Result of Amended Guideline Range (Policy Statement)). *See* USSG App. C,

Amendment 825 (effective November 1, 2023).

In the rare case in which no criminal history category was determined when the defendant originally was sentenced to the term of supervision being revoked, the court shall determine the criminal history category that would have been applicable at the time the defendant originally was sentenced to the term of supervision. (*See* the criminal history provisions of §§ 4A1.1–4B1.4.)

2. Departure from the applicable range of imprisonment in the Supervised Release Revocation Table may be warranted when the court departed from the applicable range for reasons set forth

in § 4A1.3 (Departures Based on Inadequacy of Criminal History Category) in originally imposing the sentence that resulted in supervised release. Additionally, an upward departure may be warranted when a defendant, subsequent to the federal sentence resulting in supervised release, has been sentenced for an offense that is not the basis of the violation proceeding.

3. In the case of a Grade C violation that is associated with a high risk of new felonious conduct (*e.g.*, a defendant, under supervised release for conviction of criminal sexual abuse, violates the condition that the defendant not associate with children by loitering near a schoolyard), an upward departure may be warranted.

4. Where the original sentence was the result of a downward departure (*e.g.*, as a reward for substantial assistance), or a charge reduction that resulted in a sentence below the guideline range applicable to the defendant's underlying conduct, an upward departure may be warranted.

5. Upon a finding that a defendant violated a condition of supervised release by being in possession of a controlled substance or firearm or by refusing to comply with a condition requiring drug testing, the court is required to revoke supervised release and impose a sentence that includes a term of imprisonment. 18 U.S.C. 3583(g).

6. The availability of appropriate substance abuse programs, or a defendant's current or past participation in such programs, may warrant an exception from the requirement of mandatory revocation and imprisonment under 18 U.S.C. 3583(g). 18 U.S.C. 3583(d).

§ 7C1.6. No Credit for Time Under Supervision (Policy Statement)

(a) Upon revocation of supervised release, no credit shall be given (toward any term of imprisonment ordered) for time previously served on post-release supervision. *See* 18 U.S.C. 3583(e)(3).

(b) *Provided*, that in the case of a person serving a period of supervised release on a foreign sentence under the provisions of 18 U.S.C. 4106A, credit shall be given for time on supervision prior to revocation, except that no credit shall be given for any time in escape or absconder status.

Commentary

Application Note:

1. Subsection (b) implements 18 U.S.C. 4106A(b)(1)(C), which provides that the combined periods of imprisonment and supervised release in

transfer treaty cases shall not exceed the term of imprisonment imposed by the foreign court.

Background: This section provides that time served on supervised release is not to be credited in the determination of any term of imprisonment imposed upon revocation. Other aspects of the defendant's conduct, such as compliance with supervision conditions and adjustment while under supervision, appropriately may be considered by the court in the determination of the sentence to be imposed within the applicable revocation range."

Reason for Amendment: This amendment updates the *Guidelines Manual's* approach to supervised release by revising Part D (Supervised Release) of Chapter Five (Determining the Sentence) and Chapter Seven (Violations of Probation and Supervised Release).

The Sentencing Reform Act of 1984 established "supervised release" as a tool a court could use to impose post-release supervision on a defendant sentenced to a term of imprisonment. *See* 18 U.S.C. 3583. The primary goal of supervised release is to "ease the defendant's transition into the community after the service of a long prison term for a particularly serious offense, or to provide rehabilitation to a defendant who has spent a fairly short period in prison . . . but still needs supervision and training programs after release." S. Rep. No. 225, 98th Cong., 1st Sess. 54 (1983). Supervised release also functions as an important tool to promote public safety. *See* 18 U.S.C. 3583(c), 3553(a)(2)(C).

While statutes mandate the imposition and minimum length of supervised release in some cases, courts generally have discretion to determine whether to impose supervised release, to set its length and conditions, modify those conditions, and to extend, revoke, or terminate the term. In making these decisions, the Act requires courts to examine a set of factors similar, but not identical, to those considered when imposing a sentence. *Compare* 18 U.S.C. 3553(a) *with* 18 U.S.C. 3583(c)–(e).

In November 2024, the Commission held a roundtable on supervised release attended by judges, retired federal probation officers, providers of reentry services, academics, federal probation, government and defense community representatives, and a reentry program graduate. The Commission also received extensive public comment and testimony from members of Congress, the Committee on Criminal Law of the Judicial Conference of the United States, the Department of Justice, the Federal

Public and Community Defenders, the Commission's advisory groups, law professors, currently and formerly incarcerated individuals, and other criminal justice system stakeholders.

The amendment makes several overarching changes in response to this feedback and consistent with the statutory purposes and framework. First, it emphasizes the importance of judges making individualized decisions about supervised release at all relevant stages—including imposition, modification or extension, and revocation. Second, it underscores the authority of courts, in consultation with the probation officer, to reassess supervised release decisions after a defendant's release from imprisonment, including decisions about the length and conditions of supervision. Third, it underscores the rehabilitative purposes of supervised release by dividing the provisions addressing violations of probation and violations of supervised release into separate parts of Chapter Seven and providing courts with greater discretion to respond to a violation of a condition of supervised release, including where appropriate, through alternatives to revocation and imprisonment.

The amendment's specific changes to Chapters Five and Seven are discussed further below.

Chapter Five, Part D (Supervised Release)

The amendment revises Chapter Five, Part D of the *Guidelines Manual* to provide courts with greater discretion to impose a term of supervised release that is appropriate for the individual defendant. The amendment adds Introductory Commentary, revises each existing guideline, and adds a new policy statement at § 5D1.4, which addresses extending or terminating supervised release or modifying the conditions thereof.

Introductory Commentary

The amendment adds Introductory Commentary to Part D of Chapter Five emphasizing that supervised release is intended to ease a defendant's transition into the community, provide needed rehabilitation, and promote public safety. It highlights the importance of conducting an individualized assessment to determine whether a defendant needs supervision and how to appropriately tailor the term and conditions, as required by 18 U.S.C. 3583(c).

§ 5D1.1 (Imposition of a Term of Supervised Release)

The amendment revises § 5D1.1 to provide greater judicial discretion in determining whether any term of supervised release is warranted. The amendment removes the requirement to impose supervised release whenever the sentence of imprisonment is more than one year and instead requires supervised release only when mandated by statute. In any other case, “the court should order a term of supervised release when warranted by an individualized assessment of the need for supervision.” Application Note 1 defines the “individualized assessment” by reference to the 18 U.S.C. 3553(a) factors that courts must consider under 18 U.S.C. 3583(c). The Commentary to § 5D1.1 continues to instruct courts to consider the defendant’s criminal history, substance abuse history, and history of domestic violence in determining whether to impose a term of supervised release.

These changes respond to widespread concern that supervised release often is ordered reflexively, potentially diverting supervision resources from individuals who most need them. Commission data shows that courts currently impose supervised release in most cases (82.5%). This focus on an individualized assessment aims to “assure that [individuals] who will need post-release supervision will receive it” while “prevent[ing] probation system resources from being wasted on supervisory services for releasees who do not need them,” as Congress intended. *See* S. Rep. No. 225, 98th Cong., 1st Sess. 54 (1983).

The amendment also adds new § 5D1.1(d), which instructs that “the court should state in open court the reasons for imposing or not imposing a term of supervised release,” consistent with 18 U.S.C. 3553(c).

Finally, it adds new Application Note 7, which alerts courts to the fact that the decision whether to impose a term of supervised release could affect subsequent application of First Step Act earned time credits.

§ 5D1.2 (Term of Supervised Release)

The amendment revises § 5D1.2 to provide courts with greater discretion in determining the appropriate length of the term of supervised release. It removes the recommended minimum terms by class of offense from § 5D1.2(a) and instead instructs the court to conduct an individualized assessment to determine the length of the term, which shall be not less than any statutorily required minimum term. It

continues to list the maximum terms of supervised release by offense class, noting that some statutes may provide for a different term. Application Note 1 provides that the factors considered for purposes of determining the length of the term are the same as the factors considered in determining whether to impose a term and—consistent with 18 U.S.C. 3583(c) and 3553(a)—instructs that the court should ensure the term “is sufficient, but not greater than necessary, to address the purposes of imposing supervised release on the defendant.”

Similar to the changes made to § 5D1.1, the amendment adds a new instruction to § 5D1.2 that “the court should state in open court the reasons for the length of the term imposed.”

Additionally, the amendment removes the policy statement recommending the statutory maximum term of supervised release for sex offense cases. Although imposition of a statutory maximum term may be warranted in certain cases, the amendment leaves the appropriate term to the court’s discretion. As a related change, the amendment deletes a similar maximum-term recommendation in the Commentary to § 4B1.5 (Repeat and Dangerous Sex Offender Against Minors), but it continues to recommend that treatment and monitoring be considered as special conditions of supervised release for individuals sentenced under that guideline.

Finally, in Application Notes 2 and 3, the amendment advises that Congress has authorized higher statutory maximum and/or minimum terms of supervised release for certain terrorism and sex offenses and for some drug offenses.

§ 5D1.3 (Conditions of Supervised Release)

Section 5D1.3 sets forth mandatory and discretionary conditions of supervised release. Discretionary conditions currently are further subdivided into “standard,” “special,” and additional conditions. The amendment restructures and revises the discretionary conditions of supervised release in four ways. First, it adds a general instruction at § 5D1.3(b)(1), which provides that the court “should conduct an individualized assessment to determine what, if any,” discretionary conditions are warranted. Second, in § 5D1.3(b)(2), it removes the instruction that “standard” conditions “are recommended for supervised release” and instead clarifies that they “may be modified, omitted, or expanded in appropriate cases.” Third, in § 5D1.3(b)(3), it removes the

recommendation of imposing “special” conditions for listed circumstances and instead provides that “[o]ne or more conditions from the . . . non-exhaustive list of ‘special conditions’ may be appropriate in a particular case, including” the described circumstances. Fourth, it removes the “additional conditions” subheading and incorporates those conditions into the list of “special” conditions in § 5D1.3(b)(3).

These changes emphasize that any standard, special, or other discretionary conditions of supervised release—*i.e.*, those not required by statute—should be imposed only when warranted by an individualized assessment, reflecting the requirements of 18 U.S.C. 3583(d) and feedback that certain conditions are at times imposed by default. The Commission nonetheless recognizes the value of a list of “standard” conditions that establish basic behavioral expectations and facilitate probation officers’ supervision. Accordingly, the amendment maintains the list of “standard” conditions without change but notes the court’s authority to impose and adjust them as appropriate.

The amendment also adds three “special” conditions in response to commenters’ concerns about cases where victims need special protection and cases where defendants could benefit from educational programs. The revised § 5D1.3 lists the following as “special” conditions: (1) a condition prohibiting the defendant from interacting with any victim if the instant conviction is a sex offense; (2) a condition prohibiting the defendant from interacting with any identifiable victim, applicable to all offenses generally; and (3) a condition that the defendant participate in a General Education Development (or similar) program, vocational training, or skills training if the court has reason to believe it would be appropriate and would equip the defendant for suitable employment.

New § 5D1.4 (Modification, Early Termination, and Extension of Supervised Release (Policy Statement))

The Commission sought to address with this amendment potential issues surrounding the fact that the terms and conditions of supervised release are imposed at original sentencing, often years before the defendant begins supervision. People and their circumstances may change in and after prison, such that the original term and conditions may no longer be appropriate after the defendant’s release. Courts are encouraged to consider modifying the terms and conditions of supervised

release whenever changed individual circumstances so warrant.

While Commentary to § 5D1.2 previously noted the court's authority to terminate or extend supervised release and encouraged courts to "exercise this authority in appropriate cases," the amendment adds a new policy statement at § 5D1.4 to more directly address a court's statutory authority to modify conditions or to terminate or extend the term of supervised release.

Subsection (a) (Modification of Conditions) restates the court's authority under 18 U.S.C. 3583(e)(2) to modify, reduce, or enlarge the conditions of supervised release and encourages the court to conduct an individualized assessment, in consultation with the probation officer, to determine whether any change to the conditions is warranted after a defendant's release from imprisonment. The Commission received feedback that while probation officers often meet with defendants approaching and after their release, judicial involvement varies by jurisdiction and individual court practice. The Commission believes that more consistent judicial participation in revisiting the conditions of supervised release will facilitate successful reintegration, increase compliance, and promote public safety, and, therefore, it is encouraged as a best practice.

To encourage appropriate use of early termination, subsection (b) (Early Termination) restates the court's authority under 18 U.S.C. 3583(e)(1) to terminate the remaining term of supervision any time after one year of supervised release if the court determines, following consultation with the government and the probation officer, that termination is warranted by the conduct of the defendant and in the interest of justice. Application Note 1(B) specifies factors a court might consider in determining whether to terminate the remaining term of supervised release, which are modeled in part after the factors in the *Guide to Judiciary Policy*, Vol. 8E, Ch. 3, § 360.20. Considering early termination at appropriate intervals will help ensure that resources are allocated to the individuals most in need of continued supervision and that the term is "sufficient, but not greater than necessary" to fulfill the purposes of imposing supervision. See 18 U.S.C. 3583(c); 18 U.S.C. 3553(a); USSG § 5D1.2 comment. (n.1) (as revised by this amendment).

Subsection (c) (Extending a Term of Supervised Release) provides that the court may extend the term of supervised release any time before the expiration of a term if less than the maximum term was imposed and extension is

warranted by an individualized assessment of the need for further supervision. Application Note 3 notes that extending a term may be more appropriate than revoking a term of supervised release in some cases.

Application Note 2 encourages the court, in coordination with the government, to ensure that any victim is reasonably, accurately, and timely notified, and provided, to the extent practicable, with an opportunity to be reasonably heard, unless any such victim previously requested not to be notified.

Conforming Changes

The amendment also makes conforming changes to § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)), § 5B1.3 (Conditions of Probation), § 5H1.3 (Mental and Emotional Conditions (Policy Statement)), and § 5H1.4 (Physical Condition, Including Drug or Alcohol Dependence or Abuse; Gambling Addiction (Policy Statement)).

Chapter Seven (Violations of Probation and Supervised Release)

The amendment revises Chapter Seven of the *Guidelines Manual* in two main ways to underscore the different purposes of probation and supervised release. First, it divides Chapter Seven into Part B (Violations of Probation) and Part C (Violations of Supervised Release) to reflect that probation serves all the goals of sentencing, including punishment, while supervised release primarily "fulfills rehabilitative ends, distinct from those served by incarceration." *United States v. Johnson*, 529 U.S. 53, 59 (2000). Second, it responds to stakeholder feedback on the need for a more flexible, individualized approach to supervised release violations by encouraging courts to consider a graduated response to a defendant's non-compliant behavior.

Chapter Seven—Part A (Introduction to Chapter Seven)

The amendment revises the Introduction to Chapter Seven to explain the Commission's updated approach that treats violations of probation and supervised release differently. To highlight the primarily rehabilitative purposes of supervised release, the new introductory language encourages courts to consider graduated responses to non-compliant behavior before revoking supervised release. The Commission believes that a graduated approach will better allocate resources, promote public safety, and facilitate the

reentry and rehabilitation of defendants on supervised release.

Chapter Seven—Part B (Violations of Probation)

The amendment removes references to supervised release from Chapter Seven, Part B and adds an example to the commentary of § 7B1.4 (criminal history calculation) that mirrors an addition to the commentary of new § 7C1.5. The provisions in Chapter Seven, Part B are otherwise unchanged, reflecting the Commission's determination that violations of probation and supervised release should be treated differently.

Chapter Seven—Part C (Violations of Supervised Release), Introductory Commentary

The amendment includes Introductory Commentary to new Part C of Chapter Seven, which explains that in responding to a report of non-compliance, addressing a violation found during revocation proceedings, or imposing a sentence upon revocation, the court should conduct the same kind of individualized assessment used when imposing supervised release. The introduction highlights the Commission's view that courts should consider a wide array of options to address violations of supervised release and that any sentence imposed upon revocation should be tailored to address the failure to abide by supervision conditions, as imposition of an appropriate punishment for new criminal conduct is not the primary goal of a revocation sentence.

New § 7C1.1 (Classification of Violations (Policy Statement)) and § 7C1.2 (Reporting of Violations of Supervised Release (Policy Statement))

The amendment duplicates §§ 7B1.1 and 7B1.2 into new §§ 7C1.1 and 7C1.2 and retains the three existing grades of supervised release violations.

§ 7C1.3 (Responses to Violations of Supervised Release (Policy Statement))

New § 7C1.3 identifies actions a court may take in response to a report of non-compliance with supervised release conditions or a finding of a violation. This new policy statement underscores the importance of using a graduated response to non-compliant behavior.

Subsection (a) instructs the court to conduct an individualized assessment to determine what, if any, response is appropriate to a report of non-compliance. New § 7C1.3(a) reflects feedback that supervision is a dynamic process and often benefits from regular

communication between the defendant, the probation officer, and the court.

Subsection (b) instructs the court to (1) revoke supervised release upon a finding of a violation for which revocation is required by statute, and (2) upon a finding of any other violation, conduct an individualized assessment, taking into consideration the grade of the violation, to determine whether to revoke supervised release for any other violation. New § 7C1.3(b) further provides that revocation is generally appropriate for a Grade A violation, often appropriate for a Grade B violation, and may be appropriate for a Grade C violation. While revocation previously was required for both Grade A or B violations—and Commission data shows similar rates of prison-only revocations for both grades in recent years, *see* U.S. Sent’g Comm., Federal Probation and Supervised Release Violations 35 & Fig.13 (2020)—the amendment provides flexibility to assess the seriousness of the underlying conduct and account for any jurisdictional differences affecting the grade assigned to similar conduct.

For both reports of non-compliance and findings of a violation, Application Note 2 references the court’s authority to “take any appropriate action provided under 18 U.S.C. 3583” and lists certain informal responses the court also may consider.

New Application Note 3 encourages the court to consider issuing a summons, rather than an arrest warrant, when appropriate, reflecting concerns that an arrest may result in unnecessary collateral consequences.

§ 7C1.4 (Revocation of Supervised Release (Policy Statement))

The amendment adds new § 7C1.4, which, in subsection (a), instructs the court to conduct an individualized assessment to determine the appropriate length of the term of imprisonment upon revocation, given the recommended ranges set forth in § 7C1.5 (Term of Imprisonment—Supervised Release (Policy Statement)).

Subsection (b) directs that any term of imprisonment “generally should” be ordered to be served consecutively to any sentence of imprisonment that the defendant is currently serving. This language replaces the former instruction that terms of imprisonment upon revocation “shall” be ordered to be served consecutively. This new provision continues to underscore the seriousness of violation conduct while reserving flexibility for courts to run sentences concurrently in extraordinary cases where justified.

Subsection (c) retains the instruction from the prior version of § 7B1.3(g)(2) which, consistent with 18 U.S.C. 3583(h), allows a court to reimpose a term of supervised release upon release from a term of imprisonment imposed upon revocation.

New Application Note 3 adopts and modifies § 7B1.3(c)(3) to state that “[i]n the case of a revocation based, at least in part, on a violation of a condition specifically pertaining to community confinement, intermittent confinement, or home detention, use of the same or a less restrictive sanction *generally* is not recommended” (emphasis added).

New Application Note 4 adopts and modifies § 7B1.3(d) to instruct that sentencing obligations that remain unpaid or unserved at the time of revocation “should” be ordered to be paid or served in addition to any sentence imposed upon revocation.

§ 7C1.5 (Term of Imprisonment—Supervised Release (Policy Statement))

The new § 7C1.5 adopts and modifies § 7B1.4 to set forth the Supervised Release Revocation Table and affirms the importance of conducting an individualized assessment to determine the length of a revocation sentence, in addition to consulting the recommended ranges in the Supervised Release Revocation Table.

The amendment adds an example to Application Note 1 to clarify that a defendant’s criminal history category for purposes of determining the applicable range of imprisonment is not recalculated to reflect an amendment made retroactive under § 1B1.10 (Reduction of Imprisonment as a Result of Amended Guideline Range (Policy Statement)). It adds the same example to the commentary to § 7B1.4 (Term of Imprisonment—Probation (Policy Statement)).

§ 7C1.6 (No Credit for Time Under Supervision (Policy Statement))

The amendment adds § 7C1.6, which duplicates § 7B1.5(b) and (c).

5. *Amendment:* Chapter One is amended by striking Part A as follows:

“Part A—Introduction and Authority Introductory Commentary

Subparts 1 and 2 of this Part provide an introduction to the Guidelines Manual describing the historical development and evolution of the federal sentencing guidelines. Subpart 1 sets forth the original introduction to the Guidelines Manual as it first appeared in 1987, with the inclusion of amendments made occasionally thereto between 1987 and 2000. The original

introduction, as so amended, explained a number of policy decisions made by the United States Sentencing Commission (‘Commission’) when it promulgated the initial set of guidelines and therefore provides a useful reference for contextual and historical purposes. Subpart 2 further describes the evolution of the federal sentencing guidelines after the initial guidelines were promulgated.

Subpart 3 of this Part states the authority of the Commission to promulgate federal sentencing guidelines, policy statements, and commentary.

1. Original Introduction to the Guidelines Manual

The following provisions of this Subpart set forth the original introduction to this manual, effective November 1, 1987, and as amended through November 1, 2000:

1. *Authority*

The United States Sentencing Commission (‘Commission’) is an independent agency in the judicial branch composed of seven voting and two non-voting, *ex officio* members. Its principal purpose is to establish sentencing policies and practices for the federal criminal justice system that will assure the ends of justice by promulgating detailed guidelines prescribing the appropriate sentences for offenders convicted of federal crimes.

The guidelines and policy statements promulgated by the Commission are issued pursuant to Section 994(a) of Title 28, United States Code.

2. *The Statutory Mission*

The Sentencing Reform Act of 1984 (Title II of the Comprehensive Crime Control Act of 1984) provides for the development of guidelines that will further the basic purposes of criminal punishment: deterrence, incapacitation, just punishment, and rehabilitation. The Act delegates broad authority to the Commission to review and rationalize the federal sentencing process.

The Act contains detailed instructions as to how this determination should be made, the most important of which directs the Commission to create categories of offense behavior and offender characteristics. An offense behavior category might consist, for example, of ‘bank robbery/committed with a gun/\$2500 taken.’ An offender characteristic category might be ‘offender with one prior conviction not resulting in imprisonment.’ The Commission is required to prescribe guideline ranges that specify an appropriate sentence for each class of convicted persons determined by

coordinating the offense behavior categories with the offender characteristic categories. Where the guidelines call for imprisonment, the range must be narrow: the maximum of the range cannot exceed the minimum by more than the greater of 25 percent or six months. 28 U.S.C. 994(b)(2).

Pursuant to the Act, the sentencing court must select a sentence from within the guideline range. If, however, a particular case presents atypical features, the Act allows the court to depart from the guidelines and sentence outside the prescribed range. In that case, the court must specify reasons for departure. 18 U.S.C. 3553(b). If the court sentences within the guideline range, an appellate court may review the sentence to determine whether the guidelines were correctly applied. If the court departs from the guideline range, an appellate court may review the reasonableness of the departure. 18 U.S.C. 3742. The Act also abolishes parole, and substantially reduces and restructures good behavior adjustments.

The Commission's initial guidelines were submitted to Congress on April 13, 1987. After the prescribed period of Congressional review, the guidelines took effect on November 1, 1987, and apply to all offenses committed on or after that date. The Commission has the authority to submit guideline amendments each year to Congress between the beginning of a regular Congressional session and May 1. Such amendments automatically take effect 180 days after submission unless a law is enacted to the contrary. 28 U.S.C. 994(p).

The initial sentencing guidelines and policy statements were developed after extensive hearings, deliberation, and consideration of substantial public comment. The Commission emphasizes, however, that it views the guideline-writing process as evolutionary. It expects, and the governing statute anticipates, that continuing research, experience, and analysis will result in modifications and revisions to the guidelines through submission of amendments to Congress. To this end, the Commission is established as a permanent agency to monitor sentencing practices in the federal courts.

3. *The Basic Approach (Policy Statement)*

To understand the guidelines and their underlying rationale, it is important to focus on the three objectives that Congress sought to achieve in enacting the Sentencing Reform Act of 1984. The Act's basic objective was to enhance the ability of the criminal justice system to combat

crime through an effective, fair sentencing system. To achieve this end, Congress first sought honesty in sentencing. It sought to avoid the confusion and implicit deception that arose out of the pre-guidelines sentencing system which required the court to impose an indeterminate sentence of imprisonment and empowered the parole commission to determine how much of the sentence an offender actually would serve in prison. This practice usually resulted in a substantial reduction in the effective length of the sentence imposed, with defendants often serving only about one-third of the sentence imposed by the court.

Second, Congress sought reasonable uniformity in sentencing by narrowing the wide disparity in sentences imposed for similar criminal offenses committed by similar offenders. Third, Congress sought proportionality in sentencing through a system that imposes appropriately different sentences for criminal conduct of differing severity.

Honesty is easy to achieve: the abolition of parole makes the sentence imposed by the court the sentence the offender will serve, less approximately fifteen percent for good behavior. There is a tension, however, between the mandate of uniformity and the mandate of proportionality. Simple uniformity—sentencing every offender to five years—destroys proportionality. Having only a few simple categories of crimes would make the guidelines uniform and easy to administer, but might lump together offenses that are different in important respects. For example, a single category for robbery that included armed and unarmed robberies, robberies with and without injuries, robberies of a few dollars and robberies of millions, would be far too broad.

A sentencing system tailored to fit every conceivable wrinkle of each case would quickly become unworkable and seriously compromise the certainty of punishment and its deterrent effect. For example: a bank robber with (or without) a gun, which the robber kept hidden (or brandished), might have frightened (or merely warned), injured seriously (or less seriously), tied up (or simply pushed) a guard, teller, or customer, at night (or at noon), in an effort to obtain money for other crimes (or for other purposes), in the company of a few (or many) other robbers, for the first (or fourth) time.

The list of potentially relevant features of criminal behavior is long; the fact that they can occur in multiple combinations means that the list of possible permutations of factors is virtually endless. The appropriate

relationships among these different factors are exceedingly difficult to establish, for they are often context specific. Sentencing courts do not treat the occurrence of a simple bruise identically in all cases, irrespective of whether that bruise occurred in the context of a bank robbery or in the context of a breach of peace. This is so, in part, because the risk that such a harm will occur differs depending on the underlying offense with which it is connected; and also because, in part, the relationship between punishment and multiple harms is not simply additive. The relation varies depending on how much other harm has occurred. Thus, it would not be proper to assign points for each kind of harm and simply add them up, irrespective of context and total amounts.

The larger the number of subcategories of offense and offender characteristics included in the guidelines, the greater the complexity and the less workable the system. Moreover, complex combinations of offense and offender characteristics would apply and interact in unforeseen ways to unforeseen situations, thus failing to cure the unfairness of a simple, broad category system. Finally, and perhaps most importantly, probation officers and courts, in applying a complex system having numerous subcategories, would be required to make a host of decisions regarding whether the underlying facts were sufficient to bring the case within a particular subcategory. The greater the number of decisions required and the greater their complexity, the greater the risk that different courts would apply the guidelines differently to situations that, in fact, are similar, thereby reintroducing the very disparity that the guidelines were designed to reduce.

In view of the arguments, it would have been tempting to retreat to the simple, broad category approach and to grant courts the discretion to select the proper point along a broad sentencing range. Granting such broad discretion, however, would have risked correspondingly broad disparity in sentencing, for different courts may exercise their discretionary powers in different ways. Such an approach would have risked a return to the wide disparity that Congress established the Commission to reduce and would have been contrary to the Commission's mandate set forth in the Sentencing Reform Act of 1984.

In the end, there was no completely satisfying solution to this problem. The Commission had to balance the comparative virtues and vices of broad, simple categorization and detailed,

complex subcategorization, and within the constraints established by that balance, minimize the discretionary powers of the sentencing court. Any system will, to a degree, enjoy the benefits and suffer from the drawbacks of each approach.

A philosophical problem arose when the Commission attempted to reconcile the differing perceptions of the purposes of criminal punishment. Most observers of the criminal law agree that the ultimate aim of the law itself, and of punishment in particular, is the control of crime. Beyond this point, however, the consensus seems to break down. Some argue that appropriate punishment should be defined primarily on the basis of the principle of 'just deserts.' Under this principle, punishment should be scaled to the offender's culpability and the resulting harms. Others argue that punishment should be imposed primarily on the basis of practical 'crime control' considerations. This theory calls for sentences that most effectively lessen the likelihood of future crime, either by deterring others or incapacitating the defendant.

Adherents of each of these points of view urged the Commission to choose between them and accord one primacy over the other. As a practical matter, however, this choice was unnecessary because in most sentencing decisions the application of either philosophy will produce the same or similar results.

In its initial set of guidelines, the Commission sought to solve both the practical and philosophical problems of developing a coherent sentencing system by taking an empirical approach that used as a starting point data estimating pre-guidelines sentencing practice. It analyzed data drawn from 10,000 presentence investigations, the differing elements of various crimes as distinguished in substantive criminal statutes, the United States Parole Commission's guidelines and statistics, and data from other relevant sources in order to determine which distinctions were important in pre-guidelines practice. After consideration, the Commission accepted, modified, or rationalized these distinctions.

This empirical approach helped the Commission resolve its practical problem by defining a list of relevant distinctions that, although of considerable length, was short enough to create a manageable set of guidelines. Existing categories are relatively broad and omit distinctions that some may believe important, yet they include most of the major distinctions that statutes and data suggest made a significant difference in sentencing decisions.

Relevant distinctions not reflected in the guidelines probably will occur rarely and sentencing courts may take such unusual cases into account by departing from the guidelines.

The Commission's empirical approach also helped resolve its philosophical dilemma. Those who adhere to a just deserts philosophy may concede that the lack of consensus might make it difficult to say exactly what punishment is deserved for a particular crime. Likewise, those who subscribe to a philosophy of crime control may acknowledge that the lack of sufficient data might make it difficult to determine exactly the punishment that will best prevent that crime. Both groups might therefore recognize the wisdom of looking to those distinctions that judges and legislators have, in fact, made over the course of time. These established distinctions are ones that the community believes, or has found over time, to be important from either a just deserts or crime control perspective.

The Commission did not simply copy estimates of pre-guidelines practice as revealed by the data, even though establishing offense values on this basis would help eliminate disparity because the data represent averages. Rather, it departed from the data at different points for various important reasons. Congressional statutes, for example, suggested or required departure, as in the case of the Anti-Drug Abuse Act of 1986 that imposed increased and mandatory minimum sentences. In addition, the data revealed inconsistencies in treatment, such as punishing economic crime less severely than other apparently equivalent behavior.

Despite these policy-oriented departures from pre-guidelines practice, the guidelines represent an approach that begins with, and builds upon, empirical data. The guidelines will not please those who wish the Commission to adopt a single philosophical theory and then work deductively to establish a simple and perfect set of categorizations and distinctions. The guidelines may prove acceptable, however, to those who seek more modest, incremental improvements in the status quo, who believe the best is often the enemy of the good, and who recognize that these guidelines are, as the Act contemplates, but the first step in an evolutionary process. After spending considerable time and resources exploring alternative approaches, the Commission developed these guidelines as a practical effort toward the achievement of a more honest, uniform, equitable,

proportional, and therefore effective sentencing system.

4. *The Guidelines' Resolution of Major Issues (Policy Statement)*

The guideline-drafting process required the Commission to resolve a host of important policy questions typically involving rather evenly balanced sets of competing considerations. As an aid to understanding the guidelines, this introduction briefly discusses several of those issues; commentary in the guidelines explains others.

(a) *Real Offense vs. Charge Offense Sentencing.*

One of the most important questions for the Commission to decide was whether to base sentences upon the actual conduct in which the defendant engaged regardless of the charges for which he was indicted or convicted ('real offense' sentencing), or upon the conduct that constitutes the elements of the offense for which the defendant was charged and of which he was convicted ('charge offense' sentencing). A bank robber, for example, might have used a gun, frightened bystanders, taken \$50,000, injured a teller, refused to stop when ordered, and raced away damaging property during his escape. A pure real offense system would sentence on the basis of all identifiable conduct. A pure charge offense system would overlook some of the harms that did not constitute statutory elements of the offenses of which the defendant was convicted.

The Commission initially sought to develop a pure real offense system. After all, the pre-guidelines sentencing system was, in a sense, this type of system. The sentencing court and the parole commission took account of the conduct in which the defendant actually engaged, as determined in a presentence report, at the sentencing hearing, or before a parole commission hearing officer. The Commission's initial efforts in this direction, carried out in the spring and early summer of 1986, proved unproductive, mostly for practical reasons. To make such a system work, even to formalize and rationalize the status quo, would have required the Commission to decide precisely which harms to take into account, how to add them up, and what kinds of procedures the courts should use to determine the presence or absence of disputed factual elements. The Commission found no practical way to combine and account for the large number of diverse harms arising in different circumstances; nor did it find a practical way to reconcile the need for a fair adjudicatory procedure with the need for a speedy sentencing process.

given the potential existence of hosts of adjudicated ‘real harm’ facts in many typical cases. The effort proposed as a solution to these problems required the use of, for example, quadratic roots and other mathematical operations that the Commission considered too complex to be workable. In the Commission’s view, such a system risked return to wide disparity in sentencing practice.

In its initial set of guidelines submitted to Congress in April 1987, the Commission moved closer to a charge offense system. This system, however, does contain a significant number of real offense elements. For one thing, the hundreds of overlapping and duplicative statutory provisions that make up the federal criminal law forced the Commission to write guidelines that are descriptive of generic conduct rather than guidelines that track purely statutory language. For another, the guidelines take account of a number of important, commonly occurring real offense elements such as role in the offense, the presence of a gun, or the amount of money actually taken, through alternative base offense levels, specific offense characteristics, cross references, and adjustments.

The Commission recognized that a charge offense system has drawbacks of its own. One of the most important is the potential it affords prosecutors to influence sentences by increasing or decreasing the number of counts in an indictment. Of course, the defendant’s actual conduct (that which the prosecutor can prove in court) imposes a natural limit upon the prosecutor’s ability to increase a defendant’s sentence. Moreover, the Commission has written its rules for the treatment of multicount convictions with an eye toward eliminating unfair treatment that might flow from count manipulation. For example, the guidelines treat a three-count indictment, each count of which charges sale of 100 grams of heroin or theft of \$10,000, the same as a single-count indictment charging sale of 300 grams of heroin or theft of \$30,000. Furthermore, a sentencing court may control any inappropriate manipulation of the indictment through use of its departure power. Finally, the Commission will closely monitor charging and plea agreement practices and will make appropriate adjustments should they become necessary.

(b) Departures.

The sentencing statute permits a court to depart from a guideline-specified sentence only when it finds ‘an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating

the guidelines that should result in a sentence different from that described.’ 18 U.S.C. 3553(b). The Commission intends the sentencing courts to treat each guideline as carving out a ‘heartland,’ a set of typical cases embodying the conduct that each guideline describes. When a court finds an atypical case, one to which a particular guideline linguistically applies but where conduct significantly differs from the norm, the court may consider whether a departure is warranted. Section 5H1.10 (Race, Sex, National Origin, Creed, Religion, and Socio-Economic Status), § 5H1.12 (Lack of Guidance as a Youth and Similar Circumstances), the third sentence of § 5H1.4 (Physical Condition, Including Drug or Alcohol Dependence or Abuse), the last sentence of § 5K2.12 (Coercion and Duress), and § 5K2.19 (Post-Sentencing Rehabilitative Efforts)* list several factors that the court cannot take into account as grounds for departure. With those specific exceptions, however, the Commission does not intend to limit the kinds of factors, whether or not mentioned anywhere else in the guidelines, that could constitute grounds for departure in an unusual case.

* **Note:** Section 5K2.19 (Post-Sentencing Rehabilitative Efforts) was deleted by Amendment 768, effective November 1, 2012. (See USSG App. C, amendment 768.)

The Commission has adopted this departure policy for two reasons. First, it is difficult to prescribe a single set of guidelines that encompasses the vast range of human conduct potentially relevant to a sentencing decision. The Commission also recognizes that the initial set of guidelines need not do so. The Commission is a permanent body, empowered by law to write and rewrite guidelines, with progressive changes, over many years. By monitoring when courts depart from the guidelines and by analyzing their stated reasons for doing so and court decisions with references thereto, the Commission, over time, will be able to refine the guidelines to specify more precisely when departures should and should not be permitted.

Second, the Commission believes that despite the courts’ legal freedom to depart from the guidelines, they will not do so very often. This is because the guidelines, offense by offense, seek to take account of those factors that the Commission’s data indicate made a significant difference in pre-guidelines sentencing practice. Thus, for example, where the presence of physical injury made an important difference in pre-guidelines sentencing practice (as in the case of robbery or assault), the

guidelines specifically include this factor to enhance the sentence. Where the guidelines do not specify an augmentation or diminution, this is generally because the sentencing data did not permit the Commission to conclude that the factor was empirically important in relation to the particular offense. Of course, an important factor (e.g., physical injury) may infrequently occur in connection with a particular crime (e.g., fraud). Such rare occurrences are precisely the type of events that the courts’ departure powers were designed to cover—unusual cases outside the range of the more typical offenses for which the guidelines were designed.

It is important to note that the guidelines refer to two different kinds of departure. The first involves instances in which the guidelines provide specific guidance for departure by analogy or by other numerical or non-numerical suggestions. The Commission intends such suggestions as policy guidance for the courts. The Commission expects that most departures will reflect the suggestions and that the courts of appeals may prove more likely to find departures ‘unreasonable’ where they fall outside suggested levels.

A second type of departure will remain unguided. It may rest upon grounds referred to in Chapter Five, Part K (Departures) or on grounds not mentioned in the guidelines. While Chapter Five, Part K lists factors that the Commission believes may constitute grounds for departure, the list is not exhaustive. The Commission recognizes that there may be other grounds for departure that are not mentioned; it also believes there may be cases in which a departure outside suggested levels is warranted. In its view, however, such cases will be highly infrequent.

(c) Plea Agreements.

Nearly ninety percent of all federal criminal cases involve guilty pleas and many of these cases involve some form of plea agreement. Some commentators on early Commission guideline drafts urged the Commission not to attempt any major reforms of the plea agreement process on the grounds that any set of guidelines that threatened to change pre-guidelines practice radically also threatened to make the federal system unmanageable. Others argued that guidelines that failed to control and limit plea agreements would leave untouched a ‘loophole’ large enough to undo the good that sentencing guidelines would bring.

The Commission decided not to make major changes in plea agreement practices in the initial guidelines, but rather to provide guidance by issuing

general policy statements concerning the acceptance of plea agreements in Chapter Six, Part B (Plea Agreements). The rules set forth in Fed. R. Crim. P. 11(e) govern the acceptance or rejection of such agreements. The Commission will collect data on the courts' plea practices and will analyze this information to determine when and why the courts accept or reject plea agreements and whether plea agreement practices are undermining the intent of the Sentencing Reform Act. In light of this information and analysis, the Commission will seek to further regulate the plea agreement process as appropriate. Importantly, if the policy statements relating to plea agreements are followed, circumvention of the Sentencing Reform Act and the guidelines should not occur.

The Commission expects the guidelines to have a positive, rationalizing impact upon plea agreements for two reasons. First, the guidelines create a clear, definite expectation in respect to the sentence that a court will impose if a trial takes place. In the event a prosecutor and defense attorney explore the possibility of a negotiated plea, they will no longer work in the dark. This fact alone should help to reduce irrationality in respect to actual sentencing outcomes. Second, the guidelines create a norm to which courts will likely refer when they decide whether, under Rule 11(e), to accept or to reject a plea agreement or recommendation.

(d) *Probation and Split Sentences.*

The statute provides that the guidelines are to 'reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense' 28 U.S.C. 994(j). Under pre-guidelines sentencing practice, courts sentenced to probation an inappropriately high percentage of offenders guilty of certain economic crimes, such as theft, tax evasion, antitrust offenses, insider trading, fraud, and embezzlement, that in the Commission's view are 'serious.'

The Commission's solution to this problem has been to write guidelines that classify as serious many offenses for which probation previously was frequently given and provide for at least a short period of imprisonment in such cases. The Commission concluded that the definite prospect of prison, even though the term may be short, will serve as a significant deterrent, particularly when compared with pre-guidelines practice where probation, not prison, was the norm.

More specifically, the guidelines work as follows in respect to a first offender. For offense levels one through eight, the sentencing court may elect to sentence the offender to probation (with or without confinement conditions) or to a prison term. For offense levels nine and ten, the court may substitute probation for a prison term, but the probation must include confinement conditions (community confinement, intermittent confinement, or home detention). For offense levels eleven and twelve, the court must impose at least one-half the minimum confinement sentence in the form of prison confinement, the remainder to be served on supervised release with a condition of community confinement or home detention.* The Commission, of course, has not dealt with the single acts of aberrant behavior that still may justify probation at higher offense levels through departures.**

* **Note:** The Commission expanded Zones B and C of the Sentencing Table in 2010 to provide a greater range of sentencing options to courts with respect to certain offenders. (See USSG App. C, amendment 738.) In 2018, the Commission added a new application note to the Commentary to § 5C1.1 (Imposition of a Term of Imprisonment), stating that if a defendant is a 'nonviolent first offender and the applicable guideline range is in Zone A or B of the Sentencing Table, the court should consider imposing a sentence other than a sentence of imprisonment.' (See USSG App. C, amendment 801.) In 2023, the Commission added a new Chapter Four guideline, at § 4C1.1 (Adjustment for Certain Zero-Point Offenders), providing a decrease of 2 levels from the offense level determined under Chapters Two and Three for 'zero-point' offenders who meet certain criteria. In addition, the Commission further amended the Commentary to § 5C1.1 to address the alternatives to incarceration available to 'zero-point' offenders by revising the application note in § 5C1.1 that addressed 'nonviolent first offenders' to focus on 'zero-point' offenders. (See USSG App. C, amendment 821.)

** **Note:** Although the Commission had not addressed 'single acts of aberrant behavior' at the time the Introduction to the Guidelines Manual originally was written, it subsequently addressed the issue in Amendment 603, effective November 1, 2000. (See USSG App. C, amendment 603.)

(e) *Multi-Count Convictions.*

The Commission, like several state sentencing commissions, has found it particularly difficult to develop guidelines for sentencing defendants convicted of multiple violations of law, each of which makes up a separate count in an indictment. The difficulty is that when a defendant engages in conduct that causes several harms, each additional harm, even if it increases the extent to which punishment is

warranted, does not necessarily warrant a proportionate increase in punishment. A defendant who assaults others during a fight, for example, may warrant more punishment if he injures ten people than if he injures one, but his conduct does not necessarily warrant ten times the punishment. If it did, many of the simplest offenses, for reasons that are often fortuitous, would lead to sentences of life imprisonment—sentences that neither just deserts nor crime control theories of punishment would justify.

Several individual guidelines provide special instructions for increasing punishment when the conduct that is the subject of that count involves multiple occurrences or has caused several harms. The guidelines also provide general rules for aggravating punishment in light of multiple harms charged separately in separate counts. These rules may produce occasional anomalies, but normally they will permit an appropriate degree of aggravation of punishment for multiple offenses that are the subjects of separate counts.

These rules are set out in Chapter Three, Part D (Multiple Counts). They essentially provide: (1) when the conduct involves fungible items (e.g., separate drug transactions or thefts of money), the amounts are added and the guidelines apply to the total amount; (2) when nonfungible harms are involved, the offense level for the most serious count is increased (according to a diminishing scale) to reflect the existence of other counts of conviction. The guidelines have been written in order to minimize the possibility that an arbitrary casting of a single transaction into several counts will produce a longer sentence. In addition, the sentencing court will have adequate power to prevent such a result through departures.

(f) *Regulatory Offenses.*

Regulatory statutes, though primarily civil in nature, sometimes contain criminal provisions in respect to particularly harmful activity. Such criminal provisions often describe not only substantive offenses, but also more technical, administratively-related offenses such as failure to keep accurate records or to provide requested information. These statutes pose two problems: first, which criminal regulatory provisions should the Commission initially consider, and second, how should it treat technical or administratively-related criminal violations?

In respect to the first problem, the Commission found that it could not comprehensively treat all regulatory

violations in the initial set of guidelines. There are hundreds of such provisions scattered throughout the United States Code. To find all potential violations would involve examination of each individual federal regulation. Because of this practical difficulty, the Commission sought to determine, with the assistance of the Department of Justice and several regulatory agencies, which criminal regulatory offenses were particularly important in light of the need for enforcement of the general regulatory scheme. The Commission addressed these offenses in the initial guidelines.

In respect to the second problem, the Commission has developed a system for treating technical recordkeeping and reporting offenses that divides them into four categories. First, in the simplest of cases, the offender may have failed to fill out a form intentionally, but without knowledge or intent that substantive harm would likely follow. He might fail, for example, to keep an accurate record of toxic substance transport, but that failure may not lead, nor be likely to lead, to the release or improper handling of any toxic substance. Second, the same failure may be accompanied by a significant likelihood that substantive harm will occur; it may make a release of a toxic substance more likely. Third, the same failure may have led to substantive harm. Fourth, the failure may represent an effort to conceal a substantive harm that has occurred.

The structure of a typical guideline for a regulatory offense provides a low base offense level (e.g., 6) aimed at the first type of recordkeeping or reporting offense. Specific offense characteristics designed to reflect substantive harms that do occur in respect to some regulatory offenses, or that are likely to occur, increase the offense level. A specific offense characteristic also provides that a recordkeeping or reporting offense that conceals a substantive offense will have the same offense level as the substantive offense.

(g) *Sentencing Ranges.*

In determining the appropriate sentencing ranges for each offense, the Commission estimated the average sentences served within each category under the pre-guidelines sentencing system. It also examined the sentences specified in federal statutes, in the parole guidelines, and in other relevant, analogous sources. The Commission's Supplementary Report on the Initial Sentencing Guidelines (1987) contains a comparison between estimates of pre-guidelines sentencing practice and sentences under the guidelines.

While the Commission has not considered itself bound by pre-

guidelines sentencing practice, it has not attempted to develop an entirely new system of sentencing on the basis of theory alone. Guideline sentences, in many instances, will approximate average pre-guidelines practice and adherence to the guidelines will help to eliminate wide disparity. For example, where a high percentage of persons received probation under pre-guidelines practice, a guideline may include one or more specific offense characteristics in an effort to distinguish those types of defendants who received probation from those who received more severe sentences. In some instances, short sentences of incarceration for all offenders in a category have been substituted for a pre-guidelines sentencing practice of very wide variability in which some defendants received probation while others received several years in prison for the same offense. Moreover, inasmuch as those who pleaded guilty under pre-guidelines practice often received lesser sentences, the guidelines permit the court to impose lesser sentences on those defendants who accept responsibility for their misconduct. For defendants who provide substantial assistance to the government in the investigation or prosecution of others, a downward departure may be warranted.

The Commission has also examined its sentencing ranges in light of their likely impact upon prison population. Specific legislation, such as the Anti-Drug Abuse Act of 1986 and the career offender provisions of the Sentencing Reform Act of 1984 (28 U.S.C. 994(h)), required the Commission to promulgate guidelines that will lead to substantial prison population increases. These increases will occur irrespective of the guidelines. The guidelines themselves, insofar as they reflect policy decisions made by the Commission (rather than legislated mandatory minimum or career offender sentences), are projected to lead to an increase in prison population that computer models, produced by the Commission and the Bureau of Prisons in 1987, estimated at approximately 10 percent over a period of ten years.

(h) *The Sentencing Table.*

The Commission has established a sentencing table that for technical and practical reasons contains 43 levels. Each level in the table prescribes ranges that overlap with the ranges in the preceding and succeeding levels. By overlapping the ranges, the table should discourage unnecessary litigation. Both prosecution and defense will realize that the difference between one level and another will not necessarily make a difference in the sentence that the court

imposes. Thus, little purpose will be served in protracted litigation trying to determine, for example, whether \$10,000 or \$11,000 was obtained as a result of a fraud. At the same time, the levels work to increase a sentence proportionately. A change of six levels roughly doubles the sentence irrespective of the level at which one starts. The guidelines, in keeping with the statutory requirement that the maximum of any range cannot exceed the minimum by more than the greater of 25 percent or six months (28 U.S.C. 994(b)(2)), permit courts to exercise the greatest permissible range of sentencing discretion. The table overlaps offense levels meaningfully, works proportionately, and at the same time preserves the maximum degree of allowable discretion for the court within each level.

Similarly, many of the individual guidelines refer to tables that correlate amounts of money with offense levels. These tables often have many rather than a few levels. Again, the reason is to minimize the likelihood of unnecessary litigation. If a money table were to make only a few distinctions, each distinction would become more important and litigation over which category an offender fell within would become more likely. Where a table has many small monetary distinctions, it minimizes the likelihood of litigation because the precise amount of money involved is of considerably less importance.

5. *A Concluding Note*

The Commission emphasizes that it drafted the initial guidelines with considerable caution. It examined the many hundreds of criminal statutes in the United States Code. It began with those that were the basis for a significant number of prosecutions and sought to place them in a rational order. It developed additional distinctions relevant to the application of these provisions and it applied sentencing ranges to each resulting category. In doing so, it relied upon pre-guidelines sentencing practice as revealed by its own statistical analyses based on summary reports of some 40,000 convictions, a sample of 10,000 augmented presentence reports, the parole guidelines, and policy judgments.

The Commission recognizes that some will criticize this approach as overly cautious, as representing too little a departure from pre-guidelines sentencing practice. Yet, it will cure wide disparity. The Commission is a permanent body that can amend the guidelines each year. Although the data available to it, like all data, are

imperfect, experience with the guidelines will lead to additional information and provide a firm empirical basis for consideration of revisions.

Finally, the guidelines will apply to more than 90 percent of all felony and Class A misdemeanor cases in the federal courts. Because of time constraints and the nonexistence of statistical information, some offenses that occur infrequently are not considered in the guidelines. Their exclusion does not reflect any judgment regarding their seriousness and they will be addressed as the Commission refines the guidelines over time.

2. Continuing Evolution and Role of the Guidelines

The Sentencing Reform Act of 1984 changed the course of federal sentencing. Among other things, the Act created the United States Sentencing Commission as an independent agency in the Judicial Branch, and directed it to develop guidelines and policy statements for sentencing courts to use when sentencing offenders convicted of federal crimes. Moreover, it empowered the Commission with ongoing responsibilities to monitor the guidelines, submit to Congress appropriate modifications of the guidelines and recommended changes in criminal statutes, and establish education and research programs. The mandate rested on congressional awareness that sentencing is a dynamic field that requires continuing review by an expert body to revise sentencing policies, in light of application experience, as new criminal statutes are enacted, and as more is learned about what motivates and controls criminal behavior.

This statement finds resonance in a line of Supreme Court cases that, taken together, echo two themes. The first theme is that the guidelines are the product of a deliberative process that seeks to embody the purposes of sentencing set forth in the Sentencing Reform Act, and as such they continue to play an important role in the sentencing court's determination of an appropriate sentence in a particular case. The Supreme Court alluded to this in *Mistretta v. United States*, 488 U.S. 361 (1989), which upheld the constitutionality of both the federal sentencing guidelines and the Commission against nondelegation and separation of powers challenges. Therein the Court stated:

Developing proportionate penalties for hundreds of different crimes by a virtually limitless array of offenders is precisely the sort of intricate, labor-

intensive task for which delegation to an expert body is especially appropriate. Although Congress has delegated significant discretion to the Commission to draw judgments from its analysis of existing sentencing practice and alternative sentencing models, . . . [w]e have no doubt that in the hands of the Commission 'the criteria which Congress has supplied are wholly adequate for carrying out the general policy and purpose' of the Act.

Id. at 379 (internal quotation marks and citations omitted).

The continuing importance of the guidelines in federal sentencing was further acknowledged by the Court in *United States v. Booker*, 543 U.S. 220 (2005), even as that case rendered the guidelines advisory in nature. In *Booker*, the Court held that the imposition of an enhanced sentence under the federal sentencing guidelines based on the sentencing judge's determination of a fact (other than a prior conviction) that was not found by the jury or admitted by the defendant violated the Sixth Amendment. The Court reasoned that an advisory guideline system, while lacking the mandatory features that Congress enacted, retains other features that help to further congressional objectives, including providing certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities, and maintaining sufficient flexibility to permit individualized sentences when warranted. The Court concluded that an advisory guideline system would 'continue to move sentencing in Congress' preferred direction, helping to avoid excessive sentencing disparities while maintaining flexibility sufficient to individualize sentences where necessary.' *Id.* at 264–65. An advisory guideline system continues to assure transparency by requiring that sentences be based on articulated reasons stated in open court that are subject to appellate review. An advisory guideline system also continues to promote certainty and predictability in sentencing, thereby enabling the parties to better anticipate the likely sentence based on the individualized facts of the case.

The continuing importance of the guidelines in the sentencing determination is predicated in large part on the Sentencing Reform Act's intent that, in promulgating guidelines, the Commission must take into account the purposes of sentencing as set forth in 18 U.S.C. 3553(a). *See* 28 U.S.C. 994(f), 991(b)(1). The Supreme Court reinforced this view in *Rita v. United States*, 551 U.S. 338 (2007), which held that a court of appeals may apply a presumption of

reasonableness to a sentence imposed by a district court within a properly calculated guideline range without violating the Sixth Amendment. In *Rita*, the Court relied heavily on the complementary roles of the Commission and the sentencing court in federal sentencing, stating:

[T]he presumption reflects the nature of the Guidelines-writing task that Congress set for the Commission and the manner in which the Commission carried out that task. In instructing both the *sentencing judge* and the *Commission* what to do, Congress referred to the basic sentencing objectives that the statute sets forth in 18 U.S.C. 3553(a) The provision also tells the sentencing judge to 'impose a sentence sufficient, but not greater than necessary, to comply with' the basic aims of sentencing as set out above. Congressional statutes then tell the *Commission* to write Guidelines that will carry out these same § 3553(a) objectives.

Id. at 347–48 (emphasis in original). The Court concluded that '[t]he upshot is that the sentencing statutes envision both the sentencing judge and the Commission as carrying out the same basic § 3553(a) objectives, the one, at retail, the other at wholesale[.]' *id.* at 348, and that the Commission's process for promulgating guidelines results in 'a set of Guidelines that seek to embody the § 3553(a) considerations, both in principle and in practice.' *Id.* at 350.

Consequently, district courts are required to properly calculate and consider the guidelines when sentencing, even in an advisory guideline system. *See* 18 U.S.C. 3553(a)(4), (a)(5); *Booker*, 543 U.S. at 264 ('The district courts, while not bound to apply the Guidelines, must . . . take them into account when sentencing.'). *Rita*, 551 U.S. at 351 (stating that a district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range); *Gall v. United States*, 552 U.S. 38, 49 (2007) ('As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark.'). The district court, in determining the appropriate sentence in a particular case, therefore, must consider the properly calculated guideline range, the grounds for departure provided in the policy statements, and then the factors under 18 U.S.C. 3553(a). *See Rita*, 551 U.S. at 351. The appellate court engages in a two-step process upon review. The appellate court 'first ensure[s] that the district court committed no significant procedural error, such as failing to

calculate (or improperly calculating) the Guidelines range . . . [and] then consider[s] the substantive reasonableness of the sentence imposed under an abuse-of-discretion standard[.] . . . tak[ing] into account the totality of the circumstances, including the extent of any variance from the Guidelines range.’ *Gall*, 552 U.S. at 51.

The second and related theme resonant in this line of Supreme Court cases is that, as contemplated by the Sentencing Reform Act, the guidelines are evolutionary in nature. They are the product of the Commission’s fulfillment of its statutory duties to monitor federal sentencing law and practices, to seek public input on the operation of the guidelines, and to revise the guidelines accordingly. As the Court acknowledged in *Rita*:

The Commission’s work is ongoing. The statutes and the Guidelines themselves foresee continuous evolution helped by the sentencing courts and courts of appeals in that process. The sentencing courts, applying the Guidelines in individual cases may depart (either pursuant to the Guidelines or, since *Booker*, by imposing a non-Guidelines sentence). The judges will set forth their reasons. The Courts of Appeals will determine the reasonableness of the resulting sentence. The Commission will collect and examine the results. In doing so, it may obtain advice from prosecutors, defenders, law enforcement groups, civil liberties associations, experts in penology, and others. And it can revise the Guidelines accordingly.

Rita, 551 U.S. at 350; *see also Booker*, 543 U.S. at 264 (‘[T]he Sentencing Commission remains in place, writing Guidelines, collecting information about actual district court sentencing decisions, undertaking research, and revising the Guidelines accordingly.’); *Gall*, 552 U.S. at 46 (‘[E]ven though the Guidelines are advisory rather than mandatory, they are, as we pointed out in *Rita*, the product of careful study based on extensive empirical evidence derived from the review of thousands of individual sentencing decisions.’).

Provisions of the Sentencing Reform Act promote and facilitate this evolutionary process. For example, pursuant to 28 U.S.C. 994(x), the Commission publishes guideline amendment proposals in the **Federal Register** and conducts hearings to solicit input on those proposals from experts and other members of the public. Pursuant to 28 U.S.C. 994(o), the Commission periodically reviews and revises the guidelines in consideration of comments it receives from members of the federal criminal justice system,

including the courts, probation officers, the Department of Justice, the Bureau of Prisons, defense attorneys and the federal public defenders, and in consideration of data it receives from sentencing courts and other sources. Statutory mechanisms such as these bolster the Commission’s ability to take into account fully the purposes of sentencing set forth in 18 U.S.C. 3553(a)(2) in its promulgation of the guidelines.

Congress retains authority to require certain sentencing practices and may exercise its authority through specific directives to the Commission with respect to the guidelines. As the Supreme Court noted in *Kimbrough v. United States*, 552 U.S. 85 (2007), ‘Congress has shown that it knows how to direct sentencing practices in express terms. For example, Congress has specifically required the Sentencing Commission to set Guideline sentences for serious recidivist offenders ‘at or near’ the statutory maximum.’ *Id.* at 103; 28 U.S.C. 994(h).

As envisioned by Congress, implemented by the Commission, and reaffirmed by the Supreme Court, the guidelines are the product of a deliberative and dynamic process that seeks to embody within federal sentencing policy the purposes of sentencing set forth in the Sentencing Reform Act. As such, the guidelines continue to be a key component of federal sentencing and to play an important role in the sentencing court’s determination of an appropriate sentence in any particular case.

3. Authority

§ 1A3.1. Authority

The guidelines, policy statements, and commentary set forth in this Guidelines Manual, including amendments thereto, are promulgated by the United States Sentencing Commission pursuant to: (1) section 994(a) of title 28, United States Code; and (2) with respect to guidelines, policy statements, and commentary promulgated or amended pursuant to specific congressional directive, pursuant to the authority contained in that directive in addition to the authority under section 994(a) of title 28, United States Code.”;

and inserting the following:

“Part A—Introduction and Authority

Introductory Commentary

The United States Sentencing Commission (‘Commission’) is an independent agency in the judicial branch composed of seven voting and two non-voting, *ex officio* members.

Congress directed the Commission to establish sentencing policies and practices for the federal criminal justice system and develop guidelines that further the purposes of sentencing. This part provides the statutory authority and mission of the Commission to promulgate federal sentencing guidelines, policy statements, and commentary.

The guidelines and policy statements promulgated by the Commission are issued pursuant to Section 994(a) of Title 28, United States Code, and are set forth in this Guidelines Manual.

The Guidelines Manual is structured to reflect the advisory sentencing scheme established following the Supreme Court’s decision in *United States v. Booker*, 543 U.S. 220 (2005), recognizing both essential steps of the court’s inquiry in imposing a sentence ‘sufficient, but not greater than necessary.’ *See* 18 U.S.C. 3553(a). The guidelines and policy statements set forth throughout the Guidelines Manual represent the first step in the sentencing process and are one of multiple factors judges must consider under 18 U.S.C. 3553(a).

Originally, consistent with the pre-*Booker* sentencing system, the Guidelines Manual included an additional step for determining a sentence by providing for a number of ‘departures,’ which were provisions that allowed the court to impose a sentence outside the applicable guideline range or otherwise different from the guideline sentence before the court’s consideration of the additional sentencing factors set forth in 18 U.S.C. 3553(a). The departure provisions were set forth throughout the Guidelines Manual as part of the commentary to numerous guidelines and in policy statements contained in Chapter Four, Part A, and Chapter Five, Parts H and K.

Following *Booker*, courts are permitted to impose sentences outside the applicable guideline range as ‘variances,’ both for reasons related to the operation of the applicable guideline provisions and in light of individual characteristics unrelated to guideline provisions. In the years after *Booker*, courts used departures with much less frequency in favor of variances.

In 2025, the Commission amended the Guidelines Manual to remove departures and policy statements relating to specific personal characteristics. (*See* USSG App. C, amendment 836). The Commission sought to make these changes to better align the requirements placed on the court and acknowledge the growing shift away from the use of departures

provided for within the Guidelines Manual in the wake of *Booker* and subsequent decisions. The Commission envisioned and framed this 2025 amendment to be outcome neutral, intending that judges who would have relied upon facts previously identified as a basis for a departure would continue to have the authority to rely upon such facts to impose a sentence outside of the applicable guideline range as a variance under 18 U.S.C. 3553(a). The removal of departures from the Guidelines Manual does not limit the information courts may consider in imposing a sentence nor does it reflect a view from the Commission that such facts should no longer inform a court for purposes of determining the appropriate sentence. In this regard, Appendix B of the Guidelines Manual compiles the departure provisions as they were last provided in the 2024 edition of the Manual. Similarly, information describing the historical development and evolution of the federal sentencing guidelines is also set forth in Appendix B of the Guidelines Manual.

1. Authority

§ 1A1.1. *Commission's Authority*

The Sentencing Reform Act of 1984 (Title II of the Comprehensive Crime Control Act of 1984) provides that a sentencing court 'shall impose a sentence sufficient, but not greater than necessary, to comply with' the purposes of sentencing: (1) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (2) deterrence; (3) protection of the public from further crimes; and (4) rehabilitation. *See* 18 U.S.C. 3553(a). The Act also provides for the development of guidelines by the Commission that further those purposes.

The guidelines, policy statements, and commentary set forth in this Guidelines Manual, including amendments thereto, are promulgated by the United States Sentencing Commission pursuant to: (1) section 994(a) of title 28, United States Code; and (2) with respect to guidelines, policy statements, and commentary promulgated or amended pursuant to specific congressional directive, pursuant to the authority contained in that directive in addition to the authority under section 994(a) of title 28, United States Code.

The Commission has ensured that the guidelines, policy statements, and commentary used to calculate the guideline range are: (1) neutral as to the race, sex, national origin, creed, and socioeconomic status of the defendant;

and (2) generally do not reflect consideration of education, vocational skills, employment record, family ties and responsibilities, and community ties of the defendant, in recommending a term of imprisonment or length of imprisonment. *See* 28 U.S.C. 994(d), (e).

Commentary

Background: The Sentencing Reform Act of 1984 (Title II of the Comprehensive Crime Control Act of 1984) (the 'Act') provides that courts must consider a variety of factors when imposing a sentence 'sufficient, but not greater than necessary' to comply with the purposes of sentencing as set forth in the Act—to reflect the seriousness of the offense, to promote respect for the law, to provide just punishment for the offense, deterrence, protection of the public from further crimes, and rehabilitation. 18 U.S.C. 3553(a). The Act provides for the development of guidelines that will (1) further these statutory purposes of sentencing; (2) provide certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct while maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices; and (3) reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process. 28 U.S.C. 994(f).

As background, Congress provided specific directives to the Commission when setting a guideline range for 'each category of offense involving each category of defendant.' 28 U.S.C. 994(b)(1).

First, the Act directs the Commission to consider, for purposes of establishing categories of offenses, whether the following seven matters, 'among others,' have any relevance to the nature, extent, place of service, or other aspects of an appropriate sentence: (1) the grade of the offense; (2) the circumstances under which the offense was committed which mitigate or aggravate the seriousness of the offense; (3) the nature and degree of the harm caused by the offense, including whether it involved property, irreplaceable property, a person, a number of persons, or a breach of public trust; (4) the community view of the gravity of the offense; (5) the public concern generated by the offense; (6) the deterrent effect a particular sentence may have on the commission of the offense by others; and (7) the current

incidence of the offense in the community and in the Nation as a whole. *See* 28 U.S.C. 994(c).

Second, the Act directs the Commission to consider, for purposes of establishing categories of defendants, whether the following eleven matters, 'among others,' have any relevance to the nature, extent, place of service, or other aspects of an appropriate sentence, and to take them into account in the guidelines and policy statements only to the extent that they do have relevance: (1) age; (2) education; (3) vocational skills; (4) mental and emotional condition to the extent that such condition mitigates the defendant's culpability or to the extent that such condition is otherwise plainly relevant; (5) physical condition, including drug dependence; (6) previous employment record; (7) family ties and responsibilities; (8) community ties; (9) role in the offense; (10) criminal history; and (11) degree of dependence upon criminal activity for a livelihood. *See* 28 U.S.C. 994(d). The Act also directs the Commission to ensure that the guidelines and policy statements 'are entirely neutral' as to five characteristics—race, sex, national origin, creed, and socioeconomic status. *See* 28 U.S.C. 994(d).

Third, the Act directs the Commission to ensure that the guidelines and policy statements, in recommending a term of imprisonment or length of a term of imprisonment, reflect the 'general inappropriateness' of considering five of those characteristics—education; vocational skills; employment record; family ties and responsibilities; and community ties. *See* 28 U.S.C. 994(e).

In formulating the guidelines used to calculate the guideline range, the Commission remains cognizant of these detailed instructions directing the Commission to consider whether, and to what extent, specific offense-based and offender-based factors are relevant to sentencing. *See* 28 U.S.C. 994(c), (d). Similarly, the Commission has ensured that the guidelines, policy statements, and commentary used to calculate the guideline range are: (1) neutral as to the race, sex, national origin, creed, and socioeconomic status of the defendant; and (2) generally do not reflect consideration of education, vocational skills, employment record, family ties and responsibilities, and community ties of the defendant in recommending a term of imprisonment or length of imprisonment. *See* 28 U.S.C. 994(d), (e).

The requirements and limitations imposed upon the Commission by 28 U.S.C. 994, however, do not apply to the sentencing court. To the contrary, Congress set forth the factors that a

court must consider in imposing a sentence that is ‘sufficient but not greater than necessary’ to comply with the purposes of sentencing in 18 U.S.C. 3553(a). These statutory factors permit a sentencing court to consider the ‘widest possible breadth of information’ about a defendant ensuring the court is in ‘possession of the fullest information possible concerning the defendant’s life and characteristics.’ *See Pepper v. United States*, 562 U.S. 476, 488 (2011); *see also Concepcion v. United States*, 597 U.S. 481, 493 (2022). Accordingly, the application instructions set forth in the following part are structured to reflect this two-step process whereby the sentencing court must first correctly calculate the applicable guideline range as the ‘starting point and initial benchmark’ and then must determine an appropriate sentence upon consideration of all the factors set forth by Congress in 18 U.S.C. 3553(a). *See Gall v. United States*, 552 U.S. 38, 49–51 (2007).”.

Section 1B1.1(a) is amended—by inserting at the beginning the following new heading: “*Step One: Calculation of Guideline Range and Determination of Sentencing Requirements and Options under the Guidelines Manual.*—”;

in paragraph 5 by striking “Apply the adjustment as appropriate for the defendant’s acceptance of responsibility from Part E of Chapter Three” and inserting “Apply the adjustment for the defendant’s acceptance of responsibility and the reduction pursuant to an early disposition program, as appropriate, from Parts E and F of Chapter Three”;

and by inserting at the end the following new paragraph (9):

“(9) Apply, as appropriate, Part K of Chapter Five.”.

Section 1B1.1 is amended by striking subsections (b) and (c) as follows:

“(b) The court shall then consider Parts H and K of Chapter Five, Specific Offender Characteristics and Departures, and any other policy statements or commentary in the guidelines that might warrant consideration in imposing sentence. *See* 18 U.S.C. 3553(a)(5).

(c) The court shall then consider the applicable factors in 18 U.S.C. 3553(a) taken as a whole. *See* 18 U.S.C. 3553(a).”;

and inserting the following new subsection (b):

“(b) *Step Two: Consideration of Factors Set Forth in 18 U.S.C. 3553(a).*—After determining the kinds of sentence and guidelines range pursuant to subsection (a) of § 1B1.1 (Application Instructions) and 18 U.S.C. 3553(a)(4) and (5), the court shall consider the

other applicable factors in 18 U.S.C. 3553(a) to determine a sentence that is sufficient, but not greater than necessary, to comply with the purposes of sentencing. Specifically, as set forth in 18 U.S.C. 3553(a), in determining the particular sentence to be imposed, the court shall also consider—

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed to meet the purposes of sentencing listed in 18 U.S.C. 3553(a)(2);

(3) the kinds of sentences available;

(4) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(5) the need to provide restitution to any victims of the offense.”.

The Commentary to § 1B1.1 captioned “Application Notes” is amended in Note 1—

by striking subparagraph (F) as follows:

“(F) ‘Departure’ means (i) for purposes other than those specified in clause (ii), imposition of a sentence outside the applicable guideline range or of a sentence that is otherwise different from the guideline sentence; and (ii) for purposes of § 4A1.3 (Departures Based on Inadequacy of Criminal History Category), assignment of a criminal history category other than the otherwise applicable criminal history category, in order to effect a sentence outside the applicable guideline range. ‘Depart’ means grant a departure.

‘Downward departure’ means departure that effects a sentence less than a sentence that could be imposed under the applicable guideline range or a sentence that is otherwise less than the guideline sentence. ‘Depart downward’ means grant a downward departure.

‘Upward departure’ means departure that effects a sentence greater than a sentence that could be imposed under the applicable guideline range or a sentence that is otherwise greater than the guideline sentence. ‘Depart upward’ means grant an upward departure.”;

and by redesignating subparagraphs (G) through (M) as subparagraphs (F) through (L), respectively.

The Commentary to § 1B1.1 captioned “Background” is amended by striking the following:

“The court must impose a sentence ‘sufficient, but not greater than necessary,’ to comply with the purposes of sentencing set forth in 18 U.S.C. 3553(a)(2). *See* 18 U.S.C. 3553(a). Subsections (a), (b), and (c) are structured to reflect the three-step

process used in determining the particular sentence to be imposed. If, after step (c), the court imposes a sentence that is outside the guidelines framework, such a sentence is considered a ‘variance’. *See Irizarry v. United States*, 553 U.S. 708, 709–16 (2008) (describing within-range sentences and departures as ‘sentences imposed under the framework set out in the Guidelines’).”;

and inserting the following:

“The court must impose a sentence ‘sufficient, but not greater than necessary,’ to comply with the purposes of sentencing set forth in 18 U.S.C. 3553(a)(2). *See* 18 U.S.C. 3553(a). This guideline is structured to reflect the advisory sentencing scheme established following the Supreme Court’s decision in *United States v. Booker*, 543 U.S. 220 (2005), by setting forth both essential steps of the court’s inquiry in making this determination.

Originally, the guidelines were mandatory, with limited exceptions. *See* 18 U.S.C. 3553(b). Later, in *United States v. Booker*, 543 U.S. 220 (2005), the Supreme Court held that the provision in 18 U.S.C. 3553(b) making the guidelines mandatory was unconstitutional. Following *Booker*, district courts are first required to properly calculate and consider the guidelines when sentencing. *See* 18 U.S.C. 3553(a)(4), (a)(5); *Booker*, 543 U.S. at 264 (‘The district courts, while not bound to apply the Guidelines, must . . . take them into account when sentencing.’); *Rita v. United States*, 551 U.S. 338, 351 (2007) (stating that a district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range); *Gall v. United States*, 552 U.S. 38, 49 (2007) (‘As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark.’); *Peugh v. United States*, 569 U.S. 530 (2013) (noting that ‘the post-*Booker* federal sentencing system adopted procedural measures that make the guidelines the ‘lodestone’ of sentencing’). Step one sets forth the steps for properly calculating the guidelines.

District courts are then required to fully and carefully consider the additional factors set forth in 18 U.S.C. 3553(a), which include: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed to meet the purposes of sentencing listed in 18 U.S.C. 3553(a)(2); (3) the kinds of sentence available; (4) the need to avoid unwarranted sentence disparities among

defendants with similar records who have been found guilty of similar conduct; and (5) the need to provide restitution to any victims of the offense. *See Rita*, 551 U.S. at 351. Step two, as set forth in subsection (b), reflects this step of the sentencing process.”.

The Commentary to § 1B1.2 captioned “Application Notes” is amended in Note 1 by striking “the court would be forced to use an artificial guideline and then depart from it” and inserting “the court would be forced to use an artificial guideline and then impose a sentence that is greater than the otherwise applicable guideline range”; and by striking “the probation officer might need to calculate the robbery guideline to assist the court in determining the appropriate degree of departure” and inserting “the probation officer might need to calculate the robbery guideline to assist the court in determining an appropriate sentence”.

Section 1B1.3(b) is amended in the heading by striking “*Five (Determining the Sentence)*” and inserting “*Five (Determining the Sentencing Range and Options Under the Guidelines)*”.

The Commentary to § 1B1.3 captioned “Application Notes” is amended—

in Note 3(B) by striking “The Commission does not foreclose the possibility that there may be some unusual set of circumstances in which the exclusion of such conduct may not adequately reflect the defendant’s culpability; in such a case, an upward departure may be warranted.”;

and in Note 6(B) by striking “In a case in which creation of risk is not adequately taken into account by the applicable offense guideline, an upward departure may be warranted. *See generally* § 1B1.4 (Information to be Used in Imposing Sentence); § 5K2.0 (Grounds for Departure).”.

Section 1B1.4 is amended— in the heading by striking “(*Selecting a Point Within the Guideline Range or Departing from the Guidelines*)”;

and by striking “In determining the sentence to impose within the guideline range, or whether a departure from the guidelines is warranted” and inserting “In determining the sentence to impose”.

The Commentary to 1B1.4 captioned “Background” is amended by striking the following:

“This section distinguishes between factors that determine the applicable guideline sentencing range (§ 1B1.3) and information that a court may consider in imposing a sentence within that range. The section is based on 18 U.S.C. 3661, which recodifies 18 U.S.C. 3577. The recodification of this 1970 statute in 1984 with an effective date of 1987 (99

Stat. 1728), makes it clear that Congress intended that no limitation would be placed on the information that a court may consider in imposing an appropriate sentence under the future guideline sentencing system. A court is not precluded from considering information that the guidelines do not take into account in determining a sentence within the guideline range or from considering that information in determining whether and to what extent to depart from the guidelines. For example, if the defendant committed two robberies, but as part of a plea negotiation entered a guilty plea to only one, the robbery that was not taken into account by the guidelines would provide a reason for sentencing at the top of the guideline range and may provide a reason for an upward departure. Some policy statements do, however, express a Commission policy that certain factors should not be considered for any purpose, or should be considered only for limited purposes. *See, e.g.*, Chapter Five, Part H (Specific Offender Characteristics).”;

and inserting the following:

“This section distinguishes between factors that determine the applicable guideline sentencing range (§ 1B1.3) and information that a court may consider in imposing a sentence. The section is based on 18 U.S.C. 3661, which recodifies 18 U.S.C. 3577. The recodification of this 1970 statute in 1984 with an effective date of 1987 (99 Stat. 1728), makes it clear that Congress intended that no limitation would be placed on the information that a court may consider in imposing an appropriate sentence under the future guideline sentencing system. A court is not precluded from considering information that the guidelines do not take into account. For example, if the defendant committed two robberies, but as part of a plea negotiation entered a guilty plea to only one, the robbery that was not taken into account by the guidelines may provide a reason for sentencing at the top of, or above, the guideline range.”.

Section 1B1.7 is amended by striking the following:

“The Commentary that accompanies the guideline sections may serve a number of purposes. First, it may interpret the guideline or explain how it is to be applied. Failure to follow such commentary could constitute an incorrect application of the guidelines, subjecting the sentence to possible reversal on appeal. *See* 18 U.S.C. 3742. Second, the commentary may suggest circumstances which, in the view of the Commission, may warrant departure from the guidelines. Such commentary

is to be treated as the legal equivalent of a policy statement. Finally, the commentary may provide background information, including factors considered in promulgating the guideline or reasons underlying promulgation of the guideline. As with a policy statement, such commentary may provide guidance in assessing the reasonableness of any departure from the guidelines.”;

and inserting the following:

“The Commentary that accompanies the guideline sections may serve a number of purposes. It may interpret the guideline or explain how it is to be applied. Failure to follow such commentary could constitute an incorrect application of the guidelines, subjecting the sentence to possible reversal on appeal. *See* 18 U.S.C. 3742. In addition, the commentary may provide background information, including factors considered in promulgating the guideline or reasons underlying promulgation of the guideline.”.

Section 1B1.8(b)(5) is amended by striking “in determining whether, or to what extent, a downward departure from the guidelines is warranted pursuant to a government motion under § 5K1.1 (Substantial Assistance to Authorities)” and inserting “in determining whether, or to what extent, to impose a sentence that is below the otherwise applicable guideline range pursuant to a government motion under § 5K1.1 (Substantial Assistance to Authorities)”.

The Commentary to § 1B1.8 captioned “Application Notes” is amended in Note 1 by striking “Although the guideline itself affects only the determination of the guideline range, the policy of the Commission, as a corollary, is that information prohibited from being used to determine the applicable guideline range shall not be used to depart upward. In contrast, subsection (b)(5) provides that consideration of such information is appropriate in determining whether, and to what extent, a downward departure is warranted pursuant to a government motion under § 5K1.1 (Substantial Assistance to Authorities); *e.g.*, a court may refuse to depart downward on the basis of such information.” and inserting “In contrast, subsection (b)(5) provides that consideration of such information is appropriate in determining whether, or to what extent, to impose a sentence that is below the otherwise applicable guideline range pursuant to a government motion under § 5K1.1 (Substantial Assistance to Authorities). For example, a court may refuse to

impose a sentence that is below the otherwise applicable guideline range on the basis of such information.”.

The Commentary to § 1B1.9 captioned “Application Notes” is amended in Note 2 by adding at the end of the paragraph the following: “For example, in a case where the defendant wore or displayed an official, or counterfeit official, insignia or uniform received in violation of 18 U.S.C. 716 while committing an offense covered by the guidelines, it would be appropriate for the court to consider this fact as an aggravating factor in determining the appropriate sentence even though section 716 is a Class B misdemeanor not covered by the guidelines. *See* Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109–162, 1191(c).”.

The Commentary to § 1B1.10 captioned “Application Notes,” as amended by Amendment 4 of this document, is further amended—in Note 1(A) by striking “(i.e., the guideline range that corresponds to the offense level and criminal history category determined pursuant to § 1B1.1(a), which is determined before consideration of any departure provision in the Guidelines Manual or any variance)” and inserting “(i.e., the guideline range that corresponds to the offense level and criminal history category determined pursuant to § 1B1.1(a)(1)–(7), which is determined before consideration of Part K of Chapter Five and § 1B1.1(b))”;

and in Note 3 by striking “(constituting a downward departure or variance)” and inserting “(constituting a sentence that is below the otherwise applicable guideline range)”; by striking “(representing a downward departure of 20 percent” and inserting “(representing a reduction of 20 percent””; and by striking “(authorizing, upon government motion, a downward departure based on the defendant’s substantial assistance)” and inserting “(authorizing the court, upon government motion, to impose a sentence that is below the otherwise applicable guideline range based on the defendant’s substantial assistance)”.

Section 1B1.12 is amended by striking “sufficient to warrant an upward departure from that guideline range. *United States v. R.L.C.*, 503 U.S. 291 (1992)” and inserting “sufficient to warrant imposing a sentence greater than that guideline range in determining the appropriate sentence to impose pursuant to 18 U.S.C. 3553(a). *See* 18 U.S.C. 5037(c); *United States v. R.L.C.*, 503 U.S. 291 (1992)”.

Chapter Two is amended in the Introductory Commentary by striking “Chapter Four, Parts B (Career

Offenders and Criminal Livelihood) and C (Adjustment for Certain Zero-Point Offenders); and Chapter Five, Part K (Departures)” and inserting: “and Chapter Four, Parts B (Career Offenders and Criminal Livelihood) and C (Adjustment for Certain Zero-Point Offenders)”.

The Commentary to § 2A1.1 captioned “Application Notes” is amended in Note 2 by striking the following:

“*Imposition of Life Sentence.*—

(A) *Offenses Involving Premeditated Killing.*—In the case of premeditated killing, life imprisonment is the appropriate sentence if a sentence of death is not imposed. A downward departure would not be appropriate in such a case. A downward departure from a mandatory statutory term of life imprisonment is permissible only in cases in which the government files a motion for a downward departure for the defendant’s substantial assistance, as provided in 18 U.S.C. 3553(e).

(B) *Felony Murder.*—If the defendant did not cause the death intentionally or knowingly, a downward departure may be warranted. For example, a downward departure may be warranted if in robbing a bank, the defendant merely passed a note to the teller, as a result of which the teller had a heart attack and died. The extent of the departure should be based upon the defendant’s state of mind (e.g., recklessness or negligence), the degree of risk inherent in the conduct, and the nature of the underlying offense conduct. However, departure below the minimum guideline sentence provided for second degree murder in § 2A1.2 (Second Degree Murder) is not likely to be appropriate. Also, because death obviously is an aggravating factor, it necessarily would be inappropriate to impose a sentence at a level below that which the guideline for the underlying offense requires in the absence of death.”;

and inserting the following:

“*Offenses Involving Premeditated Killing.*—In the case of premeditated killing, life imprisonment is the appropriate sentence if a sentence of death is not imposed. If a mandatory statutory term of life imprisonment applies, a lesser term of imprisonment is permissible only in cases in which the government files a motion pertaining to the defendant’s substantial assistance, as provided in 18 U.S.C. 3553(e).”.

The Commentary to § 2A1.2 is amended by striking the Commentary captioned “Application Note” in its entirety as follows:

“*Application Note:*

1. *Upward Departure Provision.*—If the defendant’s conduct was

exceptionally heinous, cruel, brutal, or degrading to the victim, an upward departure may be warranted. *See* § 5K2.8 (Extreme Conduct).”.

The Commentary to § 2A2.1 captioned “Application Notes” is amended—in the caption by striking “Notes” and inserting “Note”;

and by striking Note 2 as follows:

“2. *Upward Departure Provision.*—If the offense created a substantial risk of death or serious bodily injury to more than one person, an upward departure may be warranted.”.

The Commentary to § 2A2.4 captioned “Application Notes” is amended by striking Note 3 as follows:

“3. *Upward Departure Provision.*—The base offense level does not assume any significant disruption of governmental functions. In situations involving such disruption, an upward departure may be warranted. *See* § 5K2.7 (Disruption of Governmental Function).”.

The Commentary to § 2A3.1 captioned “Application Notes” is amended by striking Note 6 as follows:

“6. *Upward Departure Provision.*—If a victim was sexually abused by more than one participant, an upward departure may be warranted. *See* § 5K2.8 (Extreme Conduct).”.

The Commentary to § 2A3.2 captioned “Application Notes” is amended by striking Note 6 as follows:

“6. *Upward Departure Consideration.*—There may be cases in which the offense level determined under this guideline substantially understates the seriousness of the offense. In such cases, an upward departure may be warranted. For example, an upward departure may be warranted if the defendant committed the criminal sexual act in furtherance of a commercial scheme such as pandering, transporting persons for the purpose of prostitution, or the production of pornography.”.

The Commentary to § 2A3.6 captioned “Application Notes” is amended by striking Note 4 as follows:

“4. *Upward Departure.*—In a case in which the guideline sentence is determined under subsection (a), a sentence above the minimum term required by 18 U.S.C. 2250(d) is an upward departure from the guideline sentence. A departure may be warranted, for example, in a case involving a sex offense committed against a minor or if the offense resulted in serious bodily injury to a minor.”.

The Commentary to § 2A5.3 captioned “Application Notes” is amended—in the caption by striking “Notes” and inserting “Note”;

and by striking Note 2 as follows:

“2. If the conduct intentionally or recklessly endangered the safety of the aircraft or passengers, an upward departure may be warranted.”.

The Commentary to § 2A6.1 captioned “Application Notes” is amended by striking Note 4 as follows:

“4. *Departure Provisions.*—

(A) *In General.*—The Commission recognizes that offenses covered by this guideline may include a particularly wide range of conduct and that it is not possible to include all of the potentially relevant circumstances in the offense level. Factors not incorporated in the guideline may be considered by the court in determining whether a departure from the guidelines is warranted. *See* Chapter Five, Part K (Departures).

(B) *Multiple Threats, False Liens or Encumbrances, or Victims; Pecuniary Harm.*—If the offense involved (i) substantially more than two threatening communications to the same victim, (ii) a prolonged period of making harassing communications to the same victim, (iii) substantially more than two false liens or encumbrances against the real or personal property of the same victim, (iv) multiple victims, or (v) substantial pecuniary harm to a victim, an upward departure may be warranted.”.

The Commentary to § 2A6.2 captioned “Application Notes” is amended by striking Note 5 as follows:

“5. If the defendant received an enhancement under subsection (b)(1) but that enhancement does not adequately reflect the extent or seriousness of the conduct involved, an upward departure may be warranted. For example, an upward departure may be warranted if the defendant stalked the victim on many occasions over a prolonged period of time.”.

The Commentary to § 2B1.1 captioned “Application Notes” is amended—

in Note 8(A) by striking “If, in a particular case, however, more than one of the enumerated factors applied, an upward departure may be warranted.”; and by striking Note 21 as follows:

“21. *Departure Considerations.*—

(A) *Upward Departure Considerations.*—There may be cases in which the offense level determined under this guideline substantially understates the seriousness of the offense. In such cases, an upward departure may be warranted. The following is a non-exhaustive list of factors that the court may consider in determining whether an upward departure is warranted:

(i) A primary objective of the offense was an aggravating, non-monetary objective. For example, a primary

objective of the offense was to inflict emotional harm.

(ii) The offense caused or risked substantial non-monetary harm. For example, the offense caused physical harm, psychological harm, or severe emotional trauma, or resulted in a substantial invasion of a privacy interest (through, for example, the theft of personal information such as medical, educational, or financial records). An upward departure would be warranted, for example, in an 18 U.S.C. 1030 offense involving damage to a protected computer, if, as a result of that offense, death resulted. An upward departure also would be warranted, for example, in a case involving animal enterprise terrorism under 18 U.S.C. 43, if, in the course of the offense, serious bodily injury or death resulted, or substantial scientific research or information were destroyed. Similarly, an upward departure would be warranted in a case involving conduct described in 18 U.S.C. 670 if the offense resulted in serious bodily injury or death, including serious bodily injury or death resulting from the use of the pre-retail medical product.

(iii) The offense involved a substantial amount of interest of any kind, finance charges, late fees, penalties, amounts based on an agreed-upon return or rate of return, or other similar costs, not included in the determination of loss for purposes of subsection (b)(1).

(iv) The offense created a risk of substantial loss beyond the loss determined for purposes of subsection (b)(1), such as a risk of a significant disruption of a national financial market.

(v) In a case involving stolen information from a ‘protected computer’, as defined in 18 U.S.C. 1030(e)(2), the defendant sought the stolen information to further a broader criminal purpose.

(vi) In a case involving access devices or unlawfully produced or unlawfully obtained means of identification:

(I) The offense caused substantial harm to the victim’s reputation, or the victim suffered a substantial inconvenience related to repairing the victim’s reputation.

(II) An individual whose means of identification the defendant used to obtain unlawful means of identification is erroneously arrested or denied a job because an arrest record has been made in that individual’s name.

(III) The defendant produced or obtained numerous means of identification with respect to one individual and essentially assumed that individual’s identity.

(B) *Upward Departure for Debilitating Impact on a Critical Infrastructure.*—An upward departure would be warranted in a case in which subsection (b)(19)(A)(iii) applies and the disruption to the critical infrastructure(s) is so substantial as to have a debilitating impact on national security, national economic security, national public health or safety, or any combination of those matters.

(C) *Downward Departure Consideration.*—There may be cases in which the offense level determined under this guideline substantially overstates the seriousness of the offense. In such cases, a downward departure may be warranted.

For example, a securities fraud involving a fraudulent statement made publicly to the market may produce an aggregate loss amount that is substantial but diffuse, with relatively small loss amounts suffered by a relatively large number of victims. In such a case, the loss table in subsection (b)(1) and the victims table in subsection (b)(2) may combine to produce an offense level that substantially overstates the seriousness of the offense. If so, a downward departure may be warranted.

(D) *Downward Departure for Major Disaster or Emergency Victims.*—If (i) the minimum offense level of level 12 in subsection (b)(12) applies; (ii) the defendant sustained damage, loss, hardship, or suffering caused by a major disaster or an emergency as those terms are defined in 42 U.S.C. 5122; and (iii) the benefits received illegally were only an extension or overpayment of benefits received legitimately, a downward departure may be warranted.”.

The Commentary to § 2B1.5 captioned “Application Notes” is amended by striking Note 9 as follows:

“9. *Upward Departure Provision.*—

There may be cases in which the offense level determined under this guideline substantially understates the seriousness of the offense. In such cases, an upward departure may be warranted. For example, an upward departure may be warranted if (A) in addition to cultural heritage resources or paleontological resources, the offense involved theft of, damage to, or destruction of, items that are not cultural heritage resources (such as an offense involving the theft from a national cemetery of lawnmowers and other administrative property in addition to historic gravemarkers or other cultural heritage resources) or paleontological resources; or (B) the offense involved a cultural heritage resource that has profound significance to cultural identity (e.g., the Statue of Liberty or the Liberty Bell).”.

The Commentary to § 2B2.1 captioned “Background” is amended by striking “Weapon use would be a ground for upward departure.”.

The Commentary to § 2B3.1 captioned “Application Notes,” as amended by Amendment 1 of this document, is further amended—

by striking Note 5 as follows:

“5. *Upward Departure Provision.*—If the defendant intended to murder the victim, an upward departure may be warranted; see § 2A2.1 (Assault with Intent to Commit Murder; Attempted Murder).”;

and by redesignating Note 6 as Note 5.

The Commentary to § 2B3.2 captioned “Application Notes,” as amended by Amendment 1 of this document, is further amended by striking Notes 7 and 8 as follows:

“7. *Upward Departure Based on Threat of Death or Serious Bodily Injury to Numerous Victims.*—If the offense involved the threat of death or serious bodily injury to numerous victims (e.g., in the case of a plan to derail a passenger train or poison consumer products), an upward departure may be warranted.

8. *Upward Departure Based on Organized Criminal Activity or Threat to Family Member of Victim.*—If the offense involved organized criminal activity, or a threat to a family member of the victim, an upward departure may be warranted.”.

The Commentary to § 2B5.3 captioned “Application Notes” is amended by striking Note 5 as follows:

“5. *Departure Considerations.*—If the offense level determined under this guideline substantially understates or overstates the seriousness of the offense, a departure may be warranted. The following is a non-exhaustive list of factors that the court may consider in determining whether a departure may be warranted:

(A) The offense involved substantial harm to the reputation of the copyright or trademark owner.

(B) The offense was committed in connection with, or in furtherance of, the criminal activities of a national, or international, organized criminal enterprise.

(C) The method used to calculate the infringement amount is based upon a formula or extrapolation that results in an estimated amount that may substantially exceed the actual pecuniary harm to the copyright or trademark owner.

(D) The offense resulted in death or serious bodily injury.”.

The Commentary to § 2C1.1 captioned “Application Notes” is amended—

in Note 5 by striking “Chapter Three, Parts A–D” and inserting “Chapter Three, Parts A–E”;

and by striking Note 7 as follows:

“7. *Upward Departure Provisions.*—In some cases the monetary value of the unlawful payment may not be known or may not adequately reflect the seriousness of the offense. For example, a small payment may be made in exchange for the falsification of inspection records for a shipment of defective parachutes or the destruction of evidence in a major narcotics case. In part, this issue is addressed by the enhancements in § 2C1.1(b)(2) and (c)(1), (2), and (3). However, in cases in which the seriousness of the offense is still not adequately reflected, an upward departure is warranted. See Chapter Five, Part K (Departures).

In a case in which the court finds that the defendant’s conduct was part of a systematic or pervasive corruption of a governmental function, process, or office that may cause loss of public confidence in government, an upward departure may be warranted. See § 5K2.7 (Disruption of Governmental Function).”.

The Commentary to § 2C1.8 captioned “Application Notes” is amended by striking Note 4 as follows:

“4. *Departure Provision.*—In a case in which the defendant’s conduct was part of a systematic or pervasive corruption of a governmental function, process, or office that may cause loss of public confidence in government, an upward departure may be warranted.”.

The Commentary to § 2D1.1 captioned “Application Notes” is amended— in Note 3 by striking the following paragraph:

“An upward departure nonetheless may be warranted when the mixture or substance counted in the Drug Quantity Table is combined with other, non-countable material in an unusually sophisticated manner in order to avoid detection.”;

in Note 10 by striking the following paragraph:

“In the case of liquid LSD (LSD that has not been placed onto a carrier medium), using the weight of the LSD alone to calculate the offense level may not adequately reflect the seriousness of the offense. In such a case, an upward departure may be warranted.”;

in Note 18(A) by striking “In some cases, the enhancement under subsection (b)(14)(A) may not account adequately for the seriousness of the environmental harm or other threat to public health or safety (including the health or safety of law enforcement and cleanup personnel). In such cases, an upward departure may be warranted.

Additionally, in determining” and inserting “In determining”;

in Note 22 by striking the following:

“*Application of Subsection (e)(1).*—

(A) *Definition.*—For purposes of this guideline, ‘sexual offense’ means a ‘sexual act’ or ‘sexual contact’ as those terms are defined in 18 U.S.C. 2246(2) and (3), respectively.

(B) *Upward Departure Provision.*—If the defendant committed a sexual offense against more than one individual, an upward departure would be warranted.”;

and inserting the following:

“*Application of Subsection (e)(1).*—

For purposes of this guideline, ‘sexual offense’ means a ‘sexual act’ or ‘sexual contact’ as those terms are defined in 18 U.S.C. 2246(2) and (3), respectively.”;

in Note 24 by striking “a lower sentence imposed (including a downward departure)” and inserting “a lower sentence imposed”;

and by striking Note 27 as follows:

“27. *Departure Considerations.*—

(A) *Downward Departure Based on Drug Quantity in Certain Reverse Sting Operations.*—If, in a reverse sting (an operation in which a government agent sells or negotiates to sell a controlled substance to a defendant), the court finds that the government agent set a price for the controlled substance that was substantially below the market value of the controlled substance, thereby leading to the defendant’s purchase of a significantly greater quantity of the controlled substance than his available resources would have allowed him to purchase except for the artificially low price set by the government agent, a downward departure may be warranted.

(B) *Upward Departure Based on Drug Quantity.*—In an extraordinary case, an upward departure above offense level 38 on the basis of drug quantity may be warranted. For example, an upward departure may be warranted where the quantity is at least ten times the minimum quantity required for level 38. Similarly, in the case of a controlled substance for which the maximum offense level is less than level 38, an upward departure may be warranted if the drug quantity substantially exceeds the quantity for the highest offense level established for that particular controlled substance.

(C) *Upward Departure Based on Unusually High Purity.*—Trafficking in controlled substances, compounds, or mixtures of unusually high purity may warrant an upward departure, except in the case of PCP, amphetamine, methamphetamine, hydrocodone, or oxycodone for which the guideline itself provides for the consideration of purity

(see the footnote to the Drug Quantity Table). The purity of the controlled substance, particularly in the case of heroin, may be relevant in the sentencing process because it is probative of the defendant's role or position in the chain of distribution. Since controlled substances are often diluted and combined with other substances as they pass down the chain of distribution, the fact that a defendant is in possession of unusually pure narcotics may indicate a prominent role in the criminal enterprise and proximity to the source of the drugs. As large quantities are normally associated with high purities, this factor is particularly relevant where smaller quantities are involved.

(D) *Departure Based on Potency of Synthetic Cathinones.*—In addition to providing converted drug weights for specific controlled substances and groups of substances, the Drug Conversion Tables provide converted drug weights for certain classes of controlled substances, such as synthetic cathinones. In the case of a synthetic cathinone that is not specifically referenced in this guideline, the converted drug weight for the class should be used to determine the appropriate offense level. However, there may be cases in which a substantially lesser or greater quantity of a synthetic cathinone is needed to produce an effect on the central nervous system similar to the effect produced by a typical synthetic cathinone in the class, such as methcathinone or alpha-PVP. In such a case, a departure may be warranted. For example, an upward departure may be warranted in cases involving MDPV, a substance of which a lesser quantity is usually needed to produce an effect on the central nervous system similar to the effect produced by a typical synthetic cathinone. In contrast, a downward departure may be warranted in cases involving methylone, a substance of which a greater quantity is usually needed to produce an effect on the central nervous system similar to the effect produced by a typical synthetic cathinone.

(E) *Departures for Certain Cases Involving Synthetic Cannabinoids.*—

(i) *Departure Based on Concentration of Synthetic Cannabinoids.*—Synthetic cannabinoids are manufactured as powder or crystalline substances. The concentrated substance is then usually sprayed on or soaked into a plant or other base material, and trafficked as part of a mixture. Nonetheless, there may be cases in which the substance involved in the offense is a synthetic cannabinoid not combined with any

other substance. In such a case, an upward departure would be warranted.

There also may be cases in which the substance involved in the offense is a mixture containing a synthetic cannabinoid diluted with an unusually high quantity of base material. In such a case, a downward departure may be warranted.

(ii) *Downward Departure Based on Potency of Synthetic Cannabinoids.*—In the case of a synthetic cannabinoid that is not specifically referenced in this guideline, the converted drug weight for the class should be used to determine the appropriate offense level. However, there may be cases in which a substantially greater quantity of a synthetic cannabinoid is needed to produce an effect on the central nervous system similar to the effect produced by a typical synthetic cannabinoid in the class, such as JWH-018 or AM-2201. In such a case, a downward departure may be warranted.”.

The Commentary to § 2D1.5 captioned “Application Notes” is amended—

by striking Note 2 as follows:

“2. *Upward Departure Provision.*—If as part of the enterprise the defendant sanctioned the use of violence, or if the number of persons managed by the defendant was extremely large, an upward departure may be warranted.”; and by redesignating Notes 3 and 4 as Notes 2 and 3, respectively.

The Commentary to § 2D1.7 is amended by striking the Commentary captioned “Application Note” in its entirety as follows:

“*Application Note:*

1. The typical case addressed by this guideline involves small-scale trafficking in drug paraphernalia (generally from a retail establishment that also sells items that are not unlawful). In a case involving a large-scale dealer, distributor, or manufacturer, an upward departure may be warranted. Conversely, where the offense was not committed for pecuniary gain (e.g., transportation for the defendant's personal use), a downward departure may be warranted.”.

The Commentary to § 2D1.11 captioned “Application Notes” is amended—

in Note 1 by striking subparagraph (C) as follows:

“(C) *Upward Departure.*—In a case involving two or more chemicals used to manufacture different controlled substances, or to manufacture one controlled substance by different manufacturing processes, an upward departure may be warranted if the offense level does not adequately address the seriousness of the offense.”;

and in Note 4 by striking “In some cases, the enhancement under subsection (b)(3) may not adequately account for the seriousness of the environmental harm or other threat to public health or safety (including the health or safety of law enforcement and cleanup personnel). In such cases, an upward departure may be warranted. Additionally, any costs” and inserting “Any costs”.

The Commentary to § 2D1.12 captioned “Application Notes” is amended—

by striking Note 1 as follows:

“1. If the offense involved the large-scale manufacture, distribution, transportation, exportation, or importation of prohibited flasks, equipment, chemicals, products, or material, an upward departure may be warranted.”;

by redesignating Notes 2, 3, and 4 as Notes 1, 2, and 3, respectively;

and in Note 2 (as so redesignated) by striking “In some cases, the enhancement under subsection (b)(2) may not adequately account for the seriousness of the environmental harm or other threat to public health or safety (including the health or safety of law enforcement and cleanup personnel). In such cases, an upward departure may be warranted. Additionally, any costs” and inserting “Any costs”.

The Commentary to § 2D2.1 is amended by striking the Commentary captioned “Application Note” in its entirety as follows:

“*Application Note:*

1. The typical case addressed by this guideline involves possession of a controlled substance by the defendant for the defendant's own consumption. Where the circumstances establish intended consumption by a person other than the defendant, an upward departure may be warranted.”.

The Commentary to § 2D2.3 captioned “Background” is amended by striking “If no or only a few passengers were placed at risk, a downward departure may be warranted. If the offense resulted in the death or serious bodily injury of a large number of persons, such that the resulting offense level under subsection (b) would not adequately reflect the seriousness of the offense, an upward departure may be warranted.”.

The Commentary to § 2E1.1 captioned “Application Notes” is amended in Note 4 by striking “If this treatment produces an anomalous result in a particular case, a guideline departure may be warranted.”.

The Commentary to § 2E3.1 captioned “Application Notes” is amended—

in the caption by striking “Notes” and inserting “Note”;

and by striking Note 2 as follows:

“2. Upward Departure Provision.—

The base offense levels provided for animal fighting ventures in subsection (a)(1) and (a)(3) reflect that an animal fighting venture involves one or more violent fights between animals and that a defeated animal often is severely injured in the fight, dies as a result of the fight, or is killed afterward. Nonetheless, there may be cases in which the offense level determined under this guideline substantially understates the seriousness of the offense. In such a case, an upward departure may be warranted. For example, an upward departure may be warranted if (A) the offense involved extraordinary cruelty to an animal beyond the violence inherent in such a venture (such as by killing an animal in a way that prolongs the suffering of the animal); or (B) the offense involved animal fighting on an exceptional scale (such as an offense involving an unusually large number of animals).”.

The Commentary to § 2G1.1 captioned “Application Notes” is amended—

in Note 2 by striking “If bodily injury results, an upward departure may be warranted. *See* Chapter Five, Part K (Departures).”;

and by striking Note 6 as follows:

“6. Upward Departure Provision.—If the offense involved more than ten victims, an upward departure may be warranted.”.

The Commentary to § 2G1.3 captioned “Application Notes” is amended by striking Note 7 as follows:

“7. Upward Departure Provision.—If the offense involved more than ten minors, an upward departure may be warranted.”.

The Commentary to § 2G2.1 captioned “Application Notes” is amended by striking Note 8 as follows:

“8. Upward Departure Provision.—An upward departure may be warranted if the offense involved more than 10 minors.”.

The Commentary to § 2G2.2 captioned “Application Notes” is amended—

in Note 6(B)(i) by striking “If the number of images substantially underrepresents the number of minors depicted, an upward departure may be warranted.”;

in Note 6(B)(ii) by striking “If the length of the visual depiction is substantially more than 5 minutes, an upward departure may be warranted.”;

and by striking Note 9 as follows:

“9. Upward Departure Provision.—If the defendant engaged in the sexual abuse or exploitation of a minor at any time (whether or not such abuse or

exploitation occurred during the course of the offense or resulted in a conviction for such conduct) and subsection (b)(5) does not apply, an upward departure may be warranted. In addition, an upward departure may be warranted if the defendant received an enhancement under subsection (b)(5) but that enhancement does not adequately reflect the seriousness of the sexual abuse or exploitation involved.”.

The Commentary to § 2H2.1 is amended by striking the Commentary captioned “Application Note” in its entirety as follows:

“Application Note:

1. Upward Departure Provision.—If the offense resulted in bodily injury or significant property damage, or involved corrupting a public official, an upward departure may be warranted. *See* Chapter Five, Part K (Departures).”.

The Commentary to § 2H3.1 captioned “Application Notes” is amended by striking Note 5 as follows:

“5. Upward Departure.—There may be cases in which the offense level determined under this guideline substantially understates the seriousness of the offense. In such a case, an upward departure may be warranted. The following are examples of cases in which an upward departure may be warranted:

(A) The offense involved personal information, means of identification, confidential phone records information, or tax return information of a substantial number of individuals.

(B) The offense caused or risked substantial non-monetary harm (e.g., physical harm, psychological harm, or severe emotional trauma, or resulted in a substantial invasion of privacy interest) to individuals whose private or protected information was obtained.”.

The Commentary to § 2H4.1 captioned “Application Notes” is amended by striking Notes 3 and 4 as follows:

“3. If the offense involved the holding of more than ten victims in a condition of peonage or involuntary servitude, an upward departure may be warranted.

4. In a case in which the defendant was convicted under 18 U.S.C. 1589(b) or 1593A, a downward departure may be warranted if the defendant benefitted from participating in a venture described in those sections without knowing that (i.e., in reckless disregard of the fact that) the venture had engaged in the criminal activity described in those sections.”.

The Commentary to § 2J1.2 captioned “Application Notes” is amended—

by striking Note 4 as follows:

“4. Upward Departure Considerations.—If a weapon was used, or bodily injury or significant property

damage resulted, an upward departure may be warranted. *See* Chapter Five, Part K (Departures). In a case involving an act of extreme violence (for example, retaliating against a government witness by throwing acid in the witness’s face) or a particularly serious sex offense, an upward departure would be warranted.”;

and by redesignating Note 5 as Note 4.

The Commentary to § 2J1.3 captioned “Application Notes” is amended—

by striking Note 4 as follows:

“4. If a weapon was used, or bodily injury or significant property damage resulted, an upward departure may be warranted. *See* Chapter Five, Part K (Departures).”;

and by redesignating Note 5 as Note 4.

The Commentary to § 2J1.6 captioned “Application Notes” is amended—

by striking Note 4 as follows:

“4. If a defendant is convicted of both the underlying offense and the failure to appear count, and the defendant committed additional acts of obstructive behavior (e.g., perjury) during the investigation, prosecution, or sentencing of the instant offense, an upward departure may be warranted. The upward departure will ensure an enhanced sentence for obstructive conduct for which no adjustment under § 3C1.1 (Obstructing or Impeding the Administration of Justice) is made because of the operation of the rules set out in Application Note 3.”;

and by redesignating Note 5 as Note 4.

The Commentary to § 2K1.3 captioned “Application Notes” is amended—

by striking Note 10 as follows:

“10. An upward departure may be warranted in any of the following circumstances: (A) the quantity of explosive materials significantly exceeded 1000 pounds; (B) the explosive materials were of a nature more volatile or dangerous than dynamite or conventional powder explosives (e.g., plastic explosives); (C) the defendant knowingly distributed explosive materials to a person under twenty-one years of age; or (D) the offense posed a substantial risk of death or bodily injury to multiple individuals.”;

by redesignating Note 11 as Note 10; and in Note 10 (as so redesignated) by striking “However, where the defendant used or possessed a firearm or explosive to facilitate another firearms or explosives offense (e.g., the defendant used or possessed a firearm to protect the delivery of an unlawful shipment of explosives), an upward departure under

§ 5K2.6 (Weapons and Dangerous Instrumentalities) may be warranted.”.

The Commentary to § 2K1.4 captioned “Application Notes” is amended by striking Note 3 as follows:

“3. *Upward Departure Provision.*—If bodily injury resulted, an upward departure may be warranted. *See* Chapter Five, Part K (Departures).”.

Section 2K2.1(b)(10)(B), as redesignated by Amendment 3 of this document, is amended by striking “, before application of subsection (b) of § 4A1.3 (Departures Based on Inadequacy of Criminal History Category)”.

The Commentary to § 2K2.1 captioned “Application Notes,” as amended by Amendment 3 of this document, is further amended—

in Note 7 by striking the following:

“Offenses involving such devices cover a wide range of offense conduct and involve different degrees of risk to the public welfare depending on the type of destructive device involved and the location or manner in which that destructive device was possessed or transported. For example, a pipe bomb in a populated train station creates a substantially greater risk to the public welfare, and a substantially greater risk of death or serious bodily injury, than an incendiary device in an isolated area. In a case in which the cumulative result of the increased base offense level and the enhancement under subsection (b)(3) does not adequately capture the seriousness of the offense because of the type of destructive device involved, the risk to the public welfare, or the risk of death or serious bodily injury that the destructive device created, an upward departure may be warranted. *See also* §§ 5K2.1 (Death), 5K2.2 (Physical Injury), and 5K2.14 (Public Welfare).”; by striking Note 11 as follows:

“11. *Upward Departure Provisions.*—An upward departure may be warranted in any of the following circumstances: (A) the number of firearms substantially exceeded 200; (B) the offense involved multiple National Firearms Act weapons (*e.g.*, machineguns, destructive devices), military type assault rifles, non-detectable (“plastic”) firearms (defined at 18 U.S.C. 922(p)); (C) the offense involved large quantities of armor-piercing ammunition (defined at 18 U.S.C. 921(a)(17)(B)); or (D) the offense posed a substantial risk of death or bodily injury to multiple individuals (*see* Application Note 7).”; by redesignating Notes 12, 13, and 14 as Notes 11, 12, and 13, respectively;

in Note 12 (as so redesignated)—

by striking subparagraph (B) as follows:

“(B) *Upward Departure Provision.*—If the defendant transported, transferred, sold, or otherwise disposed of, or purchased or received with intent to transport, transfer, sell, or otherwise dispose of, substantially more than 25 firearms, an upward departure may be warranted.”;

and by redesignating subparagraph (C) as subparagraph (B);

and in Note 13 (as so redesignated)— by striking subparagraph (D) as follows:

“(D) *Upward Departure Provision.*—In a case in which the defendant used or possessed a firearm or explosive to facilitate another firearms or explosives offense (*e.g.*, the defendant used or possessed a firearm to protect the delivery of an unlawful shipment of explosives), an upward departure under § 5K2.6 (Weapons and Dangerous Instrumentalities) may be warranted.”;

and by redesignating subparagraph (E) as subparagraph (D).

Section 2K2.4(a) is amended by striking “Chapters Three (Adjustments) and Four (Criminal History and Criminal Livelihood)” and inserting “Chapters Three (Adjustments), Parts A through E, and Four (Criminal History and Criminal Livelihood)”.

Section 2K2.4(b) is amended by striking “Chapters Three and Four” and inserting “Chapters Three, Parts A through E, and Four”.

Section 2K2.4(c) is amended by striking “Chapters Three and Four” and inserting “Chapters Three, Parts A through E, and Four”.

The Commentary to § 2K2.4 captioned “Application Notes,” as amended by Amendment 3 of this document, is further amended—

in Note 2 by striking the following:

“*Application of Subsection (b).*—

(A) *In General.*—Sections 924(c) and 929(a) of title 18, United States Code, provide mandatory minimum terms of imprisonment (*e.g.*, not less than five years). Except as provided in subsection (c), in a case in which the defendant is convicted under 18 U.S.C. 924(c) or 929(a), the guideline sentence is the minimum term required by the relevant statute. Each of 18 U.S.C. 924(c) and 929(a) also requires that a term of imprisonment imposed under that section shall run consecutively to any other term of imprisonment.

(B) *Upward Departure Provision.*—In a case in which the guideline sentence is determined under subsection (b), a sentence above the minimum term required by 18 U.S.C. 924(c) or 929(a) is an upward departure from the guideline sentence. A departure may be warranted, for example, to reflect the seriousness of the defendant’s criminal

history in a case in which the defendant is convicted of an 18 U.S.C. 924(c) or 929(a) offense but is not determined to be a career offender under § 4B1.1.”;

and inserting the following:

“*Application of Subsection (b).*—Sections 924(c) and 929(a) of title 18, United States Code, provide mandatory minimum terms of imprisonment (*e.g.*, not less than five years). Except as provided in subsection (c), in a case in which the defendant is convicted under 18 U.S.C. 924(c) or 929(a), the guideline sentence is the minimum term required by the relevant statute. Each of 18 U.S.C. 924(c) and 929(a) also requires that a term of imprisonment imposed under that section shall run consecutively to any other term of imprisonment.”;

in Note 4 by striking the subparagraph (C) as follows:

“(C) *Upward Departure Provision.*—In a few cases in which the defendant is determined not to be a career offender, the offense level for the underlying offense determined under the preceding paragraphs may result in a guideline range that, when combined with the mandatory consecutive sentence under 18 U.S.C. 844(h), 924(c), or 929(a), produces a total maximum penalty that is less than the maximum of the guideline range that would have resulted had there not been a count of conviction under 18 U.S.C. 844(h), 924(c), or 929(a) (*i.e.*, the guideline range that would have resulted if the enhancements for possession, use, or discharge of a firearm had been applied). In such a case, an upward departure may be warranted so that the conviction under 18 U.S.C. 844(h), 924(c), or 929(a) does not result in a decrease in the total punishment. An upward departure under this paragraph shall not exceed the maximum of the guideline range that would have resulted had there not been a count of conviction under 18 U.S.C. 844(h), 924(c), or 929(a).”; and in Note 5 by striking “Chapter Three (Adjustment) and Chapter Four (Criminal History and Criminal Livelihood)” and inserting “Chapter Three (Adjustment), Parts A through E, and Chapter Four (Criminal History and Criminal Livelihood)”; and by striking “no other adjustments in Chapter Three” and inserting “no other adjustments in Chapter Three, Parts A through D.”.

The Commentary to § 2K2.5 captioned “Application Notes” is amended by striking Note 4 as follows:

“4. Where the firearm was brandished, discharged, or otherwise used, in a federal facility, federal court facility, or school zone, and the cross reference from subsection (c)(1) does not

apply, an upward departure may be warranted.”.

The Commentary to § 2L1.1 captioned “Application Notes” is amended—in Note 4 by striking “Application Note 1(M) of § 1B1.1” and inserting “Application Note 1(L) of § 1B1.1”; and by striking Note 7 as follows:

“7. *Upward Departure Provisions.*—

An upward departure may be warranted in any of the following cases:

(A) The defendant smuggled, transported, or harbored an alien knowing that the alien intended to enter the United States to engage in subversive activity, drug trafficking, or other serious criminal behavior.

(B) The defendant smuggled, transported, or harbored an alien the defendant knew was inadmissible for reasons of security and related grounds, as set forth under 8 U.S.C. 1182(a)(3).

(C) The offense involved substantially more than 100 aliens.”.

The Commentary to § 2L1.2 captioned “Application Notes” is amended by striking Notes 6, 7, and 8 as follows:

“6. *Departure Based on Seriousness of a Prior Offense.*—There may be cases in which the offense level provided by an enhancement in subsection (b)(2) or (b)(3) substantially understates or overstates the seriousness of the conduct underlying the prior offense, because (A) the length of the sentence imposed does not reflect the seriousness of the prior offense; (B) the prior conviction is too remote to receive criminal history points (see § 4A1.2(e)); or (C) the time actually served was substantially less than the length of the sentence imposed for the prior offense. In such a case, a departure may be warranted.

7. *Departure Based on Time Served in State Custody.*—In a case in which the defendant is located by immigration authorities while the defendant is serving time in state custody, whether pre- or post-conviction, for a state offense, the time served is not covered by an adjustment under § 5G1.3(b) and, accordingly, is not covered by a departure under § 5K2.23 (Discharged Terms of Imprisonment). See § 5G1.3(a). In such a case, the court may consider whether a departure is appropriate to reflect all or part of the time served in state custody, from the time immigration authorities locate the defendant until the service of the federal sentence commences, that the court determines will not be credited to the federal sentence by the Bureau of Prisons. Any such departure should be fashioned to achieve a reasonable punishment for the instant offense.

Such a departure should be considered only in cases where the

departure is not likely to increase the risk to the public from further crimes of the defendant. In determining whether such a departure is appropriate, the court should consider, among other things, (A) whether the defendant engaged in additional criminal activity after illegally reentering the United States; (B) the seriousness of any such additional criminal activity, including (1) whether the defendant used violence or credible threats of violence or possessed a firearm or other dangerous weapon (or induced another person to do so) in connection with the criminal activity, (2) whether the criminal activity resulted in death or serious bodily injury to any person, and (3) whether the defendant was an organizer, leader, manager, or supervisor of others in the criminal activity; and (C) the seriousness of the defendant’s other criminal history.

8. *Departure Based on Cultural Assimilation.*—There may be cases in which a downward departure may be appropriate on the basis of cultural assimilation. Such a departure should be considered only in cases where (A) the defendant formed cultural ties primarily with the United States from having resided continuously in the United States from childhood, (B) those cultural ties provided the primary motivation for the defendant’s illegal reentry or continued presence in the United States, and (C) such a departure is not likely to increase the risk to the public from further crimes of the defendant.

In determining whether such a departure is appropriate, the court should consider, among other things, (1) the age in childhood at which the defendant began residing continuously in the United States, (2) whether and for how long the defendant attended school in the United States, (3) the duration of the defendant’s continued residence in the United States, (4) the duration of the defendant’s presence outside the United States, (5) the nature and extent of the defendant’s familial and cultural ties inside the United States, and the nature and extent of such ties outside the United States, (6) the seriousness of the defendant’s criminal history, and (7) whether the defendant engaged in additional criminal activity after illegally reentering the United States.”.

The Commentary to § 2L2.1 captioned “Application Notes” is amended—

by striking Note 3 as follows:

“3. Subsection (b)(3) provides an enhancement if the defendant knew, believed, or had reason to believe that a passport or visa was to be used to facilitate the commission of a felony offense, other than an offense involving

violation of the immigration laws. If the defendant knew, believed, or had reason to believe that the felony offense to be committed was of an especially serious type, an upward departure may be warranted.”;

by redesignating Note 4 as Note 3; and by striking Note 5 as follows:

“5. If the offense involved substantially more than 100 documents, an upward departure may be warranted.”.

The Commentary to § 2L2.2 captioned “Application Notes” is amended by striking Note 6 as follows:

“6. *Upward Departure Provision.*—If the defendant fraudulently obtained or used a United States passport for the purpose of entering the United States to engage in terrorist activity, an upward departure may be warranted. See Application Note 4 of the Commentary to § 3A1.4 (Terrorism).”.

The Commentary to § 2M3.1 captioned “Application Notes” is amended—

in Note 2 by striking “When revelation is likely to cause little or no harm, a downward departure may be warranted. See Chapter Five, Part K (Departures).”;

and by striking Note 3 as follows:

“3. The court may depart from the guidelines upon representation by the President or his duly authorized designee that the imposition of a sanction other than authorized by the guideline is necessary to protect national security or further the objectives of the nation’s foreign policy.”.

The Commentary to § 2M4.1 is amended by striking the Commentary captioned “Application Note” in its entirety as follows:

“Application Note:

1. Subsection (b)(1) does not distinguish between whether the offense was committed in peacetime or during time of war or armed conflict. If the offense was committed when persons were being inducted for compulsory military service during time of war or armed conflict, an upward departure may be warranted.”.

The Commentary to § 2M5.1 captioned “Application Notes” is amended by striking Note 3 as follows:

“3. *Departure Provisions.*—

(A) *In General.*—In determining the sentence within the applicable guideline range, the court may consider the degree to which the violation threatened a security interest of the United States, the volume of commerce involved, the extent of planning or sophistication, and whether there were multiple occurrences. Where such factors are present in an extreme form,

a departure from the guidelines may be warranted. *See* Chapter Five, Part K (Departures).

(B) *War or Armed Conflict*.—In the case of a violation during time of war or armed conflict, an upward departure may be warranted.”.

The Commentary to § 2M5.2 captioned “Application Notes” is amended—

in the caption by striking “Notes” and inserting “Note”;

in Note 1 by striking the following:

“The base offense level assumes that the offense conduct was harmful or had the potential to be harmful to a security or foreign policy interest of the United States. In the unusual case where the offense conduct posed no such risk, a downward departure may be warranted. In the case of a violation during time of war or armed conflict, an upward departure may be warranted. *See* Chapter Five, Part K (Departures).”;

and by striking Note 2 as follows:

“2. In determining the sentence within the applicable guideline range, the court may consider the degree to which the violation threatened a security or foreign policy interest of the United States, the volume of commerce involved, the extent of planning or sophistication, and whether there were multiple occurrences. Where such factors are present in an extreme form, a departure from the guidelines may be warranted.”.

The Commentary to § 2M5.3 captioned “Application Notes” is amended—

in the caption by striking “Notes” and inserting “Note”;

and by striking Note 2 as follows:

“2. *Departure Provisions*.—

(A) *In General*.—In determining the sentence within the applicable guideline range, the court may consider the degree to which the violation threatened a security interest of the United States, the volume of the funds or other material support or resources involved, the extent of planning or sophistication, and whether there were multiple occurrences. In a case in which such factors are present in an extreme form, a departure from the guidelines may be warranted. *See* Chapter Five, Part K (Departures).

(B) *War or Armed Conflict*.—In the case of a violation during time of war or armed conflict, an upward departure may be warranted.”.

The Commentary to § 2N1.1 captioned “Application Notes” is amended—

in the caption by striking “Notes” and inserting “Note”;

by striking Note 1 as follows:

“1. The base offense level reflects that this offense typically poses a risk of

death or serious bodily injury to one or more victims; or causes, or is intended to cause, bodily injury. Where the offense posed a substantial risk of death or serious bodily injury to numerous victims, or caused extreme psychological injury or substantial property damage or monetary loss, an upward departure may be warranted. In the unusual case in which the offense did not cause a risk of death or serious bodily injury, and neither caused nor was intended to cause bodily injury, a downward departure may be warranted.”;

and by redesignating Note 2 as Note 1.

The Commentary to § 2N1.2 is amended by striking the Commentary captioned “Application Note” in its entirety as follows:

“*Application Note*:

1. If death or bodily injury, extreme psychological injury, or substantial property damage or monetary loss resulted, an upward departure may be warranted. *See* Chapter Five, Part K (Departures).”.

The Commentary to § 2N1.3 is amended by striking the Commentary captioned “Application Note” in its entirety as follows:

“*Application Note*:

1. If death or bodily injury, extreme psychological injury, or substantial property damage or monetary loss resulted, an upward departure may be warranted. *See* Chapter Five, Part K (Departures).”.

The Commentary to § 2N2.1 captioned “Application Notes” is amended—

by striking Note 1 as follows:

“1. This guideline assumes a regulatory offense that involved knowing or reckless conduct. Where only negligence was involved, a downward departure may be warranted. *See* Chapter Five, Part K (Departures).”;

by redesignating Note 2 as Note 1;

by striking Note 3 as follows:

“3. *Upward Departure Provisions*.—The following are circumstances in which an upward departure may be warranted:

(A) The offense created a substantial risk of bodily injury or death; or bodily injury, death, extreme psychological injury, property damage, or monetary loss resulted from the offense. *See* Chapter Five, Part K (Departures).

(B) The defendant was convicted under 7 U.S.C. 7734.”;

and by redesignating Note 4 as Note 2.

The Commentary to § 2P1.1 captioned “Application Notes” is amended—

by striking Note 4 as follows:

“4. If death or bodily injury resulted, an upward departure may be warranted. *See* Chapter Five, Part K (Departures).”;

and by redesignating Notes 5 and 6 as Notes 4 and 5, respectively.

The Commentary to § 2P1.3 is amended by striking the Commentary captioned “Application Note” in its entirety as follows:

“*Application Note*:

1. If death or bodily injury resulted, an upward departure may be warranted. *See* Chapter Five, Part K (Departures).”.

The Commentary to § 2Q1.1 is amended by striking the Commentary captioned “Application Note” in its entirety as follows:

“*Application Note*:

1. If death or serious bodily injury resulted, an upward departure may be warranted. *See* Chapter Five, Part K (Departures).”.

The Commentary to § 2Q1.2 captioned “Application Notes” is amended—

by striking Note 4 as follows:

“4. Except when the adjustment in subsection (b)(6) for simple recordkeeping offenses applies, this section assumes knowing conduct. In cases involving negligent conduct, a downward departure may be warranted.”;

by redesignating Notes 5 through 8 as Notes 4 through 7, respectively;

in Note 4 (as so redesignated) by striking “Depending upon the harm resulting from the emission, release or discharge, the quantity and nature of the substance or pollutant, the duration of the offense and the risk associated with the violation, a departure of up to two levels in either direction from the offense levels prescribed in these specific offense characteristics may be appropriate.”;

in Note 5 (as so redesignated) by striking “Depending upon the nature of the risk created and the number of people placed at risk, a departure of up to three levels upward or downward may be warranted. If death or serious bodily injury results, a departure would be called for. *See* Chapter Five, Part K (Departures).”;

in Note 6 (as so redesignated) by striking “Depending upon the nature of the contamination involved, a departure of up to two levels either upward or downward could be warranted.”;

in Note 7 (as so redesignated) by striking “Depending upon the nature and quantity of the substance involved and the risk associated with the offense, a departure of up to two levels either upward or downward may be warranted.”;

and by striking Note 9 as follows:

“9. *Other Upward Departure Provisions*.—

(A) *Civil Adjudications and Failure to Comply with Administrative Order*.—In a case in which the defendant has

previously engaged in similar misconduct established by a civil adjudication or has failed to comply with an administrative order, an upward departure may be warranted. *See* § 4A1.3 (Departures Based on Inadequacy of Criminal History Category).

(B) *Extreme Psychological Injury*.—If the offense caused extreme psychological injury, an upward departure may be warranted. *See* § 5K2.3 (Extreme Psychological Injury).

(C) *Terrorism*.—If the offense was calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct, an upward departure would be warranted. *See* Application Note 4 of the Commentary to § 3A1.4 (Terrorism)."

The Commentary to § 2Q1.3 captioned "Application Notes" is amended—by striking Note 3 as follows:

"3. The specific offense characteristics in this section assume knowing conduct. In cases involving negligent conduct, a downward departure may be warranted."; by redesignating Notes 4 through 7 as Notes 3 through 6, respectively; in Note 3 (as so redesignated) by striking "Depending upon the harm resulting from the emission, release or discharge, the quantity and nature of the substance or pollutant, the duration of the offense and the risk associated with the violation, a departure of up to two levels in either direction from that prescribed in these specific offense characteristics may be appropriate."; in Note 4 (as so redesignated) by striking "Depending upon the nature of the risk created and the number of people placed at risk, a departure of up to three levels upward or downward may be warranted. If death or serious bodily injury results, a departure would be called for. *See* Chapter Five, Part K (Departures).";

in Note 5 (as so redesignated) by striking "Depending upon the nature of the contamination involved, a departure of up to two levels in either direction could be warranted.";

in Note 6 (as so redesignated) by striking "Depending upon the nature and quantity of the substance involved and the risk associated with the offense, a departure of up to two levels in either direction may be warranted.";

and by striking Note 8 as follows:
"8. Where a defendant has previously engaged in similar misconduct established by a civil adjudication or has failed to comply with an administrative order, an upward departure may be warranted. *See* § 4A1.3 (Departures Based on

Inadequacy of Criminal History Category (Policy Statement))."

The Commentary to § 2Q1.4 captioned "Application Notes" is amended by striking Note 3 as follows:

"3. *Departure Provisions*.—

(A) *Downward Departure Provision*.—The base offense level in subsection (a)(1) reflects that offenses covered by that subsection typically pose a risk of death or serious bodily injury to one or more victims, or cause, or are intended to cause, bodily injury. In the unusual case in which such an offense did not cause a risk of death or serious bodily injury, and neither caused nor was intended to cause bodily injury, a downward departure may be warranted.

(B) *Upward Departure Provisions*.—If the offense caused extreme psychological injury, or caused substantial property damage or monetary loss, an upward departure may be warranted.

If the offense was calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct, an upward departure would be warranted. *See* Application Note 4 of § 3A1.4 (Terrorism)."

The Commentary to § 2Q2.1 captioned "Application Notes" is amended—by striking Note 5 as follows:

"5. If the offense involved the destruction of a substantial quantity of fish, wildlife, or plants, and the seriousness of the offense is not adequately measured by the market value, an upward departure may be warranted.";

and by redesignating Note 6 as Note 5.

The Commentary to § 2R1.1 captioned "Application Notes" is amended in Note 7 by striking "a sentence at the maximum of the applicable guideline range, or an upward departure, may be warranted. *See* § 4A1.3 (Departures Based on Inadequacy of Criminal History Category (Policy Statement))" and inserting "a sentence at the maximum of the applicable guideline range may be warranted".

The Commentary to § 2T1.8 is amended by striking the Commentary captioned "Application Note" in its entirety as follows:

"Application Note:

1. If the defendant was attempting to evade, rather than merely delay, payment of taxes, an upward departure may be warranted."

The Commentary to § 2T2.1 captioned "Application Notes" is amended—in the caption by striking "Notes" and inserting "Note";

and by striking Note 2 as follows:

"2. Offense conduct directed at more than tax evasion (e.g., theft or fraud) may warrant an upward departure."

Chapter Two, Part T, Subpart 3 is amended in the Introductory Commentary by striking ", or for departing upward if there is not another more specific applicable guideline".

The Commentary to § 2T3.1 captioned "Application Notes" is amended—by striking Note 2 as follows:

"2. Particular attention should be given to those items for which entry is prohibited, limited, or restricted. Especially when such items are harmful or protective quotas are in effect, the duties evaded on such items may not adequately reflect the harm to society or protected industries resulting from their importation. In such instances, an upward departure may be warranted. A sentence based upon an alternative measure of the 'duty' evaded, such as the increase in market value due to importation, or 25 percent of the items' fair market value in the United States if the increase in market value due to importation is not readily ascertainable, might be considered.";

and by redesignating Note 3 as Note 2.

The Commentary to § 2X5.1 captioned "Application Notes" is amended—

in Note 1 by inserting after "include:" the following: "§ 3F1.1 (Early Disposition Programs (Policy Statement));"; by striking "Chapter Five, Part H (Specific Offender Characteristics); Chapter Five, Part J (Relief from Disability); Chapter Five, Part K (Departures); Chapter Six, Part A (Sentencing Procedures); Chapter Six, Part B (Plea Agreements)" and inserting "Chapter Five, Part J (Relief from Disability); Chapter Five, Part K (Assistance to Authorities); Chapter Six, Part A (Sentencing Procedures); and Chapter Six, Part B (Plea Agreements)"; and in Note 2 by striking the following:

"*Convictions under 18 U.S.C. 1841(a)(1)*.—

(A) *In General*.—If the defendant is convicted under 18 U.S.C. 1841(a)(1), the Chapter Two offense guideline that applies is the guideline that covers the conduct the defendant is convicted of having engaged in, i.e., the conduct of which the defendant is convicted that violates a specific provision listed in 18 U.S.C. 1841(b) and that results in the death of, or bodily injury to, a child in utero at the time of the offense of conviction. For example, if the defendant committed aggravated sexual abuse against the unborn child's mother and it caused the death of the child in utero, the applicable Chapter Two guideline would be § 2A3.1 (Criminal

Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

(B) *Upward Departure Provision.*—For offenses under 18 U.S.C. 1841(a)(1), an upward departure may be warranted if the offense level under the applicable guideline does not adequately account for the death of, or serious bodily injury to, the child in utero.”;

and inserting the following:

“*Convictions under 18 U.S.C.*

1841(a)(1).—If the defendant is convicted under 18 U.S.C. 1841(a)(1), the Chapter Two offense guideline that applies is the guideline that covers the conduct the defendant is convicted of having engaged in, *i.e.*, the conduct of which the defendant is convicted that violates a specific provision listed in 18 U.S.C. 1841(b) and that results in the death of, or bodily injury to, a child in utero at the time of the offense of conviction. For example, if the defendant committed aggravated sexual abuse against the unborn child’s mother and it caused the death of the child in utero, the applicable Chapter Two guideline would be § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).”.

The Commentary to § 2X7.2 captioned “Application Note” is amended in Note 1 by striking the following:

“*Upward Departure Provisions.*—An upward departure may be warranted in any of the following cases:

(A) The defendant engaged in a pattern of activity involving use of a submersible vessel or semi-submersible vessel described in 18 U.S.C. 2285 to facilitate other felonies.

(B) The offense involved use of the vessel as part of an ongoing criminal organization or enterprise.”;

and inserting the following:

“As identified by Congress in section 103 of Public Law 110–407, the following factors may also warrant consideration in imposing a sentence under this guideline:

(A) The defendant engaged in a pattern of activity involving use of a submersible vessel or semi-submersible vessel described in 18 U.S.C. 2285 to facilitate other felonies.

(B) The offense involved use of the vessel as part of an ongoing criminal organization or enterprise.”.

The Commentary to § 3A1.1 captioned “Application Notes” is amended—

by striking Note 4 as follows:

“4. If an enhancement from subsection (b) applies and the defendant’s criminal history includes a prior sentence for an offense that involved the selection of a vulnerable victim, an upward departure may be warranted.”;

and by redesignating Note 5 as Note 4.

The Commentary to § 3A1.2 captioned “Application Notes” is amended by striking Note 5 as follows:

“5. *Upward Departure Provision.*—If the official victim is an exceptionally high-level official, such as the President or the Vice President of the United States, an upward departure may be warranted due to the potential disruption of the governmental function.”.

The Commentary to § 3A1.3 captioned “Application Notes” is amended by striking Note 3 as follows:

“3. If the restraint was sufficiently egregious, an upward departure may be warranted. *See* § 5K2.4 (Abduction or Unlawful Restraint).”.

The Commentary to § 3A1.4 captioned “Application Notes” is amended by striking Note 4 as follows:

“4. *Upward Departure Provision.*—By the terms of the directive to the Commission in section 730 of the Antiterrorism and Effective Death Penalty Act of 1996, the adjustment provided by this guideline applies only to federal crimes of terrorism. However, there may be cases in which (A) the offense was calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct but the offense involved, or was intended to promote, an offense other than one of the offenses specifically enumerated in 18 U.S.C. 2332b(g)(5)(B); or (B) the offense involved, or was intended to promote, one of the offenses specifically enumerated in 18 U.S.C. 2332b(g)(5)(B), but the terrorist motive was to intimidate or coerce a civilian population, rather than to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct. In such cases an upward departure would be warranted, except that the sentence resulting from such a departure may not exceed the top of the guideline range that would have resulted if the adjustment under this guideline had been applied.”.

The Commentary to § 3B1.1 captioned “Application Notes” is amended in Note 2 by striking “An upward departure may be warranted, however, in the case of a defendant who did not organize, lead, manage, or supervise another participant, but who nevertheless exercised management responsibility over the property, assets, or activities of a criminal organization.”.

The Commentary to § 3B1.4 captioned “Application Notes” is amended by striking Note 3 as follows:

“3. If the defendant used or attempted to use more than one person less than eighteen years of age, an upward departure may be warranted.”.

The Commentary to § 3C1.2 captioned “Application Notes” is amended—

in Note 2 by striking “However, where a higher degree of culpability was involved, an upward departure above the 2-level increase provided in this section may be warranted.”;

and by striking Note 6 as follows:

“6. If death or bodily injury results or the conduct posed a substantial risk of death or bodily injury to more than one person, an upward departure may be warranted. *See* Chapter Five, Part K (Departures).”.

The Commentary to § 3D1.1 captioned “Background” is amended by striking “Chapter Three, Part E (Acceptance of Responsibility)” and inserting “Chapter Three, Parts E (Acceptance of Responsibility) and F (Early Disposition Programs).”; and by striking “Chapter Five (Determining the Sentence)” both places such phrase appears and inserting “Chapter Five (Determining the Sentencing Range and Options Under the Guidelines)”.

The Commentary to § 3D1.2 captioned “Background” is amended by striking “it was rejected because it probably would require departure in many cases in order to capture adequately the criminal behavior” and inserting “it was rejected because, in many cases, it would not adequately capture the scope and impact of the criminal behavior”.

The Commentary to § 3D1.3 captioned “Application Notes” is amended by striking Note 4 as follows:

“4. Sometimes the rule specified in this section may not result in incremental punishment for additional criminal acts because of the grouping rules. For example, if the defendant commits forcible criminal sexual abuse (rape), aggravated assault, and robbery, all against the same victim on a single occasion, all of the counts are grouped together under § 3D1.2. The aggravated assault will increase the guideline range for the rape. The robbery, however, will not. This is because the offense guideline for rape (§ 2A3.1) includes the most common aggravating factors, including injury, that data showed to be significant in actual practice. The additional factor of property loss ordinarily can be taken into account adequately within the guideline range for rape, which is fairly wide. However, an exceptionally large property loss in the course of the rape would provide grounds for an upward departure. *See* § 5K2.5 (Property Damage or Loss).”.

The Commentary to § 3D1.4 captioned “Background” is amended by striking the following:

“When Groups are of roughly comparable seriousness, each Group will represent one Unit. When the most serious Group carries an offense level substantially higher than that applicable to the other Groups, however, counting the lesser Groups fully for purposes of the table could add excessive punishment, possibly even more than those offenses would carry if prosecuted separately. To avoid this anomalous result and produce declining marginal punishment, Groups 9 or more levels less serious than the most serious Group should not be counted for purposes of the table, and that Groups 5 to 8 levels less serious should be treated as equal to one-half of a Group. Thus, if the most serious Group is at offense level 15 and if two other Groups are at level 10, there would be a total of two Units for purposes of the table (one plus one-half plus one-half) and the combined offense level would be 17. Inasmuch as the maximum increase provided in the guideline is 5 levels, departure would be warranted in the unusual case where the additional offenses resulted in a total of significantly more than 5 Units.

In unusual circumstances, the approach adopted in this section could produce adjustments for the additional counts that are inadequate or excessive. If there are several groups and the most serious offense is considerably more serious than all of the others, there will be no increase in the offense level resulting from the additional counts. Ordinarily, the court will have latitude to impose added punishment by sentencing toward the upper end of the range authorized for the most serious offense. Situations in which there will be inadequate scope for ensuring appropriate additional punishment for the additional crimes are likely to be unusual and can be handled by departure from the guidelines. Conversely, it is possible that if there are several minor offenses that are not grouped together, application of the rules in this part could result in an excessive increase in the sentence range. Again, such situations should be infrequent and can be handled through departure. An alternative method for ensuring more precise adjustments would have been to determine the appropriate offense level adjustment through a more complicated mathematical formula; that approach was not adopted because of its complexity.”;

and inserting the following:

“When Groups are of roughly comparable seriousness, each Group

will represent one Unit. When the most serious Group carries an offense level substantially higher than that applicable to the other Groups, however, counting the lesser Groups fully for purposes of the table could add excessive punishment, possibly even more than those offenses would carry if prosecuted separately. To avoid this anomalous result and produce declining marginal punishment, Groups 9 or more levels less serious than the most serious Group should not be counted for purposes of the table, and that Groups 5 to 8 levels less serious should be treated as equal to one-half of a Group. Thus, if the most serious Group is at offense level 15 and if two other Groups are at level 10, there would be a total of two Units for purposes of the table (one plus one-half plus one-half) and the combined offense level would be 17.”.

The Commentary to § 3D1.5 is amended by striking “Chapter Five (Determining the Sentence)” and inserting “Chapter Five (Determining the Sentencing Range and Options Under the Guidelines)”; and by striking “Chapter Three, Part E (Acceptance of Responsibility)” and inserting “Chapter Three, Parts E (Acceptance of Responsibility) and F (Early Disposition Programs),”.

Chapter Three is amended by inserting at the end the following new Part F:

“Part F—Early Disposition Programs
§ 3F1.1. Early Disposition Programs
(Policy Statement)

Upon motion of the Government, the court may decrease the defendant’s offense level pursuant to an early disposition program authorized by the Attorney General of the United States and the United States Attorney for the district in which the court resides. The level of the decrease shall be consistent with the authorized program within the filing district and the government motion filed, but shall be not more than 4 levels.

Commentary

Background: This policy statement implements the directive to the Commission in section 401(m)(2)(B) of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (the ‘PROTECT Act’, Public Law 108–21).”.

Chapter Four, Part A is amended in the Introductory Commentary by striking “and § 4A1.3”.

The Commentary to § 4A1.1 captioned “Background” is amended by striking “In recognition of the imperfection of this measure however, § 4A1.3 authorizes the court to depart from the

otherwise applicable criminal history category in certain circumstances.”.

Section 4A1.2(h) is amended by striking “, but may be considered under § 4A1.3 (Departures Based on Inadequacy of Criminal History Category (Policy Statement))”.

Section 4A1.2(i) is amended by striking “, but may be considered under § 4A1.3 (Departures Based on Inadequacy of Criminal History Category (Policy Statement))”.

Section 4A1.2(j) is amended by striking “, but may be considered under § 4A1.3 (Departures Based on Inadequacy of Criminal History Category (Policy Statement))”.

The Commentary to § 4A1.2 captioned “Applications Notes” is amended—in Note 3 by striking the following:

“Application of ‘Single Sentence’ Rule (Subsection (a)(2)).—

(A) *Predicate Offenses.*—In some cases, multiple prior sentences are treated as a single sentence for purposes of calculating the criminal history score under § 4A1.1(a), (b), and (c). However, for purposes of determining predicate offenses, a prior sentence included in the single sentence should be treated as if it received criminal history points, if it independently would have received criminal history points. Therefore, an individual prior sentence may serve as a predicate under the career offender guideline (see § 4B1.2(c)) or other guidelines with predicate offenses, if it independently would have received criminal history points. However, because predicate offenses may be used only if they are counted ‘separately’ from each other (see § 4B1.2(c)), no more than one prior sentence in a given single sentence may be used as a predicate offense.

For example, a defendant’s criminal history includes one robbery conviction and one theft conviction. The sentences for these offenses were imposed on the same day, eight years ago, and are treated as a single sentence under § 4A1.2(a)(2). If the defendant received a one-year sentence of imprisonment for the robbery and a two-year sentence of imprisonment for the theft, to be served concurrently, a total of 3 points is added under § 4A1.1(a). Because this particular robbery met the definition of a felony crime of violence and independently would have received 2 criminal history points under § 4A1.1(b), it may serve as a predicate under the career offender guideline.

Note, however, that if the sentences in the example above were imposed thirteen years ago, the robbery independently would have received no criminal history points under § 4A1.1(b), because it was not imposed

within ten years of the defendant's commencement of the instant offense. See § 4A1.2(e)(2). Accordingly, it may not serve as a predicate under the career offender guideline.

(B) *Upward Departure Provision.*—Treating multiple prior sentences as a single sentence may result in a criminal history score that underrepresents the seriousness of the defendant's criminal history and the danger that the defendant presents to the public. In such a case, an upward departure may be warranted. For example, if a defendant was convicted of a number of serious non-violent offenses committed on different occasions, and the resulting sentences were treated as a single sentence because either the sentences resulted from offenses contained in the same charging instrument or the defendant was sentenced for these offenses on the same day, the assignment of a single set of points may not adequately reflect the seriousness of the defendant's criminal history or the frequency with which the defendant has committed crimes.”;

and inserting the following:

“*Application of ‘Single Sentence’ Rule (Subsection (a)(2)).*—In some cases, multiple prior sentences are treated as a single sentence for purposes of calculating the criminal history score under § 4A1.1(a), (b), and (c). However, for purposes of determining predicate offenses, a prior sentence included in the single sentence should be treated as if it received criminal history points, if it independently would have received criminal history points. Therefore, an individual prior sentence may serve as a predicate under the career offender guideline (see § 4B1.2(c)) or other guidelines with predicate offenses, if it independently would have received criminal history points. However, because predicate offenses may be used only if they are counted ‘separately’ from each other (see § 4B1.2(c)), no more than one prior sentence in a given single sentence may be used as a predicate offense.

For example, a defendant's criminal history includes one robbery conviction and one theft conviction. The sentences for these offenses were imposed on the same day, eight years ago, and are treated as a single sentence under § 4A1.2(a)(2). If the defendant received a one-year sentence of imprisonment for the robbery and a two-year sentence of imprisonment for the theft, to be served concurrently, a total of 3 points is added under § 4A1.1(a). Because this particular robbery met the definition of a felony crime of violence and independently would have received 2 criminal history points under § 4A1.1(b), it may serve as

a predicate under the career offender guideline.

Note, however, that if the sentences in the example above were imposed thirteen years ago, the robbery independently would have received no criminal history points under § 4A1.1(b), because it was not imposed within ten years of the defendant's commencement of the instant offense. See § 4A1.2(e)(2). Accordingly, it may not serve as a predicate under the career offender guideline.”;

in Note 6 by striking the following paragraph:

“Nonetheless, the criminal conduct underlying any conviction that is not counted in the criminal history score may be considered pursuant to § 4A1.3 (Departures Based on Inadequacy of Criminal History Category (Policy Statement)).”;

and in Note 8 by striking “If the court finds that a sentence imposed outside this time period is evidence of similar, or serious dissimilar, criminal conduct, the court may consider this information in determining whether an upward departure is warranted under § 4A1.3 (Departures Based on Inadequacy of Criminal History Category (Policy Statement)).”.

Chapter Four, Part A is amended by striking § 4A1.3 and its accompanying commentary in its entirety as follows:

“§ 4A1.3. *Departures Based on Inadequacy of Criminal History Category (Policy Statement)*

(a) *Upward Departures.*—

(1) *Standard for Upward Departure.*—If reliable information indicates that the defendant's criminal history category substantially under-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes, an upward departure may be warranted.

(2) *Types of Information Forming the Basis for Upward Departure.*—The information described in subsection (a)(1) may include information concerning the following:

(A) Prior sentence(s) not used in computing the criminal history category (e.g., sentences for foreign and tribal convictions).

(B) Prior sentence(s) of substantially more than one year imposed as a result of independent crimes committed on different occasions.

(C) Prior similar misconduct established by a civil adjudication or by a failure to comply with an administrative order.

(D) Whether the defendant was pending trial or sentencing on another charge at the time of the instant offense.

(E) Prior similar adult criminal conduct not resulting in a criminal conviction.

(3) *Prohibition.*—A prior arrest record itself shall not be considered for purposes of an upward departure under this policy statement.

(4) *Determination of Extent of Upward Departure.*—

(A) *In General.*—Except as provided in subdivision (B), the court shall determine the extent of a departure under this subsection by using, as a reference, the criminal history category applicable to defendants whose criminal history or likelihood to recidivate most closely resembles that of the defendant's.

(B) *Upward Departures from Category VI.*—In a case in which the court determines that the extent and nature of the defendant's criminal history, taken together, are sufficient to warrant an upward departure from Criminal History Category VI, the court should structure the departure by moving incrementally down the sentencing table to the next higher offense level in Criminal History Category VI until it finds a guideline range appropriate to the case.

(b) *Downward Departures.*—

(1) *Standard for Downward Departure.*—If reliable information indicates that the defendant's criminal history category substantially over-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes, a downward departure may be warranted.

(2) *Prohibitions.*—

(A) *Criminal History Category I.*—Unless otherwise specified, a departure below the lower limit of the applicable guideline range for Criminal History Category I is prohibited.

(B) *Armed Career Criminal and Repeat and Dangerous Sex Offender.*—A downward departure under this subsection is prohibited for (i) an armed career criminal within the meaning of § 4B1.4 (Armed Career Criminal); and (ii) a repeat and dangerous sex offender against minors within the meaning of § 4B1.5 (Repeat and Dangerous Sex Offender Against Minors).

(3) *Limitations.*—

(A) *Limitation on Extent of Downward Departure for Career Offender.*—The extent of a downward departure under this subsection for a career offender within the meaning of § 4B1.1 (Career Offender) may not exceed one criminal history category.

(B) *Limitation on Applicability of § 5C1.2 in Event of Downward Departure.*—A defendant who receives a downward departure under this

subsection does not meet the criminal history requirement of subsection (a)(1) of § 5C1.2 (Limitation on Applicability of Statutory Maximum Sentences in Certain Cases) if the defendant did not otherwise meet such requirement before receipt of the downward departure.

(c) *Written Specification of Basis for Departure.*—In departing from the otherwise applicable criminal history category under this policy statement, the court shall specify in writing the following:

(1) In the case of an upward departure, the specific reasons why the applicable criminal history category substantially under-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes.

(2) In the case of a downward departure, the specific reasons why the applicable criminal history category substantially over-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes.

Commentary

Application Notes:

1. *Definitions.*—For purposes of this policy statement, the terms 'depart', 'departure', 'downward departure', and 'upward departure' have the meaning given those terms in Application Note 1 of the Commentary to § 1B1.1 (Application Instructions).

2. *Upward Departures.*—

(A) *Examples.*—An upward departure from the defendant's criminal history category may be warranted based on any of the following circumstances:

(i) A previous foreign sentence for a serious offense.

(ii) Receipt of a prior consolidated sentence of ten years for a series of serious assaults.

(iii) A similar instance of large scale fraudulent misconduct established by an adjudication in a Securities and Exchange Commission enforcement proceeding.

(iv) Commission of the instant offense while on bail or pretrial release for another serious offense.

(B) *Upward Departures from Criminal History Category VI.*—In the case of an egregious, serious criminal record in which even the guideline range for Criminal History Category VI is not adequate to reflect the seriousness of the defendant's criminal history, a departure above the guideline range for a defendant with Criminal History Category VI may be warranted. In determining whether an upward departure from Criminal History Category VI is warranted, the court should consider that the nature of the

prior offenses rather than simply their number is often more indicative of the seriousness of the defendant's criminal record. For example, a defendant with five prior sentences for very large-scale fraud offenses may have 15 criminal history points, within the range of points typical for Criminal History Category VI, yet have a substantially more serious criminal history overall because of the nature of the prior offenses.

(C) *Upward Departures Based on Tribal Court Convictions.*—In determining whether, or to what extent, an upward departure based on a tribal court conviction is appropriate, the court shall consider the factors set forth in § 4A1.3(a) above and, in addition, may consider relevant factors such as the following:

(i) The defendant was represented by a lawyer, had the right to a trial by jury, and received other due process protections consistent with those provided to criminal defendants under the United States Constitution.

(ii) The defendant received the due process protections required for criminal defendants under the Indian Civil Rights Act of 1968, Public Law 90–284, as amended.

(iii) The tribe was exercising expanded jurisdiction under the Tribal Law and Order Act of 2010, Public Law 111–211.

(iv) The tribe was exercising expanded jurisdiction under the Violence Against Women Reauthorization Act of 2013, Public Law 113–4.

(v) The tribal court conviction is not based on the same conduct that formed the basis for a conviction from another jurisdiction that receives criminal history points pursuant to this chapter.

(vi) The tribal court conviction is for an offense that otherwise would be counted under § 4A1.2 (Definitions and Instructions for Computing Criminal History).

3. *Downward Departures.*—

(A) *Examples.*—A downward departure from the defendant's criminal history category may be warranted based on any of the following circumstances:

(i) The defendant had two minor misdemeanor convictions close to ten years prior to the instant offense and no other evidence of prior criminal behavior in the intervening period.

(ii) The defendant received criminal history points from a sentence for possession of marijuana for personal use, without an intent to sell or distribute it to another person.

(B) *Downward Departures from Criminal History Category I.*—A

departure below the lower limit of the applicable guideline range for Criminal History Category I is prohibited under subsection (b)(2)(A), unless otherwise specified.

Background: This policy statement recognizes that the criminal history score is unlikely to take into account all the variations in the seriousness of criminal history that may occur. For example, a defendant with an extensive record of serious, assaultive conduct who had received what might now be considered extremely lenient treatment in the past might have the same criminal history category as a defendant who had a record of less serious conduct. Yet, the first defendant's criminal history clearly may be more serious. This may be particularly true in the case of younger defendants (e.g., defendants in their early twenties or younger) who are more likely to have received repeated lenient treatment, yet who may actually pose a greater risk of serious recidivism than older defendants. This policy statement authorizes the consideration of a departure from the guidelines in the limited circumstances where reliable information indicates that the criminal history category does not adequately reflect the seriousness of the defendant's criminal history or likelihood of recidivism, and provides guidance for the consideration of such departures.”

The Commentary to § 4B1.1 captioned “Application Notes” is amended by striking Note 4 as follows:

“4. *Departure Provision for State Misdemeanors.*—In a case in which one or both of the defendant's ‘two prior felony convictions’ is based on an offense that was classified as a misdemeanor at the time of sentencing for the instant federal offense, application of the career offender guideline may result in a guideline range that substantially overrepresents the seriousness of the defendant's criminal history or substantially overstates the seriousness of the instant offense. In such a case, a downward departure may be warranted without regard to the limitation in § 4A1.3(b)(3)(A).”

The Commentary to § 4B1.2 captioned “Application Notes” is amended by striking Note 4 as follows:

“4. *Upward Departure for Burglary Involving Violence.*—There may be cases in which a burglary involves violence, but does not qualify as a ‘crime of violence’ as defined in § 4B1.2(a) and, as a result, the defendant does not receive a higher offense level or higher Criminal History Category that would have applied if the burglary qualified as a ‘crime of violence.’ In

such a case, an upward departure may be appropriate.”.

The Commentary to § 4B1.4 captioned “Application Notes” is amended in Note 2 by striking the following paragraph:

“In a few cases, the rule provided in the preceding paragraph may result in a guideline range that, when combined with the mandatory consecutive sentence under 18 U.S.C. 844(h), § 924(c), or § 929(a), produces a total maximum penalty that is less than the maximum of the guideline range that would have resulted had there not been a count of conviction under 18 U.S.C. 844(h), § 924(c), or § 929(a) (*i.e.*, the guideline range that would have resulted if subsections (b)(3)(A) and (c)(2) had been applied). In such a case, an upward departure may be warranted so that the conviction under 18 U.S.C. 844(h), § 924(c), or § 929(a) does not result in a decrease in the total punishment. An upward departure under this paragraph shall not exceed the maximum of the guideline range that would have resulted had there not been a count of conviction under 18 U.S.C. 844(h), § 924(c), or § 929(a).”.

The Commentary to § 4B1.4 captioned “Background” is amended by striking “In some cases, the criminal history category may not adequately reflect the defendant’s criminal history; *see* § 4A1.3 (Departures Based on Inadequacy of Criminal History Category (Policy Statement)).”.

The Commentary to § 4C1.1 captioned “Application Notes” is amended—in the heading by striking “Notes” and inserting “Note”;

and by striking Note 2 as follows:

“2. *Upward Departure*.—An upward departure may be warranted if an adjustment under this guideline substantially underrepresents the seriousness of the defendant’s criminal history. For example, an upward departure may be warranted if the defendant has a prior conviction or other comparable judicial disposition for an offense that involved violence or credible threats of violence.”.

Chapter Five is amended—in the heading by striking “Determining the Sentence” and inserting “Determining the Sentencing Range and Options Under the Guidelines”;

and in the Introductory Commentary by striking the following:

“For certain categories of offenses and offenders, the guidelines permit the court to impose either imprisonment or some other sanction or combination of sanctions. In determining the type of sentence to impose, the sentencing judge should consider the nature and

seriousness of the conduct, the statutory purposes of sentencing, and the pertinent offender characteristics. A sentence is within the guidelines if it complies with each applicable section of this chapter. The court should impose a sentence sufficient, but not greater than necessary, to comply with the statutory purposes of sentencing. 18 U.S.C. 3553(a).”;

and inserting the following:

“Chapter Five sets forth the steps used to determine the applicable sentencing range based upon the guideline calculations made in Chapters Two through Four. Additionally, the provisions in this chapter set forth the sentencing requirements and options under the guidelines related to probation, imprisonment, supervision conditions, fines, and restitution for the particular guideline range. For example, for certain categories of offenses and offenders, the guidelines permit the court to impose either imprisonment or some other sanction or combination of sanctions. After applying the provisions of this chapter to determine the sentencing options recommended under the guidelines pursuant to subsection (a) of § 1B1.1 (Application Instructions), the court shall consider the other applicable factors in 18 U.S.C. 3553(a) to determine the length and type of sentence that is sufficient but not greater than necessary. A sentence is within the guidelines if it complies with each applicable section of this chapter.”.

The Commentary to § 5B1.1 captioned “Applications Notes” is amended by inserting at the end the following new Note 3:

“3. *Factors to Be Considered*.—

(A) *Statutory Factors*.—The court, in determining whether to impose a term of probation, and, if a term of probation is to be imposed, in determining the length of the term and the conditions of probation, is required by statute to consider the factors set forth in 18 U.S.C. 3553(a) to the extent that they are applicable. *See* 18 U.S.C. 3562(a).

(B) *Substance Abuse*.—In a case in which a defendant sentenced to probation is an abuser of controlled substances or alcohol, it is recommended that the court consider imposing a condition requiring the defendant to participate in a program approved by the United States Probation Office for substance abuse may be appropriate. *See* § 5B1.3(d)(4).

(C) *Domestic Violence*.—If the defendant is convicted for the first time of a domestic violence crime as defined in 18 U.S.C. 3561(b), a term of probation is required by statute if the defendant is not sentenced to a term of imprisonment. *See* 18 U.S.C. 3561(b).

Such a defendant is also required by statute to attend an approved rehabilitation program, if available within a 50-mile radius of the legal residence of the defendant. *See* 18 U.S.C. 3563(a); § 5B1.3(a)(4).

(D) *Mental and Emotional Conditions*.—In a case in which a defendant sentenced to probation is in need of psychological or psychiatric treatment, it is recommended that the court consider imposing a condition requiring that the defendant participate in a mental health program approved by the United States Probation Office. *See* § 5B1.3(d)(5).

(E) *Education and Vocational Skills*.—Education and vocational skills may be relevant in determining the conditions of probation for rehabilitative purposes, for public protection by restricting activities that allow for the utilization of a certain skill, or in determining the appropriate type of community service.

(F) *Employment Record*.—A defendant’s employment record may be relevant in determining the conditions of probation (*e.g.*, the appropriate hours of home detention).”.

The Commentary to § 5C1.1 captioned “Application Notes” is amended—by striking Note 6 as follows:

“6. *Departures Based on Specific Treatment Purpose*.—There may be cases in which a departure from the sentencing options authorized for Zone C of the Sentencing Table (under which at least half the minimum term must be satisfied by imprisonment) to the sentencing options authorized for Zone B of the Sentencing Table (under which all or most of the minimum term may be satisfied by intermittent confinement, community confinement, or home detention instead of imprisonment) is appropriate to accomplish a specific treatment purpose. Such a departure should be considered only in cases where the court finds that (A) the defendant is an abuser of narcotics, other controlled substances, or alcohol, or suffers from a significant mental illness, and (B) the defendant’s criminality is related to the treatment problem to be addressed.

In determining whether such a departure is appropriate, the court should consider, among other things, (1) the likelihood that completion of the treatment program will successfully address the treatment problem, thereby reducing the risk to the public from further crimes of the defendant, and (2) whether imposition of less imprisonment than required by Zone C will increase the risk to the public from further crimes of the defendant.

Examples: The following examples both assume the applicable guideline range is 12–18 months and the court departs in accordance with this application note. Under Zone C rules, the defendant must be sentenced to at least six months imprisonment. (1) The defendant is a nonviolent drug offender in Criminal History Category I and probation is not prohibited by statute. The court departs downward to impose a sentence of probation, with twelve months of intermittent confinement, community confinement, or home detention and participation in a substance abuse treatment program as conditions of probation. (2) The defendant is convicted of a Class A or B felony, so probation is prohibited by statute (*see* § 5B1.1(b)). The court departs downward to impose a sentence of one month imprisonment, with eleven months in community confinement or home detention and participation in a substance abuse treatment program as conditions of supervised release.”;

by redesignating Notes 7 through 10 as Notes 6 through 9, respectively; and in Note 9 (as so redesignated) by striking the following:

“Zero-Point Offenders.—

(A) *Zero-Point Offenders in Zones A and B of the Sentencing Table.*—If the defendant received an adjustment under § 4C1.1 (Adjustment for Certain Zero-Point Offenders) and the defendant’s applicable guideline range is in Zone A or B of the Sentencing Table, a sentence other than a sentence of imprisonment, in accordance with subsection (b) or (c)(3), is generally appropriate. *See* 28 U.S.C. 994(j).

(B) *Departure for Cases Where the Applicable Guideline Range Overstates the Gravity of the Offense.*—A departure, including a departure to a sentence other than a sentence of imprisonment, may be appropriate if the defendant received an adjustment under § 4C1.1 (Adjustment for Certain Zero-Point Offenders) and the defendant’s applicable guideline range overstates the gravity of the offense because the offense of conviction is not a crime of violence or an otherwise serious offense. *See* 28 U.S.C. 994(j).”; and inserting the following:

“Zero-Point Offenders in Zones A and B of the Sentencing Table.—If the defendant received an adjustment under § 4C1.1 (Adjustment for Certain Zero-Point Offenders) and the defendant’s applicable guideline range is in Zone A or B of the Sentencing Table, a sentence other than a sentence of imprisonment, in accordance with subsection (b) or (c)(3), is generally appropriate. *See* 28 U.S.C. 994(j).”.

The Commentary to § 5D1.1 captioned “Application Notes,” as amended by Amendment 4 of this document, is further amended—

in Note 3, as redesignated by Amendment 4 of this document, by striking “*See* § 5H1.4 (Physical Condition, Including Drug or Alcohol Dependence or Abuse; Gambling Addiction)” and inserting “*See* § 5D1.3(b)(3)(D)”;

by further redesignating Notes 5, 6, and 7 (as redesignated by Amendment 4 of this document) as Notes 8, 9, and 10, respectively;

and by inserting after Note 4, as redesignated by Amendment 4 of this document, the following new Notes 5, 6, and 7:

“5. *Mental and Emotional Conditions.*—In a case in which a defendant sentenced to imprisonment is in need of psychological or psychiatric treatment, it is recommended that the court consider imposing a condition requiring that the defendant participate in a mental health program approved by the United States Probation Office. *See* § 5D1.3(b)(3)(E).

6. *Education and Vocational Skills.*—Education and vocational skills may be relevant in determining the conditions of supervised release for rehabilitative purposes, for public protection by restricting activities that allow for the utilization of a certain skill, or in determining the appropriate type of community service.

7. *Employment Record.*—A defendant’s employment record may be relevant in determining the conditions of supervised release (*e.g.*, the appropriate hours of home detention).”.

Section 5D1.3(b)(3)(D), as redesignated and amended by Amendment 4 of this document, is further amended by inserting after “possess alcohol.” the following: “If participation in a substance abuse program is required, the length of the term of supervised release should take into account the length of time necessary for the probation office to judge the success of the program.”.

The Commentary to § 5E1.2 captioned “Applications Notes” is amended—by striking Note 4 as follows:

“4. The Commission envisions that for most defendants, the maximum of the guideline fine range from subsection (c) will be at least twice the amount of gain or loss resulting from the offense. Where, however, two times either the amount of gain to the defendant or the amount of loss caused by the offense exceeds the maximum of the fine guideline, an upward departure from the fine guideline may be warranted.

Moreover, where a sentence within the applicable fine guideline range would not be sufficient to ensure both the disgorgement of any gain from the offense that otherwise would not be disgorged (*e.g.*, by restitution or forfeiture) and an adequate punitive fine, an upward departure from the fine guideline range may be warranted.”; and by redesignating Notes 5, 6, and 7 as Notes 4, 5, and 6, respectively.

The Commentary to § 5G1.1 is amended by striking “; a sentence of less than 48 months would be a guideline departure”; and by striking “; a sentence of more than 60 months would be a guideline departure”.

The Commentary to § 5G1.3 captioned “Application Notes,” as amended by Amendment 4 of this document, is further amended—

in Note 2(C) by striking “(iii) the undischarged term of imprisonment for which the adjustment is being given” and inserting “(iii) the undischarged term of imprisonment for which the adjustment is being given and the relevant case information (including docket number)”;

in Note 4(E) by striking the following: “*Downward Departure.*—Unlike subsection (b), subsection (d) does not authorize an adjustment of the sentence for the instant offense for a period of imprisonment already served on the undischarged term of imprisonment. However, in an extraordinary case involving an undischarged term of imprisonment under subsection (d), it may be appropriate for the court to downwardly depart. This may occur, for example, in a case in which the defendant has served a very substantial period of imprisonment on an undischarged term of imprisonment that resulted from conduct only partially within the relevant conduct for the instant offense. In such a case, a downward departure may be warranted to ensure that the combined punishment is not increased unduly by the fortuity and timing of separate prosecutions and sentencings. Nevertheless, it is intended that a departure pursuant to this application note result in a sentence that ensures a reasonable incremental punishment for the instant offense of conviction.

To avoid confusion with the Bureau of Prisons’ exclusive authority provided under 18 U.S.C. 3585(b) to grant credit for time served under certain circumstances, the Commission recommends that any downward departure under this application note be clearly stated on the Judgment in a Criminal Case Order as a downward departure pursuant to § 5G1.3(d), rather than as a credit for time served.”;

and inserting the following:

“Imposition of Sentence.—Unlike subsection (b), subsection (d) does not address an adjustment of the sentence for the instant offense for a period of imprisonment already served on the undischarged term of imprisonment. If the court does account for an undischarged term of imprisonment under subsection (d) in imposing the sentence, the Commission recommends that the court clearly state that the sentence was imposed pursuant to 18 U.S.C. 3553(a), rather than as a credit for time served, to avoid confusion with the Federal Bureau of Prisons’ exclusive authority provided under 18 U.S.C. 3585(b) to grant credit for time served under certain circumstances.

The court should note on the Judgment in a Criminal Case Order (i) that the sentence was imposed pursuant to 18 U.S.C. 3553(a); (ii) the amount of time by which the sentence is being adjusted; (iii) the undischarged term of imprisonment for which the adjustment is being given and the relevant case information (including docket number); and (iv) that the sentence imposed is to account for a period of imprisonment that will not be credited by the Federal Bureau of Prisons.”;

and in Note 5 by striking the following:

“Downward Departure Provision.—In the case of a discharged term of imprisonment, a downward departure is not prohibited if the defendant (A) has completed serving a term of imprisonment; and (B) subsection (b) would have provided an adjustment had that completed term of imprisonment been undischarged at the time of sentencing for the instant offense. *See* § 5K2.23 (Discharged Terms of Imprisonment).”;

and inserting the following:

“Discharged Term of Imprisonment.—This guideline does not address an adjustment of the sentence for the instant offense for a period of imprisonment already served on a discharged term of imprisonment. Nonetheless, nothing in the Guidelines Manual abrogates a court’s authority under 18 U.S.C. 3553(a) to consider a previously completed term of imprisonment in determining an appropriate sentence where subsection (b) above would have provided an adjustment had that completed term of imprisonment been undischarged at the time of sentencing for the instant offense.”.

Chapter Five is amended by striking in its entirety Part H, as amended by Amendment 4 of this document, as follows:

“Part H—Specific Offender Characteristics

Introductory Commentary

This part addresses the relevance of certain specific offender characteristics in sentencing. The Sentencing Reform Act (the ‘Act’) contains several provisions regarding specific offender characteristics:

First, the Act directs the Commission to ensure that the guidelines and policy statements ‘are entirely neutral’ as to five characteristics—race, sex, national origin, creed, and socioeconomic status. *See* 28 U.S.C. 994(d).

Second, the Act directs the Commission to consider whether eleven specific offender characteristics, ‘among others’, have any relevance to the nature, extent, place of service, or other aspects of an appropriate sentence, and to take them into account in the guidelines and policy statements only to the extent that they do have relevance. *See* 28 U.S.C. 994(d).

Third, the Act directs the Commission to ensure that the guidelines and policy statements, in recommending a term of imprisonment or length of a term of imprisonment, reflect the ‘general inappropriateness’ of considering five of those characteristics—education; vocational skills; employment record; family ties and responsibilities; and community ties. *See* 28 U.S.C. 994(e).

Fourth, the Act also directs the sentencing court, in determining the particular sentence to be imposed, to consider, among other factors, ‘the history and characteristics of the defendant’. *See* 18 U.S.C. 3553(a)(1).

Specific offender characteristics are taken into account in the guidelines in several ways. One important specific offender characteristic is the defendant’s criminal history, *see* 28 U.S.C. 994(d)(10), which is taken into account in the guidelines in Chapter Four (Criminal History and Criminal Livelihood). *See* § 5H1.8 (Criminal History). Another specific offender characteristic in the guidelines is the degree of dependence upon criminal history for a livelihood, *see* 28 U.S.C. 994(d)(11), which is taken into account in Chapter Four, Part B (Career Offenders and Criminal Livelihood). *See* § 5H1.9 (Dependence upon Criminal Activity for a Livelihood). Other specific offender characteristics are accounted for elsewhere in this manual. *See, e.g.*, §§ 2C1.1(a)(1) and 2C1.2(a)(1) (providing alternative base offense levels if the defendant was a public official); 3B1.3 (Abuse of Position of Trust or Use of Special Skill); and 3E1.1 (Acceptance of Responsibility).

The Supreme Court has emphasized that the advisory guideline system should ‘continue to move sentencing in Congress’ preferred direction, helping to avoid excessive sentencing disparities while maintaining flexibility sufficient to individualize sentences where necessary.’ *See United States v. Booker*, 543 U.S. 220, 264–65 (2005). Although the court must consider ‘the history and characteristics of the defendant’ among other factors, *see* 18 U.S.C. 3553(a), in order to avoid unwarranted sentencing disparities the court should not give them excessive weight. Generally, the most appropriate use of specific offender characteristics is to consider them not as a reason for a sentence outside the applicable guideline range but for other reasons, such as in determining the sentence within the applicable guideline range, the type of sentence (*e.g.*, probation or imprisonment) within the sentencing options available for the applicable Zone on the Sentencing Table, and various other aspects of an appropriate sentence. To avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct, *see* 18 U.S.C. 3553(a)(6), 28 U.S.C. 991(b)(1)(B), the guideline range, which reflects the defendant’s criminal conduct and the defendant’s criminal history, should continue to be ‘the starting point and the initial benchmark.’ *Gall v. United States*, 552 U.S. 38, 49 (2007).

Accordingly, the purpose of this part is to provide sentencing courts with a framework for addressing specific offender characteristics in a reasonably consistent manner. Using such a framework in a uniform manner will help ‘secure nationwide consistency,’ *see Gall v. United States*, 552 U.S. 38, 49 (2007), ‘avoid unwarranted sentencing disparities,’ *see* 28 U.S.C. 991(b)(1)(B), 18 U.S.C. 3553(a)(6), ‘provide certainty and fairness,’ *see* 28 U.S.C. 991(b)(1)(B), and ‘promote respect for the law,’ *see* 18 U.S.C. 3553(a)(2)(A).

This part allocates specific offender characteristics into three general categories.

In the first category are specific offender characteristics the consideration of which Congress has prohibited (*e.g.*, § 5H1.10 (Race, Sex, National Origin, Creed, Religion, and Socio-Economic Status)) or that the Commission has determined should be prohibited.

In the second category are specific offender characteristics that Congress directed the Commission to take into account in the guidelines only to the

extent that they have relevance to sentencing. *See* 28 U.S.C. 994(d). For some of these, the policy statements indicate that these characteristics may be relevant in determining whether a sentence outside the applicable guideline range is warranted (e.g., age; mental and emotional condition; physical condition). These characteristics may warrant a sentence outside the applicable guideline range if the characteristic, individually or in combination with other such characteristics, is present to an unusual degree and distinguishes the case from the typical cases covered by the guidelines. These specific offender characteristics also may be considered for other reasons, such as in determining the sentence within the applicable guideline range, the type of sentence (e.g., probation or imprisonment) within the sentencing options available for the applicable Zone on the Sentencing Table, and various other aspects of an appropriate sentence.

In the third category are specific offender characteristics that Congress directed the Commission to ensure are reflected in the guidelines and policy statements as generally inappropriate in recommending a term of imprisonment or length of a term of imprisonment. *See* 28 U.S.C. 994(e). The policy statements indicate that these characteristics are not ordinarily relevant to the determination of whether a sentence should be outside the applicable guideline range. Unless expressly stated, this does not mean that the Commission views such circumstances as necessarily inappropriate to the determination of the sentence within the applicable guideline range, the type of sentence (e.g., probation or imprisonment) within the sentencing options available for the applicable Zone on the Sentencing Table, or various other aspects of an appropriate sentence (e.g., the appropriate conditions of probation or supervised release). Furthermore, although these circumstances are not ordinarily relevant to the determination of whether a sentence should be outside the applicable guideline range, they may be relevant to this determination in exceptional cases. They also may be relevant if a combination of such circumstances makes the case an exceptional one, but only if each such circumstance is identified as an affirmative ground for departure and is present in the case to a substantial degree. *See* § 5K2.0 (Grounds for Departure).

As with the other provisions in this manual, these policy statements 'are evolutionary in nature'. *See* Chapter

One, Part A, Subpart 2 (Continuing Evolution and Role of the Guidelines); 28 U.S.C. 994(o). The Commission expects, and the Sentencing Reform Act contemplates, that continuing research, experience, and analysis will result in modifications and revisions.

The nature, extent, and significance of specific offender characteristics can involve a range of considerations. The Commission will continue to provide information to the courts on the relevance of specific offender characteristics in sentencing, as the Sentencing Reform Act contemplates. *See, e.g.,* 28 U.S.C. 995(a)(12)(A) (the Commission serves as a 'clearinghouse and information center' on federal sentencing). Among other things, this may include information on the use of specific offender characteristics, individually and in combination, in determining the sentence to be imposed (including, where available, information on rates of use, criteria for use, and reasons for use); the relationship, if any, between specific offender characteristics and (A) the 'forbidden factors' specified in 28 U.S.C. 994(d) and (B) the 'discouraged factors' specified in 28 U.S.C. 994(e); and the relationship, if any, between specific offender characteristics and the statutory purposes of sentencing.

§ 5H1.1. Age (Policy Statement)

Age may be relevant in determining whether a departure is warranted.

Age may be a reason to depart downward in a case in which the defendant is elderly and infirm and where a form of punishment such as home confinement might be equally efficient as and less costly than incarceration.

A downward departure also may be warranted due to the defendant's youthfulness at the time of the offense or prior offenses. Certain risk factors may affect a youthful individual's development into the mid-20's and contribute to involvement in criminal justice systems, including environment, adverse childhood experiences, substance use, lack of educational opportunities, and familial relationships. In addition, youthful individuals generally are more impulsive, risk-seeking, and susceptible to outside influence as their brains continue to develop into young adulthood. Youthful individuals also are more amenable to rehabilitation.

The age-crime curve, one of the most consistent findings in criminology, demonstrates that criminal behavior tends to decrease with age. Age-appropriate interventions and other protective factors may promote

desistance from crime. Accordingly, in an appropriate case, the court may consider whether a form of punishment other than imprisonment might be sufficient to meet the purposes of sentencing.

Physical condition, which may be related to age, is addressed at § 5H1.4 (Physical Condition, Including Drug or Alcohol Dependence or Abuse; Gambling Addiction).

§ 5H1.2. Education and Vocational Skills (Policy Statement)

Education and vocational skills are not ordinarily relevant in determining whether a departure is warranted, but the extent to which a defendant may have misused special training or education to facilitate criminal activity is an express guideline factor.

See § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).

Education and vocational skills may be relevant in determining the conditions of probation or supervised release for rehabilitative purposes, for public protection by restricting activities that allow for the utilization of a certain skill, or in determining the appropriate type of community service.

§ 5H1.3. Mental and Emotional Conditions (Policy Statement)

Mental and emotional conditions may be relevant in determining whether a departure is warranted, if such conditions, individually or in combination with other offender characteristics, are present to an unusual degree and distinguish the case from the typical cases covered by the guidelines. *See also* Chapter Five, Part K, Subpart 2 (Other Grounds for Departure).

In certain cases a downward departure may be appropriate to accomplish a specific treatment purpose. *See* § 5C1.1, Application Note 7.

Mental and emotional conditions may be relevant in determining the conditions of probation or supervised release; e.g., participation in a mental health program (*see* §§ 5B1.3(d)(5) and 5D1.3(b)(3)(E)).

§ 5H1.4. Physical Condition, Including Drug or Alcohol Dependence or Abuse; Gambling Addiction (Policy Statement)

Physical condition or appearance, including physique, may be relevant in determining whether a departure is warranted, if the condition or appearance, individually or in combination with other offender characteristics, is present to an unusual degree and distinguishes the case from the typical cases covered by the guidelines. An extraordinary physical

impairment may be a reason to depart downward; e.g., in the case of a seriously infirm defendant, home detention may be as efficient as, and less costly than, imprisonment.

Drug or alcohol dependence or abuse ordinarily is not a reason for a downward departure. Substance abuse is highly correlated to an increased propensity to commit crime. Due to this increased risk, it is highly recommended that a defendant who is incarcerated also be sentenced to supervised release with a requirement that the defendant participate in an appropriate substance abuse program (see § 5D1.3(b)(3)(D)). If participation in a substance abuse program is required, the length of supervised release should take into account the length of time necessary for the probation office to judge the success of the program.

In certain cases a downward departure may be appropriate to accomplish a specific treatment purpose. See § 5C1.1, Application Note 7.

In a case in which a defendant who is a substance abuser is sentenced to probation, it is strongly recommended that the conditions of probation contain a requirement that the defendant participate in an appropriate substance abuse program (see § 5B1.3(d)(4)).

Addition to gambling is not a reason for a downward departure.

§ 5H1.5. *Employment Record (Policy Statement)*

Employment record is not ordinarily relevant in determining whether a departure is warranted.

Employment record may be relevant in determining the conditions of probation or supervised release (e.g., the appropriate hours of home detention).

§ 5H1.6. *Family Ties and Responsibilities (Policy Statement)*

In sentencing a defendant convicted of an offense other than an offense described in the following paragraph, family ties and responsibilities are not ordinarily relevant in determining whether a departure may be warranted.

In sentencing a defendant convicted of an offense involving a minor victim under section 1201, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, of title 18, United States Code, family ties and responsibilities and community ties are not relevant in determining whether a sentence should be below the applicable guideline range.

Family responsibilities that are complied with may be relevant to the determination of the amount of restitution or fine.

Commentary

Application Note:

1. *Circumstances to Consider.*—

(A) *In General.*—In determining whether a departure is warranted under this policy statement, the court shall consider the following non-exhaustive list of circumstances:

- (i) The seriousness of the offense.
- (ii) The involvement in the offense, if any, of members of the defendant's family.
- (iii) The danger, if any, to members of the defendant's family as a result of the offense.

(B) *Departures Based on Loss of Caretaking or Financial Support.*—A departure under this policy statement based on the loss of caretaking or financial support of the defendant's family requires, in addition to the court's consideration of the non-exhaustive list of circumstances in subdivision (A), the presence of the following circumstances:

- (i) The defendant's service of a sentence within the applicable guideline range will cause a substantial, direct, and specific loss of essential caretaking, or essential financial support, to the defendant's family.
- (ii) The loss of caretaking or financial support substantially exceeds the harm ordinarily incident to incarceration for a similarly situated defendant. For example, the fact that the defendant's family might incur some degree of financial hardship or suffer to some extent from the absence of a parent through incarceration is not in itself sufficient as a basis for departure because such hardship or suffering is of a sort ordinarily incident to incarceration.
- (iii) The loss of caretaking or financial support is one for which no effective remedial or ameliorative programs reasonably are available, making the defendant's caretaking or financial support irreplaceable to the defendant's family.
- (iv) The departure effectively will address the loss of caretaking or financial support.

Background: Section 401(b)(4) of Public Law 108–21 directly amended this policy statement to add the second paragraph, effective April 30, 2003.

§ 5H1.7. *Role in the Offense (Policy Statement)*

A defendant's role in the offense is relevant in determining the applicable guideline range (see Chapter Three, Part B (Role in the Offense)) but is not a basis for departing from that range (see subsection (d) of § 5K2.0 (Grounds for Departures)).

§ 5H1.7. *Role in the Offense (Policy Statement)*

A defendant's role in the offense is relevant in determining the applicable guideline range (see Chapter Three, Part B (Role in the Offense)) but is not a basis for departing from that range (see subsection (d) of § 5K2.0 (Grounds for Departures)).

§ 5H1.8. *Criminal History (Policy Statement)*

A defendant's criminal history is relevant in determining the applicable criminal history category. See Chapter Four (Criminal History and Criminal Livelihood). For grounds of departure based on the defendant's criminal history, see § 4A1.3 (Departures Based on Inadequacy of Criminal History Category).

§ 5H1.9. *Dependence upon Criminal Activity for a Livelihood (Policy Statement)*

The degree to which a defendant depends upon criminal activity for a livelihood is relevant in determining the appropriate sentence. See Chapter Four, Part B (Career Offenders and Criminal Livelihood).

§ 5H1.10. *Race, Sex, National Origin, Creed, Religion, and Socio-Economic Status (Policy Statement)*

These factors are not relevant in the determination of a sentence.

§ 5H1.11. *Military, Civic, Charitable, or Public Service; Employment-Related Contributions; Record of Prior Good Works (Policy Statement)*

Military service may be relevant in determining whether a departure is warranted, if the military service, individually or in combination with other offender characteristics, is present to an unusual degree and distinguishes the case from the typical cases covered by the guidelines.

Civic, charitable, or public service; employment-related contributions; and similar prior good works are not ordinarily relevant in determining whether a departure is warranted.

§ 5H1.12. *Lack of Guidance as a Youth and Similar Circumstances (Policy Statement)*

Lack of guidance as a youth and similar circumstances indicating a disadvantaged upbringing are not relevant grounds in determining whether a departure is warranted."

Chapter Five, Part K is amended in the heading by striking "DEPARTURES" and inserting "ASSISTANCE TO AUTHORITIES".

Chapter Five, Part K, Subpart 1 is amended by striking the heading as follows:

"1. *Substantial Assistance to Authorities*"

Section 5K1.1 is amended by striking "the court may depart from the guidelines" and inserting "a sentence that is below the otherwise applicable guideline range may be appropriate".

Chapter Five, Part K is amended by striking Subparts 2 and 3 in their entirety as follows:

“2. *Other Grounds for Departure*

§ 5K2.0. *Grounds for Departure (Policy Statement)*

(a) *Upward Departures in General and Downward Departures in Criminal Cases Other Than Child Crimes and Sexual Offenses.*—

(1) *In General.*—The sentencing court may depart from the applicable guideline range if—

(A) in the case of offenses other than child crimes and sexual offenses, the court finds, pursuant to 18 U.S.C. 3553(b)(1), that there exists an aggravating or mitigating circumstance; or

(B) in the case of child crimes and sexual offenses, the court finds, pursuant to 18 U.S.C. 3553(b)(2)(A)(i), that there exists an aggravating circumstance,

of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that, in order to advance the objectives set forth in 18 U.S.C. 3553(a)(2), should result in a sentence different from that described.

(2) *Departures Based on Circumstances of a Kind Not Adequately Taken Into Consideration.*—

(A) *Identified Circumstances.*—This subpart (Chapter Five, Part K, Subpart 2 (Other Grounds for Departure)) identifies some of the circumstances that the Commission may have not adequately taken into consideration in determining the applicable guideline range (e.g., as a specific offense characteristic or other adjustment). If any such circumstance is present in the case and has not adequately been taken into consideration in determining the applicable guideline range, a departure consistent with 18 U.S.C. 3553(b) and the provisions of this subpart may be warranted.

(B) *Unidentified Circumstances.*—A departure may be warranted in the exceptional case in which there is present a circumstance that the Commission has not identified in the guidelines but that nevertheless is relevant to determining the appropriate sentence.

(3) *Departures Based on Circumstances Present to a Degree Not Adequately Taken into Consideration.*—A departure may be warranted in an exceptional case, even though the circumstance that forms the basis for the departure is taken into consideration in determining the guideline range, if the court determines that such circumstance

is present in the offense to a degree substantially in excess of, or substantially below, that which ordinarily is involved in that kind of offense.

(4) *Departures Based on Not Ordinarily Relevant Offender Characteristics and Other Circumstances.*—An offender characteristic or other circumstance identified in Chapter Five, Part H (Offender Characteristics) or elsewhere in the guidelines as not ordinarily relevant in determining whether a departure is warranted may be relevant to this determination only if such offender characteristic or other circumstance is present to an exceptional degree.

(b) *Downward Departures in Child Crimes and Sexual Offenses.*—Under 18 U.S.C. 3553(b)(2)(A)(ii), the sentencing court may impose a sentence below the range established by the applicable guidelines only if the court finds that there exists a mitigating circumstance of a kind, or to a degree, that—

(1) has been affirmatively and specifically identified as a permissible ground of downward departure in the sentencing guidelines or policy statements issued under section 994(a) of title 28, United States Code, taking account of any amendments to such sentencing guidelines or policy statements by act of Congress;

(2) has not adequately been taken into consideration by the Sentencing Commission in formulating the guidelines; and

(3) should result in a sentence different from that described.

The grounds enumerated in this Part K of Chapter Five are the sole grounds that have been affirmatively and specifically identified as a permissible ground of downward departure in these sentencing guidelines and policy statements. Thus, notwithstanding any other reference to authority to depart downward elsewhere in this Sentencing Manual, a ground of downward departure has not been affirmatively and specifically identified as a permissible ground of downward departure within the meaning of section 3553(b)(2) unless it is expressly enumerated in this Part K as a ground upon which a downward departure may be granted.

(c) *Limitation on Departures Based on Multiple Circumstances.*—The court may depart from the applicable guideline range based on a combination of two or more offender characteristics or other circumstances, none of which independently is sufficient to provide a basis for departure, only if—

(1) such offender characteristics or other circumstances, taken together, make the case an exceptional one; and
(2) each such offender characteristic or other circumstance is—

(A) present to a substantial degree; and

(B) identified in the guidelines as a permissible ground for departure, even if such offender characteristic or other circumstance is not ordinarily relevant to a determination of whether a departure is warranted.

(d) *Prohibited Departures.*—Notwithstanding subsections (a) and (b) of this policy statement, or any other provision in the guidelines, the court may not depart from the applicable guideline range based on any of the following circumstances:

(1) Any circumstance specifically prohibited as a ground for departure in §§ 5H1.10 (Race, Sex, National Origin, Creed, Religion, and Socio-Economic Status), 5H1.12 (Lack of Guidance as a Youth and Similar Circumstances), the last sentence of 5H1.4 (Physical Condition, Including Drug or Alcohol Dependence or Abuse; Gambling Addiction), and the last sentence of 5K2.12 (Coercion and Duress).

(2) The defendant's acceptance of responsibility for the offense, which may be taken into account only under § 3E1.1 (Acceptance of Responsibility).

(3) The defendant's aggravating or mitigating role in the offense, which may be taken into account only under § 3B1.1 (Aggravating Role) or § 3B1.2 (Mitigating Role), respectively.

(4) The defendant's decision, in and of itself, to plead guilty to the offense or to enter a plea agreement with respect to the offense (i.e., a departure may not be based merely on the fact that the defendant decided to plead guilty or to enter into a plea agreement, but a departure may be based on justifiable, non-prohibited reasons as part of a sentence that is recommended, or agreed to, in the plea agreement and accepted by the court. See § 6B1.2 (Standards for Acceptance of Plea Agreement)).

(5) The defendant's fulfillment of restitution obligations only to the extent required by law including the guidelines (i.e., a departure may not be based on unexceptional efforts to remedy the harm caused by the offense).

(6) Any other circumstance specifically prohibited as a ground for departure in the guidelines.

(e) *Requirement of Specific Written Reasons for Departure.*—If the court departs from the applicable guideline range, it shall state, pursuant to 18 U.S.C. 3553(c), its specific reasons for departure in open court at the time of

sentencing and, with limited exception in the case of statements received in camera, shall state those reasons with specificity in the statement of reasons form.

Commentary

Application Notes:

1. *Definitions.*—For purposes of this policy statement:

‘Circumstance’ includes, as appropriate, an offender characteristic or any other offense factor.

‘Depart’, ‘departure’, ‘downward departure’, and ‘upward departure’ have the meaning given those terms in Application Note 1 of the Commentary to § 1B1.1 (Application Instructions).

2. *Scope of this Policy Statement.*—

(A) *Departures Covered by this Policy Statement.*—This policy statement covers departures from the applicable guideline range based on offense characteristics or offender characteristics of a kind, or to a degree, not adequately taken into consideration in determining that range. *See* 18 U.S.C. 3553(b).

Subsection (a) of this policy statement applies to upward departures in all cases covered by the guidelines and to downward departures in all such cases except for downward departures in child crimes and sexual offenses.

Subsection (b) of this policy statement applies only to downward departures in child crimes and sexual offenses.

(B) *Departures Covered by Other Guidelines.*—This policy statement does not cover the following departures, which are addressed elsewhere in the guidelines: (i) departures based on the defendant’s criminal history (*see* Chapter Four (Criminal History and Criminal Livelihood), particularly § 4A1.3 (Departures Based on Inadequacy of Criminal History Category)); (ii) departures based on the defendant’s substantial assistance to the authorities (*see* § 5K1.1 (Substantial Assistance to Authorities)); and (iii) departures based on early disposition programs (*see* § 5K3.1 (Early Disposition Programs)).

3. *Kinds and Expected Frequency of Departures under Subsection (a).*—As set forth in subsection (a), there generally are two kinds of departures from the guidelines based on offense characteristics and/or offender characteristics: (A) departures based on circumstances of a kind not adequately taken into consideration in the guidelines; and (B) departures based on circumstances that are present to a degree not adequately taken into consideration in the guidelines.

(A) *Departures Based on Circumstances of a Kind Not*

Adequately Taken into Account in Guidelines.—Subsection (a)(2) authorizes the court to depart if there exists an aggravating or a mitigating circumstance in a case under 18 U.S.C. 3553(b)(1), or an aggravating circumstance in a case under 18 U.S.C. 3553(b)(2)(A)(i), of a kind not adequately taken into consideration in the guidelines.

(i) *Identified Circumstances.*—This subpart (Chapter Five, Part K, Subpart 2) identifies several circumstances that the Commission may have not adequately taken into consideration in setting the offense level for certain cases. Offense guidelines in Chapter Two (Offense Conduct) and adjustments in Chapter Three (Adjustments) sometimes identify circumstances the Commission may have not adequately taken into consideration in setting the offense level for offenses covered by those guidelines. If the offense guideline in Chapter Two or an adjustment in Chapter Three does not adequately take that circumstance into consideration in setting the offense level for the offense, and only to the extent not adequately taken into consideration, a departure based on that circumstance may be warranted.

(ii) *Unidentified Circumstances.*—A case may involve circumstances, in addition to those identified by the guidelines, that have not adequately been taken into consideration by the Commission, and the presence of any such circumstance may warrant departure from the guidelines in that case. However, inasmuch as the Commission has continued to monitor and refine the guidelines since their inception to take into consideration relevant circumstances in sentencing, it is expected that departures based on such unidentified circumstances will occur rarely and only in exceptional cases.

(B) *Departures Based on Circumstances Present to a Degree Not Adequately Taken into Consideration in Guidelines.*—

(i) *In General.*—Subsection (a)(3) authorizes the court to depart if there exists an aggravating or a mitigating circumstance in a case under 18 U.S.C. 3553(b)(1), or an aggravating circumstance in a case under 18 U.S.C. 3553(b)(2)(A)(i), to a degree not adequately taken into consideration in the guidelines. However, inasmuch as the Commission has continued to monitor and refine the guidelines since their inception to determine the most appropriate weight to be accorded the mitigating and aggravating circumstances specified in the guidelines, it is expected that departures based on the weight accorded to any

such circumstance will occur rarely and only in exceptional cases.

(ii) *Examples.*—As set forth in subsection (a)(3), if the applicable offense guideline and adjustments take into consideration a circumstance identified in this subpart, departure is warranted only if the circumstance is present to a degree substantially in excess of that which ordinarily is involved in the offense. Accordingly, a departure pursuant to § 5K2.7 for the disruption of a governmental function would have to be substantial to warrant departure from the guidelines when the applicable offense guideline is bribery or obstruction of justice. When the guideline covering the mailing of injurious articles is applicable, however, and the offense caused disruption of a governmental function, departure from the applicable guideline range more readily would be appropriate. Similarly, physical injury would not warrant departure from the guidelines when the robbery offense guideline is applicable because the robbery guideline includes a specific adjustment based on the extent of any injury. However, because the robbery guideline does not deal with injury to more than one victim, departure may be warranted if several persons were injured.

(C) *Departures Based on Circumstances Identified as Not Ordinarily Relevant.*—Because certain circumstances are specified in the guidelines as not ordinarily relevant to sentencing (*see, e.g.,* Chapter Five, Part H (Specific Offender Characteristics)), a departure based on any one of such circumstances should occur only in exceptional cases, and only if the circumstance is present in the case to an exceptional degree. If two or more of such circumstances each is present in the case to a substantial degree, however, and taken together make the case an exceptional one, the court may consider whether a departure would be warranted pursuant to subsection (c). Departures based on a combination of not ordinarily relevant circumstances that are present to a substantial degree should occur extremely rarely and only in exceptional cases.

In addition, as required by subsection (e), each circumstance forming the basis for a departure described in this subparagraph shall be stated with specificity in the statement of reasons form.

4. *Downward Departures in Child Crimes and Sexual Offenses.*—

(A) *Definition.*—For purposes of this policy statement, the term ‘child crimes and sexual offenses’ means offenses under any of the following: 18 U.S.C. 1201 (involving a minor victim), 18

U.S.C. 1591, or chapter 71, 109A, 110, or 117 of title 18, United States Code.

(B) *Standard for Departure.*—

(i) *Requirement of Affirmative and Specific Identification of Departure Ground.*—The standard for a downward departure in child crimes and sexual offenses differs from the standard for other departures under this policy statement in that it includes a requirement, set forth in 18 U.S.C. 3553(b)(2)(A)(ii)(I) and subsection (b)(1) of this guideline, that any mitigating circumstance that forms the basis for such a downward departure be affirmatively and specifically identified as a ground for downward departure in this part (*i.e.*, Chapter Five, Part K).

(ii) *Application of Subsection (b)(2).*—The commentary in Application Note 3 of this policy statement, except for the commentary in Application Note 3(A)(ii) relating to unidentified circumstances, shall apply to the court's determination of whether a case meets the requirement, set forth in subsection 18 U.S.C. 3553(b)(2)(A)(ii)(II) and subsection (b)(2) of this policy statement, that the mitigating circumstance forming the basis for a downward departure in child crimes and sexual offenses be of kind, or to a degree, not adequately taken into consideration by the Commission.

5. *Departures Based on Plea Agreements.*—Subsection (d)(4) prohibits a downward departure based only on the defendant's decision, in and of itself, to plead guilty to the offense or to enter a plea agreement with respect to the offense. Even though a departure may not be based merely on the fact that the defendant agreed to plead guilty or enter a plea agreement, a departure may be based on justifiable, non-prohibited reasons for departure as part of a sentence that is recommended, or agreed to, in the plea agreement and accepted by the court. *See* § 6B1.2 (Standards for Acceptance of Plea Agreements). In cases in which the court departs based on such reasons as set forth in the plea agreement, the court must state the reasons for departure with specificity in the statement of reasons form, as required by subsection (e).

Background: This policy statement sets forth the standards for departing from the applicable guideline range based on offense and offender characteristics of a kind, or to a degree, not adequately considered by the Commission. Circumstances the Commission has determined are not ordinarily relevant to determining whether a departure is warranted or are prohibited as bases for departure are addressed in Chapter Five, Part H

(Offender Characteristics) and in this policy statement. Other departures, such as those based on the defendant's criminal history, the defendant's substantial assistance to authorities, and early disposition programs, are addressed elsewhere in the guidelines.

As acknowledged by Congress in the Sentencing Reform Act and by the Commission when the first set of guidelines was promulgated, 'it is difficult to prescribe a single set of guidelines that encompasses the vast range of human conduct potentially relevant to a sentencing decision.' (*See* Chapter One, Part A). Departures, therefore, perform an integral function in the sentencing guideline system. Departures permit courts to impose an appropriate sentence in the exceptional case in which mechanical application of the guidelines would fail to achieve the statutory purposes and goals of sentencing. Departures also help maintain 'sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices.' 28 U.S.C. 991(b)(1)(B). By monitoring when courts depart from the guidelines and by analyzing their stated reasons for doing so, along with appellate cases reviewing these departures, the Commission can further refine the guidelines to specify more precisely when departures should and should not be permitted.

As reaffirmed in the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (the 'PROTECT Act', Public Law 108–21), circumstances warranting departure should be rare. Departures were never intended to permit sentencing courts to substitute their policy judgments for those of Congress and the Sentencing Commission. Departure in such circumstances would produce unwarranted sentencing disparity, which the Sentencing Reform Act was designed to avoid.

In order for appellate courts to fulfill their statutory duties under 18 U.S.C. 3742 and for the Commission to fulfill its ongoing responsibility to refine the guidelines in light of information it receives on departures, it is essential that sentencing courts state with specificity the reasons for departure, as required by the PROTECT Act.

This policy statement, including its commentary, was substantially revised, effective October 27, 2003, in response to directives contained in the PROTECT Act, particularly the directive in section 401(m) of that Act to—

'(1) review the grounds of downward departure that are authorized by the

sentencing guidelines, policy statements, and official commentary of the Sentencing Commission; and

(2) promulgate, pursuant to section 994 of title 28, United States Code—

(A) appropriate amendments to the sentencing guidelines, policy statements, and official commentary to ensure that the incidence of downward departures is substantially reduced;

(B) a policy statement authorizing a departure pursuant to an early disposition program; and

(C) any other conforming amendments to the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission necessitated by the Act, including a revision of . . . section 5K2.0'.

The substantial revision of this policy statement in response to the PROTECT Act was intended to refine the standards applicable to departures while giving due regard for concepts, such as the 'heartland', that have evolved in departure jurisprudence over time.

Section 401(b)(1) of the PROTECT Act directly amended this policy statement to add subsection (b), effective April 30, 2003.

§ 5K2.1. *Death (Policy Statement)*

If death resulted, the court may increase the sentence above the authorized guideline range.

Loss of life does not automatically suggest a sentence at or near the statutory maximum. The sentencing judge must give consideration to matters that would normally distinguish among levels of homicide, such as the defendant's state of mind and the degree of planning or preparation. Other appropriate factors are whether multiple deaths resulted, and the means by which life was taken. The extent of the increase should depend on the dangerousness of the defendant's conduct, the extent to which death or serious injury was intended or knowingly risked, and the extent to which the offense level for the offense of conviction, as determined by the other Chapter Two guidelines, already reflects the risk of personal injury. For example, a substantial increase may be appropriate if the death was intended or knowingly risked or if the underlying offense was one for which base offense levels do not reflect an allowance for the risk of personal injury, such as fraud.

§ 5K2.2. *Physical Injury (Policy Statement)*

If significant physical injury resulted, the court may increase the sentence above the authorized guideline range. The extent of the increase ordinarily should depend on the extent of the injury, the degree to which it may prove

permanent, and the extent to which the injury was intended or knowingly risked. When the victim suffers a major, permanent disability and when such injury was intentionally inflicted, a substantial departure may be appropriate. If the injury is less serious or if the defendant (though criminally negligent) did not knowingly create the risk of harm, a less substantial departure would be indicated. In general, the same considerations apply as in § 5K2.1.

§ 5K2.3. *Extreme Psychological Injury (Policy Statement)*

If a victim or victims suffered psychological injury much more serious than that normally resulting from commission of the offense, the court may increase the sentence above the authorized guideline range. The extent of the increase ordinarily should depend on the severity of the psychological injury and the extent to which the injury was intended or knowingly risked.

Normally, psychological injury would be sufficiently severe to warrant application of this adjustment only when there is a substantial impairment of the intellectual, psychological, emotional, or behavioral functioning of a victim, when the impairment is likely to be of an extended or continuous duration, and when the impairment manifests itself by physical or psychological symptoms or by changes in behavior patterns. The court should consider the extent to which such harm was likely, given the nature of the defendant's conduct.

§ 5K2.4. *Abduction or Unlawful Restraint (Policy Statement)*

If a person was abducted, taken hostage, or unlawfully restrained to facilitate commission of the offense or to facilitate the escape from the scene of the crime, the court may increase the sentence above the authorized guideline range.

§ 5K2.5. *Property Damage or Loss (Policy Statement)*

If the offense caused property damage or loss not taken into account within the guidelines, the court may increase the sentence above the authorized guideline range. The extent of the increase ordinarily should depend on the extent to which the harm was intended or knowingly risked and on the extent to which the harm to property is more serious than other harm caused or risked by the conduct relevant to the offense of conviction.

§ 5K2.6. *Weapons and Dangerous Instrumentalities (Policy Statement)*

If a weapon or dangerous instrumentality was used or possessed

in the commission of the offense the court may increase the sentence above the authorized guideline range. The extent of the increase ordinarily should depend on the dangerousness of the weapon, the manner in which it was used, and the extent to which its use endangered others. The discharge of a firearm might warrant a substantial sentence increase.

§ 5K2.7. *Disruption of Governmental Function (Policy Statement)*

If the defendant's conduct resulted in a significant disruption of a governmental function, the court may increase the sentence above the authorized guideline range to reflect the nature and extent of the disruption and the importance of the governmental function affected. Departure from the guidelines ordinarily would not be justified when the offense of conviction is an offense such as bribery or obstruction of justice; in such cases interference with a governmental function is inherent in the offense, and unless the circumstances are unusual the guidelines will reflect the appropriate punishment for such interference.

§ 5K2.8. *Extreme Conduct (Policy Statement)*

If the defendant's conduct was unusually heinous, cruel, brutal, or degrading to the victim, the court may increase the sentence above the guideline range to reflect the nature of the conduct. Examples of extreme conduct include torture of a victim, gratuitous infliction of injury, or prolonging of pain or humiliation.

§ 5K2.9. *Criminal Purpose (Policy Statement)*

If the defendant committed the offense in order to facilitate or conceal the commission of another offense, the court may increase the sentence above the guideline range to reflect the actual seriousness of the defendant's conduct.

§ 5K2.10. *Victim's Conduct (Policy Statement)*

If the victim's wrongful conduct contributed significantly to provoking the offense behavior, the court may reduce the sentence below the guideline range to reflect the nature and circumstances of the offense. In deciding whether a sentence reduction is warranted, and the extent of such reduction, the court should consider the following:

(1) The size and strength of the victim, or other relevant physical characteristics, in comparison with those of the defendant.

(2) The persistence of the victim's conduct and any efforts by the defendant to prevent confrontation.

(3) The danger reasonably perceived by the defendant, including the victim's reputation for violence.

(4) The danger actually presented to the defendant by the victim.

(5) Any other relevant conduct by the victim that substantially contributed to the danger presented.

(6) The proportionality and reasonableness of the defendant's response to the victim's provocation.

Victim misconduct ordinarily would not be sufficient to warrant application of this provision in the context of offenses under Chapter Two, Part A, Subpart 3 (Criminal Sexual Abuse). In addition, this provision usually would not be relevant in the context of non-violent offenses. There may, however, be unusual circumstances in which substantial victim misconduct would warrant a reduced penalty in the case of a non-violent offense. For example, an extended course of provocation and harassment might lead a defendant to steal or destroy property in retaliation.

§ 5K2.11. *Lesser Harms (Policy Statement)*

Sometimes, a defendant may commit a crime in order to avoid a perceived greater harm. In such instances, a reduced sentence may be appropriate, provided that the circumstances significantly diminish society's interest in punishing the conduct, for example, in the case of a mercy killing. Where the interest in punishment or deterrence is not reduced, a reduction in sentence is not warranted. For example, providing defense secrets to a hostile power should receive no lesser punishment simply because the defendant believed that the government's policies were misdirected.

In other instances, conduct may not cause or threaten the harm or evil sought to be prevented by the law proscribing the offense at issue. For example, where a war veteran possessed a machine gun or grenade as a trophy, or a school teacher possessed controlled substances for display in a drug education program, a reduced sentence might be warranted.

§ 5K2.12. *Coercion and Duress (Policy Statement)*

If the defendant committed the offense because of serious coercion, blackmail or duress, under circumstances not amounting to a complete defense, the court may depart downward. The extent of the decrease ordinarily should depend on the reasonableness of the defendant's

actions, on the proportionality of the defendant's actions to the seriousness of coercion, blackmail, or duress involved, and on the extent to which the conduct would have been less harmful under the circumstances as the defendant believed them to be. Ordinarily coercion will be sufficiently serious to warrant departure only when it involves a threat of physical injury, substantial damage to property or similar injury resulting from the unlawful action of a third party or from a natural emergency. Notwithstanding this policy statement, personal financial difficulties and economic pressures upon a trade or business do not warrant a downward departure.

§ 5K2.13. Diminished Capacity (Policy Statement)

A downward departure may be warranted if (1) the defendant committed the offense while suffering from a significantly reduced mental capacity; and (2) the significantly reduced mental capacity contributed substantially to the commission of the offense. Similarly, if a departure is warranted under this policy statement, the extent of the departure should reflect the extent to which the reduced mental capacity contributed to the commission of the offense.

However, the court may not depart below the applicable guideline range if (1) the significantly reduced mental capacity was caused by the voluntary use of drugs or other intoxicants; (2) the facts and circumstances of the defendant's offense indicate a need to protect the public because the offense involved actual violence or a serious threat of violence; (3) the defendant's criminal history indicates a need to incarcerate the defendant to protect the public; or (4) the defendant has been convicted of an offense under chapter 71, 109A, 110, or 117, of title 18, United States Code.

Commentary

Application Note:

1. For purposes of this policy statement—

'Significantly reduced mental capacity' means the defendant, although convicted, has a significantly impaired ability to (A) understand the wrongfulness of the behavior comprising the offense or to exercise the power of reason; or (B) control behavior that the defendant knows is wrongful.

Background: Section 401(b)(5) of Public Law 108–21 directly amended this policy statement to add subdivision (4), effective April 30, 2003.

§ 5K2.14. Public Welfare (Policy Statement)

If national security, public health, or safety was significantly endangered, the court may depart upward to reflect the nature and circumstances of the offense.

§ 5K2.16. Voluntary Disclosure of Offense (Policy Statement)

If the defendant voluntarily discloses to authorities the existence of, and accepts responsibility for, the offense prior to the discovery of such offense, and if such offense was unlikely to have been discovered otherwise, a downward departure may be warranted. For example, a downward departure under this section might be considered where a defendant, motivated by remorse, discloses an offense that otherwise would have remained undiscovered. This provision does not apply where the motivating factor is the defendant's knowledge that discovery of the offense is likely or imminent, or where the defendant's disclosure occurs in connection with the investigation or prosecution of the defendant for related conduct.

§ 5K2.17. Semiautomatic Firearms Capable of Accepting Large Capacity Magazine (Policy Statement)

If the defendant possessed a semiautomatic firearm capable of accepting a large capacity magazine in connection with a crime of violence or controlled substance offense, an upward departure may be warranted. A 'semiautomatic firearm capable of accepting a large capacity magazine' means a semiautomatic firearm that has the ability to fire many rounds without reloading because at the time of the offense (1) the firearm had attached to it a magazine or similar device that could accept more than 15 rounds of ammunition; or (2) a magazine or similar device that could accept more than 15 rounds of ammunition was in close proximity to the firearm. The extent of any increase should depend upon the degree to which the nature of the weapon increased the likelihood of death or injury in the circumstances of the particular case.

Commentary

Application Note:

1. 'Crime of violence' and 'controlled substance offense' are defined in § 4B1.2 (Definitions of Terms Used in Section 4B1.1).

§ 5K2.18. Violent Street Gangs (Policy Statement)

If the defendant is subject to an enhanced sentence under 18 U.S.C. 521 (pertaining to criminal street gangs), an upward departure may be warranted. The purpose of this departure provision is to enhance the sentences of

defendants who participate in groups, clubs, organizations, or associations that use violence to further their ends. It is to be noted that there may be cases in which 18 U.S.C. 521 applies, but no violence is established. In such cases, it is expected that the guidelines will account adequately for the conduct and, consequently, this departure provision would not apply.

§ 5K2.20. Aberrant Behavior (Policy Statement)

(a) *In General.*—Except where a defendant is convicted of an offense involving a minor victim under section 1201, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, of title 18, United States Code, a downward departure may be warranted in an exceptional case if (1) the defendant's criminal conduct meets the requirements of subsection (b); and (2) the departure is not prohibited under subsection (c).

(b) *Requirements.*—The court may depart downward under this policy statement only if the defendant committed a single criminal occurrence or single criminal transaction that (1) was committed without significant planning; (2) was of limited duration; and (3) represents a marked deviation by the defendant from an otherwise law-abiding life.

(c) *Prohibitions Based on the Presence of Certain Circumstances.*—The court may not depart downward pursuant to this policy statement if any of the following circumstances are present:

(1) The offense involved serious bodily injury or death.

(2) The defendant discharged a firearm or otherwise used a firearm or a dangerous weapon.

(3) The instant offense of conviction is a serious drug trafficking offense.

(4) The defendant has either of the following: (A) more than one criminal history point, as determined under Chapter Four (Criminal History and Criminal Livelihood) before application of subsection (b) of § 4A1.3 (Departures Based on Inadequacy of Criminal History Category); or (B) a prior federal or state felony conviction, or any other significant prior criminal behavior, regardless of whether the conviction or significant prior criminal behavior is countable under Chapter Four.

Commentary

Application Notes:

1. *Definitions.*—For purposes of this policy statement:

'Dangerous weapon,' 'firearm,' 'otherwise used,' and 'serious bodily injury' have the meaning given those terms in the Commentary to § 1B1.1 (Application Instructions).

‘Serious drug trafficking offense’ means any controlled substance offense under title 21, United States Code, other than simple possession under 21 U.S.C. 844, that provides for a mandatory minimum term of imprisonment of five years or greater, regardless of whether the defendant meets the criteria of § 5C1.2 (Limitation on Applicability of Statutory Mandatory Minimum Sentences in Certain Cases).

2. Repetitious or Significant, Planned Behavior.—Repetitious or significant, planned behavior does not meet the requirements of subsection (b). For example, a fraud scheme generally would not meet such requirements because such a scheme usually involves repetitive acts, rather than a single occurrence or single criminal transaction, and significant planning.

3. Other Circumstances to Consider.—In determining whether the court should depart under this policy statement, the court may consider the defendant’s (A) mental and emotional conditions; (B) employment record; (C) record of prior good works; (D) motivation for committing the offense; and (E) efforts to mitigate the effects of the offense.

Background: Section 401(b)(3) of Public Law 108–21 directly amended subsection (a) of this policy statement, effective April 30, 2003.

§ 5K2.21. Dismissed and Uncharged Conduct (Policy Statement)

The court may depart upward to reflect the actual seriousness of the offense based on conduct (1) underlying a charge dismissed as part of a plea agreement in the case, or underlying a potential charge not pursued in the case as part of a plea agreement or for any other reason; and (2) that did not enter into the determination of the applicable guideline range.

§ 5K2.22. Specific Offender Characteristics as Grounds for Downward Departure in Child Crimes and Sexual Offenses (Policy Statement)

In sentencing a defendant convicted of an offense involving a minor victim under section 1201, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, of title 18, United States Code:

(1) Age may be a reason to depart downward only if and to the extent permitted by § 5H1.1.

(2) An extraordinary physical impairment may be a reason to depart downward only if and to the extent permitted by § 5H1.4.

(3) Drug, alcohol, or gambling dependence or abuse is not a reason to depart downward.

Commentary

Background: Section 401(b)(2) of Public Law 108–21 directly amended Chapter Five, Part K, to add this policy statement, effective April 30, 2003. § 5K2.23. *Discharged Terms of Imprisonment (Policy Statement)*

A downward departure may be appropriate if the defendant (1) has completed serving a term of imprisonment; and (2) subsection (b) of § 5G1.3 (Imposition of a Sentence on a Defendant Subject to Undischarged Term of Imprisonment or Anticipated Term of Imprisonment) would have provided an adjustment had that completed term of imprisonment been undischarged at the time of sentencing for the instant offense. Any such departure should be fashioned to achieve a reasonable punishment for the instant offense.

§ 5K2.24. Commission of Offense While Wearing or Displaying Unauthorized or Counterfeit Insignia or Uniform (Policy Statement)

If, during the commission of the offense, the defendant wore or displayed an official, or counterfeit official, insignia or uniform received in violation of 18 U.S.C. 716, an upward departure may be warranted.

Commentary

Application Note:

1. *Definition.*—For purposes of this policy statement, ‘official insignia or uniform’ has the meaning given that term in 18 U.S.C. 716(c)(3).

3. Early Disposition Programs

§ 5K3.1. Early Disposition Programs (Policy Statement)

Upon motion of the Government, the court may depart downward not more than 4 levels pursuant to an early disposition program authorized by the Attorney General of the United States and the United States Attorney for the district in which the court resides.

Commentary

Background: This policy statement implements the directive to the Commission in section 401(m)(2)(B) of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (the ‘PROTECT Act’, Public Law 108–21).’

Chapter Six, Part A is amended by striking § 6A1.4 and its accompanying commentary in its entirety as follows: “§ 6A1.4. *Notice of Possible Departure (Policy Statement)*

Before the court may depart from the applicable sentencing guideline range on a ground not identified for departure either in the presentence report or in a

party’s prehearing submission, the court must give the parties reasonable notice that it is contemplating such a departure. The notice must specify any ground on which the court is contemplating a departure. Rule 32(h), Fed. R. Crim. P.

Commentary

Background: The Federal Rules of Criminal Procedure were amended, effective December 1, 2002, to incorporate into Rule 32(h) the holding in *Burns v. United States*, 501 U.S. 129, 138–39 (1991). This policy statement parallels Rule 32(h), Fed. R. Crim. P.”.

Chapter Six, Part B is amended in the Introductory Commentary by striking “The policy statements also ensure that the basis for any judicial decision to depart from the guidelines will be explained on the record.”.

The Commentary to § 6B1.2 is amended—

in the paragraph that begins “Similarly, the court” by striking “As set forth in subsection (d) of § 5K2.0 (Grounds for Departure), however, the court may not depart below the applicable guideline range merely because of the defendant’s decision to plead guilty to the offense or to enter a plea agreement with respect to the offense.”;

and in the paragraph that begins “The second paragraph of subsection (a)” by striking “Section 5K2.21 (Dismissed and Uncharged Conduct) addresses the use, as a basis for upward departure, of conduct underlying a charge dismissed as part of a plea agreement in the case, or underlying a potential charge not pursued in the case as part of a plea agreement.”.

The Commentary to § 7B1.4 captioned “Application Notes,” as amended by Amendment 4 of this document, is further amended—

by striking Notes 2, 3, and 4 as follows:

“2. Departure from the applicable range of imprisonment in the Probation Revocation Table may be warranted when the court departed from the applicable range for reasons set forth in § 4A1.3 (Departures Based on Inadequacy of Criminal History Category) in originally imposing the sentence that resulted in probation. Additionally, an upward departure may be warranted when a defendant, subsequent to the federal sentence resulting in probation, has been sentenced for an offense that is not the basis of the violation proceeding.

3. In the case of a Grade C violation that is associated with a high risk of new felonious conduct (e.g., a defendant, on probation for conviction

of criminal sexual abuse, violates the condition that the defendant not associate with children by loitering near a schoolyard), an upward departure may be warranted.

4. Where the original sentence was the result of a downward departure (e.g., as a reward for substantial assistance), or a charge reduction that resulted in a sentence below the guideline range applicable to the defendant's underlying conduct, an upward departure may be warranted.”;

and by redesignating Notes 5 and 6 as Notes 2 and 3, respectively.

The Commentary to § 7C1.5 captioned “Application Notes,” as added by Amendment 4 of this document, is amended—

by striking Notes 2, 3, and 4 as follows:

“2. Departure from the applicable range of imprisonment in the Supervised Release Revocation Table may be warranted when the court departed from the applicable range for reasons set forth in § 4A1.3 (Departures Based on Inadequacy of Criminal History Category) in originally imposing the sentence that resulted in supervised release. Additionally, an upward departure may be warranted when a defendant, subsequent to the federal sentence resulting in supervised release, has been sentenced for an offense that is not the basis of the violation proceeding.

3. In the case of a Grade C violation that is associated with a high risk of new felonious conduct (e.g., a defendant, under supervised release for conviction of criminal sexual abuse, violates the condition that the defendant not associate with children by loitering near a schoolyard), an upward departure may be warranted.

4. Where the original sentence was the result of a downward departure (e.g., as a reward for substantial assistance), or a charge reduction that resulted in a sentence below the guideline range applicable to the defendant's underlying conduct, an upward departure may be warranted.”;

and by redesignating Notes 5 and 6 as Notes 2 and 3, respectively.

Section 8A1.2(b) is amended—in paragraph (4) by striking “For grounds for departure from the applicable guideline fine range, refer to Part C, Subpart 4 (Departures from the Guideline Fine Range)” and inserting “Determine whether a sentence below the otherwise applicable guideline range is appropriate upon motion of the government pursuant to § 8C4.1 (Substantial Assistance to Authorities—Organizations (Policy Statement))”;

and by inserting at the end the following new paragraph (5):

“(5) Consider as a whole the additional factors identified in 18 U.S.C. 3553(a) to determine the sentence that is sufficient, but not greater than necessary, to comply with the purposes set forth in 18 U.S.C. 3553(a)(2). See 18 U.S.C. 3553(a).”.

The Commentary to § 8A1.2 captioned “Application Notes” is amended in Note 2 by striking “and E (Acceptance of Responsibility)” and inserting “E (Acceptance of Responsibility), and F (Early Disposition Programs)”.

The Commentary to § 8C2.3 captioned “Application Notes” is amended in Note 2 by striking “and E (Acceptance of Responsibility)” and inserting “E (Acceptance of Responsibility), and F (Early Disposition Programs)”.

The Commentary to § 8C2.8 captioned “Application Notes” is amended in Note 5 by striking “In a case involving a pattern of illegality, an upward departure may be warranted.”.

The Commentary to § 8C2.8 captioned “Background” is amended by striking “In unusual cases, factors listed in this section may provide a basis for departure.”.

Chapter Eight, Part C, Subpart 4 is amended—

in the heading by striking “DEPARTURES FROM THE GUIDELINE FINE RANGE” and inserting “SUBSTANTIAL ASSISTANCE TO AUTHORITIES”;

and by striking the Introductory Commentary as follows:

“Introductory Commentary

The statutory provisions governing departures are set forth in 18 U.S.C. 3553(b). Departure may be warranted if the court finds ‘that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described.’ This subpart sets forth certain factors that, in connection with certain offenses, may not have been adequately taken into consideration by the guidelines. In deciding whether departure is warranted, the court should consider the extent to which that factor is adequately taken into consideration by the guidelines and the relative importance or substantiality of that factor in the particular case.

To the extent that any policy statement from Chapter Five, Part K (Departures) is relevant to the organization, a departure from the applicable guideline fine range may be warranted. Some factors listed in

Chapter Five, Part K that are particularly applicable to organizations are listed in this subpart. Other factors listed in Chapter Five, Part K may be applicable in particular cases. While this subpart lists factors that the Commission believes may constitute grounds for departure, the list is not exhaustive.”.

Section 8C4.1(a) is amended by striking “the court may depart from the guidelines” and inserting “a fine that is below the otherwise applicable guideline fine range may be appropriate”.

The Commentary to § 8C4.1 captioned “Application Note” is amended in Note 1 by striking “Departure under this section” and inserting “Fine reduction under this section”.

Chapter Eight, Part C is further amended by striking §§ 8C4.2 through 8C4.11 in their entirety as follows:

“§ 8C4.2. *Risk of Death or Bodily Injury (Policy Statement)*

If the offense resulted in death or bodily injury, or involved a foreseeable risk of death or bodily injury, an upward departure may be warranted. The extent of any such departure should depend, among other factors, on the nature of the harm and the extent to which the harm was intended or knowingly risked, and the extent to which such harm or risk is taken into account within the applicable guideline fine range.

§ 8C4.3. *Threat to National Security (Policy Statement)*

If the offense constituted a threat to national security, an upward departure may be warranted.

§ 8C4.4. *Threat to the Environment (Policy Statement)*

If the offense presented a threat to the environment, an upward departure may be warranted.

§ 8C4.5. *Threat to a Market (Policy Statement)*

If the offense presented a risk to the integrity or continued existence of a market, an upward departure may be warranted. This section is applicable to both private markets (e.g., a financial market, a commodities market, or a market for consumer goods) and public markets (e.g., government contracting).

§ 8C4.6. *Official Corruption (Policy Statement)*

If the organization, in connection with the offense, bribed or unlawfully gave a gratuity to a public official, or attempted or conspired to bribe or unlawfully give a gratuity to a public official, an upward departure may be warranted.

§ 8C4.7. *Public Entity (Policy Statement)*

If the organization is a public entity, a downward departure may be warranted.

§ 8C4.8. Members or Beneficiaries of the Organization as Victims (Policy Statement)

If the members or beneficiaries, other than shareholders, of the organization are direct victims of the offense, a downward departure may be warranted. If the members or beneficiaries of an organization are direct victims of the offense, imposing a fine upon the organization may increase the burden upon the victims of the offense without achieving a deterrent effect. In such cases, a fine may not be appropriate. For example, departure may be appropriate if a labor union is convicted of embezzlement of pension funds.

§ 8C4.9. Remedial Costs that Greatly Exceed Gain (Policy Statement)

If the organization has paid or has agreed to pay remedial costs arising from the offense that greatly exceed the gain that the organization received from the offense, a downward departure may be warranted. In such a case, a substantial fine may not be necessary in order to achieve adequate punishment and deterrence. In deciding whether departure is appropriate, the court should consider the level and extent of substantial authority personnel involvement in the offense and the degree to which the loss exceeds the gain. If an individual within high-level personnel was involved in the offense, a departure would not be appropriate under this section. The lower the level and the more limited the extent of substantial authority personnel involvement in the offense, and the greater the degree to which remedial costs exceeded or will exceed gain, the less will be the need for a substantial fine to achieve adequate punishment and deterrence.

§ 8C4.10. Mandatory Programs to Prevent and Detect Violations of Law (Policy Statement)

If the organization's culpability score is reduced under § 8C2.5(f) (Effective Compliance and Ethics Program) and the organization had implemented its program in response to a court order or administrative order specifically directed at the organization, an upward departure may be warranted to offset, in part or in whole, such reduction.

Similarly, if, at the time of the instant offense, the organization was required by law to have an effective compliance and ethics program, but the organization did not have such a program, an upward departure may be warranted.

§ 8C4.11. Exceptional Organizational Culpability (Policy Statement)

If the organization's culpability score is greater than 10, an upward departure may be appropriate.

If no individual within substantial authority personnel participated in, condoned, or was willfully ignorant of the offense; the organization at the time of the offense had an effective program to prevent and detect violations of law; and the base fine is determined under § 8C2.4(a)(1), § 8C2.4(a)(3), or a special instruction for fines in Chapter Two (Offense Conduct), a downward departure may be warranted. In a case meeting these criteria, the court may find that the organization had exceptionally low culpability and therefore a fine based on loss, offense level, or a special Chapter Two instruction results in a guideline fine range higher than necessary to achieve the purposes of sentencing. Nevertheless, such fine should not be lower than if determined under § 8C2.4(a)(2)."

Reason for Amendment: This amendment is a result of the Commission's exploration of ways to simplify the guidelines and to reduce tension between 18 U.S.C. 3553(a) and the *Guidelines Manual*. Specifically, the amendment removes one of the steps in the current three-step sentencing process, which requires courts to consider departures provided for within the *Guidelines Manual*. As amended, the *Guidelines Manual* now provides a two-step process whereby the sentencing court must first correctly calculate the applicable guideline range as the "starting point and initial benchmark" and then must determine an appropriate sentence upon consideration of all the factors set forth by Congress in 18 U.S.C. 3553(a). See *Gall v. United States*, 552 U.S. 38, 49–51 (2007).

In *United States v. Booker*, 543 U.S. 220 (2005), the Supreme Court held that the portion of 18 U.S.C. 3553 making the guidelines mandatory was unconstitutional. The Court has further explained that the guideline range, which reflects the defendant's criminal conduct and the defendant's criminal history, should continue to be "the starting point and the initial benchmark" in sentencing proceedings. See *Gall*, 552 U.S. at 49; see also *Peugh v. United States*, 569 U.S. 530 (2013) (noting that "the post-*Booker* federal sentencing system adopted procedural measures that make the guidelines the 'lodestone' of sentencing"). After determining the kinds of sentence and guideline range provided for by the

Guidelines, however, the court must also fully consider the factors in 18 U.S.C. 3553(a), including, among other factors, "the nature and circumstances of the offense and the history and characteristics of the defendant," to determine a sentence that is sufficient but not greater than necessary. See *Rita v. United States*, 551 U.S. 338, 347–48 (2007).

In the wake of *Booker* and subsequent cases, the *Guidelines Manual* provided a three-step process for determining the sentence to be imposed, which is reflected in the three main subdivisions of § 1B1.1 (Application Instructions) (subsections (a) through (c)). The three-step process can be summarized as follows: (1) the court calculates the applicable guideline range and determines the sentencing requirements and options related to probation, imprisonment, supervision conditions, fines, and restitution; (2) the court considers policy statements and guideline commentary relating to departures and specific personal characteristics that might warrant consideration in imposing the sentence; and (3) the court considers the applicable factors in 18 U.S.C. 3553(a) in deciding what sentence to impose (whether within the applicable guideline range, or whether as a departure or as a variance (or as both)).

In the years since *Booker*, the frequency of departures has steadily declined with courts relying to a greater extent on variances in a manner consistent with the statutory requirements in section 3553(a). The shift away from departures deepened as a direct result of the holding in *Irizarry v. United States*, 553 U.S. 708 (2008), in which the Court held that the "reasonable notice" requirement in Rule 32(h) of the Federal Rules of Criminal Procedure does not apply to variances.

To better align the guidelines to practices under current sentencing law and to acknowledge the growing shift away from the use of departures, the amendment revises the guidelines in multiple ways. First, the amendment moves the "Original Introduction to the Guidelines Manual" from Chapter One, Part A to an Appendix of the *Guidelines Manual* as historical background. Second, the amendment revises the application instructions provided in § 1B1.1 to reflect the simplification of the three-step process into two steps. At Step One, courts are to calculate the guideline range and determine the sentencing requirements and options under the *Guidelines Manual*. See § 1B1.1(a). At Step Two, courts are to consider the section 3553(a) factors. See § 1B1.1(b). Section 1B1.1(b) expressly

lists the section 3553(a) factors the court must consider. Other conforming changes are made throughout Chapter One. For example, § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) is amended to reflect the removal of departures. The Commission does not intend this conforming amendment to substantively change the operation of the calculation of the amended guideline range in § 1B1.10.

In addition, the amendment seeks to better address the distinction between the statutory limitations on the Commission's ability to consider certain offense characteristics and individual circumstances in recommending a term of imprisonment or length of imprisonment, and the requirement that the court consider a broad range of individual and offense characteristics in determining an appropriate sentence pursuant to 18 U.S.C. 3553(a). More specifically, the amendment revises § 1A3.1 (Authority), which sets forth the Commission's authority in developing the guidelines. First, the provision is redesignated as § 1A1.1 and, for clarity, is retitled as "Commission's Authority." Second, in addition to referring to 28 U.S.C. 994(a) as the basis of the Commission's authority to promulgate guidelines, policy statements, and commentary, the provision explains how the Commission has complied with the requirements placed on it by Congress, noting what is not considered by the Commission in formulating the guidelines. This ensures that the Commission has addressed the provisions of sections 994(c), (d), and (e).

A new background commentary to this section explains that the requirements and limitations imposed upon the Commission by 28 U.S.C. 994 do not apply to sentencing courts. Instead, the factors set forth by Congress in 18 U.S.C. 3553(a) "permit a sentencing court to consider the 'widest possible breadth of information' about a defendant ensuring the court is in 'possession of the fullest information possible concerning the defendant's life and characteristics.'" See *Pepper v. United States*, 562 U.S. 476, 488 (2011); see also *Concepcion v. United States*, 597 U.S. 481, 493 (2022). The new background commentary concludes by noting that the application instructions set forth in § 1B1.1 are structured to reflect a two-step process whereby the sentencing court must first correctly calculate the applicable guideline range as the "starting point and initial benchmark" and then must determine an appropriate sentence upon

consideration of all the factors set forth by Congress in 18 U.S.C. 3553(a).

Consistent with the revised approach, the amendment deletes most departures previously provided throughout the *Guidelines Manual*. Changes are made throughout the *Guidelines Manual* by deleting the departure provisions contained in commentary to various guidelines. However, some provisions, originally promulgated in response to congressional directives, are retained in another form. First, Application Note 1 of § 2X7.2 (Submersible and Semi-Submersible Vessels) is revised to remove the language pertaining to a departure and instead indicates that the listed factors, which were identified by Congress in section 103 of Public Law 110–407, may warrant consideration in imposing a sentence. Similarly, Application Note 2 of § 1B1.9 (Class B or C Misdemeanors and Infractions), which addresses Class B and C misdemeanors and infractions, is revised to add a reference to the aggravating nature of committing an offense while wearing or displaying insignia and uniform in violation of 18 U.S.C. 716 (a class B misdemeanor). This guidance was previously set forth in a departure provision at § 5K2.24 (Commission of Offense While Wearing or Displaying Unauthorized or Counterfeit Insignia or Uniform).

The amendment also makes several changes to Chapter Five. The chapter is retitled "Determining the Sentencing Range and Options Under the Guidelines" to focus on the rules pertaining to the calculation of the guideline range, and the introductory commentary is revised to better reflect the chapter's purpose by noting that "a sentence is within the guidelines if it complies with each applicable section of this chapter." All provisions previously contained in Chapter Five, Part H (Specific Offender Characteristics), and most of the provisions in Chapter Five, Part K (Departures), are deleted. Only the provisions pertaining to substantial assistance are retained under § 5K1.1, and the provision pertaining to early disposition programs is moved from § 5K3.1 to Chapter Three, Part F.

Chapter Five is also amended at § 5B1.1 (Imposition of a Term of Probation), § 5D1.1 (Imposition of a Term of Supervised Release), and § 5D1.3 (Conditions of Supervised Release) to emphasize the factors courts are statutorily required to consider in determining the conditions of probation and supervised release. The commentary is further revised to retain factors that the Commission had previously identified as relevant in

Chapter Five, Part H pursuant to the congressional guidance provided to the Commission in 28 U.S.C. 994(d) and (e).

Changes are also made to § 5G1.3 (Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment or Anticipated State Term of Imprisonment) in response to comment urging the Commission to retain the guidance regarding certain undischarged or discharged terms of imprisonment currently contained in § 5G1.3, Application Note 4(E), and § 5K2.23 (Discharged Terms of Imprisonment (Policy Statement)). These procedural aspects of imposing a sentence are particularly complex and at times confusing for courts given the intersection of a court's authority to sentence and the Bureau of Prisons' authority to execute that sentence. The amendment thus makes several changes to the commentary in § 5G1.3 to ensure courts continue to receive guidance on the treatment of undischarged and discharged sentences not otherwise addressed in the guideline. First, a new application note is added at Application Note 4(E), which would provide that where the court accounts for an undischarged term of imprisonment covered by subsection (d), the court should clearly state that the sentence was imposed pursuant to 18 U.S.C. 3553(a), rather than as a credit for time served, to avoid confusion with the Federal Bureau of Prisons' exclusive authority under 18 U.S.C. 3585(b) to grant credit for time served under certain circumstances. Similarly, a new Application Note 5 would provide similar guidance on the court's authority to consider an already discharged term of imprisonment that would, if undischarged, qualify for consideration under § 5G1.3(b). This new Application Note would preserve the concept previously addressed in § 5K2.23.

Finally, in conjunction with the amendment, the Commission plans to compile the deleted departure provisions, as they were last provided in the 2024 edition of the *Guidelines Manual*, in a new Part III of Appendix B. At the time these departure provisions were promulgated, they represented grounds that the Commission expressly authorized in the *Guidelines Manual* as a basis for a sentence outside of the otherwise applicable guideline range. These provisions, which were based on various circumstances of the offense, specific personal characteristics, and certain procedural history of the case, reflected the Commission's determination that such circumstances

were outside of the heartland of offenses addressed by the guidelines and warranted the court's consideration in imposing sentence. Because the Commission envisions this amendment to be outcome neutral, the introduction to the compilation of deleted departure provisions explains that the removal of departures from the *Guidelines Manual* does not reflect a determination by the Commission that the rationale underlying the deleted departure provisions is no longer informative and does not serve as a limit to the information courts may consider in imposing a sentence. It is the Commission's intent that judges who would have relied upon facts previously identified as a basis for a departure will continue to have the authority to rely upon such facts, or any other relevant factors, to impose a sentence outside of the applicable guideline range as a variance under 18 U.S.C. 3553(a).

(2) Request for Comment on Possible Retroactive Application of Parts A and B of Amendment 1, and Subparts 1 and 2 of Part A of Amendment 2

On April 30, 2025, the Commission submitted to the Congress amendments to the sentencing guidelines, policy statements, and official commentary, which become effective on November 1, 2025, unless Congress acts to the contrary. Such amendments and the reason for each amendment are included in this notice.

Section 3582(c)(2) of title 18, United States Code, provides that "in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in

section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." Pursuant to 28 U.S.C. 994(u), "[i]f the Commission reduces the term of imprisonment recommended in the guidelines applicable to a particular offense or category of offenses, it shall specify in what circumstances and by what amount the sentences of prisoners serving terms of imprisonment for the offense may be reduced." The Commission lists in subsection (d) of § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) the specific guideline amendments that the court may apply retroactively under 18 U.S.C. 3582(c)(2).

The following amendments may have the effect of lowering guidelines ranges: Part A (Circuit Conflict Concerning "Physically Restrained" Enhancements) and Part B (Circuit Conflict Concerning the Meaning of "Intervening Arrest" in § 4A1.2(a)(2)) of Amendment 1; and Subpart 1 (Mitigating Role Provisions at § 2D1.1(a)(5)) and Subpart 2 (Special Instruction Relating to § 3B1.2) of Amendment 2. The Commission intends to consider whether, pursuant to 18 U.S.C. 3582(c)(2) and 28 U.S.C. 994(u), any or all of these amendments should be included in § 1B1.10(d) as an amendment that may be applied retroactively to previously sentenced defendants. In considering whether to do so, the Commission will consider, among other things, a retroactivity impact analysis and public comment. Accordingly, the Commission seeks public comment on whether it should make any or all the subparts or parts of the amendments listed above available for retroactive application. To help inform public comment, the retroactivity impact analyses of these

amendments will be made available to the public as soon as practicable.

The Background Commentary to § 1B1.10 lists the purpose of the amendment, the magnitude of the change in the guideline range made by the amendment, and the difficulty of applying the amendment retroactively to determine an amended guideline range under § 1B1.10(b) as among the factors the Commission considers in selecting the amendments included in § 1B1.10(d). To the extent practicable, public comment should address each of these factors.

The Commission seeks comment on whether it should list in § 1B1.10(d) as changes that may be applied retroactively to previously sentenced defendants any or all of the following subparts and parts of these amendments: Part A (Circuit Conflict Concerning "Physically Restrained" Enhancements) and Part B (Circuit Conflict Concerning the Meaning of "Intervening Arrest" in § 4A1.2(a)(2)) of Amendment 1; and Subpart 1 (Mitigating Role Provisions at § 2D1.1(a)(5)) and Subpart 2 (Special Instruction Relating to § 3B1.2) of Part A of Amendment 2. For each subpart and part of the amendments listed above, the Commission requests comment on whether any such subpart or part should be listed in § 1B1.10(d) as an amendment that may be applied retroactively.

If the Commission does list any or all the subparts or parts of the amendments listed above in § 1B1.10(d) as an amendment that may be applied retroactively to previously sentenced defendants, should the Commission provide further guidance or limitations regarding the circumstances in which and the amount by which sentences may be reduced?

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 218

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Military Readiness Activities in the Atlantic Fleet Training and Testing Study Area; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 218

[Docket No. 250430–0074]

RIN 0648–BN17

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Military Readiness Activities in the Atlantic Fleet Training and Testing Study Area

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

ACTION: Proposed rule; proposed letters of authorization; request for comments.

SUMMARY: NMFS has received a request from the U.S. Department of the Navy (including the U.S. Navy and the U.S. Marine Corps (Navy)) and on behalf of the U.S. Coast Guard (Coast Guard; hereafter, Navy and Coast Guard are collectively referred to as Action Proponents) for Incidental Take Regulations (ITR) and three associated Letters of Authorization (LOAs) pursuant to the Marine Mammal Protection Act (MMPA). The requested regulations would govern the authorization of take of marine mammals incidental to training and testing activities conducted in the Atlantic Fleet Training and Testing (AFTT) Study Area over the course of seven years from November 2025 through November 2032. NMFS requests comments on this proposed rule. NMFS will consider public comments prior to making any final decision on the promulgation of the requested ITR and issuance of the LOAs; agency responses to public comments will be summarized in the final rule, if issued. The Action Proponents' activities are considered military readiness activities pursuant to the MMPA, as amended by the National Defense Authorization Act for Fiscal Year 2004 (2004 NDAA).

DATES: Comments and information must be received no later than June 9, 2025.

ADDRESSES: A plain language summary of this proposed rule is available at <https://www.regulations.gov/docket/NOAA-NMFS-2024-0115>. You may submit comments on this document, identified by NOAA–NMFS–2024–0115, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Visit <https://www.regulations.gov> and type NOAA–NMFS–2024–0115 in the Search

box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225.

- **Fax:** (301) 713–0376; Attn: Jolie Harrison.

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, etc.), 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). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

A copy of the Action Proponents' Incidental Take Authorization (ITA) 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-military-readiness-activities>. In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Alyssa Clevenstine, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:**Purpose and Need for Regulatory Action**

This proposed rule, if promulgated, would provide a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) to allow for the authorization of take of marine mammals incidental to the Action Proponents' training and testing activities (which qualify as military readiness activities) involving the use of active sonar and other transducers, air guns, and explosives (also referred to as “in-water detonations”); pile driving and vibratory extraction; and vessel movement in the AFTT Study Area. The AFTT Study Area includes air and water space of the western Atlantic Ocean along the east

coast of North America, the Gulf of America (formerly Gulf of Mexico), and portions of the Caribbean Sea, covering approximately 2.6 million square nautical miles (nmi²; 8.9 million square kilometers (km²)) of ocean area (see figure 1.1–1 of the rulemaking and LOA application (hereafter referred to as the application)). Please see the Legal Authority for the Proposed Action section for relevant definitions.

Legal Authority for the Proposed 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 and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review and the opportunity to submit comment.

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; 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 MMPA defines “take” to mean to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. The Preliminary Analysis and Negligible Impact Determination section discusses the definition of “negligible impact.”

The 2004 NDAA (Pub. L. 108–136) amended section 101(a)(5) of the MMPA to remove the “small numbers” and “specified geographical region” provisions and amended the definition of “harassment” as applied to a “military readiness activity” to read as follows (section 3(18)(B) of the MMPA): (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the

wild (Level A Harassment); or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B Harassment). The 2004 NDAA also amended the MMPA establishing that “[f]or military readiness activity . . . , a determination of ‘least practicable adverse impact’ . . . shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.” On August 13, 2018, the NDAA for Fiscal Year 2019 (2019 NDAA) (Pub. L. 115–232) amended the MMPA to allow incidental take regulations for military readiness activities to be issued for up to 7 years.

Summary of Major Provisions Within the Proposed Rule

The major provisions of this proposed rule are:

- (i) The proposed take of marine mammals by Level A harassment and/or Level B harassment;
- (ii) The proposed take of marine mammals by mortality or serious injury (M/SI);
- (iii) The proposed use of defined powerdown and shutdown zones (based on activity);
- (iv) Proposed measures to reduce the likelihood of vessel strikes;
- (v) Proposed activity limitations in certain areas and times that are biologically important (*i.e.*, for foraging, migration, reproduction) for marine mammals;
- (vi) The proposed implementation of a Notification and Reporting Plan (for dead, live stranded, or marine mammals struck by any vessel engaged in military readiness activities); and
- (vii) The proposed implementation of a robust monitoring plan to improve our understanding of the environmental effects resulting from the Action Proponents’ training and testing activities.

This proposed rule includes an adaptive management component that allows for timely modification of mitigation, monitoring, and/or reporting measures based on new information, when appropriate.

Summary of Request

On May 28, 2024, NMFS received an application from the Action Proponents requesting authorization to take marine mammals, by Level A and Level B harassment, incidental to training and

testing (characterized as military readiness activities) including the use of sonar and other transducers, in-water detonations, air guns, and impact and vibratory pile driving and extraction conducted within the AFTT Study Area. In addition, the Action Proponents are requesting authorization to take, by serious injury or mortality, a limited number of several marine mammal species from explosives during training exercises, ship shock trials, and vessel movement during military readiness activities conducted within the AFTT Study Area over the 7-year period of the LOAs. In response to our comments and following information exchange, the Action Proponents submitted a final revised application on August 16, 2024, that we determined was adequate and complete on August 19, 2024. On October 8, 2024, the Action Proponents submitted an updated application to revise take estimates on a subset of Navy activities. On September 20, 2024, we published a notice of receipt (NOR) of application in the **Federal Register** (89 FR 77106), requesting comments and information related to the Action Proponents’ request for 30 days. During the 30-day public comment period on the NOR, we did not receive any public comments. On January 21, 2025, the Action Proponents submitted an updated application that removed ship shock trials and estimated take associated with that activity in Key West and within the Virginia Capes (VACAPES) Range Complex and, on February 13, 2025, the Action Proponents submitted an updated application containing minor revisions.

NMFS has previously promulgated incidental take regulations pursuant to the MMPA relating to similar military readiness activities in AFTT. NMFS published the first rule effective from January 22, 2009 through January 22, 2014 (74 FR 4844, January 27, 2009), the second rule effective from November 14, 2013 through November 13, 2018 (78 FR 73009, December 4, 2013), and the third rule effective from November 14, 2018 through November 13, 2023 (83 FR 57076, November 14, 2018), which was subsequently amended, extending the effective date until November 13, 2025 (84 FR 70712, December 23, 2019) pursuant to the 2019 NDAA. For this proposed rulemaking, the Action Proponents propose to conduct substantially similar training and testing activities within the AFTT Study Area that were conducted under previous rules.

The Action Proponents’ application reflects the most up-to-date compilation of training and testing activities deemed necessary to accomplish military

readiness requirements. The types and numbers of activities included in the proposed rule account for fluctuations in training and testing to meet evolving or emergent military readiness requirements. These proposed regulations would cover military readiness activities in the AFTT Study Area that would occur for a 7-year period following the expiration of the existing MMPA authorization on November 13, 2025.

Description of Proposed Activity

Overview

The Action Proponents request authorization to take marine mammals incidental to conducting military readiness activities. The Action Proponents have determined that acoustic and explosives stressors are most likely to result in take of marine mammals that could rise to the level of harassment, and take by serious injury or mortality may result from vessel movement, explosive use, and ship shock trials. Detailed descriptions of these activities are provided in chapter 2 of the 2024 AFTT Draft Supplemental Environmental Impact Statement (EIS)/Overseas EIS (OEIS) (2024 AFTT Draft Supplemental EIS/OEIS) (<https://www.nepa.navy.mil/aftteis/>) and in the Action Proponents’ application (<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities>) and are summarized here.

The Navy’s statutory mission is to organize, train, equip, and maintain combat-ready naval forces for the peacetime promotion of the national security interests and prosperity of the United States, and for prompt and sustained combat incident to operations essential to the prosecution of a naval campaign. These missions are mandated by Federal law (10 U.S.C. 8062 and 10 U.S.C. 8063), which requires the readiness of the naval forces of the United States. The Navy executes this responsibility by establishing and executing at-sea training and testing, often in designated operating areas (OPAREA) and testing and training ranges. The Navy must be able to access and utilize these areas and associated sea and air space to develop and maintain skills for conducting naval operations. The Navy’s testing activities ensure naval forces are equipped with well-maintained systems that take advantage of the latest technological advances. The Navy’s research and acquisition community conducts military readiness activities that involve testing. The Navy tests vessels, aircraft, weapons, combat systems, sensors, and

related equipment, and conducts scientific research activities to achieve and maintain military readiness.

The mission of the Coast Guard is to ensure the maritime safety, security, and stewardship of the United States. To advance this mission, the Coast Guard must ensure its personnel can qualify and train jointly with, and independently of, the Navy and other services in the effective and safe operational use of Coast Guard vessels, aircraft, and weapons under realistic conditions. These activities help ensure the Coast Guard can safely assist in the defense of the United States by protecting the United States' maritime safety, security, and natural resources in accordance with its national defense mission (14 U.S.C. 102). Coast Guard training activities are described in more detail in appendix C of the 2024 AFTT Draft Supplemental EIS/OEIS and in the Action Proponents' application, and are summarized below.

Dates and Duration

The specified activities would occur at any time during the 7-year period of validity of the regulations. The proposed number of military readiness activities are described in the Detailed Description of the Specified Activity section (table 4 through table 9).

Specified Geographical Region

The AFTT Study Area includes areas of the western Atlantic Ocean along the east coast of North America, the Gulf of America, and portions of the Caribbean Sea, covering approximately 2.6 million nmi² (8.9 million km²) of ocean area, oriented from the mean high tide line along the U.S. coast and extending east to 45-degree west longitude line, north to 65-degree north latitude line, and south to approximately the 20-degree north latitude line (figure 1). It also includes Navy and Coast Guard pierside locations and port transit channels, bays, harbors, inshore waterways (*e.g.*, channels, rivers), and civilian ports where military readiness activities occur

as well as vessel and aircraft transit routes between homeports and OPAREAs. New to the Study Area are inshore waters adjacent to the Gulf of America and changes to ship shock trial areas. The VACAPES and Key West ship shock trial areas were removed from the Study Area, the Gulf of America ship shock trial area was moved south, and the Jacksonville ship shock trial area expanded. The vast majority of military readiness activities occur within appropriately designated range complexes and testing ranges that fall within the confines of the Study Area. Please refer to figure 1.1–1 of the application for a color map of the AFTT Study Area and figure 2.1–1 through figure 2.1–5 for additional maps of the range complexes and testing ranges. A summary of the AFTT Range Complexes and Testing Ranges are provided in table 1, Inshore Areas are provided in table 2, and Ports and Piers are provided in table 3.

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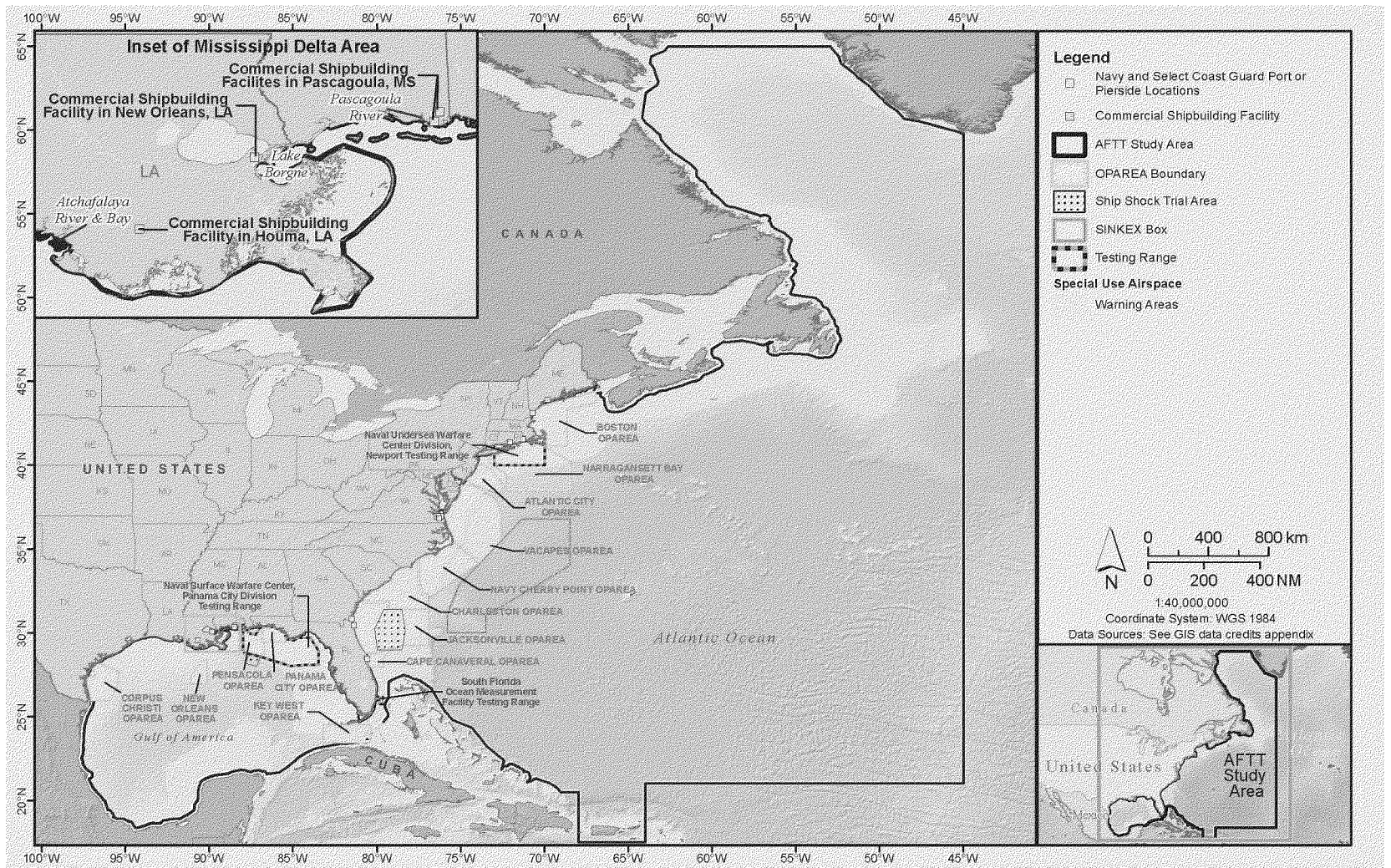


Figure 1 -- Map of the AFTT Study Area

TABLE 1—AFTT STUDY AREA TRAINING AND TESTING RANGES

Name	Basic location	Sea and undersea space	Air space
Northeast Range Complexes	750 miles along the coast from Maine to New Jersey.	46,000 nmi ² of sea and undersea space. Includes three OPAREAs: Boston, Narragansett Bay, and Atlantic City.	29,000 nmi ² of special use airspace.
Naval Undersea Warfare Center Division, Newport Testing Range.	Includes the waters of Narragansett Bay, Rhode Island Sound, Block Island Sound, Buzzards Bay, Vineyard Sound, and Long Island Sound.	11,000 nmi ² of sea and undersea space. Includes three Restricted Areas: Coddington Cove, Narragansett Bay, and Rhode Island Sound.	Minimal testing occurs in airspace within the test area.
Virginia Capes Range Complex (VACAPES RC).	250 miles along the coast from Delaware to North Carolina, from the shoreline to 150 nmi seaward.	30,000 nmi ² of sea and undersea space. Includes one OPAREA: Virginia Capes.	30,000 nmi ² of special use airspace.
Navy Cherry Point Range Complex	Off the coast of North and South Carolina, from the shoreline to 120 nmi seaward.	19,000 nmi ² of sea and undersea space. Includes one OPAREA: Navy Cherry Point.	19,000 nmi ² of special use airspace.
Jacksonville Range Complex (JAX RC)	520 miles along the coast from North Carolina to Florida, from the shoreline to roughly 250 nmi seaward.	50,000 nmi ² of sea and undersea space. Includes three OPAREAs: Charleston, Jacksonville and Cape Canaveral. Includes the Undersea Warfare Training Range.	64,000 nmi ² of special use airspace.
Naval Surface Warfare Center, Carderock Division, South Florida Ocean Measurement Facility Testing Range (SFOMF).	Located adjacent to the Port Everglades entrance channel in Fort Lauderdale, Florida; out to roughly 25 nmi from shore.	500 nmi ² of sea and undersea space	No associated special use airspace.
Key West Range Complex	Off the southwestern coast of mainland Florida and along the southern Florida Keys, extending into the Gulf of America and the Straits of Florida.	8,000 nmi ² of sea and undersea space south of Key West. Includes one OPAREA: Key West.	23,000 nmi ² of special use airspace.
Naval Surface Warfare Center, Panama City Division Testing Area.	Off the panhandle of Florida and Alabama, extending from the shoreline 120 nmi seaward and includes St. Andrew Bay.	23,000 nmi ² of sea and undersea space. Includes two OPAREAs: Panama City and Pensacola.	23,000 nmi ² of special use airspace.
Gulf Range Complex (Gulf RC)	Includes geographically separated areas throughout the Gulf of America.	20,000 nmi ² of sea and undersea space. Includes four OPAREAs: Panama City, Pensacola, New Orleans, and Corpus Christi.	43,000 nmi ² of special use airspace.

Note: nmi = nautical mile, nmi² = square nautical mile, areas and distances of locations, sea and undersea space, and airspace are approximations.

TABLE 2—AFTT STUDY AREA INSHORE LOCATIONS

Name	Associated inshore waters
Northeast Range Complexes Inshore	Thames River, Narragansett Bay, Rhode Island Sound, Block Island Sound.
Virginia Capes Range Complex (VACAPES RC) Inshore	Lower Chesapeake Bay, James River and tributaries, Broad Bay, York River.
Jacksonville Range Complex (JAX RC) Inshore	Blount Island, Southeast Kings Bay, Cooper River, St. Johns River, Port Canaveral.
Key West Range Complex Inshore	Truman Harbor, Demolition Key.
Gulf Range Complex (Gulf RC) Inshore	St. Andrew Bay, Atchafalaya Bay, Atchafalaya River, Lake Borgne, Pascagoula River, Mobile Bay.

Note: The Gulf Range Complex Inshore includes geographically separated areas throughout the Gulf of America.

TABLE 3—AFTT STUDY AREA PORTS AND PIERS

Pierside locations	Civilian ports	Coast Guard locations
Portsmouth Naval Shipyard	Bath, ME	Southwest Harbor, ME
Naval Submarine Base New London	Boston, MA	Boston, MA
Naval Station Newport	Earle, NJ	Cape Cod, MA
Naval Station Norfolk	Delaware Bay, DE	New London, CT*
Joint Expeditionary Base Little Creek Fort Story	Hampton Roads, VA	New Haven CT*
Norfolk Naval Shipyard	Morehead City, NC	Newport, RI*
Naval Submarine Base Kings Bay	Wilmington, NC	Montauk, NY
Naval Station Mayport	Kings Bay, GA	Staten Island, NY*
Port Canaveral	Savannah, GA	Atlantic City, NJ
	Mayport, FL	Chesapeake, VA
	Port Canaveral, FL	Virginia Beach, VA*
	Tampa, FL	Portsmouth, VA*
	Pascagoula, MS	Elizabeth City, NC
	Gulfport, MS	Charleston, SC*
	Beaumont, TX	Mayport, FL*
	Corpus Christi, TX	Cape Canaveral, FL*
		Fort Pierce, FL*
		Dania, FL*
		Miami, FL*
		Key West, FL*
		St. Petersburg, FL*
		Pensacola, FL*
		Opa Locka, FL
		New Orleans, LA
		Houston, TX
		Corpus Christi, TX

Note: CT: Connecticut; FL: Florida; GA: Georgia; LA: Louisiana; MA: Massachusetts; ME: Maine; MS: Mississippi; NC: North Carolina; NJ: New Jersey; NY: New York; RI: Rhode Island; SC: South Carolina; TX: Texas; VA: Virginia.

* Indicates Coast Guard cutter stations.

Detailed Description of the Specified Activity

The Action Proponents propose to conduct military readiness activities within the AFTT Study Area and have been conducting military readiness activities in the Study Area for well over a century and with active sonar for over 70 years. The tempo and types of military readiness activities have fluctuated due to the introduction of new technologies, the evolving nature of international events, advances in warfighting doctrine and procedures, and changes in force structure (organization of vessels, weapons, and personnel). Such developments influenced the frequency, duration, intensity, and location of required military readiness activities.

Primary Mission Areas

The Navy categorizes their activities into functional warfare areas called primary mission areas, while the Coast Guard categorizes their activities as operational mission programs. For the Navy, these activities generally fall into the following five primary mission areas (Coast Guard mission areas are discussed below). The Navy mission areas with activities that may result in incidental take of marine mammals (and stressors associated with training and testing activities within those mission areas) include the following:

- (i) Amphibious warfare (in-water detonations);
- (ii) Anti-submarine warfare (sonar and other transducers, in-water detonations);
- (iii) Expeditionary warfare (in-water detonations, pile driving and extraction);
- (iv) Mine warfare (sonar and other transducers, in-water detonations);
- (v) Surface warfare (in-water detonations); and
- (vi) Other (sonar and other transducers, air guns, vessel movement).

Most Navy activities conducted in AFTT are categorized under one of these primary mission areas; activities that do not fall within one of these areas are listed as “other activities.” In addition, ship shock (in-water detonations) trials, a specific Navy testing activity related to vessel evaluation, would be conducted. The testing community also categorizes most, but not all, of its testing activities under these primary mission areas. The testing community has three additional categories of activities: vessel evaluation (inclusive of ship shock trials), unmanned systems (*i.e.*, unmanned surface vehicles (USVs), unmanned underwater vehicles (UUVs)), and

acoustic and oceanographic science and technology.

The Action Proponents describe and analyze the effects of their activities within the application (see the 2024 AFTT Draft Supplemental EIS/OEIS for additional details). In their assessment, the Action Proponents concluded that sonar and other transducers, underwater detonations, air guns, and pile driving/extraction were the stressors most likely to result in impacts on marine mammals that could rise to the level of harassment (and serious injury or mortality by explosives or by vessel movement) as defined under the MMPA. Therefore, the Action Proponents’ application provides their assessment of potential effects from these stressors in terms of the primary warfare mission areas in which they would be conducted.

The Coast Guard has four major national defense missions:

- (i) Maritime intercept operations;
- (ii) Deployed port operations/security and defense;
- (iii) Peacetime engagement; and
- (iv) Environmental defense operations (which includes oil and hazardous substance response).

The Coast Guard manages 6 major operational mission programs with 11 statutory missions, which includes defense readiness. As part of the Coast Guard’s defense mission, Title 14 U.S.C. 1 states the Coast Guard is “at all times an armed force of the United States.” As part of the Joint Forces, the Coast Guard maintains its readiness to carry out military operations in support of the policies and objectives of the U.S. government. As an armed force, the Coast Guard trains and operates in the joint military arena at any time and functions as a specialized service under the Navy in time of war or when directed by the President. Coast Guard service members are trained to respond immediately to support military operations and national security. Federal law created the framework for the relationship between the Navy and the Coast Guard (10 U.S.C. 101; 14 U.S.C. 2(7); 22 U.S.C.; 50 U.S.C.). To meet these statutory requirements and effectively carry out these missions, the Coast Guard’s air and surface units train using realistic scenarios, including training with the Navy in their primary mission areas. Every Coast Guard unit is trained to support all statutory missions and, thus, trained to meet all mission requirements, which includes their defense mission requirements. Since all Coast Guard’s missions entail the deployment of cutters or boats and

either fixed-wing or rotary aircraft, the Coast Guard training requirements for one mission generally overlaps with the training requirements of other missions. Thus, when the Coast Guard is training for its defense mission, the same skill sets are utilized for its other statutory missions.

The Coast Guard’s defense mission does not involve low- or mid-frequency active sonar (LFAS or MFAS), missiles, in-water detonations, pile driving and extraction, or air guns that would result in harassment of marine mammals. For additional information on all activities in the Coast Guard’s mission programs see appendix C of the 2024 AFTT Draft Supplemental EIS/OEIS.

Below, we provide additional detail for each of the applicable primary mission areas.

Amphibious Warfare—

The mission of amphibious warfare is to project military power from the sea to the shore (*i.e.*, attack a threat on land by a military force embarked on ships) through the use of naval firepower and expeditionary landing forces. Amphibious warfare operations include Navy and Marine Corps small unit reconnaissance or raid missions to large-scale amphibious exercises involving multiple ships and aircraft combined into a strike group.

Amphibious warfare training ranges from individual, crew, and small unit events to large task force exercises. Individual and crew training include amphibious vehicles and naval gunfire support training. Such training includes shore assaults, boat raids, airfield or port seizures, reconnaissance, and disaster relief. Large-scale amphibious exercises involve ship-to-shore maneuvers, naval fire support such as shore bombardment, air strikes, and attacks on targets that are near friendly forces.

Testing of guns, munitions, aircraft, ships, and amphibious vessels and vehicles used in amphibious warfare are often integrated into training activities and, in most cases, the systems are used in the same manner in which they are used for training activities. Amphibious warfare tests, when integrated with training activities or conducted separately as full operational evaluations on existing amphibious vessels and vehicles following maintenance, repair, or modernization, may be conducted independently or in conjunction with other amphibious ship and aircraft activities. Testing is performed to ensure effective ship-to-

shore coordination and transport of personnel, equipment, and supplies. Tests may also be conducted periodically on other systems, vessels, and aircraft intended for amphibious operations to assess operability and to investigate efficacy of new technologies.

Anti-Submarine Warfare—

The mission of anti-submarine warfare is to locate, neutralize, and defeat hostile submarine forces that threaten Navy forces. Anti-submarine warfare is based on the principle that surveillance and attack aircraft, ships, and submarines all search for hostile submarines. These forces operate together or independently to gain early warning and detection and to localize, track, target, and attack submarine threats.

Anti-submarine warfare training addresses basic skills such as detecting and classifying submarines, as well as evaluating sounds to distinguish between enemy submarines and friendly submarines, ships, and marine life. More advanced training integrates the full spectrum of anti-submarine warfare from detecting and tracking a submarine to attacking a target using either exercise torpedoes (*i.e.*, torpedoes that do not contain a warhead) or simulated weapons. These integrated anti-submarine warfare training exercises are conducted in coordinated, at-sea training events involving submarines, ships, and aircraft.

Testing of anti-submarine warfare systems is conducted to develop new technologies and assess weapon performance and operability with new systems and platforms, such as unmanned systems. Testing uses ships, submarines, and aircraft to demonstrate capabilities of torpedoes, missiles, countermeasure systems, and underwater surveillance and communications systems. Tests may be conducted as part of a large-scale fleet training event involving submarines, ships, fixed-wing aircraft, and helicopters. These integrated training events offer opportunities to conduct research and acquisition activities and to train aircrew in the use of new or newly enhanced systems during a large-scale, complex exercise.

Expeditionary Warfare—

The mission of expeditionary warfare is to provide security and surveillance in the littoral (at the shoreline), riparian (along a river), or coastal environments. Expeditionary warfare is wide ranging and includes defense of harbors, operation of remotely operated vehicles, defense against swimmers, and boarding/seizure operations.

Expeditionary warfare training activities include Navy, Marine Corps, and Coast Guard underwater construction team training, dive and salvage operations, and insertion/extraction via air, surface, and subsurface platforms.

Mine Warfare—

The mission of mine warfare is to detect, classify, and avoid or neutralize (disable) mines to protect U.S. ships and submarines, and to maintain free access to ports and shipping lanes. Mine warfare training for the Navy and Coast Guard falls into two primary categories: mine detection and classification, and mine countermeasure and neutralization. Mine warfare also includes offensive mine laying to gain control of or deny the enemy access to sea space. Naval mines can be laid by ships, submarines, UAVs, or aircraft.

Mine warfare neutralization training includes exercises in which aircraft, ships, submarines, underwater vehicles, unmanned vehicles, or marine mammal detection systems search for mine shapes. Personnel train to destroy or disable mines by attaching underwater explosives to or near the mine or using remotely operated vehicles to destroy the mine.

Mine warfare testing is similar to training but focuses on the development of mine warfare systems to improve sonar, laser, and magnetic detectors intended to hunt, locate, and record the positions of mines for avoidance or subsequent neutralization. Mine detection and classification testing involves the use of air, surface, and subsurface platforms using a variety of systems to locate and identify objects underwater. Mine countermeasure and neutralization testing includes the use of air, surface, and subsurface platforms to evaluate the effectiveness of tracking devices, countermeasure and neutralization systems, and explosive munitions to neutralize mine threats. Most neutralization tests use mine shapes, or non-explosive practice mines, to evaluate a new or enhanced capability; however, a small percentage require the use of high-explosive mines to evaluate and confirm effectiveness of various systems.

Surface Warfare—

The mission of surface warfare is to obtain control of sea space from which naval forces may operate and entails offensive action against other surface and subsurface targets while also defending against enemy forces. In surface warfare, aircraft use cannons, air-to-surface missiles, and other precision-guided munitions; ships

employ torpedoes, naval guns, and surface-to-surface missiles; and submarines attack surface ships using torpedoes.

Surface warfare training includes Navy and Coast Guard surface-to-surface gunnery and missile exercises, air-to-surface gunnery, bombing, and missile exercises, submarine torpedo launch events, other munitions against surface targets, and amphibious operations in a contested environment.

Testing of weapons used in surface warfare is conducted to develop new technologies and to assess weapon performance and operability with new systems and platforms, such as unmanned systems. Tests include various air-to-surface guns and missiles, surface-to-surface guns and missiles, and bombing tests. Testing events may be integrated into training activities to test aircraft or aircraft systems in the delivery of ordnance on a surface target. In most cases the tested systems are used in the same manner in which they are used for training activities.

Overview of Training Activities Within the Study Area

The Action Proponents routinely train in the AFTT Study Area in preparation for national defense missions. Training activities and exercises covered in this proposed rule are briefly described below and in more detail within appendix A (Activity Descriptions) of the 2024 AFTT Draft Supplemental EIS/OEIS. The description, annual number of activities, and location of each training activity are provided by stressor category in table 4, table 5, and table 6. Each training activity described meets a requirement that can be traced ultimately to requirements set forth by the National Command Authority.

Within the Navy, a major training exercise (MTE) is comprised of multiple “unit-level” exercises conducted by several units operating together while commanded and controlled by a single commander (these units are collectively referred to as carrier and expeditionary strike groups). These exercises typically employ an exercise scenario developed to train and evaluate the strike group in tactical naval tasks. In a MTE, most of the operations and activities being directed and coordinated by the strike group commander are identical in nature to the operations conducted during individual, crew, and smaller unit-level training events. However, in MTEs, these disparate training tasks are conducted in concert rather than in isolation. Some integrated or coordinated anti-submarine warfare exercises are similar in that they are composed of several unit-level exercises

but are generally on a smaller scale than a MTE, are shorter in duration, use fewer assets, and use fewer hours of hull-mounted sonar per exercise. Coordinated training exercises involve multiple units working together to meet unit-level training requirements, whereas integrated training exercises involve multiple units working together for deployment. Coordinated exercises involving the use of sonar are presented under the category of anti-submarine warfare. The anti-submarine warfare portions of these exercises are considered together in coordinated activities for the sake of acoustic modeling. When other training objectives are being met, those activities are described via unit-level training in each of the relevant primary mission areas.

With a smaller fleet of approximately 250 cutters, Coast Guard activities are not as extensive as Navy activities due

to differing mission requirements. However, the Coast Guard does train with the Navy and conducts some of the same training as the Navy. The Coast Guard does not conduct any exercises similar in scale to Navy MTEs/ integrated exercises, and the use of mid- or low-frequency sonar, missiles, and underwater detonations are examples of actions that are not a part of the Coast Guard's mission requirements. Coast Guard training generally occurs close to the vessel homeport or close to shore, on established Navy testing and training ranges, or in transit to a scheduled patrol/mission. There are approximately 1,600 Coast Guard vessels (cutters up to 418 feet (ft; 127.4 meters (m)) and boats less than 65 ft (19.8 m)), and the largest cutters would be underway for 3 to 4 months, whereas the smaller cutters would be underway from a few days to 4 weeks. The busiest regions for the Coast Guard are the Gulf of America due

to the number of busy commercial ports, and Hampton Roads due to many of the cutters being based at facilities in that area.

The MTEs and integrated/coordinated training activities analyzed for this request are Navy-led exercises in which the Coast Guard may participate and described in table 4. For additional information on these activities, see table 1.3–1 of the application and appendix A (Activity Descriptions) of the 2024 AFTT Draft Supplemental EIS/OEIS. Table 5 describes the proposed Navy training activities analyzed within the AFTT Study Area while table 6 describes the proposed Coast Guard training activities analyzed within the AFTT Study Area. In addition to participating in Navy-led exercises, Coast Guard training activities include unit-level activities conducted independently of, and not in coordination with, the Navy.

TABLE 4—MAJOR TRAINING EXERCISES AND INTEGRATED/COORDINATED TRAINING ACTIVITIES ANALYZED WITHIN THE AFTT STUDY AREA

Training type	Exercise group	Description	Scale	Duration	Location (range complex)	Exercise examples	Typical hull-mounted sonar per event
Major Training Exercise.	Large Integrated ASW.	Larger-scale, longer duration integrated ASW exercises.	Greater than 6 surface ASW units (up to 30 with the largest exercises), 2 or more submarines, multiple ASW aircraft.	Generally greater than 10 days.	Jacksonville Range Complex, Navy Cherry Point Range Complex, Virginia Capes Range Complex.	COMPTUEX	<500 hours.
Major Training Exercise.	Medium Integrated ASW.	Medium-scale, medium duration integrated ASW exercises.	Approximately 3–8 surface ASW units, at least 1 submarine, multiple ASW aircraft.	Generally 4–10 days.	Jacksonville Range Complex, Navy Cherry Point Range Complex, Virginia Capes Range Complex.	Sustainment/ Task Force Exercise.	100–300 hours.
Integrated/Coordinated Training.	Small Integrated ASW.	Small-scale, short duration integrated ASW exercises.	Approximately 3–6 surface ASW units, 2 dedicated submarines, 2–6 ASW aircraft.	Generally less than 5 days.	Jacksonville Range Complex, Navy Cherry Point Range Complex, Virginia Capes Range Complex.	SWATT, NUWTAC.	50–100 hours.
Integrated/Coordinated Training.	Medium Coordinated ASW.	Medium-scale, medium duration, coordinated ASW exercises.	Approximately 2–4 surface ASW units, possibly a submarine, 2–5 ASW aircraft.	Generally 3–10 days.	Jacksonville Range Complex, Navy Cherry Point Range Complex, Virginia Capes Range Complex.	ASW Tactical Development Exercise.	<100 hours.
Integrated/Coordinated Training.	Small Coordinated ASW.	Small-scale, short duration, coordinated ASW exercises.	Approximately 2–4 surface ASW units, possibly a submarine, 1–2 ASW aircraft.	Generally 2–4 days.	Jacksonville Range Complex, Navy Cherry Point Range Complex, Virginia Capes Range Complex.	ARG/MEU COMPTUEX.	<50 hours.

Note: ASW: anti-submarine warfare; COMPTUEX: Composite Training Unit Exercise; SWATT: Surface Warfare Advanced Tactical Training Exercise; NUWTAC: Navy Undersea Warfare Training Assessment Course; ARG/MEU: Amphibious Ready Group/Marine Expeditionary Unit.

TABLE 5—PROPOSED NAVY TRAINING ACTIVITIES ANALYZED WITHIN THE AFTT STUDY AREA

Stressor category	Activity type	Activity name	Description	Source bin	Number of activities 1-year	Number of activities 7-year	Location
Acoustic	Major Training Exercise—Large Integrated ASW.	Composite Training Unit Exercise.	Aircraft carrier and carrier air wing integrate with surface and submarine and Coast Guard units in a challenging multi-threat operational environment that certifies them ready to deploy.	LFH, MFM, MFH, MF1, MF1C, Broadband (MF to HF).	2–3	17	Jacksonville Range Complex, Navy Cherry Point Range Complex, Virginia Capes Range Complex.
Acoustic	Major Training Exercise—Medium Integrated ASW.	Sustainment/Task Force Exercise.	Aircraft carrier and carrier air wing integrates with surface and submarine units in a challenging multi-threat operational environment to maintain ability to deploy.	LFH, MFM, MFH, MF1, MF1C, Broadband (MF to HF).	2	14	Jacksonville Range Complex, Navy Cherry Point Range Complex, Virginia Capes Range Complex.
Acoustic	Small Integrated ASW Training.	Navy Undersea Warfare Training Assessment Course.	Multiple ships, aircraft, and submarines integrate the use of their sensors, including sonobuoys, to search for, detect, classify, localize, and track a threat submarine.	LFH, MFM, MFH, MF1, MF1C, Broadband (MF to HF).	2	14	Jacksonville Range Complex, Navy Cherry Point Range Complex, Virginia Capes Range Complex.
Acoustic	Small Integrated ASW Training.	Surface Warfare Advanced Tactical Training.	Multiple ships and aircraft coordinate the use of sensors, including sonobuoys, to search, detect, and track a threat submarine. Surface Warfare Advanced Tactical Training (SWATT) exercises are not dedicated anti-submarine warfare exercises and involve multiple warfare areas.	LFH, MFM, MFH, MF1, MF1C, Broadband (MF to HF).	2	14	Jacksonville Range Complex, Navy Cherry Point Range Complex, Virginia Capes Range Complex.
Acoustic	Medium Coordinated ASW Training.	Tactical Development Exercise.	Multiple ships, aircraft, and submarines coordinate their efforts to search for, detect, and track submarines with the use of all sensors. Anti-Submarine Warfare Tactical Development Exercise is a dedicated anti-submarine warfare exercise.	MFM, MFH, MF1, MF1C, Broadband (MF to HF).	1	7	Jacksonville Range Complex.
Acoustic	Medium Coordinated ASW Training.	Tactical Development Exercise.	Multiple ships, aircraft, and submarines coordinate their efforts to search for, detect, and track submarines with the use of all sensors. Anti-Submarine Warfare Tactical Development Exercise is a dedicated anti-submarine warfare exercise.	MFM, MFH, MF1, MF1C, Broadband (MF to HF).	1	7	Virginia Capes Range Complex.
Acoustic	Small Coordinated ASW Training.	Group Sail	Surface ships, Coast Guard Cutters, and helicopters integrate to search for, detect, and track threat submarines. Group Sails are not dedicated anti-submarine warfare exercises and involve multiple warfare areas.	MFM, MFH, MF1, MF1C, Broadband (MF to HF).	5	35	Jacksonville Range Complex.
Acoustic	Small Coordinated ASW Training.	Group Sail	Surface ships, Coast Guard Cutters, and helicopters integrate to search for, detect, and track threat submarines. Group Sails are not dedicated anti-submarine warfare exercises and involve multiple warfare areas.	MFM, MFH, MF1, MF1C, Broadband (MF to HF).	4	28	Navy Cherry Point Range Complex.
Acoustic	Small Coordinated ASW Training.	Group Sail	Surface ships, Coast Guard Cutters, and helicopters integrate to search for, detect, and track threat submarines. Group Sails are not dedicated anti-submarine warfare exercises and involve multiple warfare areas.	MFM, MFH, MF1, MF1C, Broadband (MF to HF).	5	35	Virginia Capes Range Complex.
Acoustic	Small Coordinated ASW Training.	Amphibious Ready Group Marine Expeditionary Unit Composite Training Unit Exercise.	Amphibious Ready Group exercises are conducted to validate the Marine Expeditionary Unit's readiness for deployment and include small boat raids; visit, board, search, and seizure training; helicopter and mechanized amphibious raids; and non-combatant evacuation operations.	LFH, MFM, MFH, MF1, Broadband (MF to HF).	1	7	Navy Cherry Point Range Complex.
Explosive	Amphibious Warfare	Amphibious Operations in a Contested Environment.	Navy and Marine Corps forces conduct operations in coastal and offshore waterways against air, surface, and subsurface threats.	E1, E2, E3, E6, E9, E10.	45	315	Navy Cherry Point Range Complex.

Explosive	Amphibious Warfare	Navy and Marine Corps forces conduct operations in coastal and offshore waterways against air, surface, and subsurface threats.	E1, E2, E3, E6, E9, E10.	12	84	Virginia Capes Range Complex.
Acoustic	Anti-Submarine Warfare	Helicopter crews search for, track, and detect submarines. Recoverable air launched torpedoes are employed against submarine targets.	MF1, MFH, HFH, Broadband (MF to HF).	14	98	Jacksonville Range Complex.
Acoustic	Anti-Submarine Warfare	Helicopter crews search for, track, and detect submarines. Recoverable air launched torpedoes are employed against submarine targets.	MF1, MFH, HFH, Broadband (MF to HF).	4	28	Virginia Capes Range Complex.
Acoustic	Anti-Submarine Warfare	Maritime patrol aircraft crews search for, track, and detect submarines. Recoverable air launched torpedoes are employed against submarine targets.	MF1, MFH, HFH, Broadband (MF to HF).	14	98	Jacksonville Range Complex.
Acoustic	Anti-Submarine Warfare	Maritime patrol aircraft crews search for, track, and detect submarines. Recoverable air launched torpedoes are employed against submarine targets.	MF1, MFH, HFH, Broadband (MF to HF).	4	28	Virginia Capes Range Complex.
Acoustic	Anti-Submarine Warfare	Surface ship crews search for, track, and detect submarines. Exercise torpedoes are used during this exercise.	MF1, MFH, HFH, Broadband (MF to HF).	16	112	Jacksonville Range Complex.
Acoustic	Anti-Submarine Warfare	Surface ship crews search for, track, and detect submarines. Exercise torpedoes are used during this exercise.	MF1, MFH, HFH, Broadband (MF to HF).	5	35	Virginia Capes Range Complex.
Acoustic	Anti-Submarine Warfare	Submarine crews search for, track, and detect submarines. Exercise torpedoes are used during this exercise.	HFH, Broadband (MF to HF).	12	84	Jacksonville Range Complex.
Acoustic	Anti-Submarine Warfare	Submarine crews search for, track, and detect submarines. Exercise torpedoes are used during this exercise.	HFH, Broadband (MF to HF).	6	42	Northeast Range Complexes.
Acoustic	Anti-Submarine Warfare	Submarine crews search for, track, and detect submarines. Exercise torpedoes are used during this exercise.	HFH, Broadband (MF to HF).	2	14	Virginia Capes Range Complex.
Acoustic	Anti-Submarine Warfare	Helicopter crews search for, track, and detect submarines.	MF1, MFH	3	21	Gulf Range Complex.
Acoustic	Anti-Submarine Warfare	Helicopter crews search for, track, and detect submarines.	MF1, MFH	370	2,590	Jacksonville Range Complex.
Acoustic	Anti-Submarine Warfare	Helicopter crews search for, track, and detect submarines.	MF1, MFH	12	84	Navy Cherry Point Range Complex.
Acoustic	Anti-Submarine Warfare	Helicopter crews search for, track, and detect submarines.	MF1, MFH	24	168	Other AFTT Areas.
Acoustic	Anti-Submarine Warfare	Helicopter crews search for, track, and detect submarines.	MF1, MFH	8	56	Virginia Capes Range Complex.
Acoustic	Anti-Submarine Warfare	Maritime patrol aircraft crews search for, track, and detect submarines.	LFM, LFH, MF1, MFH ..	475	3,325	Jacksonville Range Complex.
Acoustic	Anti-Submarine Warfare	Maritime patrol aircraft crews search for, track, and detect submarines.	LFM, LFH, MF1, MFH ..	35	245	Navy Cherry Point Range Complex.
Acoustic	Anti-Submarine Warfare	Maritime patrol aircraft crews search for, track, and detect submarines.	LFM, LFH, MF1, MFH ..	80	560	Northeast Range Complexes.
Acoustic	Anti-Submarine Warfare	Maritime patrol aircraft crews search for, track, and detect submarines.	LFM, LFH, MF1, MFH ..	155	1,085	Virginia Capes Range Complex.
Acoustic	Anti-Submarine Warfare	Surface ship crews search for, track, and detect submarines. Exercise torpedoes may be used during this event.	MF1, MFH, MF1, MFH, Broadband (MF to HF).	5	35	Gulf Range Complex.

TABLE 5—PROPOSED NAVY TRAINING ACTIVITIES ANALYZED WITHIN THE AFTT STUDY AREA—Continued

Stressor category	Activity type	Activity name	Description	Source bin	Number of activities 1-year	Number of activities 7-year	Location
Acoustic	Anti-Submarine Warfare	Anti-Submarine Warfare Tracking Exercise—Ship.	Surface ship crews search for, track, and detect submarines. Exercise torpedoes may be used during this event.	MFH, MF1, MF1C, Broadband (MF to HF).	290	2,030	Jacksonville Range Complex.
Acoustic	Anti-Submarine Warfare	Anti-Submarine Warfare Tracking Exercise—Ship.	Surface ship crews search for, track, and detect submarines. Exercise torpedoes may be used during this event.	MFH, MF1, MF1C, Broadband (MF to HF).	33	231	Navy Cherry Point Range Complex.
Acoustic	Anti-Submarine Warfare	Anti-Submarine Warfare Tracking Exercise—Ship.	Surface ship crews search for, track, and detect submarines. Exercise torpedoes may be used during this event.	MFH, MF1, MF1C, Broadband (MF to HF).	5	35	Northeast Range Complexes.
Acoustic	Anti-Submarine Warfare	Anti-Submarine Warfare Tracking Exercise—Ship.	Surface ship crews search for, track, and detect submarines. Exercise torpedoes may be used during this event.	MFH, MF1, MF1C, Broadband (MF to HF).	55	385	Other AFTT Areas.
Acoustic	Anti-Submarine Warfare	Anti-Submarine Warfare Tracking Exercise—Ship.	Surface ship crews search for, track, and detect submarines. Exercise torpedoes may be used during this event.	MFH, MF1, MF1C, Broadband (MF to HF).	120	840	Virginia Capes Range Complex.
Acoustic	Anti-Submarine Warfare	Anti-Submarine Warfare Tracking Exercise—Ship.	Submarine crews search for, track, and detect submarines.	LFH, MFH, HFH	13	91	Jacksonville Range Complex.
Acoustic	Anti-Submarine Warfare	Anti-Submarine Warfare Tracking Exercise—Submarine.	Submarine crews search for, track, and detect submarines.	LFH, MFH, HFH	1	7	Navy Cherry Point Range Complex.
Acoustic	Anti-Submarine Warfare	Anti-Submarine Warfare Tracking Exercise—Submarine.	Submarine crews search for, track, and detect submarines.	LFH, MFH, HFH	18	126	Northeast Range Complexes.
Acoustic	Anti-Submarine Warfare	Anti-Submarine Warfare Tracking Exercise—Submarine.	Submarine crews search for, track, and detect submarines.	LFH, MFH, HFH	46	308	Other AFTT Areas.
Acoustic	Anti-Submarine Warfare	Anti-Submarine Warfare Tracking Exercise—Submarine.	Submarine crews search for, track, and detect submarines.	LFH, MFH, HFH	6	42	Virginia Capes Range Complex.
Acoustic	Expeditionary Warfare	Port Damage Repair	Navy and Coast Guard Expeditionary forces train to repair critical port facilities.	Pile driving	4	28	Gulfport, MS.
Acoustic	Mine Warfare	Airborne Mine Countermeasures—Mine Detection.	Helicopter aircrew detect mines using towed or laser mine detection systems.	HFH	290	2,030	Gulf Range Complex.
Acoustic	Mine Warfare	Airborne Mine Countermeasures—Mine Detection.	Helicopter aircrew detect mines using towed or laser mine detection systems.	HFH	275	1,925	Jacksonville Range Complex.
Acoustic	Mine Warfare	Airborne Mine Countermeasures—Mine Detection.	Helicopter aircrew detect mines using towed or laser mine detection systems.	HFH	187	1,309	Key West Range Complex.
Acoustic	Mine Warfare	Airborne Mine Countermeasures—Mine Detection.	Helicopter aircrew detect mines using towed or laser mine detection systems.	HFH	321	2,247	Navy Cherry Point Range Complex.
Acoustic	Mine Warfare	Airborne Mine Countermeasures—Mine Detection.	Helicopter aircrew detect mines using towed or laser mine detection systems.	HFH	1,420	9,940	Virginia Capes Range Complex.
Acoustic	Mine Warfare	Civilian Port Defense—Homeland Security Anti-Terrorism/Force Protection Exercises.	Coast Guard and Navy Maritime security personnel train to protect civilian ports and harbors against enemy efforts to interfere with access to those ports.	MFH, HFM, HFH	0–1	4	Boston, MA; Beaumont, TX; Corpus Christi, TX; Delaware Bay, DE; Earle, NJ; Hampton Roads, VA; Kings Bay, GA; Mayport, FL; Morehead City, NC; Port Canaveral, FL; Savannah, GA; Tampa, FL; Wilmington, NC.

Acoustic and Explosive.	Mine Warfare	Mine Countermeasures— Mine Neutralization—Remotely Operated Vehicles.	Ship, small boat, and helicopter crews locate and disable mines using remotely operated underwater vehicles. All events include acoustic sources, only a fraction involve explosives.	HFM, E4	* 66	* 462	Gulf Range Complex.
Acoustic and Explosive.	Mine Warfare	Mine Countermeasures— Mine Neutralization—Remotely Operated Vehicles.	Ship, small boat, and helicopter crews locate and disable mines using remotely operated underwater vehicles. All events include acoustic sources, only a fraction involve explosives.	HFM, E4	36	252	Jacksonville Range Complex.
Acoustic and Explosive.	Mine Warfare	Mine Countermeasures— Mine Neutralization—Remotely Operated Vehicles.	Ship, small boat, and helicopter crews locate and disable mines using remotely operated underwater vehicles. All events include acoustic sources, only a fraction involve explosives.	HFM, E4	10	70	Key West Range Complex.
Acoustic and Explosive.	Mine Warfare	Mine Countermeasures— Mine Neutralization—Remotely Operated Vehicles.	Ship, small boat, and helicopter crews locate and disable mines using remotely operated underwater vehicles. All events include acoustic sources, only a fraction involve explosives.	HFM, E4	* 36	* 252	Navy Cherry Point Range Complex.
Acoustic and Explosive.	Mine Warfare	Mine Countermeasures— Mine Neutralization—Remotely Operated Vehicles.	Ship, small boat, and helicopter crews locate and disable mines using remotely operated underwater vehicles. All events include acoustic sources, only a fraction involve explosives.	HFM, E4	* 315	* 2,205	Virginia Capes Range Complex.
Acoustic	Mine Warfare	Mine Countermeasures— Ship Sonar.	Ship crews detect and avoid mines while navigating restricted areas or channels using active sonar.	HFH	22	* 462	Gulf Range Complex.
Acoustic	Mine Warfare	Mine Countermeasures— Ship Sonar.	Ship crews detect and avoid mines while navigating restricted areas or channels using active sonar.	HFH	53	252	Jacksonville Range Complex.
Acoustic	Mine Warfare	Mine Countermeasures— Ship Sonar.	Ship crews detect and avoid mines while navigating restricted areas or channels using active sonar.	HFH	53	70	Virginia Capes Range Complex.
Explosive	Mine Warfare	Mine Neutralization Explosive Ordnance Disposal.	Personnel disable threat mines using explosive charges.	E6	* 96	* 672	Gulf Range Complex.
Explosive	Mine Warfare	Mine Neutralization Explosive Ordnance Disposal.	Personnel disable threat mines using explosive charges.	E5, E6	* 100	* 700	Jacksonville Range Complex.
Explosive	Mine Warfare	Mine Neutralization Explosive Ordnance Disposal.	Personnel disable threat mines using explosive charges.	E5, E6, E7	* 30	* 210	Key West Range Complex.
Explosive	Mine Warfare	Mine Neutralization Explosive Ordnance Disposal.	Personnel disable threat mines using explosive charges.	E5	* 176	* 1,232	Key West Range Complex Inshore.
Explosive	Mine Warfare	Mine Neutralization Explosive Ordnance Disposal.	Personnel disable threat mines using explosive charges.	E6	* 86	* 602	Navy Cherry Point Range Complex.
Explosive	Mine Warfare	Mine Neutralization Explosive Ordnance Disposal.	Personnel disable threat mines using explosive charges.	E5, E6, E7	* 325	* 2,275	Virginia Capes Range Complex.
Acoustic	Mine Warfare	Mine Neutralization Explosive Ordnance Disposal.	Submarine crews or UAVs deploy exercise mobile mines or mines.	MF1K	2	14	Jacksonville Range Complex.
Acoustic	Mine Warfare	Surface Ship Object Detection.	Ship crews detect and avoid mines while navigating restricted areas or channels using active sonar.	MF1K	76	532	Jacksonville Range Complex.
Acoustic	Mine Warfare	Surface Ship Object Detection.	Ship crews detect and avoid mines while navigating restricted areas or channels using active sonar.	MF1K	162	1,134	Virginia Capes Range Complex.
Explosive	Surface Warfare	Bombing Exercise Air-to-Surface.	Fixed-wing aircraft deliver bombs against surface targets.	E9, E10	* 47	* 329	Gulf Range Complex.
Explosive	Surface Warfare	Bombing Exercise Air-to-Surface.	Fixed-wing aircraft deliver bombs against surface targets.	E9, E10	* 260	1,820*	Jacksonville Range Complex.
Explosive	Surface Warfare	Bombing Exercise Air-to-Surface.	Fixed-wing aircraft deliver bombs against surface targets.	E9, E10, E12	* 272	* 1,904	Virginia Capes Range Complex.
Explosive	Surface Warfare	Gunnery Exercise Surface-to-Surface Boat Medium-Caliber.	Small boat crews fire medium-caliber guns at surface targets.	E1	* 404	* 2,828	Virginia Capes Range Complex.

TABLE 5—PROPOSED NAVY TRAINING ACTIVITIES ANALYZED WITHIN THE AFTT STUDY AREA—Continued

Stressor category	Activity type	Activity name	Description	Source bin	Number of activities 1-year	Number of activities 7-year	Location
Explosive	Surface Warfare	Gunnery Exercise Surface-to-Surface Ship Large-Caliber.	Surface ship crews fire large-caliber guns at surface targets.	E3, E5	*8	*56	Gulf Range Complex.
Explosive	Surface Warfare	Gunnery Exercise Surface-to-Surface Ship Large-Caliber.	Surface ship crews fire large-caliber guns at surface targets.	E3, E5	*46	*322	Jacksonville Range Complex.
Explosive	Surface Warfare	Gunnery Exercise Surface-to-Surface Ship Large-Caliber.	Surface ship crews fire large-caliber guns at surface targets.	E3, E5	*34	*238	Navy Cherry Point Range Complex.
Explosive	Surface Warfare	Gunnery Exercise Surface-to-Surface Ship Large-Caliber.	Surface ship crews fire large-caliber guns at surface targets.	E3, E5	*9	*63	Other AFTT Areas.
Explosive	Surface Warfare	Gunnery Exercise Surface-to-Surface Ship Large-Caliber.	Surface ship crews fire large-caliber guns at surface targets.	E3, E5	*63	*441	Virginia Capes Range Complex.
Explosive	Surface Warfare	Integrated Live Fire Exercise	Naval forces defend against a swarm of surface threats (ships or small boats) with bombs, missiles, rockets, and small-, medium- and large-caliber guns.	E10	2	14	Jacksonville Range Complex.
Explosive	Surface Warfare	Integrated Live Fire Exercise	Naval forces defend against a swarm of surface threats (ships or small boats) with bombs, missiles, rockets, and small-, medium- and large-caliber guns.	E10	2	14	Virginia Capes Range Complex.
Explosive	Surface Warfare	Missile Exercise Air-to-Surface—Rocket.	Helicopter aircrew fire both precision-guided and unguided rockets at surface targets.	E3	10	70	Gulf Range Complex.
Explosive	Surface Warfare	Missile Exercise Air-to-Surface—Rocket.	Helicopter aircrew fire both precision-guided and unguided rockets at surface targets.	E3	115	805	Jacksonville Range Complex.
Explosive	Surface Warfare	Missile Exercise Air-to-Surface—Rocket.	Helicopter aircrew fire both precision-guided and unguided rockets at surface targets.	E3	15	105	Navy Cherry Point Range Complex.
Explosive	Surface Warfare	Missile Exercise Air-to-Surface—Rocket.	Helicopter aircrew fire both precision-guided and unguided rockets at surface targets.	E3	100	700	Virginia Capes Range Complex.
Explosive	Surface Warfare	Missile Exercise Air-to-Surface—Rocket.	Fixed-wing and helicopter aircrew fire air-to-surface missiles at surface targets.	E6, E8, E9	81	567	Jacksonville Range Complex.
Explosive	Surface Warfare	Missile Exercise Air-to-Surface—Rocket.	Fixed-wing and helicopter aircrew fire air-to-surface missiles at surface targets.	E6	8	56	Key West Range Complex.
Explosive	Surface Warfare	Missile Exercise Air-to-Surface—Rocket.	Fixed-wing and helicopter aircrew fire air-to-surface missiles at surface targets.	E6	72	504	Navy Cherry Point Range Complex.
Explosive	Surface Warfare	Missile Exercise Air-to-Surface—Rocket.	Fixed-wing and helicopter aircrew fire air-to-surface missiles at surface targets.	E6, E8, E9	83	581	Virginia Capes Range Complex.
Explosive	Surface Warfare	Missile Exercise Surface-to-Surface.	Surface ship crews defend against surface threats (ships or small boats) and engage them with missiles.	E6, E9	19	133	Jacksonville Range Complex.
Explosive	Surface Warfare	Missile Exercise Surface-to-Surface.	Surface ship crews defend against surface threats (ships or small boats) and engage them with missiles.	E6, E9	15	105	Virginia Capes Range Complex.
Acoustic and Explosive.	Surface Warfare	Sinking Exercise	Aircraft, ship, cutter, and submarine crews deliberately sink a seaborne target, usually a decommissioned ship made environmentally safe for sinking according to U.S. Environmental Protection Agency standards, with a variety of ordnance.	HFH, E5, E8, E9, E11.	1	7	SINKEX Box.
Acoustic	Other Training Activities	Submarine Navigation	Submarine crews operate sonar for navigation and detection while transiting into and out of port during reduced visibility.	MFH	29	203	Jacksonville Range Complex.
Acoustic	Other Training Activities	Submarine Navigation	Submarine crews operate sonar for navigation and detection while transiting into and out of port during reduced visibility.	MFH	169	1,183	Northeast Range Complexes.

Acoustic	Other Training Activities	Submarine Navigation	Submarine crews operate sonar for navigation and detection while transiting into and out of port during reduced visibility.	MFH	84	588	Virginia Capes Range Complex, Virginia Capes Range Complex Inshore.
Acoustic	Other Training Activities	Submarine Sonar Maintenance and Systems Checks.	Maintenance of submarine sonar and other system checks are conducted pier-side or at sea.	MFH	4	28	Jacksonville Range Complex.
Acoustic	Other Training Activities	Submarine Sonar Maintenance and Systems Checks.	Maintenance of submarine sonar and other system checks are conducted pier-side or at sea.	MFH	2	14	Port Canaveral, FL.
Acoustic	Other Training Activities	Submarine Sonar Maintenance and Systems Checks.	Maintenance of submarine sonar and other system checks are conducted pier-side or at sea.	MFH	2	14	NSB Kings Bay.
Acoustic	Other Training Activities	Submarine Sonar Maintenance and Systems Checks.	Maintenance of submarine sonar and other system checks are conducted pier-side or at sea.	MFH	66	462	Northeast Range Complexes.
Acoustic	Other Training Activities	Submarine Sonar Maintenance and Systems Checks.	Maintenance of submarine sonar and other system checks are conducted pier-side or at sea.	MFH	66	462	NSB New London.
Acoustic	Other Training Activities	Submarine Sonar Maintenance and Systems Checks.	Maintenance of submarine sonar and other system checks are conducted pier-side or at sea.	MFH	12	84	Other AFTT Areas.
Acoustic	Other Training Activities	Submarine Sonar Maintenance and Systems Checks.	Maintenance of submarine sonar and other system checks are conducted pier-side or at sea.	MFH	34	238	Virginia Capes Range Complex.
Acoustic	Other Training Activities	Submarine Sonar Maintenance and Systems Checks.	Maintenance of submarine sonar and other system checks are conducted pier-side or at sea.	MFH	34	238	NS Norfolk.
Acoustic	Other Training Activities	Submarine Under Ice Certification.	Submarine crews operate sonar while transiting under ice. Ice conditions are simulated during training and certification events.	HFH	3	21	Jacksonville Range Complex.
Acoustic	Other Training Activities	Submarine Under Ice Certification.	Submarine crews operate sonar while transiting under ice. Ice conditions are simulated during training and certification events.	HFH	3	21	Navy Cherry Point Range Complex.
Acoustic	Other Training Activities	Submarine Under Ice Certification.	Submarine crews operate sonar while transiting under ice. Ice conditions are simulated during training and certification events.	HFH	9	63	Northeast Range Complexes.
Acoustic	Other Training Activities	Submarine Under Ice Certification.	Submarine crews operate sonar while transiting under ice. Ice conditions are simulated during training and certification events.	HFH	9	63	Virginia Capes Range Complex.
Acoustic	Other Training Activities	Surface Ship Sonar Maintenance and Systems Checks.	Maintenance of surface ship sonar and other system checks are conducted pier-side or at sea.	MF1, MF1K	50	350	Jacksonville Range Complex.
Acoustic	Other Training Activities	Surface Ship Sonar Maintenance and Systems Checks.	Maintenance of surface ship sonar and other system checks are conducted pier-side or at sea.	MF1, MF1K	50	350	NS Mayport.
Acoustic	Other Training Activities	Surface Ship Sonar Maintenance and Systems Checks.	Maintenance of surface ship sonar and other system checks are conducted pier-side or at sea.	MF1, MF1K	120	840	Navy Cherry Point Range Complex.
Acoustic	Other Training Activities	Surface Ship Sonar Maintenance and Systems Checks.	Maintenance of surface ship sonar and other system checks are conducted pier-side or at sea.	MF1, MF1K	175	1,225	NS Norfolk.
Acoustic	Other Training Activities	Surface Ship Sonar Maintenance and Systems Checks.	Maintenance of surface ship sonar and other system checks are conducted pier-side or at sea.	MF1, MF1K	18	126	Other AFTT Areas.
Acoustic	Other Training Activities	Surface Ship Sonar Maintenance and Systems Checks.	Maintenance of surface ship sonar and other system checks are conducted pier-side or at sea.	MF1, MF1K	175	1,225	Virginia Capes Range Complex.
Acoustic	Other Training Activities	Unmanned Underwater Vehicle Training—Certification and Development.	Unmanned underwater vehicle certification involves training with unmanned platforms to ensure submarine crew proficiency. Tactical development involves training with various payloads, for multiple purposes to ensure that the systems can be employed effectively in an operational environment.	MFH, HFL, HFM, VHFL, VHF, VHFH, Broadband (MF to HF), Broadband (HF to VHF).	10	70	Gulf Range Complex.

TABLE 5—PROPOSED NAVY TRAINING ACTIVITIES ANALYZED WITHIN THE AFTT STUDY AREA—Continued

Stressor category	Activity type	Activity name	Description	Source bin	Number of activities 1-year	Number of activities 7-year	Location
Acoustic	Other Training Activities	Unmanned Underwater Vehicle Training—Certification and Development.	Unmanned underwater vehicle certification involves training with unmanned platforms to ensure submarine crew proficiency. Tactical development involves training with various payloads, for multiple purposes to ensure that the systems can be employed effectively in an operational environment.	MFH, HFL, HFM, VHFL, VHFH, Broadband (MF to HF), Broadband (HF to VHF).	22	154	Jacksonville Range Complex.
Acoustic	Other Training Activities	Unmanned Underwater Vehicle Training—Certification and Development.	Unmanned underwater vehicle certification involves training with unmanned platforms to ensure submarine crew proficiency. Tactical development involves training with various payloads, for multiple purposes to ensure that the systems can be employed effectively in an operational environment.	MFH, HFL, HFM, VHFL, VHFH, Broadband (MF to HF), Broadband (HF to VHF).	10	70	Navy Cherry Point Range Complex.
Acoustic	Other Training Activities	Unmanned Underwater Vehicle Training—Certification and Development.	Unmanned underwater vehicle certification involves training with unmanned platforms to ensure submarine crew proficiency. Tactical development involves training with various payloads, for multiple purposes to ensure that the systems can be employed effectively in an operational environment.	MFH, HFL, HFM, VHFL, VHFH, Broadband (MF to HF), Broadband (HF to VHF).	12	84	Northeast Range Complexes.
Acoustic	Other Training Activities	Unmanned Underwater Vehicle Training—Certification and Development.	Unmanned underwater vehicle certification involves training with unmanned platforms to ensure submarine crew proficiency. Tactical development involves training with various payloads, for multiple purposes to ensure that the systems can be employed effectively in an operational environment.	MFH, HFL, HFM, VHFL, VHFH, Broadband (MF to HF), Broadband (HF to VHF).	32	224	Virginia Capes Range Complex.
Acoustic	Other Training Activities	Unmanned Underwater Vehicle Training—Certification and Development.	Unmanned underwater vehicle certification involves training with unmanned platforms to ensure submarine crew proficiency. Tactical development involves training with various payloads, for multiple purposes to ensure that the systems can be employed effectively in an operational environment.	MFH, HFL, HFM, VHFL, VHFH, Broadband (MF to HF), Broadband (HF to VHF).	21	147	Virginia Capes Range Complex Inshore.

Note: AFTT: Atlantic Fleet Training and Testing; DE: Delaware; FL: Florida; GA: Georgia; JEB: Joint Expeditionary Base; MA: Massachusetts; MS: Mississippi; NC: North Carolina; NJ: New Jersey; NS: Naval Station; NSB: Naval Submarine Base; SINKEX: Sinking Exercise; TX: Texas; VA: Virginia. The Gulf Range Complex includes geographically separated areas throughout the Gulf of America.

*Only a small subset of these activities include explosive ordnance.

TABLE 6—PROPOSED COAST GUARD TRAINING ACTIVITIES ANALYZED WITHIN THE AFTT STUDY AREA

Stressor category	Activity type	Activity name	Description	Source bin	Number of activities 1-year	Number of activities 7-year	Location
Explosive	Surface Warfare	Gunnery Exercise Surface-to-Surface Ship Large-Caliber.	Surface ship crews fire large-caliber guns at surface targets.	E3	* 29	203	Gulf Range complex.
Explosive	Surface Warfare	Gunnery Exercise Surface-to-Surface Ship Large-Caliber.	Surface ship crews fire large-caliber guns at surface targets.	E3	15	105	Jacksonville Range Complex.
Explosive	Surface Warfare	Gunnery Exercise Surface-to-Surface Ship Large-Caliber.	Surface ship crews fire large-caliber guns at surface targets.	E3	10	70	Navy Cherry Point Range Complex.
Explosive	Surface Warfare	Gunnery Exercise Surface-to-Surface Ship Large-Caliber.	Surface ship crews fire large-caliber guns at surface targets.	E3	* 15	105	Northeast Range Complexes.

Explosive	Surface Warfare	Gunnery Exercise Surface-to-Surface Ship Large-Caliber.	Surface ship crews fire large-caliber guns at surface targets.	E3	*20	140	Virginia Capes Range Complex.
Acoustic	Surface Warfare	Unmanned Underwater Vehicle Training—Certification and Development.	Unmanned underwater vehicle certification involves training with unmanned platforms to ensure submarine crew proficiency. Tactical development involves training with various payloads, for multiple purposes to ensure that the systems can be employed effectively in an operational environment.	MFH, HFL, HFM, VHFL, VHFH, Broadband (MF to HF), Broadband (HF to VHF).	10	70	Gulf Range Complex.
Acoustic	Surface Warfare	Unmanned Underwater Vehicle Training—Certification and Development.	Unmanned underwater vehicle certification involves training with unmanned platforms to ensure submarine crew proficiency. Tactical development involves training with various payloads, for multiple purposes to ensure that the systems can be employed effectively in an operational environment.	MFH, HFL, HFM, VHFL, VHFH, Broadband (MF to HF), Broadband (HF to VHF).	10	70	Jacksonville Range Complex.
Acoustic	Surface Warfare	Unmanned Underwater Vehicle Training—Certification and Development.	Unmanned underwater vehicle certification involves training with unmanned platforms to ensure submarine crew proficiency. Tactical development involves training with various payloads, for multiple purposes to ensure that the systems can be employed effectively in an operational environment.	MFH, HFL, HFM, VHFL, VHFH, Broadband (MF to HF), Broadband (HF to VHF).	10	70	Navy Cherry Point Range Complex.
Acoustic	Surface Warfare	Unmanned Underwater Vehicle Training—Certification and Development.	Unmanned underwater vehicle certification involves training with unmanned platforms to ensure submarine crew proficiency. Tactical development involves training with various payloads, for multiple purposes to ensure that the systems can be employed effectively in an operational environment.	MFH, HFL, HFM, VHFL, VHFH, Broadband (MF to HF), Broadband (HF to VHF).	20	140	Virginia Capes Range Complex.
Acoustic	Surface Warfare	Unmanned Underwater Vehicle Training—Certification and Development.	Unmanned underwater vehicle certification involves training with unmanned platforms to ensure submarine crew proficiency. Tactical development involves training with various payloads, for multiple purposes to ensure that the systems can be employed effectively in an operational environment.	MFH, HFL, HFM, VHFL, VHFH, Broadband (MF to HF), Broadband (HF to VHF).	20	140	Virginia Capes Range Complex Inshore.

Note: The Gulf Range Complex includes geographically separated areas throughout the Gulf of America.
 * Only a small subset of these activities include explosive ordnance.

Overview of Testing Activities Within the Study Area

While this proposed rule includes an evaluation of proposed training activities by both the Navy and Coast Guard, all testing activities evaluated in this proposed rule would only be conducted by the Navy. The Navy's research and acquisition community engages in a broad spectrum of testing activities, some of which ultimately support both Action Proponents. These activities include, but are not limited to, basic and applied scientific research and technology development; testing, evaluation, and maintenance of systems (*e.g.*, missiles, radar, and sonar) and platforms (*e.g.*, surface ships, submarines, and aircraft); and acquisition of systems and platforms to support Navy missions and give a technological edge over adversaries. The individual commands within the research and acquisition community included in the application are Naval Air Systems Command (NAVAIR), Naval Sea Systems Command (NAVSEA), and the Office of Naval Research (ONR).

The Action Proponents operate in an ever-changing strategic, tactical, financially-constrained, and time-constrained environment. Testing activities occur in response to emerging

science or fleet operational needs. For example, future Navy studies to develop a better understanding of ocean currents may be designed based on advancements made by non-government researchers not yet published in the scientific literature. Similarly, future but yet unknown Navy and Coast Guard operations within a specific geographic area may require development of modified Navy assets to address local conditions. Such modifications must be tested in the field to ensure they meet fleet needs and requirements. Accordingly, generic descriptions of some of these activities are the best that can be articulated in a long-term, comprehensive document.

Some testing activities are similar to training activities conducted by the fleet (*e.g.*, both the fleet and the research and acquisition community fire torpedoes). While the firing of a torpedo might look identical to an observer, the difference is in the purpose of the firing. The fleet might fire the torpedo to practice the procedures for such a firing, whereas the research and acquisition community might be assessing a new torpedo guidance technology or testing it to ensure the torpedo meets performance specifications and operational requirements.

NAVAIR testing activities support its mission to provide full life cycle

support of naval aviation aircraft, weapons, and systems to be operated by the Navy and Coast Guard. NAVAIR activities closely follow Navy primary mission areas, such as the testing of airborne mine warfare and anti-submarine warfare weapons and systems. NAVAIR activities include, but are not limited to, the testing of new aircraft platforms, weapons, and systems that have not yet been integrated into the Navy fleet and Coast Guard. In addition to testing new platforms and weapon systems, most aircraft and weapon systems that have been integrated into the fleet also require follow-on testing throughout their lifecycle in conjunction with maintenance and upgrades, such as software revisions, to ensure that they function as designed. While these types of activities do not fall within one of the fleet primary mission areas, most NAVAIR testing activities can be easily correlated to fleet training activities. Some testing activities may be conducted in different locations and in a different manner than similar fleet training activities and, therefore, the analysis for those events and the potential environmental effects may differ. Table 7 summarizes the proposed testing activities for NAVAIR analyzed within the AFTT Study Area.

TABLE 7—PROPOSED NAVAIR TESTING ACTIVITIES ANALYZED WITHIN THE AFTT STUDY AREA

Stressor category	Activity type	Activity name	Description	Source bin	Number of activities 1-year	Number of activities 7-year	Location
Acoustic	Anti-Submarine Warfare	Anti-Submarine Warfare Tracking Test (Fixed-Wing).	The test evaluates the sensors and systems used by fixed-wing aircraft to detect and track submarines and to ensure that aircraft systems used to deploy the tracking systems perform to specifications and meet operational requirements.	LFM, LFH, MFM, HFM.	15	105	Gulf Range Complex.
Acoustic	Anti-Submarine Warfare	Anti-Submarine Warfare Tracking Test (Fixed-Wing).	The test evaluates the sensors and systems used by fixed-wing aircraft to detect and track submarines and to ensure that aircraft systems used to deploy the tracking systems perform to specifications and meet operational requirements.	LFM, LFH, MFM, HFM.	19	133	Jacksonville Range Complex.
Acoustic	Anti-Submarine Warfare	Anti-Submarine Warfare Tracking Test (Fixed-Wing).	The test evaluates the sensors and systems used by fixed-wing aircraft to detect and track submarines and to ensure that aircraft systems used to deploy the tracking systems perform to specifications and meet operational requirements.	LFM, LFH, MFM, HFM.	12	84	Key West Range Complex.
Acoustic	Anti-Submarine Warfare	Anti-Submarine Warfare Tracking Test (Fixed-Wing).	The test evaluates the sensors and systems used by fixed-wing aircraft to detect and track submarines and to ensure that aircraft systems used to deploy the tracking systems perform to specifications and meet operational requirements.	LFM, LFH, MFM, HFM.	15	105	Navy Cherry Point Range Complex.
Acoustic	Anti-Submarine Warfare	Anti-Submarine Warfare Tracking Test (Fixed-Wing).	The test evaluates the sensors and systems used by fixed-wing aircraft to detect and track submarines and to ensure that aircraft systems used to deploy the tracking systems perform to specifications and meet operational requirements.	LFM, LFH, MFM, HFM.	45	315	Northeast Range Complexes.
Acoustic	Anti-Submarine Warfare	Anti-Submarine Warfare Tracking Test (Fixed-Wing).	The test evaluates the sensors and systems used by fixed-wing aircraft to detect and track submarines and to ensure that aircraft systems used to deploy the tracking systems perform to specifications and meet operational requirements.	LFM, LFH, MFM, HFM.	25	175	SINKEX Box.
Acoustic	Anti-Submarine Warfare	Anti-Submarine Warfare Tracking Test (Fixed-Wing).	The test evaluates the sensors and systems used by fixed-wing aircraft to detect and track submarines and to ensure that aircraft systems used to deploy the tracking systems perform to specifications and meet operational requirements.	LFM, LFH, MFM, HFM.	25	175	Virginia Capes Range Complex.
Acoustic	Anti-Submarine Warfare	Anti-Submarine Warfare Torpedo Test.	This event is similar to the training event torpedo exercise. Test evaluates anti-submarine warfare systems onboard rotary-wing and fixed-wing aircraft and the ability to search for, detect, classify, localize, track, and attack a submarine or similar target.	HFH	20–43	209	Jacksonville Range Complex.
Acoustic	Anti-Submarine Warfare	Anti-Submarine Warfare Torpedo Test.	This event is similar to the training event torpedo exercise. Test evaluates anti-submarine warfare systems onboard rotary-wing and fixed-wing aircraft and the ability to search for, detect, classify, localize, track, and attack a submarine or similar target.	HFH	40–121	523	Virginia Capes Range Complex.
Acoustic	Anti-Submarine Warfare	Anti-Submarine Warfare Tracking Test (Rotary-Wing).	This event is similar to the training event anti-submarine tracking exercise—helicopter. The test evaluates the sensors and systems used to detect and track submarines and to ensure that helicopter systems used to deploy the tracking systems perform to specifications.	MFH, MFH	6	42	Gulf Range Complex.
Acoustic	Anti-Submarine Warfare	Anti-Submarine Warfare Tracking Test (Rotary-Wing).	This event is similar to the training event anti-submarine tracking exercise—helicopter. The test evaluates the sensors and systems used to detect and track submarines and to ensure that helicopter systems used to deploy the tracking systems perform to specifications.	MFH, MFH	23	161	Jacksonville Range Complex.

TABLE 7—PROPOSED NAVAIR TESTING ACTIVITIES ANALYZED WITHIN THE AFTT STUDY AREA—Continued

Stressor category	Activity type	Activity name	Description	Source bin	Number of activities 1-year	Number of activities 7-year	Location
Acoustic	Anti-Submarine Warfare	Anti-Submarine Warfare Tracking Test (Rotary-Wing).	This event is similar to the training event anti-submarine tracking exercise-helicopter. The test evaluates the sensors and systems used to detect and track submarines and to ensure that helicopter systems used to deploy the tracking systems perform to specifications.	MFH, MFH	27	189	Key West Range Complex.
Acoustic	Anti-Submarine Warfare	Anti-Submarine Warfare Tracking Test (Rotary-Wing).	This event is similar to the training event anti-submarine tracking exercise-helicopter. The test evaluates the sensors and systems used to detect and track submarines and to ensure that helicopter systems used to deploy the tracking systems perform to specifications.	MFH, MFH	110	770	Northeast Range Complexes.
Acoustic	Anti-Submarine Warfare	Anti-Submarine Warfare Tracking Test (Rotary-Wing).	This event is similar to the training event anti-submarine tracking exercise-helicopter. The test evaluates the sensors and systems used to detect and track submarines and to ensure that helicopter systems used to deploy the tracking systems perform to specifications.	MFH, MFH	280	1,960	Virginia Capes Range Complex.
Acoustic	Anti-Submarine Warfare	Kilo Dip Test	Functional check of a helicopter deployed dipping sonar system prior to conducting a testing or training event using the dipping sonar system.	MFH	6	42	Gulf Range Complex.
Acoustic	Anti-Submarine Warfare	Kilo Dip Test	Functional check of a helicopter deployed dipping sonar system prior to conducting a testing or training event using the dipping sonar system.	MFH	6	42	Jacksonville Range Complex.
Acoustic	Anti-Submarine Warfare	Kilo Dip Test	Functional check of a helicopter deployed dipping sonar system prior to conducting a testing or training event using the dipping sonar system.	MFH	6	42	Key West Range Complex.
Acoustic	Anti-Submarine Warfare	Kilo Dip Test	Functional check of a helicopter deployed dipping sonar system prior to conducting a testing or training event using the dipping sonar system.	MFH	4	28	Northeast Range Complexes.
Acoustic	Anti-Submarine Warfare	Kilo Dip Test	Functional check of a helicopter deployed dipping sonar system prior to conducting a testing or training event using the dipping sonar system.	MFH	40	280	Virginia Capes Range Complex.
Acoustic and Explosive.	Anti-Submarine Warfare	Sonobuoy Lot Acceptance Test.	Sonobuoys are deployed from surface vessels and aircraft to verify the integrity and performance of a lot or group of sonobuoys in advance of delivery to the fleet for operational use.	LFH, LFH, MFH, HFM E1, E3.	* 186	* 1,302	Key West Range Complex.
Acoustic	Mine Warfare	Airborne Dipping Sonar Minehunting Test.	A mine-hunting dipping sonar system that is deployed from a helicopter and uses high-frequency sonar for the detection and classification of bottom and moored mines.	HFH	32	224	NSWC Panama City Testing Range.
Acoustic	Mine Warfare	Airborne Dipping Sonar Minehunting Test.	A mine-hunting dipping sonar system that is deployed from a helicopter and uses high-frequency sonar for the detection and classification of bottom and moored mines.	HFH	40	280	Virginia Capes Range Complex.
Explosive	Mine Warfare	Airborne Mine Neutralization System Test.	A test of the airborne mine neutralization system evaluates the system's ability to detect and destroy mines from an airborne mine counter-measures capable helicopter. The airborne mine neutralization system uses up to four unmanned underwater vehicles equipped with high-frequency sonar, video cameras, and explosive and non-explosive neutralizers.	E4	* 27	* 189	NSWC Panama City Testing Range.

Explosive	Mine Warfare	Airborne Mine Neutralization System Test	A test of the airborne mine neutralization system evaluates the system's ability to detect and destroy mines from an airborne mine counter-neutralization system uses up to four unmanned underwater vehicles equipped with high-frequency sonar, video cameras, and explosive and non-explosive neutralizers.	E4	* 25	* 175	Virginia Capes Range Complex.
Acoustic	Mine Warfare	Airborne Minehunting Test—Sonobuoy	A mine-hunting system made up of sonobuoys is deployed from a helicopter. A field of sonobuoys, using high-frequency sonar, is used for detection and classification of bottom and moored mines.	MFm	26	182	NSWC Panama City Testing Range.
Acoustic	Mine Warfare	Airborne Minehunting Test—Sonobuoy	A mine-hunting system made up of sonobuoys is deployed from a helicopter. A field of sonobuoys, using high-frequency sonar, is used for detection and classification of bottom and moored mines.	MFm	12	84	Virginia Capes Range Complex.
Explosive	Surface Warfare	Air-to-Surface Gunnery Test	This event is similar to the training event gunnery exercise air-to-surface. Fixed-wing and rotary-wing aircraft evaluate new or enhanced aircraft guns against surface maritime targets to test that the gun, gun ammunition, or associated systems meet required specifications or to train aircrew in the operation of a new or enhanced weapons system.	E1	55	385	Jacksonville Range Complex.
Explosive	Surface Warfare	Air-to-Surface Gunnery Test	This event is similar to the training event gunnery exercise air-to-surface. Fixed-wing and rotary-wing aircraft evaluate new or enhanced aircraft guns against surface maritime targets to test that the gun, gun ammunition, or associated systems meet required specifications or to train aircrew in the operation of a new or enhanced weapons system.	E1	140	980	Virginia Capes Range Complex.
Explosive	Surface Warfare	Air-to-Surface Missile Test	This event is similar to the training event missile exercise air-to-surface. Test may involve both fixed-wing and rotary-wing aircraft launching missiles at surface maritime targets to evaluate the weapons system or as part of another systems integration test.	E9	5	35	Gulf Range Complex.
Explosive	Surface Warfare	Air-to-Surface Missile Test	This event is similar to the training event missile exercise air-to-surface. Test may involve both fixed-wing and rotary-wing aircraft launching missiles at surface maritime targets to evaluate the weapons system or as part of another systems integration test.	E6	* 29	* 203	Jacksonville Range Complex.
Explosive	Surface Warfare	Air-to-Surface Missile Test	This event is similar to the training event missile exercise air-to-surface. Test may involve both fixed-wing and rotary-wing aircraft launching missiles at surface maritime targets to evaluate the weapons system or as part of another systems integration test.	E6	* 117	* 819	Virginia Capes Range Complex.
Explosive	Surface Warfare	Rocket Test	Rocket tests are conducted to evaluate the integration, accuracy, performance, and safe separation of guided and unguided 2.75-inch rockets fired from a hovering or forward flying helicopter or tilt rotor aircraft.	E3	19	133	Jacksonville Range Complex.
Explosive	Surface Warfare	Rocket Test	Rocket tests are conducted to evaluate the integration, accuracy, performance, and safe separation of guided and unguided 2.75-inch rockets fired from a hovering or forward flying helicopter or tilt rotor aircraft.	E3	* 35	* 245	Virginia Capes Range Complex.

TABLE 7—PROPOSED NAVAIR TESTING ACTIVITIES ANALYZED WITHIN THE AFTT STUDY AREA—Continued

Stressor category	Activity type	Activity name	Description	Source bin	Number of activities 1-year	Number of activities 7-year	Location
Acoustic	Other Testing Activities	Undersea Range System Test	Following installation of a Navy underwater warfare training and testing range, tests of the nodes (components of the range) will be conducted to include node surveys and testing of node transmission functionality.	MFM, HFM	4–20	76	Jacksonville Range Complex.

Note: NAVAIR: Naval Air Systems Command; NSWC: Naval Surface Warfare Center. The Gulf Range Complex includes geographically separated areas throughout the Gulf of America.
* Only a small subset of these activities include explosive ordnance.

NAVSEA activities are aligned with its mission of new ship construction, life cycle management, and weapon systems development. NAVSEA activities include pierside and at-sea testing of vessel systems, including sonar, acoustic countermeasures, radars, launch systems, weapons, unmanned systems, and radio equipment; tests to determine how the vessel or Coast Guard Cutter performs at sea (sea trials); developmental and operational test and evaluation programs for new technologies and systems; and testing on all vessels and systems that have

undergone overhaul or maintenance. In the application, pierside testing at Navy contractor shipyards would consist only of system testing. At-sea test firing of shipboard weapon systems, including guns, torpedoes, and missiles, is also conducted. Testing activities are conducted throughout the life of a vessel, from construction to verification of performance and mission capabilities, and further to deactivation from the fleet. Table 8 summarizes the proposed testing activities for the NAVSEA analyzed within the AFTT Study Area.

One ship of each new class (or major upgrade) of combat ships constructed for the Navy typically undergoes an at-sea ship shock trial. A ship shock trial consists of a series of underwater detonations that send shock waves through the ship's hull to simulate near misses during combat. A shock trial allows the Navy to assess the survivability of the hull and ship's systems in a combat environment as well as the capability of the ship to protect the crew.

TABLE 8—PROPOSED NAVSEA TESTING ACTIVITIES ANALYZED WITHIN THE AFTT STUDY AREA

Stressor category	Activity type	Activity name	Description	Source bin	Number of activities 1-year	Number of activities 7-year	Location
Acoustic	Anti-Submarine Warfare	Anti-Submarine Warfare Mission Package Testing.	Ships and their supporting platforms (e.g., rotary-wing aircraft and unmanned aerial systems) detect, localize, and prosecute submarines.	MFH, MF1	1–2	11	Gulf Range Complex.
Acoustic	Anti-Submarine Warfare	Anti-Submarine Warfare Mission Package Testing.	Ships and their supporting platforms (e.g., rotary-wing aircraft and unmanned aerial systems) detect, localize, and prosecute submarines.	MFH, MF1	2	14	Jacksonville Range Complex.
Acoustic	Anti-Submarine Warfare	Anti-Submarine Warfare Mission Package Testing.	Ships and their supporting platforms (e.g., rotary-wing aircraft and unmanned aerial systems) detect, localize, and prosecute submarines.	MFH, MF1	1–2	11	Northeast Range Complexes.
Acoustic	Anti-Submarine Warfare	At-Sea Sonar Testing	At-sea testing to ensure systems are fully functional in an open ocean environment.	MFL, MFM, MFH, MF1, MF1K, HFL, HFM, HFH, Broadband (LF to HF), Broadband (LF to MF), Broadband (MF to HF).	7–9	49	Gulf Range Complex; Jacksonville Range Complex; Navy Cherry Point Range Complex; Northeast Range Complexes; SFOMF; Virginia Capes Range Complex.
Acoustic	Anti-Submarine Warfare	At-Sea Sonar Testing	At-sea testing to ensure systems are fully functional in an open ocean environment.	MFL, MFM, MFH, MF1, MF1K, HFL, HFM, HFH, Broadband (LF to HF), Broadband (LF to MF), Broadband (MF to HF).	7–14	77	Gulf Range Complex.
Acoustic	Anti-Submarine Warfare	At-Sea Sonar Testing	At-sea testing to ensure systems are fully functional in an open ocean environment.	MFL, MFM, MFH, MF1, MF1K, HFL, HFM, HFH, Broadband (LF to HF), Broadband (LF to MF), Broadband (MF to HF).	4	28	Jacksonville Range Complex.
Acoustic	Anti-Submarine Warfare	At-Sea Sonar Testing	At-sea testing to ensure systems are fully functional in an open ocean environment.	MFL, MFM, MFH, MF1, MF1K, HFL, HFM, HFH, Broadband (LF to HF), Broadband (LF to MF), Broadband (MF to HF).	2	14	Navy Cherry Point Range Complex.
Acoustic	Anti-Submarine Warfare	At-Sea Sonar Testing	At-sea testing to ensure systems are fully functional in an open ocean environment.	MFL, MFM, MFH, MF1, MF1K, HFL, HFM, HFH, Broadband (LF to HF), Broadband (LF to MF), Broadband (MF to HF).	8–15	84	Northeast Range Complexes.

Acoustic	Anti-Submarine Warfare	At-Sea Sonar Testing	At-sea testing to ensure systems are fully functional in an open ocean environment.	MFL, MFM, MFH, MF1, MF1K, HFL, HFM, HFH, Broadband (LF to HF), Broadband (LF to MF), Broadband (MF to HF).	16–22	58	Virginia Capes Range Complex.
Acoustic	Anti-Submarine Warfare	At-Sea Sonar Testing	At-sea testing to ensure systems are fully functional in an open ocean environment.	MFL, MFM, MFH, MF1, MF1K, HFL, HFM, HFH, Broadband (LF to HF), Broadband (LF to MF), Broadband (MF to HF).	2	14	SFOMF.
Acoustic	Anti-Submarine Warfare	Pierside Sonar Testing	Pierside testing to ensure systems are fully functional in a controlled pierside environment prior to at-sea test activities and complete any required troubleshooting.	MFM, MFH, HFM, HFH, Broadband (MF to HF).	5–10	64	NSB New London; Gulf Range Complex Inshore; Jacksonville Range Complex; NSB Kings Bay; Newport, RI; NS Norfolk; Northeast Range Complexes; Port Canaveral, FL; Virginia Capes Range Complex.
Acoustic	Anti-Submarine Warfare	Pierside Sonar Testing	Pierside testing to ensure systems are fully functional in a controlled pierside environment prior to at-sea test activities and complete any required troubleshooting.	MFM, MFH, HFM, HFH, Broadband (MF to HF).	10–20	110	Bath, ME.
Acoustic	Anti-Submarine Warfare	Pierside Sonar Testing	Pierside testing to ensure systems are fully functional in a controlled pierside environment prior to at-sea test activities and complete any required troubleshooting.	MFM, MFH, HFM, HFH, Broadband (MF to HF).	10–18	94	NS Mayport.
Acoustic	Anti-Submarine Warfare	Pierside Sonar Testing	Pierside testing to ensure systems are fully functional in a controlled pierside environment prior to at-sea test activities and complete any required troubleshooting.	MFM, MFH, HFM, HFH, Broadband (MF to HF).	63–84	455	NS Norfolk.
Acoustic	Anti-Submarine Warfare	Pierside Sonar Testing	Pierside testing to ensure systems are fully functional in a controlled pierside environment prior to at-sea test activities and complete any required troubleshooting.	MFM, MFH, HFM, HFH, Broadband (MF to HF).	10–20	110	Pascagoula, MS.
Acoustic	Anti-Submarine Warfare	Pierside Sonar Testing	Pierside testing to ensure systems are fully functional in a controlled pierside environment prior to at-sea test activities and complete any required troubleshooting.	MFM, MFH, HFM, HFH, Broadband (MF to HF).	16–24	152	Portsmouth Naval Shipyard.
Acoustic	Anti-Submarine Warfare	Surface Ship Sonar Testing/ Maintenance.	Pierside and at-sea testing of ship systems occurs periodically following major maintenance periods and for routine maintenance.	LFL, MFM, MF1, MF1K, Broadband (MF to HF).	1	7	Jacksonville Range Complex.
Acoustic	Anti-Submarine Warfare	Surface Ship Sonar Testing/ Maintenance.	Pierside and at-sea testing of ship systems occurs periodically following major maintenance periods and for routine maintenance.	LFL, MFM, MF1, MF1K, Broadband (MF to HF).	4	28	Virginia Capes Range Complex.
Acoustic and Explosive.	Anti-Submarine Warfare	Torpedo (Explosive) Testing	Air, surface, or submarine crews employ explosive and non-explosive torpedoes against artificial targets.	MFM, MFH, MF1, HFH, Broadband (MF to HF), E8, E11.	1–5	17	Gulf Range Complex; Jacksonville Range Complex; Key West Range Complex; Navy Cherry Point Range Complex; Northeast Range Complexes; Virginia Capes Range Complex.

TABLE 8—PROPOSED NAVSEA TESTING ACTIVITIES ANALYZED WITHIN THE AFTT STUDY AREA—Continued

Stressor category	Activity type	Activity name	Description	Source bin	Number of activities 1-year	Number of activities 7-year	Location
Acoustic	Anti-Submarine Warfare	Torpedo (Non-Explosive) Testing.	Air, surface, or submarine crews employ non-explosive torpedoes against targets, submarines, or surface vessels.	MFL, MFM, MFH, MF1, HFM, HFH, VHFH, Broadband (LF to HF), Broadband (MF to HF).	13–17	82	Gulf Range Complex; Jacksonville Range Complex; Key West Range Complex; Navy Cherry Point Range Complex; Northeast Range Complexes; SFOMF; Virginia Capes Range Complex.
Acoustic	Anti-Submarine Warfare	Torpedo (Non-Explosive) Testing.	Air, surface, or submarine crews employ non-explosive torpedoes against targets, submarines, or surface vessels.	MFL, MFM, MFH, MF1, HFM, HFH, VHFH, Broadband (LF to HF), Broadband (MF to HF).	30	210	NUWC Newport Testing Range.
Explosive	Mine Warfare	Mine Countermeasure and Neutralization Testing.	Air, surface, and subsurface vessels neutralize threat mines and mine-like objects.	E4	18–45	315	Gulf Range Complex.
Explosive	Mine Warfare	Mine Countermeasure and Neutralization Testing.	Air, surface, and subsurface vessels neutralize threat mines and mine-like objects.	E4	*24–48	*288	Virginia Capes Range Complex.
Acoustic	Mine Warfare	Mine Countermeasure Mission Package Testing.	Vessels and associated aircraft conduct mine countermeasure operations.	MFH, HFM, HFH	15	105	Gulf Range Complex.
Acoustic	Mine Warfare	Mine Countermeasure Mission Package Testing.	Vessels and associated aircraft conduct mine countermeasure operations.	MFH, HFM, HFH	8	56	Jacksonville Range Complex.
Acoustic	Mine Warfare	Mine Countermeasure Mission Package Testing.	Vessels and associated aircraft conduct mine countermeasure operations.	MFH, HFM, HFH	11	77	NSWC Panama City Testing Range.
Acoustic	Mine Warfare	Mine Countermeasure Mission Package Testing.	Vessels and associated aircraft conduct mine countermeasure operations.	MFH, HFM, HFH	2	14	SFOMF.
Acoustic	Mine Warfare	Mine Countermeasure Mission Package Testing.	Vessels and associated aircraft conduct mine countermeasure operations.	MFH, HFM, HFH	3	21	Virginia Capes Range Complex.
Acoustic	Mine Warfare	Mine Detection and Classification Testing.	Air, surface, and subsurface vessels and systems detect and classify mines and mine-like objects. Vessels also assess their potential susceptibility to mines and mine-like objects.	HFH	0–1	1	Jacksonville Range Complex, NSWC Panama City Testing Range, Port Cavanaugh, FL.
Acoustic	Mine Warfare	Mine Detection and Classification Testing.	Air, surface, and subsurface vessels and systems detect and classify mines and mine-like objects. Vessels also assess their potential susceptibility to mines and mine-like objects.	HFH	0–1	4	Jacksonville Range Complex.
Acoustic	Mine Warfare	Mine Detection and Classification Testing.	Air, surface, and subsurface vessels and systems detect and classify mines and mine-like objects. Vessels also assess their potential susceptibility to mines and mine-like objects.	HFH	286–287	2,005	NSWC Panama City Testing Range.
Acoustic and Explosive.	Acoustic and Oceanographic Science and Technology.	Acoustic and Oceanographic Research.	Research using active transmissions from sources deployed from ships, aircraft, and unmanned underwater vehicles. Research sources can be used as proxies for current and future Navy systems.	LFM, Broadband (LF to HF), E7.	0–1	1	Gulf Range Complex; Jacksonville Range Complex; Key West Range Complex.
Acoustic	Other Testing Activities	Acoustic and Oceanographic Research.	Research using active transmissions from sources deployed from ships, aircraft, and unmanned underwater vehicles. Research sources can be used as proxies for current and future Navy systems.	LFM, Broadband (LF to HF).	3	21	Northeast Range Complexes.
Acoustic and Explosive.	Other Testing Activities	Acoustic and Oceanographic Research.	Research using active transmissions from sources deployed from ships, aircraft, and unmanned underwater vehicles. Research sources can be used as proxies for current and future Navy systems.	LFM, Broadband (LF to HF), E7.	*0–1	*3	Key West Range Complex.

Acoustic	Other Testing Activities	Acoustic and Oceanographic Research.	Research using active transmissions from sources deployed from ships, aircraft, and unmanned underwater vehicles. Research sources can be used as proxies for current and future Navy systems.	LFM, Broadband (LF to HF).	0–1	2	Other AFTT Areas.
Acoustic	Other Testing Activities	Acoustic Component Testing	Various surface vessels, moored equipment, and materials are tested to evaluate performance in the marine environment.	LFL, MFL, MFH, HFM, HFH, VHFH, Broadband (LF to HF), Broadband (MF to HF).	33	231	SFOMF.
Acoustic	Other Testing Activities	Acoustic Component Testing	Various surface vessels, moored equipment, and materials are tested to evaluate performance in the marine environment.	LFL, MFL, MFH, HFM, HFH, VHFH, Broadband (LF to HF), Broadband (MF to HF).	1	7	Jacksonville Range Complex.
Acoustic	Other Testing Activities	Countermeasure Testing	Countermeasure testing involves the testing of systems that will detect, localize, track, and engage incoming weapons, including marine vessel targets and airborne missiles. Testing includes surface ship torpedo defense systems, marine vessel stopping payloads, and airborne decoys against air targets.	MFH, MFH, HFH, VHFH, Broadband (LF to HF), Broadband (MF to HF).	16–20	116	Gulf Range Complex; Jacksonville Range Complex; Key West Range Complex; Navy Cherry Point Range Complex; Northeast Range Complexes; Virginia Capes Range Complex; JEB Little Creek Fort Story.
Acoustic	Other Testing Activities	Countermeasure Testing	Countermeasure testing involves the testing of systems that will detect, localize, track, and engage incoming weapons, including marine vessel targets and airborne missiles. Testing includes surface ship torpedo defense systems, marine vessel stopping payloads, and airborne decoys against air targets.	MFH, MFH, HFH, VHFH, Broadband (LF to HF), Broadband (MF to HF).	8–10	63	Gulf Range Complex.
Acoustic	Other Testing Activities	Countermeasure Testing	Countermeasure testing involves the testing of systems that will detect, localize, track, and engage incoming weapons, including marine vessel targets and airborne missiles. Testing includes surface ship torpedo defense systems, marine vessel stopping payloads, and airborne decoys against air targets.	MFH, MFH, HFH, VHFH, Broadband (LF to HF), Broadband (MF to HF).	6	42	NUWC Newport Testing Range.
Acoustic	Other Testing Activities	Countermeasure Testing	Countermeasure testing involves the testing of systems that will detect, localize, track, and engage incoming weapons, including marine vessel targets and airborne missiles. Testing includes surface ship torpedo defense systems, marine vessel stopping payloads, and airborne decoys against air targets.	MFH, MFH, HFH, VHFH, Broadband (LF to HF), Broadband (MF to HF).	6–10	13	Virginia Capes Range Complex.
Acoustic	Other Testing Activities	Insertion/Extraction	Testing of submarines capable of inserting and extracting personnel and payloads into denied areas from strategic distances.	LFH, HFH, Broadband (LF to MF), E4	501–502	3,514	Key West Range Complex; NSWC Panama City Testing Range.
Explosive	Other Testing Activities	Line Charge Testing	Surface vessels deploy line charges to test the capability to safely clear an area for expeditionary forces.	E4	4	28	NSWC Panama City Testing Range.
Acoustic and Explosive.	Other Testing Activities	Semi-Stationary Equipment Testing.	Semi-stationary equipment (e.g., hydrophones) is deployed to determine functionality.	AG230, HFH, HFM, Broadband (LF), Broadband (LF to HF), Broadband (MF to HF), MFH, VHFH, E4.	*8–14	*74	NSB New London; NS Mayport; NS Norfolk; Port Canaveral, FL; Virginia Capes Range Complex Inshore; Key West Range Complex Inshore.

TABLE 8—PROPOSED NAVSEA TESTING ACTIVITIES ANALYZED WITHIN THE AFTT STUDY AREA—Continued

Stressor category	Activity type	Activity name	Description	Source bin	Number of activities 1-year	Number of activities 7-year	Location
Acoustic and Explosive.	Other Testing Activities	Semi-Stationary Equipment Testing.	Semi-stationary equipment (e.g., hydrophones) is deployed to determine functionality.	AG230, HFH, HFM, Broadband (LF), Broadband (LF to HF), Broadband (MF to HF), MFM, VHFH, VHFH, E4.	4	28	Newport, RI.
Acoustic and Explosive.	Other Testing Activities	Semi-Stationary Equipment Testing.	Semi-stationary equipment (e.g., hydrophones) is deployed to determine functionality.	AG230, HFH, HFM, Broadband (LF), Broadband (LF to HF), Broadband (MF to HF), MFM, VHFH, VHFH, E4.	30	210	NSWC Panama City Testing Range.
Acoustic and Explosive.	Other Testing Activities	Semi-Stationary Equipment Testing.	Semi-stationary equipment (e.g., hydrophones) is deployed to determine functionality.	AG230, HFH, HFM, Broadband (LF), Broadband (LF to HF), Broadband (MF to HF), MFM, VHFH, VHFH, E4.	* 155–173	* 1,139	NUWC Newport Testing Range.
Acoustic	Other Testing Activities	Towed Equipment Testing ...	Surface vessels or unmanned surface vehicles deploy and tow equipment to determine functionality of towed systems.	MFM, Broadband (LF).	43–49	319	NUWC Newport Testing Range.
Explosive	Surface Warfare	Gun Testing—Large-Caliber	Surface crews test large-caliber guns to defend against surface targets. Demonstration of large-caliber guns including the MK 45 5-inch gun and MK 41 Vertical Launch Systems using surface to air missiles.	E3, E5	* 1–15	* 20	Jacksonville Range Complex; Virginia Capes Range Complex.
Explosive	Surface Warfare	Gun Testing—Large-Caliber	Surface crews test large-caliber guns to defend against surface targets. Demonstration of large-caliber guns including the MK 45 5-inch gun and MK 41 Vertical Launch Systems using surface to air missiles.	E3, E5	1–2	11	Gulf Range Complex.
Explosive	Surface Warfare	Gun Testing—Large-Caliber	Surface crews test large-caliber guns to defend against surface targets. Demonstration of large-caliber guns including the MK 45 5-inch gun and MK 41 Vertical Launch Systems using surface to air missiles.	E3, E5	* 2–4	* 23	Jacksonville Range Complex.
Explosive	Surface Warfare	Gun Testing—Large-Caliber	Surface crews test large-caliber guns to defend against surface targets. Demonstration of large-caliber guns including the MK 45 5-inch gun and MK 41 Vertical Launch Systems using surface to air missiles.	E3, E5	1–2	11	Northeast Range Complexes.
Explosive	Surface Warfare	Gun Testing—Large-Caliber	Surface crews test large-caliber guns to defend against surface targets. Demonstration of large-caliber guns including the MK 45 5-inch gun and MK 41 Vertical Launch Systems using surface to air missiles.	E3, E5	* 15	* 105	NSWC Panama City Testing Range.

Explosive	Surface Warfare	Missile and Rocket Testing	Missile and rocket testing includes various missiles or rockets fired from submarines and surface combatants. Testing of the launching system and ship defense is performed.	E6, E7, E8, E10 ...	*6–18	*49	Gulf Range Complex; Jacksonville Range Complex; Navy Cherry Point Range Complex; Virginia Capes Range Complex.
Explosive	Surface Warfare	Missile and Rocket Testing	Missile and rocket testing includes various missiles or rockets fired from submarines and surface combatants. Testing of the launching system and ship defense is performed.	E6, E7, E8, E10 ...	*20–30	*78	Virginia Capes Range Complex.
Acoustic	Unmanned Systems	Unmanned Underwater Vehicle Testing.	Testing involves the production or upgrade of unmanned underwater vehicles. This may include testing of mine detection capabilities, evaluating the basic functions of individual platforms, or complex events with multiple vehicles.	LFL, MFL, MFM, MFH, HFM, HFH, VHFH, Broadband (LF to HF), Broadband (MF to HF).	208–209	1,459	NSWC Panama City Testing Range.
Acoustic	Unmanned Systems	Unmanned Underwater Vehicle Testing.	Testing involves the production or upgrade of unmanned underwater vehicles. This may include testing of mine detection capabilities, evaluating the basic functions of individual platforms, or complex events with multiple vehicles.	LFL, MFL, MFM, MFH, HFM, HFH, VHFH, Broadband (LF to HF), Broadband (MF to HF).	138	966	NUWC Newport Testing Range.
Acoustic	Unmanned Systems	Unmanned Underwater Vehicle Testing.	Testing involves the production or upgrade of unmanned underwater vehicles. This may include testing of mine detection capabilities, evaluating the basic functions of individual platforms, or complex events with multiple vehicles.	LFL, MFL, MFM, MFH, HFM, HFH, VHFH, Broadband (LF to HF), Broadband (MF to HF).	1	7	SFOMF.
Acoustic	Vessel Evaluation	In-Port Maintenance Testing	Each combat system is tested to ensure they are functioning in a technically acceptable manner and are operationally ready to support at-sea testing.	MF1	2	4	NS Mayport; NS Norfolk.
Acoustic	Vessel Evaluation	In-Port Maintenance Testing	Each combat system is tested to ensure they are functioning in a technically acceptable manner and are operationally ready to support at-sea testing.	MF1	2	14	NS Mayport.
Acoustic	Vessel Evaluation	In-Port Maintenance Testing	Each combat system is tested to ensure they are functioning in a technically acceptable manner and are operationally ready to support at-sea testing.	MF1	4	28	NS Norfolk.
Acoustic	Vessel Evaluation	Signature Analysis Operations.	Surface ship and submarine testing of electromagnetic, acoustic, optical, and radar signature measurements.	LFM, LFH, MFM, HFM, Broadband (LF).	0–1	4	Hampton Roads, VA.
Acoustic	Vessel Evaluation	Signature Analysis Operations.	Surface ship and submarine testing of electromagnetic, acoustic, optical, and radar signature measurements.	LFM, LFH, MFM, HFM, Broadband (LF).	79–94	579	SFOMF.
Explosive	Vessel Evaluation	Small Ship Shock Trial	Underwater detonations are used to test new ships or major upgrades.	E16	0–2	5	Jacksonville Range Complex; Gulf Range Complex.
Acoustic	Vessel Evaluation	Submarine Sea Trials—Weapons System Testing.	Submarine weapons and sonar systems are tested at-sea to meet the integrated combat system certification requirements.	MFL, MFH, HFM, HFH, Broadband (LF to HF).	3–7	22	Gulf Range Complex; Jacksonville Range Complex; NSB Kings Bay; Northeast Range Complexes; Port Canaveral, FL; Virginia Capes Range Complex.
Acoustic	Vessel Evaluation	Submarine Sea Trials—Weapons System Testing.	Submarine weapons and sonar systems are tested at-sea to meet the integrated combat system certification requirements.	MFL, MFH, HFM, HFH, Broadband (LF to HF).	2–4	28	Northeast Range Complexes.
Acoustic	Vessel Evaluation	Submarine Sea Trials—Weapons System Testing.	Submarine weapons and sonar systems are tested at-sea to meet the integrated combat system certification requirements.	MFL, MFH, HFM, HFH, Broadband (LF to HF).	1	6	Northeast Range Complexes Inshore.

TABLE 8—PROPOSED NAVSEA TESTING ACTIVITIES ANALYZED WITHIN THE AFTT STUDY AREA—Continued

Stressor category	Activity type	Activity name	Description	Source bin	Number of activities 1-year	Number of activities 7-year	Location
Acoustic	Vessel Evaluation	Submarine Sea Trials— Weapons System Testing.	Submarine weapons and sonar systems are tested at-sea to meet the integrated combat system certification requirements.	MFL, MFH, HFM, HFH, Broadband (LF to HF).	2–4	28	Virginia Capes Range Complex.
Acoustic and Explosive.	Vessel Evaluation	Surface Warfare Testing	Tests the capabilities of shipboard sensors to detect, track, and engage surface targets. Testing may include ships defending against surface targets using explosive and non-explosive rounds, gun system structural test firing and demonstration of the response to Call for Fire against land-based targets (simulated by sea-based locations).	HFH, E3, E5, E6, E7, E8.	* 17–76	* 206	Jacksonville Range Complex; Virginia Capes Range Complex.
Acoustic	Vessel Evaluation	Surface Warfare Testing	Tests the capabilities of shipboard sensors to detect, track, and engage surface targets. Testing may include ships defending against surface targets using non-explosive rounds, gun system structural test firing and demonstration of the response to Call for Fire against land-based targets (simulated by sea-based locations).	HFH	0–2	6	Gulf Range Complex.
Acoustic and Explosive.	Vessel Evaluation	Surface Warfare Testing	Tests the capabilities of shipboard sensors to detect, track, and engage surface targets. Testing may include ships defending against surface targets using explosive and non-explosive rounds, gun system structural test firing and demonstration of the response to Call for Fire against land-based targets (simulated by sea-based locations).	HFH, E3, E5, E6, E7, E8.	* 4–6	* 37	Jacksonville Range Complex.
Acoustic and Explosive.	Vessel Evaluation	Surface Warfare Testing	Tests the capabilities of shipboard sensors to detect, track, and engage surface targets. Testing may include ships defending against surface targets using explosive and non-explosive rounds, gun system structural test firing and demonstration of the response to Call for Fire against land-based targets (simulated by sea-based locations).	HFH, E3, E5, E6, E7, E8.	* 5–7	* 42	Virginia Capes Range Complex.
Acoustic and Explosive.	Vessel Evaluation	Undersea Warfare Testing ..	Ships demonstrate capability of counter-measure systems and underwater surveillance, weapons engagement and communications systems. This tests ships ability to detect, track, and engage undersea targets.	MFH, MFH, MF1, HFM, HFH, Broadband (LF to HF), E4.	6–24	105	Jacksonville Range Complex; Navy Cherry Point Range Complex; Northeast Range Complexes; SFOMF; Virginia Capes Range Complex.
Acoustic and Explosive.	Vessel Evaluation	Undersea Warfare Testing ..	Ships demonstrate capability of counter-measure systems and underwater surveillance, weapons engagement and communications systems. This tests ships ability to detect, track, and engage undersea targets.	MFH, MFH, MF1, HFM, HFH, Broadband (LF to HF), E4.	* 4–6	* 30	Jacksonville Range Complex.
Acoustic	Vessel Evaluation	Vessel Signature Evaluation	Surface ship, submarine, and auxiliary system signature assessments. This may include electronic, radar, acoustic, infrared and magnetic signatures.	MFH, HFM, HFH ..	1–4	9	Jacksonville Range Complex; Virginia Capes Range Complex.
Acoustic	Vessel Evaluation	Vessel Signature Evaluation	Surface ship, submarine, and auxiliary system signature assessments. This may include electronic, radar, acoustic, infrared and magnetic signatures.	MFH, HFM, HFH ..	0–1	2	Gulf Range Complex.
Acoustic	Vessel Evaluation	Vessel Signature Evaluation	Surface ship, submarine, and auxiliary system signature assessments. This may include electronic, radar, acoustic, infrared and magnetic signatures.	MFH, HFM, HFH ..	1–3	6	Hampton Roads, VA.

Acoustic	Vessel Evaluation	Vessel Signature Evaluation	Surface ship, submarine, and auxiliary system signature assessments. This may include electronic, radar, acoustic, infrared and magnetic signatures.	MFM, HFM, HFH ..	0–1	3	NUWC Newport Testing Range.
Acoustic	Vessel Evaluation	Vessel Signature Evaluation	Surface ship, submarine, and auxiliary system signature assessments. This may include electronic, radar, acoustic, infrared and magnetic signatures.	MFM, HFM, HFH ..	0–1	3	SFOMF.
Acoustic	Vessel Evaluation	Vessel Signature Evaluation	Surface ship, submarine, and auxiliary system signature assessments. This may include electronic, radar, acoustic, infrared and magnetic signatures.	MFM, HFM, HFH ..	0–1	4	Virginia Capes Range Complex.

Note: FL: Florida; GA: Georgia; JEB: Joint Expeditionary Base; LA: Louisiana; MS: Mississippi; NS: Naval Station; NSB: Naval Submarine Base; NSWC: Naval Surface Warfare Center; NUWC: Naval Undersea Warfare Center; RI: Rhode Island; SFOMF: South Florida Ocean Measurement Facility; VA: Virginia. The Gulf Range Complex inshore includes geographically separated areas throughout the Gulf of America.

* Only a small subset of these activities include explosive ordnance.

The ONR, as the Department of the Navy’s science and technology provider, provides technology solutions for Navy and Marine Corps needs. The ONR’s mission, defined by law, is to plan, foster, and encourage scientific research in recognition of its paramount importance as related to the maintenance of future naval power and the preservation of national security. The ONR manages the Navy’s basic,	applied, and advanced research to foster transition from science and technology to higher levels of research, development, test, and evaluation. The ONR is also a parent organization for the Naval Research Laboratory, which operates as the Navy’s corporate research laboratory and conducts a broad multidisciplinary program of scientific research and advanced technological development. Testing	activities conducted by the ONR and the Naval Research Laboratory include activities such as acoustic and oceanographic research, UUV research, and next generation mine countermeasures research. Table 9 summarizes the proposed testing activities for the ONR analyzed within the AFTT Study Area.

TABLE 9—PROPOSED ONR TESTING ACTIVITIES ANALYZED WITHIN THE AFTT STUDY AREA

Stressor category	Activity type	Activity name	Description	Source bin	Number of activities 1-year	Number of activities 7-year	Location
Acoustic and Explosive.	Acoustic and Oceanographic Science and Technology.	Acoustic and Oceanographic Research.	Research using active transmissions from sources deployed from ships, aircraft, and unmanned vehicles. Research sources can be used as proxies for current and future Navy systems.	LFM, LFH, MFM, MFH, HFM, HFH, E1, E3, 3S3, AG232.	* 12–15	* 93	Gulf Range Complex; Jacksonville Range Complex; Northeast Range Complexes; Virginia Capes Range Complex.
Acoustic	Acoustic and Oceanographic Science and Technology.	Mine Countermeasure Technology Research.	Test involves the use of broadband acoustic sources on unmanned underwater vehicles.	MFH	4–5	35	Gulf Range Complex; Jacksonville Range Complex; Northeast Range Complexes; Virginia Capes Range Complex.

Note: The Gulf Range Complex includes geographically separated areas throughout the Gulf of America.

* Only a small subset of these activities include explosive ordnance.

Vessel Movement

Vessels used as part of the proposed activities include both surface and sub-surface operations of both manned and unmanned vessels (USVs, UUVs). Navy vessels include ships, submarines, and boats ranging in size from small, 22 ft (7 m) rigid hull inflatable boats to aircraft carriers with lengths up to 1,092 ft (333 m). Unmanned systems may include vehicles ranging from 4–16 ft (1.2–4.9 m) but typical size of USVs is 36–328 ft (11–100 m), while UUVs are 33–98 ft (10–30 m) in length. The Marine Corps operates small boats from 10–50 ft (3–15.2 m) in length and include small unit riverine craft, rigid hull inflatable boats and amphibious combat vehicles. Coast Guard vessels range in size from small boats between 13 and 65 ft (3.9 to 19.8 m) to large cutters with lengths up to 418 ft (127.4 m).

Large ships greater than 65 ft (19.8 m) generally operate at speeds in the range of 10 to 15 knots (kn; 18.5 to 27.8 km per hour (km/hr)) for fuel conservation. Submarines generally operate at lower speeds in transit and even lower speeds for certain tactical maneuvers. Small craft (considered in this proposed rule to be less than 60 ft (18 m) in length) have much more variable speeds (dependent on the mission). While these speeds are representative of most events, some vessels need to temporarily operate outside of these parameters. For example, to produce the required relative wind speed over the flight deck, an aircraft carrier vessel group engaged in flight operations must adjust its speed through the water accordingly. Conversely, there are other instances such as launch and recovery of a small rigid hull inflatable boat, vessel boarding, search and seizure training events, or retrieval of a target when vessels will be stopped or moving slowly ahead to maintain steerage. Additionally, there are specific events including high speed tests of newly constructed vessels. High speed ferries may also be used to support Navy testing in Narragansett Bay.

The number of vessels used in the Study Area varies based on military readiness requirements, deployment schedules, annual budgets, and other unpredictable factors. Most military readiness activities involve the use of vessels. These activities could be widely dispersed throughout the Study Area, but would typically be conducted near naval ports, piers, and range areas. Activities involving vessel movements occur intermittently and are variable in duration, ranging from a few hours to multiple weeks.

Action Proponent vessel traffic would be concentrated near Naval Station Norfolk in Norfolk, Virginia and Naval Station Mayport in Jacksonville, Florida. There is no seasonal differentiation in vessel use. Large vessel movement primarily occurs with the majority of the traffic flowing between the installations and the OPAREAs and/or testing and training ranges. Support craft would be more concentrated in the coastal waters in the areas of naval installations, ports, and ranges.

The number of testing activities that include the use of vessels is around 12 percent lower than the number of training activities, but testing activities are more likely to include the use of larger unmanned vessels. In addition, testing often occurs jointly with a training event so it is likely that the testing activity would be conducted from a vessel that was also conducting a training activity. Vessel movement in conjunction with testing activities could occur throughout the Study Area, but would typically be conducted near naval ports, piers, and within range complexes.

Additionally, a variety of smaller craft will be operated within the Study Area. Small craft types, sizes, and speeds vary. During military readiness activities, speeds generally range from 10 to 14 kn (18.5 to 25.9 km/hr); however, vessels can and will, on occasion, operate within the entire spectrum of their specific operational capabilities. In all cases, the vessels/craft will be operated in a safe manner consistent with the local conditions.

Foreign Navies

Foreign militaries may participate in U.S. Navy training or testing activities in the AFTT Study Area. The Navy does not consider these foreign military activities as part of the “specified activity” under the MMPA, and NMFS defers to the applicant to describe the scope of its request for an authorization.

The participation of foreign navies varies from year to year but overall is infrequent compared with Navy’s total training and testing activities. When foreign militaries are participating in a U.S. Navy-led exercise or event, foreign military use of sonar and explosives, when combined with the U.S. Navy’s use of sonar and explosives, would not result in exceedance of the analyzed levels (within each Navy Acoustic Effects Model (NAEMO) modeled sonar and explosive bin) used for estimating predicted impacts, which formed the basis of our acoustic impacts effects analysis that was used to estimate take in this proposed rule. Please see the *Proposed Mitigation Measures* section

and *Proposed Reporting* section of this proposed rule for information about mitigation and reporting related to foreign navy activities in the AFTT Study Area.

Standard Operating Procedures

For training and testing to be effective, Action Proponent personnel must be able to safely use their sensors, platforms, weapons, and other devices to their optimum capabilities and as intended for use in missions and combat operations. The Action Proponents have developed standard operating procedures through decades of experience to provide for safety and mission success. Because they are essential to safety and mission success, standard operating procedures are part of the Proposed Action and are considered in the environmental analysis for applicable resources (see chapter 3 (Affected Environment and Environmental Consequences) of the 2024 AFTT Draft Supplemental EIS/OEIS). Standard operating procedures recognized as providing a benefit to public safety or environmental resources are described in appendix A (Activity Descriptions) of the 2024 AFTT Draft Supplemental EIS/OEIS. While standard operating procedures are designed for the safety of personnel and equipment and to ensure the success of training and testing activities, their implementation often yields additional benefits on environmental, socioeconomic, public health and safety, and cultural resources.

Because standard operating procedures are essential to safety and mission success, the Action Proponents consider them to be part of the proposed activities and have included them in the environmental analysis. Standard operating procedures that are recognized as providing a potential secondary benefit on marine mammals during training and testing activities are noted below.

- (i) Vessel safety;
- (ii) Weapons firing safety;
- (iii) Target deployment safety;
- (iv) Towed in-water device safety;
- (v) Pile driving safety; and
- (vi) Coastal zones.

Standard operating procedures (which are implemented regardless of their secondary benefits) are different from mitigation measures (which are designed entirely for the purpose of avoiding or reducing impacts). Information on mitigation measures is provided in the Proposed Mitigation Measures section below. Additional information on standard operating procedures is discussed in more detail in appendix A (Activity Descriptions) of

the 2024 AFTT Draft Supplemental EIS/OEIS.

Description of Stressors

The Action Proponents use a variety of sensors, platforms, weapons, and other devices, and military readiness activities using these systems may introduce sound and energy into the environment. The proposed military readiness activities were evaluated to identify specific components that would act as stressors by having direct or indirect impacts on marine mammals and their habitat. This analysis included identification of the spatial variation of the identified stressors. The following subsections describe the acoustic and explosive stressors for marine mammals and their habitat within the AFTT Study Area. Each description contains a list of activities that may generate the stressor. Stressor/resource interactions that were determined to have negligible (as defined for the purposes of the NEPA analyses) or impacts that do not rise to the level of take under the MMPA (*i.e.*, vessel, aircraft, or weapons noise) were not carried forward for analysis in the application. NMFS reviewed the Action Proponents' analysis and conclusions on *de minimis* sources (*i.e.*, those that are not likely to result in the take of marine mammals) and finds them complete and supportable (see section 3.7.4 of the technical report "Quantifying Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase IV Training and Testing" (U.S. Department of the Navy, 2024)).

Acoustic Stressors

Acoustic stressors include acoustic signals emitted into the water for a specific purpose, such as sonar, other transducers (devices that convert energy from one form to another—in this case, into sound waves), and air guns, as well as incidental sources of broadband sound produced as a byproduct of vessel movement, aircraft transits, use of weapons or other deployed objects, vibratory pile extraction, and vibratory and impact pile driving. Explosives also produce broadband sound but are characterized separately from other acoustic sources due to their unique hazardous characteristics. Characteristics of each of these sound sources are described in the following sections.

To better organize and facilitate the analysis of approximately 300 sources of underwater sound used for training and testing by the Action Proponents, including sonars and other transducers, air guns, and explosives, a series of source classifications, or source bins,

were used. The acoustic source classification bins do not include the broadband noise produced incidental to pile driving, vessel and aircraft transits, and weapons firing. Noise produced from vessel, aircraft, and weapons firing activities are not carried forward because those activities were found to have *de minimis* or no acoustic impacts, as stated above. Of note, the source bins used in this analysis have been revised from previous (Phase III) acoustic modeling to more efficiently group similar sources and use the parameters of the bin for propagation, making a comparison to previous bins impossible in most cases as some sources are modeled at different propagation parameters. For example, in previous analyses, non-impulsive narrowband sound sources were grouped into bins that were defined by their acoustic properties (*i.e.*, frequency, source level, beam pattern, duty cycle) or, in some cases, their purpose or application. In the current analysis, these sources are binned based only on their acoustic properties and not on their purpose or application. As such, sources that previously fell into a single "purpose-based" bin now, in many cases, fall into multiple bins while sources with similar acoustic parameters that were previously sorted into separate bins due to different purposes now share a bin. Therefore, the acoustic source bins used in the current analysis do not represent a one-for-one replacement with previous bins, making direct comparison not possible in most cases.

The use of source classification bins provides the following benefits:

- (i) Allows new sensors or munitions to be used under existing authorizations as long as those sources fall within the parameters of a "bin";
- (ii) Improves efficiency of source utilization data collection and reporting requirements anticipated under the MMPA authorizations;
- (iii) Ensures that impacts are not underestimated, as all sources within a given class are modeled as the most impactful source (highest source level, longest duty cycle, or largest net explosive weight) within that bin;
- (iv) Allows analyses to be conducted in a more efficient manner, without any compromise of analytical results; and
- (v) Provides a framework to support the reallocation of source usage (hours/explosives) between different source bins, as long as the total numbers of takes remain within the overall analyzed and authorized limits. This flexibility is required to support evolving training and testing requirements, which are linked to real world events.

Sonar and Other Transducers—

Active sonar and other transducers emit non-impulsive sound waves into the water to detect objects, navigate safely, and communicate. Passive sonars differ from active sound sources in that they do not emit acoustic signals; rather, they only receive acoustic information about the environment, or listen. In this proposed rule, the terms sonar and other transducers will be used to indicate active sound sources unless otherwise specified.

The Action Proponents employ a variety of sonars and other transducers to obtain and transmit information about the undersea environment. Some examples are mid-frequency hull-mounted sonars used to find and track enemy submarines; high-frequency small object detection sonars used to detect mines; high-frequency underwater modems used to transfer data over short ranges; and extremely high-frequency (greater than 200 kilohertz (kHz)) Doppler sonars used for navigation, like those used on commercial and private vessels. The characteristics of these sonars and other transducers, such as source level (SL), beam width, directivity, and frequency, depend on the purpose of the source. Higher frequencies can carry more information or provide more information about objects off which they reflect, but attenuate more rapidly. Lower frequencies attenuate less rapidly, so they may detect objects over a longer distance, but with less detail.

Propagation of sound produced underwater is highly dependent on environmental characteristics such as bathymetry, seafloor type, water depth, temperature, and salinity. The sound received at a particular location will be different than near the source due to the interaction of many factors, including propagation loss; how the sound is reflected, refracted, or scattered; the potential for reverberation; and interference due to multi-path propagation. In addition, absorption greatly affects the distance over which higher-frequency sounds propagate. The effects of these factors are explained in appendix D (Acoustic and Explosive Impacts Supporting Information) of the 2024 AFTT Draft Supplemental EIS/OEIS. Because of the complexity of analyzing sound propagation in the ocean environment, the Action Proponents rely on acoustic models in their environmental analyses that consider sound source characteristics and varying ocean conditions across the AFTT Study Area. For additional information on how propagation is accounted for, see the technical report

“Quantifying Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase IV Training and Testing” (U.S. Navy, 2024).

The sound sources and platforms typically used in military readiness activities analyzed in the application are described in appendix A (Activity Descriptions) of the 2024 AFTT Draft Supplemental EIS/OEIS. Sonars and other transducers used to obtain and transmit information underwater during military readiness activities generally fall into several categories of use described below.

Anti-Submarine Warfare

Sonar used during anti-submarine warfare training and testing would impart the greatest amount of acoustic energy of any category of sonar and other transducers analyzed in this proposed rule. Types of sonars used to detect potential enemy vessels include hull-mounted, towed, line array, sonobuoy, helicopter dipping, and torpedo sonars. In addition, acoustic targets and decoys (countermeasures) may be deployed to emulate the sound signatures of vessels or repeat received signals.

Most anti-submarine warfare sonars are mid-frequency (1–10 kHz) because mid-frequency sound balances sufficient resolution to identify targets with distance over which threats can be identified. However, some sources may use higher or lower frequencies. Duty cycles can vary widely, from rarely used to continuously active. Anti-submarine warfare sonars can be wide-ranging in a search mode or highly directional in a track mode.

Most anti-submarine warfare activities involving submarines or submarine targets would occur in waters greater than 600 ft (182.9 m) deep due to safety concerns about running aground at shallower depths. Sonars used for anti-submarine warfare activities would

typically be used beyond 12 nmi (22.2 km) from shore. Exceptions include use of dipping sonar by helicopters, pierside testing and maintenance of systems while in port, and system checks while transiting to or from port.

Mine Warfare, Object Detection, and Imaging

Sonars used to locate mines and other small objects, as well as those used in imaging (e.g., for hull inspections or imaging of the seafloor), are typically high-frequency or very high-frequency. Higher frequencies allow for greater resolution and, due to their greater attenuation, are most effective over shorter distances. Mine detection sonar can be deployed (towed or vessel hull-mounted) at variable depths on moving platforms (ships, helicopters, or unmanned vehicles) to sweep a suspected mined area. Hull-mounted anti-submarine sonars can also be used in an object detection mode known as “Kingfisher” mode. Sonars used for imaging are usually used in close proximity to the area of interest, such as pointing downward near the seafloor.

Mine detection sonar use would be concentrated in areas where practice mines are deployed, typically in water depths less than 200 ft (60.9 m), and at established training or testing minefields or temporary minefields close to strategic ports and harbors. Kingfisher mode on vessels is most likely to be used when transiting to and from port. Sound sources used for imaging would be used throughout the AFTT Study Area.

Navigation and Safety

Similar to commercial and private vessels, the Action Proponents’ vessels employ navigational acoustic devices, including speed logs, Doppler sonars for ship positioning, and fathometers. These may be in use at any time for safe vessel operation. These sources are

typically highly directional to obtain specific navigational data.

Communication

Sound sources used to transmit data (such as underwater modems), provide location (pingers), or send a single brief release signal to seafloor-mounted devices (acoustic release) may be used throughout the AFTT Study Area. These sources typically have low duty cycles and are usually only used when it is necessary to send a detectable acoustic message.

Classification of Sonar and Other Transducers

Sonars and other transducers are grouped into bins based on their acoustic properties. Sonars and other transducers are now grouped into bins based on the frequency or bandwidth, source level, duty-cycle, and three-dimensional beam coverage. Unless stated otherwise, a reference distance of decibel (dB) microPascal (μPa) at 1 m (3.3 ft) is used for sonar and other transducers.

(i) Frequency of the non-impulsive acoustic source:

- Low-frequency sources operate below 1 kHz;
- Mid-frequency sources operate at or above 1 kHz, up to and including 10 kHz;
- High-frequency sources operate above 10 kHz, up to and including 100 kHz; and
- Very high-frequency sources operate above 100 kHz but below 200 kHz.

(ii) Sound pressure level (SPL):

- Greater than 160 dB referenced to 1 microPascal (re 1 μPa), but less than 185 dB re 1 μPa;
- Equal to 185 dB re 1 μPa and up to 205 dB re 1 μPa; and
- Greater than 205 dB re 1 μPa.

Active sonar and other transducer use that was quantitatively analyzed in the Study Area are shown in table 10.

TABLE 10—SONAR AND OTHER TRANSDUCERS QUANTITATIVELY ANALYZED IN THE AFTT STUDY AREA

Source type	Source category	Description	Unit	Navy training annual	Navy training 7-year total	Coast Guard training annual	Coast Guard training 7-year total	Navy testing annual	Navy testing 7-year total
Broadband	LF	<205 dB	H	-	-	-	-	206–252	1,580
Broadband	LF to MF	<205 dB	H	-	-	-	-	1,501–1,503	10,519
Broadband	LF to HF	<205 dB	C	-	-	-	-	791–1,020	5,101
Broadband	LF to HF	<205 dB	H	-	-	-	-	2,367–2,571	16,356
Broadband	MF to HF	<205 dB	C	133	931	-	-	-	-
Broadband	MF to HF	<205 dB	H	935–951	6,595	280	1,960	2,749–2,950	19,308
Broadband	HF to VHF	<205 dB	H	10	70	-	-	-	-
Low-frequency acoustic.	LFL	160 dB to 185 dB	H	-	-	-	-	1,969	13,783
Low-frequency acoustic.	LFM	185 dB to 205 dB	C	-	-	-	-	360	2,520
Low-frequency acoustic.	LFM	185 dB to 205 dB	H	746	5,219	-	-	5,386–6,106	39,862
Low-frequency acoustic.	LFH	>205 dB	C	1,920–2,020	13,760	-	-	6,078–6,084	42,588

TABLE 10—SONAR AND OTHER TRANSDUCERS QUANTITATIVELY ANALYZED IN THE AFTT STUDY AREA—Continued

Source type	Source category	Description	Unit	Navy training annual	Navy training 7-year total	Coast Guard training annual	Coast Guard training 7-year total	Navy testing annual	Navy testing 7-year total
Low-frequency acoustic.	LFH	>205 dB	H	144	1,008	-	-	414–479	3,101
Mid-frequency acoustic.	MFL	160 dB to 185 dB ...	H	-	-	-	-	3,238–3,582	22,336
Mid-frequency acoustic.	MFM	185 dB to 205 dB ...	C	6,825–6,964	48,196	-	-	16,017–16,040	111,849
Mid-frequency acoustic.	MFM	185 dB to 205 dB ...	H	2	14	-	-	3,081–3,509	23,012
Mid-frequency acoustic.	MFH	>205 dB	H	2,343–2,466	16,794	-	-	7,203–7,943	52,542
High-frequency acoustic.	HFL	160 dB to 185 dB ...	H	169	1,183	-	-	96	672
High-frequency acoustic.	HFM	185 dB to 205 dB ...	C	-	-	-	-	860–1,660	8,420
High-frequency acoustic.	HFM	185 dB to 205 dB ...	H	1,253–1,255	8,777	210	1,470	4,125–4,489	29,941
High-frequency acoustic.	HFH	>205 dB	C	138	966	-	-	1,621–1,858	11,684
High-frequency acoustic.	HFH	>205 dB	H	3,892–3,940	27,436	-	-	3,779–4,580	28,383
Very high-frequency acoustic.	VHFL	160 dB to 185 dB ...	H	12	84	-	-	-	-
Very high-frequency acoustic.	VHFM	185 dB to 205 dB ...	H	918	6,426	-	-	120	840
Very high-frequency acoustic.	VHFH	>205 dB	C	-	-	-	-	69–103	520
Very high-frequency acoustic.	VHFH	>205 dB	H	579	4,051	140	980	5,584	–39,088
Hull-mounted surface ship sonar.	MF1C	Hull-mounted surface ship sonar with duty cycle >80% (previously MF11).	H	661–722	4,811	-	-	1,139	7,974
Hull-mounted surface ship sonar.	MF1K	Hull-mounted surface ship sonar in Kingfisher mode.	H	280	1,957	-	-	108	759
Hull-mounted surface ship sonar.	MF1	Hull-mounted surface ship sonar.	H	3,498–3,870	25,602	-	-	1,102–1,390	8,464

Note: < = less than, C = count, dB = decibel, H = hours; - = not applicable.

Air Guns—

Air guns are essentially stainless steel tubes charged with high-pressure air via a compressor. An impulsive sound is generated when the air is almost instantaneously released into the surrounding water. Small air guns with capacities up to 60 cubic inches (in³) would be used during testing activities

in various offshore areas in the AFTT Study Area.

Generated impulses would have short durations, typically a few hundred milliseconds, with dominant frequencies below 1 kHz. The root-mean-square (RMS) SPL and peak pressure (SPL peak) at a distance 1 m (3.3 ft) from the air gun would be approximately 215 dB re 1 µPa and 227

dB re 1 µPa, respectively, if operated at the full capacity of 60 in³. The size of the air gun chamber can be adjusted, which would result in lower SPLs and sound exposure level (SEL) per shot. The air gun and non-explosive impulsive sources that were quantitatively analyzed in the Study Area are shown in table 11.

TABLE 11—TESTING AIR GUN AND NON-EXPLOSIVE IMPULSIVE SOURCES QUANTITATIVELY ANALYZED IN THE AFTT STUDY AREA

Source class category	Description	Unit	Testing annual	Testing 7-year total
NEI	Non-explosive impulsive	C	192–240	1,488
AG	Air gun	C	4,400–5,400	33,800

Note: C: count.

Pile Driving—

Impact and vibratory pile driving and extraction would occur during Expeditionary Warfare, Port Damage Repair training in Gulfport, MS. The pile driving method, pile type and size, and assumptions for acoustic impact analysis are presented in table 12. This

training activity would occur up to four times per year. Training events are typically 5 days each, for a total of 20 days per year. The training would involve the installation and extraction of 27-inch (0.69 m) steel sheets, installation of timber or plastic round 16-inch (0.41 m) piles using impact

(impulsive) and vibratory (non-impulsive) methods, and the extraction of timber or plastic round 16-inch piles. When training events are complete, all piles and sheets are extracted using vibratory or dead pull methods. Crews would extract up to 12 piles in a 24-hour period.

TABLE 12—PORT DAMAGE REPAIR TRAINING PILES QUANTITATIVELY ANALYZED AND ASSOCIATED UNDERWATER SOUND LEVELS

Method	Pile size and type	Number of piles annual	Number of piles 7-year total	Peak SPL (dB re 1 μ Pa)	SEL (single strike; dB re 1 μ Pa ² · s)	RMS SPL (dB re 1 μ Pa)	Reference
Impact	16-inch timber or plastic round.	80	560	180	160	170	Caltrans (2020)—Ballena Isle Marina.
Vibratory	16-inch timber or plastic round.	160	1,120	.....	.....	162	Caltrans (2020)—Norfolk Naval Station.
Vibratory	27-inch steel sheet	240	1,680	.....	.....	159	Naval Facilities Engineering Command Southwest (2020).

Note: Impact method is for installation only.

Only one hammer would be used at any given point in time; there would not be any instances where multiple piles would be driven simultaneously. All piles and sheets would be extracted using the vibratory hammer. Timber or plastic piles would also be extracted using a dead pull method.

Impact pile driving would involve the use of an impact hammer with both it and the pile held in place by a crane. When the pile driving starts, the hammer part of the mechanism is raised up and allowed to fall, transferring energy to the top of the pile. The pile is thereby driven into the sediment by a repeated series of these hammer blows. Each blow results in an impulsive sound emanating from the length of the pile into the water column as well as from the bottom of the pile through the sediment. Broadband impulsive signals are produced by impact pile driving methods, with most of the acoustic energy concentrated below 1,000 hertz (Hz) (Hildebrand, 2009). For the purposes of this analysis, the Action Proponents assume the impact pile driver would generally operate on average 60 strikes per pile.

Vibratory installation and extraction would involve the use of a vibratory hammer suspended from the crane and attached to the top of a pile. The pile is then vibrated by hydraulic motors rotating eccentric weights in the mechanism, causing a rapid up and down vibration in the pile, driving the pile into the sediment. During extraction, the vibration causes the sediment particles in contact with the pile to lose frictional grip on the pile. The crane slowly lifts the vibratory driver and pile until the pile is free of the sediment. In some cases, the crane may be able to lift the pile and vibratory driver without vibrations from the driver (dead pull), in which case no noise would be introduced into the water. Vibratory driving and extraction create broadband, continuous, non-impulsive noise at low source levels, for a short duration with most of the energy dominated by lower frequencies. Port

Damage Repair training would occur in shallow water, and sound would be transmitted on direct paths through the water, be reflected at the water surface or bottom, or travel through seafloor substrate. Soft substrates such as sand would absorb or attenuate the sound more readily than hard substrates (rock), which may reflect the acoustic wave. The predicted sound levels produced by pile driving by method, pile size, and type for Port Damage Repair training are presented in table 12.

In addition to underwater noise, the installation and extraction of piles also results in airborne noise in the environment, denoted dBA. dBA is an A-weighted decibel level that represents the relative loudness of sounds as perceived by the human ear. A-weighting gives more value to frequencies in the middle of human hearing and less value to frequencies at the edges as compared to a flat or unweighted decibel level. Impact pile driving creates in-air impulsive sound about 100 dBA re 20 μ Pa at a range of 15 m for 24-inch (0.61 m) steel piles (Illingworth and Rodkin, 2016). During vibratory extraction, the three aspects that generate airborne noise are the crane, the power plant, and the vibratory extractor. The average sound level recorded in air during vibratory extraction was about 85 dBA re 20 μ Pa (94 dB re 20 μ Pa) within a range of 32.8–49.2 ft (10–15 m) (Illingworth and Rodkin, 2015).

Explosive Stressors

This section describes the characteristics of explosions during military readiness activities. The activities analyzed in the application that use explosives are described in appendix A (Activity Descriptions) of the 2024 AFTT Draft Supplemental EIS/OEIS, and terminology and metrics used when describing explosives in the application are in appendix D (Acoustic and Explosive Impacts Supporting Information) of the 2024 AFTT Draft Supplemental EIS/OEIS.

The near-instantaneous rise from ambient to an extremely high peak pressure is what makes an explosive shock wave potentially damaging. Farther from an explosive, the peak pressures decay and the explosive waves propagate as an impulsive, broadband sound. Several parameters influence the effect of an explosive: the weight of the explosive warhead, the type of explosive material, the boundaries and characteristics of the propagation medium, and the detonation depth in water. The net explosive weight (NEW), the explosive power of a charge expressed as the equivalent weight of trinitrotoluene (commonly referred to as TNT), accounts for the first two parameters.

Explosions in Water—

Explosive detonations during military readiness activities are associated with high-explosive munitions, including, but not limited to bombs, missiles, rockets, naval gun shells, torpedoes, mines, demolition charges, and explosive sonobuoys. Explosive detonations during military readiness activities involving the use of high-explosive munitions, including bombs, missiles, and naval gun shells, would occur in the air or near the water's surface. Explosive detonations associated with torpedoes and explosive sonobuoys would occur in the water column; mines and demolition charges would be detonated in the water column or on the ocean floor. The Coast Guard usage of explosives is limited to medium- and large-caliber munitions used during gunnery exercises. Most detonations would occur in waters greater than 200 ft (60.9 m) in depth and greater than 3 nmi (5.6 km) from shore, although mine warfare, demolition, and some testing detonations would occur in shallow water close to shore.

To better organize and facilitate the analysis of explosives used by the Action Proponents during military readiness activities that would detonate in water or at the water surface, explosive classification bins were

developed. The use of explosive classification bins provides the same benefits as described for acoustic source classification bins in the Sonar and Other Transducers section. Explosives detonated in water are binned by NEW.

Table 13 shows explosives use that was quantitatively analyzed in the Study Area. A range of annual use indicates that occurrence is anticipated to vary annually, consistent with the variation in the number of annual activities

described in chapter 2 (Description of Proposed Action and Alternatives) of the 2024 AFTT Draft Supplemental EIS/OEIS. The 7-year total takes that variability into account.

TABLE 13—EXPLOSIVE SOURCES QUANTITATIVELY ANALYZED PROPOSED FOR USE UNDERWATER OR AT THE WATER SURFACE

Bin	Net explosive weight	Example explosive source	Navy training annual	Navy training 7-year	Coast Guard training annual	Coast Guard training 7-year	Navy testing annual	Navy testing 7-year
E1	0.1–0.25	Medium-caliber projectile	3,002	21,014	-	-	1,825	12,775
E2	>0.25–0.5	LAW rocket	60	420	-	-	-	-
E3	>0.5–2.5	2.75-inch rocket	5,078	35,546	180	1,260	1,069–1,971	8,705
E4	>2.5–5	Mine neutralization charge	82	574	-	-	2,893–4,687	30,889
E5	>5–10	Large-caliber projectile	1,109	7,763	-	-	1,268–1,860	11,540
E6	>10–20	Hellfire missile	508	3,556	-	-	17–25	125
E7	>20–60	Demo block/shaped charge	10	70	-	-	8–22	62
E8	>60–100	Maverick missile	20	140	-	-	10–13	41
E9	>100–250	500 lb bomb	138	966	-	-	5	35
E10	>250–500	Harpoon missile	71	497	-	-	4	28
E11	>500–675	Torpedo	1	7	-	-	1–2	8
E12	>675–1,000	2,000 lb bomb	20	140	-	-	-	-
E16	>7,250–14,500	Small ship shock trial	-	-	-	-	0–6	15

Note: > = greater than, lb = pound, - = not applicable.

Propagation of explosive pressure waves in water is highly dependent on environmental characteristics such as bathymetry, seafloor type, water depth, temperature, and salinity, which affect how the pressure waves are reflected, refracted, or scattered; the potential for reverberation; and interference due to multi-path propagation. In addition, absorption greatly affects the distance over which higher-frequency components of explosive broadband noise can propagate. Appendix D (Acoustic and Explosive Impacts Supporting Information) of the 2024 AFTT Draft Supplemental EIS/OEIS explains the characteristics of explosive detonations and how the above factors affect the propagation of explosive energy in the water. Because of the complexity of analyzing sound propagation in the ocean environment, the Action Proponents rely on acoustic models in their environmental analyses that consider sound source characteristics and varying ocean conditions across the Study Area.

Vessel Strike

NMFS also considered the likelihood that vessel movement during military readiness activities could result in an incidental, but intentional, strike of a marine mammal in the AFTT Study Area, which has the potential to result in serious injury or mortality. Vessel strikes are not specific to any specific military readiness activity but rather, a limited, sporadic, and incidental result of the Action Proponents' vessel movement during military readiness activities within the Study Area. Vessel

strikes from commercial, recreational, and military vessels are known to seriously injure and occasionally kill cetaceans (Abramson *et al.*, 2011; Berman-Kowalewski *et al.*, 2010; Calambokidis, 2012, Crum *et al.*, 2019, Douglas *et al.*, 2008, Laggner, 2009, Lammers *et al.*, 2003, Van der Hoop *et al.*, 2012, Van der Hoop *et al.*, 2013), although reviews of the literature on vessel strikes mainly involve collisions between commercial vessels and whales (Jensen and Silber, 2003, Laist *et al.*, 2001). Vessel speed, size, and mass are all important factors in determining both the potential likelihood and impacts of a vessel strike to marine mammals (Blondin *et al.*, 2025; Conn and Silber, 2013; Garrison *et al.*, 2025; Gende *et al.*, 2011; Redfern *et al.*, 2019; Silber *et al.*, 2010; Szesciorka *et al.*, 2019; Vanderlaan and Taggart, 2007; Wiley *et al.*, 2016). For large vessels, speed and angle of approach can influence the severity of a strike.

The Action Proponents' vessels transit at speeds that are optimal for fuel conservation or to meet training and testing requirements. From unpublished Navy data, average median speed for large Navy ships in the other Navy ranges from 2011–2015 varied from 10 to 15 kn (18.5 to 27.8 km/hr) depending on ship class and geographic location (*i.e.*, slower speeds close to the coast). Similar patterns are anticipated in the AFTT Study Area. A full description of the Action Proponents' vessels proposed for use during military readiness activities can be found in chapter 2 (Description of Proposed Action and

Alternatives) of the 2024 AFTT Draft Supplemental EIS/OEIS.

While these speeds for large Navy vessels are representative of most events, some of the Action Proponents' vessels may need to temporarily operate outside of these parameters. For example, to produce the required relative wind speed over the flight deck, an aircraft carrier engaged in flight operations must adjust its speed through the water accordingly. There are a few specific events, including high speed tests of newly constructed vessels, where the Action Proponents' vessel would operate at higher speeds. High speed ferries may also be used to support Navy testing in Narragansett Bay. By comparison, there are other instances when the Action Proponents vessel would be stopped or moving slowly ahead to maintain steerage, such as launch and recovery of a small rigid hull inflatable boat; vessel boarding, search, and seizure training events; or retrieval of a target.

Large Navy vessels (greater than 65 ft (19.8 m)) and Coast Guard vessels within the offshore areas of range complexes and testing ranges operate differently from commercial vessels, which may reduce potential vessel strikes of large whales. Surface ships operated by or for the Navy have multiple personnel assigned to stand watch at all times, when a ship or surfaced submarine is moving through the water (underway). A primary duty of personnel standing watch on surface ships is to detect and report all objects and disturbances sighted in the water that may indicate a threat to the vessel

and its crew, such as debris, a periscope, surfaced submarine, or surface disturbance. Per vessel safety requirements, personnel standing watch also report any marine mammals sighted in the path of the vessel as a standard collision avoidance procedure. All vessels proceed at a safe speed so they can take proper and effective action to avoid a collision with any sighted object or disturbance and can stop within a distance appropriate to the prevailing circumstances and conditions. As described in the Standard Operating Procedures section, the Action Proponents utilize Lookouts to avoid collisions, and Lookouts are trained to spot marine mammals so that vessels may change course or take other appropriate action to avoid collisions. Despite the precautions, should a vessel strike occur, NMFS anticipates that it would likely result in incidental take in the form of serious injury and/or mortality, though it is possible that it could result in non-serious injury (Level A harassment). Accordingly, for the purposes of this analysis, NMFS assumes that any vessel strike would result in serious injury or mortality.

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

Description of Marine Mammals in the Area of Specified Activities

Marine mammal species and their associated stocks that have the potential

to occur in the AFTT Study Area are presented in table 14 along with each stock's Endangered Species Act (ESA) and MMPA statuses, abundance estimate and associated coefficient of variation (CV) value, minimum abundance estimate, potential biological removal (PBR), annual M/SI, and potential occurrence in the AFTT Study Area. The Action Proponents request authorization to take individuals of 41 species (81 stocks) by Level A and Level B harassment incidental to military readiness activities from the use of sonar and other transducers, in-water detonations, air guns, pile driving/extraction, and vessel movement in the AFTT Study Area. Of note, the 2019 AFTT Final Rule (84 FR 70712, December 23, 2019) refers to the Northern Gulf of America stock of Bryde's whales (*Balaenoptera edeni*). These whales were subsequently described as a new species, Rice's whale (*Balaenoptera ricei*) (Rosel *et al.*, 2021), and NMFS refers to them as Rice's whale throughout this rulemaking. Currently, the North Atlantic right whale (NARW; *Eubalaena glacialis*) has critical habitat designated under the ESA in the AFTT Study Area, and the Rice's whale has proposed ESA-designated critical habitat in the AFTT Study Area (see *Critical Habitat* section below).

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 the general biology and ecology of marine mammals is included in the 2024 AFTT Draft Supplemental EIS/OEIS.

Table 14 incorporates the best available science, including data from the U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessment Report (Hayes *et al.*, 2024) (now referred to as the Gulf of America; see <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>), and 2024 draft SAR, as well as monitoring data from the Navy's marine mammal research efforts (note, the application includes information from the 2022 final SAR but does not include information from the 2023 final SAR and 2024 draft SAR as they were not available at the time of application submission).

TABLE 14—MARINE MAMMAL OCCURRENCE IN THE AFTT STUDY AREA¹

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	Occurrence in range complexes	Occurrence in associated inshore waters	Occurrence in port and pierside locations
Order Artiodactyla—Cetacea—Mysticeti (baleen whales)									
<i>Family Balaenidae:</i> North Atlantic Right Whale ⁵ .	<i>Eubalaena glacialis</i>	Western	E, D, Y	372 (0, 367, 2023).	0.73	14.8	Northeast RC, NUWC Division Newport Testing Range, VACAPES RC, Navy Cherry Point RC, JAX RC, SFOMF, Key West RC (extralimital), NSWC Panama City Division Testing Range (extralimital), Gulf RC (extralimital), SINKEX Box, Other AFTT Areas.	Northeast RC Inshore, Jackson- ville RC Inshore.	Civilian Ports: Boston, MA, Earle, NJ, Delaware Bay, DE, Hampton Roads, VA, Morehead City, NC, Wil- mington, NC, Kings Bay, GA, Savannah, GA, Mayport, FL, Port Canaveral, FL (extralimital); Coast Guard Stations: Boston, MA, Vir- ginia Beach, VA, Charleston, SC, Mayport, FL, Cape Ca- naveral, FL (extralimital).
<i>Family</i> <i>Balaenopteridae</i> (rorquals): Blue Whale	<i>Balaenoptera musculus</i> .	Western North Atlan- tic.	E, D, Y	UNK (UNK, 402, See SAR) ⁶ .	0.8	0	Northeast RC, NUWC Division Newport Testing Range, VACAPES RC, Navy Cherry Point RC, JAX RC, SINKEX Box, Other AFTT Areas. Other AFTT Areas	N/A	N/A.
Bryde's Whale ... Fin Whale	<i>Balaenoptera edeni</i> <i>Balaenoptera physalus</i> .	Primary, Western North Atlan- tic.	(^{7a}) E, D, Y	6,802 (0.24, 5,573, 2021).	11	2.05	Northeast RC, VACAPES RC, Navy Cherry Point RC, JAX RC, Key West RC, Gulf RC (extralimital), NSWC Panama City Testing Range (extralimital), SINKEX Box, Other AFTT Areas. Other AFTT Areas.	N/A	N/A.
Fin Whale	<i>Balaenoptera physalus</i> .	Gulf of St. Lawrence		.....	.....	.....	Other AFTT Areas.		
Fin Whale	<i>Balaenoptera physalus</i> .	West Greenland .....		.....	.....	.....	Other AFTT Areas.		
Humpback Whale.	<i>Megaptera novaeangliae</i> .	Gulf of Maine	- ¹ , - ¹ , N	1,396 (0, 1380, 2016).	22	12.15	Northeast RC, NUWC Division, Newport Testing Range, VACAPES RC, Navy Cherry Point RC, JAX RC, SFOMF, Key West RC, NSWC Pan- ama City Division Testing Range, Gulf RC, SINKEX Box, Other AFTT Areas.	Northeast RC Inshore, VACAPES Inshore, Jackson- ville RC Inshore.	Civilian Ports: Boston, MA, Earle, NJ, Delaware Bay, DE, Hampton Roads, VA, Morehead City, NC, Wil- mington, NC; Coast Guard Stations: Boston, MA, New- port, RI, Virginia Beach, VA, Charleston, SC, Mayport, FL, Cape Canaveral, FL, Fort Pierce, FL, Dania, FL, Miami, FL, Key West, FL, St. Pe- tersburg, FL, Pensacola, FL, New Orleans, LA, Corpus Christi, TX.

TABLE 14—MARINE MAMMAL OCCURRENCE IN THE AFTT STUDY AREA 1—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	Occurrence in range complexes	Occurrence in associated inshore waters	Occurrence in port and pierside locations
Minke Whale	<i>Balaenoptera acutorostrata</i> .	Canadian East Coast.	- , - , N	21,968 (0.31, 17,002, 2021).	170	9.4	Northeast RC, NUWC Division Newport Testing Range, VACAPES RC, Navy Cherry Point RC, JAX RC, SFOMF, Key West RC, NSWC Pan- ama City Division Testing Range, Gulf RC, SINKEX Box, Other AFTT Areas.	Northeast RC Inshore, VACAPES Inshore, Jackson- ville RC Inshore.	Civilian Ports: Boston, MA, Earle, NJ, Delaware Bay, DE, Hampton Roads, VA, Morehead City, NC, Wil- mington, NC, Kings Bay, GA, Savannah, GA; Coast Guard Stations: Boston, MA, New- port, RI, Virginia Beach, VA, Charleston, SC, Mayport, FL, Cape Canaveral, FL, Fort Pierce, FL, Dania, FL, Miami, FL, Key West, FL, St. Pe- tersburg, FL, Pensacola, FL, New Orleans, LA, Corpus Christi, TX.
Minke Whale	<i>Balaenoptera acutorostrata</i> .	West Greenland	(⁹)	.....	.....	.....	Other AFTT Areas.	.....	.....
Rice's Whale	<i>Balaenoptera ricei</i> ..	Northern Gulf of America.	E, - , Y	51 (0.5, 34, 2018).	0.1	10 0.5	Gulf RC, Key West RC, NSWC Panama City Testing Range.	Gulf RC Inshore	Civilian Ports: Tampa, FL, Beaumont, TX, Corpus Christi, TX.
Sei Whale	<i>Balaenoptera bore- alis</i> .	Nova Scotia	E, D, Y	6,292 (1.02, 3,098, 2021).	6.2	0.6	Northeast RC, NUWC Division Newport Testing Range, VACAPES RC, Navy Cherry Point RC, JAX RC, Gulf RC, SINKEX Box, Other AFTT Areas.	N/A	N/A.
Sei Whale	<i>Balaenoptera bore- alis</i> .	Labrador Sea	(¹¹)	.....	.....	.....	Other AFTT Areas.	.....	.....
Odontoceti (toothed whales, dolphins, and porpoises)									
Family Physeteridae: Sperm Whale	<i>Physeter macrocephalus</i> .	North Atlantic	E, D, Y	5,895 (0.29, 4,639, 2021).	9.28	0.2	Northeast RC, NUWC Division Newport Testing Range, VACAPES RC, Navy Cherry Point RC, JAX RC, Gulf RC, SINKEX Box, Other AFTT Areas.	N/A	N/A.
Sperm Whale	<i>Physeter macrocephalus</i> .	Northern Gulf of America.	E, D, Y	1,180 (0.22, 983, 2018).	2	9.6	Gulf, NSWC Panama City Test- ing Range.	N/A	N/A.
Sperm Whale	<i>Physeter macrocephalus</i> .	Puerto Rico and U.S. Virgin Islands.	E, D, Y	UNK (UNK, UNK, See SAR).	UNK	UNK	Other AFTT Areas	N/A	N/A.
Family Kogiidae: Dwarf Sperm Whale.	<i>Kogia sima</i>	Northern Gulf of America ¹² .	- , - , N	336 (0.35, 253, 2018).	2.5	31	Gulf RC	N/A	N/A.
Dwarf Sperm Whale.	<i>Kogia sima</i>	Western North Atlan- tic ¹³ .	- , - , N	9,474 (0.36, 7,080, 2021).	57	UNK	Northeast RC, NUWC Division Newport Testing Range, VACAPES RC, Navy Cherry Point RC, JAX RC, SFOMF, Key West RC, NSWC Pan- ama City Division Testing Range, Gulf RC, Other AFTT Areas.	N/A	N/A.
Pygmy Sperm Whale.	<i>Kogia breviceps</i>	Northern Gulf of America ¹² .	- , - , N	336 (0.35, 253, 2018).	2.5	31	Gulf RC	N/A	N/A.

Pygmy Sperm Whale.	<i>Kogia breviceps</i>	Western North Atlantic ¹³ .	- , - , N	9,474 (0.36, 7,080, 2021).	57	UNK	Northeast RC, NUWC Division Newport Testing Range, VACAPES RC, Navy Cherry Point RC, JAX RC, SFOMF, Key West RC, NSWC Panama City Division Testing Range, Gulf RC, Other AFTT Areas.	N/A	N/A.
Family Ziphiidae (beaked whales): Blainville's Beaked Whale. Blainville's Beaked Whale.	<i>Mesoplodon densirostris</i> .	Northern Gulf of America.	- , - , N	98 (0.46, 68, 2018).	0.7	5.2	Gulf RC	N/A	N/A.
	<i>Mesoplodon densirostris</i> .	Western North Atlantic ¹⁴ .	- , - , N	2,936 (0.26, 2,374, 2021).	24	0	Northeast RC, NUWC Division Newport Testing Range, VACAPES RC, Navy Cherry Point RC, JAX RC, Gulf RC, Other AFTT Areas.	N/A	N/A.
	<i>Ziphius cavirostris</i> ...	Northern Gulf of America.	- , - , N	18 (0.75, 10, 2018).	0.1	5.2	Gulf RC	N/A	N/A.
	<i>Ziphius cavirostris</i> ...	Puerto Rico and U.S. Virgin Islands.	- , - , Y	UNK (UNK, UNK, N/A).	UNK	UNK	Other AFTT Areas	N/A	N/A.
Goose-Beaked Whale.	<i>Ziphius cavirostris</i> ...	Western North Atlantic.	- , - , N	4,260 (0.24, 3,817, 2021).	38	0.2	Northeast RC, NUWC Division Newport Testing Range, VACAPES RC, Navy Cherry Point RC, JAX RC, SFOMF, Other AFTT Areas.	N/A	N/A.
Gervais' Beaked Whale.	<i>Mesoplodon europaeus</i> .	Northern Gulf of America.	- , - , N	20 (0.98, 10, 2018).	0.1	5.2	Gulf RC	N/A	N/A.
Gervais' Beaked Whale.	<i>Mesoplodon europaeus</i> .	Western North Atlantic ¹⁵ .	- , - , N	8,595 (0.24, 7,022, 2021).	70	0	Northeast RC, NUWC Division Newport Testing Range, VACAPES RC, Navy Cherry Point RC, JAX RC, Gulf RC, Other AFTT Areas.	N/A	N/A.
Northern Bottlenose Whale.	<i>Hyperoodon ampullatus</i> .	Western North Atlantic.	- , - , N	UNK (UNK, UNK, 2016).	UNK	0	Other AFTT Areas	N/A	N/A.
Sowerby's Beaked Whale.	<i>Mesoplodon bidens</i>	Western North Atlantic.	- , - , N	492 (0.50, 340, 2021).	3.4	0	Northeast RC, NUWC Division Newport Testing Range, VACAPES RC, Navy Cherry Point RC, JAX RC, Gulf RC, Other AFTT Areas.	N/A	N/A.
True's Beaked Whale.	<i>Mesoplodon mirus</i> ...	Western North Atlantic.	- , - , N	4,480 (0.34, 3,391, 2021).	34	0.2	Northeast RC, NUWC Division Newport Testing Range, VACAPES RC, Navy Cherry Point RC, JAX RC, Gulf RC, Other AFTT Areas.	N/A	N/A.
Family Delphinidae: Atlantic Spotted Dolphin. Atlantic Spotted Dolphin. Atlantic Spotted Dolphin.	<i>Stenella frontalis</i>	Northern Gulf of America.	- , - , N	21,506 (0.26, 17,339, 2018).	166	36	Gulf RC, Other AFTT Areas	N/A	N/A.
	<i>Stenella frontalis</i>	Puerto Rico and U.S. Virgin Islands.	- , - , Y	UNK (UNK, UNK, N/A).	UNK	UNK	Other AFTT Areas	N/A	N/A.
	<i>Stenella frontalis</i>	Western North Atlantic.	- , - , N	31,506 (0.28, 25,042, 2021).	250	0	Northeast RC, NUWC Division Newport Testing Range, VACAPES RC, Navy Cherry Point RC, JAX RC, SFOMF, Key West RC, NSWC Panama City Division Testing Range, Gulf RC, Other AFTT Areas.	N/A	N/A.
Atlantic White-Sided Dolphin.	<i>Lagenorhynchus acutus</i> .	Western North Atlantic.	- , - , N	93,233 (0.71, 54,443, 2021).	544	28	Northeast RC, VACAPES RC, Other AFTT Areas.	N/A	Civilian Ports: Boston, MA; Coast Guard Stations: Boston, MA.
Bottlenose Dolphin.	<i>Tursiops truncatus</i> ...	Biscayne Bay	- , - , N	241 (0.04, 233, 2019).	2.3	1	Other AFTT Areas	N/A	N/A.

TABLE 14—MARINE MAMMAL OCCURRENCE IN THE AFTT STUDY AREA 1—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	Occurrence in range complexes	Occurrence in associated inshore waters	Occurrence in port and pierside locations
Tamanend's bottlenose dol- phin.	<i>Tursiops erebennus</i>	Western North Atlan- tic, Central Florida Coastal.	-, -, Y	2,541 (0.46, 1,760, 2021).	18	0.2	JAX RC	JAX RC Inshore	Civilian Ports: Port Canaveral, FL.
Bottlenose Dol- phin.	<i>Tursiops truncatus</i>	Central GA Estua- rine.	-, -, N	UNK (UNK, UNK, 2008– 2009).	UND	0.4	Other AFTT Areas	N/A	N/A.
Bottlenose Dol- phin.	<i>Tursiops truncatus</i>	Charleston Estuarine	-, -, Y	UNK (UNK, UNK, 2005– 2006).	UND	2.2	Other AFTT Areas	JAX RC Inshore	N/A.
Bottlenose Dol- phin.	<i>Tursiops truncatus</i>	Gulf of America Bay, Sound, and Estu- aries ¹⁶ .	Y	.....	.....	.....	Gulf RC	Gulf RC Inshore	N/A.
Bottlenose Dol- phin.	<i>Tursiops truncatus</i>	Gulf of America Eastern Coastal.	-, -, N	16,407 (0.17, 14,199, 2018).	114	9.2	Gulf RC	Gulf RC Inshore	N/A.
Bottlenose Dol- phin.	<i>Tursiops truncatus</i>	Gulf of America Northern Coastal.	-, -, N	11,543 (0.19, 9,881, 2018).	89	28	Gulf RC	Gulf RC Inshore	N/A.
Bottlenose Dol- phin.	<i>Tursiops truncatus</i>	Northern Gulf of America Oceanic.	-, -, N	7,462 (0.31, 5,769, 2018).	58	32	Gulf RC	N/A	N/A.
Bottlenose Dol- phin.	<i>Tursiops truncatus</i>	Gulf of America Western Coastal.	-, -, N	20,759 (0.13, 18,585, 2018).	167	36	Gulf RC	Gulf RC Inshore	Civilian Ports: Beaumont, TX, Corpus Christi, TX, Pascagoula, MS; Coast Guard Stations: Corpus Christi, TX.
Bottlenose Dol- phin.	<i>Tursiops truncatus</i>	Florida Bay	-, -, N	UNK (UNK, UNK, 2003).	UNK	0.2	Other AFTT Areas	N/A	N/A.
Bottlenose Dol- phin.	<i>Tursiops truncatus</i>	Indian River Lagoon Estuarine.	-, -, Y	1,032 (0.03, 1,004, 2016– 2017).	10	5.7	Other AFTT Areas	JAX RC Inshore	Civilian Ports: Port Canaveral, FL.
Bottlenose Dol- phin.	<i>Tursiops truncatus</i>	Jacksonville Estua- rine.	-, -, Y	UNK (UNK, UNK, n/a).	UNK	2	JAX RC	JAX RC Inshore	Civilian Ports: Port Canaveral, FL.
Bottlenose Dol- phin.	<i>Tursiops truncatus</i>	MS Sound, Lake Borgne, Bay Boudreau.	-, -, Y	1,265 (0.35, 947, 2018).	8.5	59	Gulf RC	Gulf Inshore	N/A.
Tamanend's bottlenose Dol- phin.	<i>Tursiops erebennus</i>	Western North Atlan- tic, Northern Flor- ida Coastal.	-, -, Y	3,619 (0.35, 2,711, 2021).	27	0.2	Other AFTT Areas	JAX RC Inshore	Civilian Ports: Kings Bay, GA, Savannah, GA.
Bottlenose Dol- phin.	<i>Tursiops truncatus</i>	Northern GA/South- ern SC Estuarine.	-, -, Y	UNK (UNK, UNK, See SAR).	UNK	1.5	Other AFTT Areas	JAX RC Inshore	N/A.
Bottlenose Dol- phin.	<i>Tursiops truncatus</i>	Northern Gulf of America Conti- nental Shelf.	-, -, N	63,280 (0.11, 57,917, 2018).	556	65	Gulf RC	N/A	N/A.
Bottlenose Dol- phin.	<i>Tursiops truncatus</i>	Western North Atlan- tic, Northern Mi- gratory Coastal.	-, -, Y	6,639 (0.41, 4,759, 2016).	48	12.2–21.5	VACAPES RC, Navy Cherry Point RC, JAX RC, Key West RC, Other AFTT Areas.	VACAPES RC Inshore.	Civilian Ports: Earle, NJ, Dela- ware Bay, DE, Hampton Roads, VA, Morehead City, NC; Coast Guard Stations: Virginia Beach, VA.
Bottlenose Dol- phin.	<i>Tursiops truncatus</i>	Northern NC Estua- rine.	-, -, Y	823 (0.06, 782, 2017).	7.8	7.2–30	Other AFTT Areas	N/A	Civilian Ports: Morehead City, NC, Wilmington, NC.
Bottlenose Dol- phin.	<i>Tursiops truncatus</i>	Northern SC Estua- rine.	-, -, N	453 (0.28, 359, 2016).	3.6	0.5	Other AFTT Areas	JAX RC Inshore	N/A.
Bottlenose Dol- phin.	<i>Tursiops truncatus</i>	Nueces Bay, Corpus Christi.	-, -, Y	58 (0.61, UNK, 1992).	UND	0.2	Gulf RC	N/A	Civilian Ports: Corpus Christi, TX.
Bottlenose Dol- phin.	<i>Tursiops truncatus</i>	Sabine Lake	-, -, N	122 (0.19, 104, 2017).	0.9	0	Gulf RC	N/A	Civilian Ports: Beaumont, TX.

Tamanend's bottlenose Dolphin.	<i>Tursiops erebennus</i>	Western North Atlantic South Carolina/Georgia Coastal.	- , Y	9,121 (0.28, 7,261, 2021).	73	0.2–0.6	Other AFTT Areas	JAX RC Inshore	Civilian Ports: Kings Bay, GA, Savannah, GA.
Bottlenose Dolphin.	<i>Tursiops truncatus</i> ...	Southern GA Estuarine System.	- , N	UNK (UNK, UNK, 2008–2009).	UND	0.1	Other AFTT Areas	JAX RC Inshore	Civilian Ports: Kings Bay, GA, Savannah, GA.
Bottlenose Dolphin.	<i>Tursiops truncatus</i> ...	Western North Atlantic, Southern Migratory Coastal.	- , Y	3,751 (0.6, 2,353, 2016).	24	0–18.3	Navy Cherry Point RC, JAX RC, Key West RC, Other AFTT Areas.	JAX RC Inshore	Civilian Ports: Hampton Roads, VA, Morehead City, NC, Wilmington, NC, Kings Bay, GA, Savannah, GA; Coast Guard Stations: Virginia Beach, VA.
Bottlenose Dolphin.	<i>Tursiops truncatus</i> ...	Southern NC Estuarine System.	- , Y	UNK (UNK, UNK, 2017).	UND	0.4	Other AFTT Areas	N/A	Civilian Ports: Morehead City, NC, Wilmington, NC.
Bottlenose Dolphin.	<i>Tursiops truncatus</i> ...	Western North Atlantic Offshore 17.	- , N	64,587 (0.24, 52,801, 2021).	507	28	Northeast RC, NUWC Division Newport Testing Range, VACAPES RC, Navy Cherry Point RC, JAX RC, Other AFTT Areas.	N/A	Civilian Ports: Morehead City, NC, Wilmington, NC.
Bottlenose Dolphin.	<i>Tursiops truncatus</i> ...	Puerto Rico and U.S. Virgin Islands, Apalachee Bay	- , Y	UNK (UNK, UNK, N/A).	UNK	UNK	Other AFTT Areas	N/A	N/A.
Bottlenose Dolphin.	<i>Tursiops truncatus</i> ...	Barataria Bay Estuarine System.	- , Y	491 (0.39, UNK, 1993).	UND	0	Gulf RC	N/A	N/A.
Bottlenose Dolphin.	<i>Tursiops truncatus</i> ...	Calcasieu Lake	- , Y	2,071 (0.06, 1,971, 2019).	18	35	Gulf RC	N/A	N/A.
Bottlenose Dolphin.	<i>Tursiops truncatus</i> ...	Caloosahatchee River.	- , Y	0 (N/A, N/A, 1992).	UND	0.2	Gulf RC	N/A	N/A.
Bottlenose Dolphin.	<i>Tursiops truncatus</i> ...	Choctawhatchee Bay	- , Y	0 (N/A, N/A, 1985).	UND	0.4	Gulf RC	N/A	N/A.
Bottlenose Dolphin.	<i>Tursiops truncatus</i> ...	Chokoloskee Bay, Ten Thousand Islands, Gullivan Bay.	- , Y	179 (0.04, UNK, 2007).	UND	0.4	Gulf RC	N/A	N/A.
Bottlenose Dolphin.	<i>Tursiops truncatus</i> ...	Copano Bay, Aransas Bay, San Antonio Bay, Redfish Bay, Espiritu Santo Bay.	- , Y	UNK (N/A, UNK, N/A).	UND	0.2	Gulf RC	N/A	N/A.
Bottlenose Dolphin.	<i>Tursiops truncatus</i> ...	Estero Bay	- , Y	55 (0.82, UNK, 1992).	UND	0.6	Gulf RC	N/A	Civilian Ports: Corpus Christi, TX.
Bottlenose Dolphin.	<i>Tursiops truncatus</i> ...	Florida Keys	- , Y	UNK (N/A, UNK, N/A).	UND	0.4	Gulf RC	N/A	N/A.
Bottlenose Dolphin.	<i>Tursiops truncatus</i> ...	Galveston Bay, East Bay, Trinity Bay.	- , N	UNK (N/A, UNK, N/A).	UND	0.2	Gulf RC	Key West Range Complex Inshore.	N/A.
Bottlenose Dolphin.	<i>Tursiops truncatus</i> ...	Laguna Madre	- , Y	842 (0.08, 787, 2016).	6.3	1	Gulf RC	N/A	N/A.
Bottlenose Dolphin.	<i>Tursiops truncatus</i> ...	Matagorda Bay, Tres Palacios Bay, Lavaca Bay.	- , Y	80 (1.57, UNK, 1992).	UND	0.8	Gulf RC	N/A	N/A.
Bottlenose Dolphin.	<i>Tursiops truncatus</i> ...	Mobile and Bonsecour Bays.	- , Y	61 (0.45, UNK, 1992).	UND	0.4	Gulf RC	N/A	N/A.
Bottlenose Dolphin.	<i>Tursiops truncatus</i> ...	MS River Delta	- , N	122 (0.34, UNK, 1993).	UND	16	Gulf RC	N/A	N/A.
Bottlenose Dolphin.	<i>Tursiops truncatus</i> ...	Pensacola and East Bays.	- , Y	1,446 (0.19, 1,238, 2018).	11	9.2	Gulf RC	N/A	N/A.
Bottlenose Dolphin.	<i>Tursiops truncatus</i> ...	Perdido Bay	- , Y	33 (0.8, UNK, 1993).	UND	0.4	Gulf RC	N/A	N/A.
Bottlenose Dolphin.	<i>Tursiops truncatus</i> ...	Pine Island Sound, Charlotte Harbor, Gasparilla Sound, Lemon Bay.	- , Y	0 (N/A, N/A, 1993).	UND	0.8	Gulf RC	N/A	N/A.
Bottlenose Dolphin.	<i>Tursiops truncatus</i> ...	Sarasota Bays	- , N	826 (0.09, UNK, 2006).	UND	1	Gulf RC	N/A	N/A.
Bottlenose Dolphin.	<i>Tursiops truncatus</i> ...	Sarasota Bays	- , N	158 (0.27, 126, 2015).	1	0.2	Gulf RC	N/A	N/A.

TABLE 14—MARINE MAMMAL OCCURRENCE IN THE AFTT STUDY AREA 1—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic importance (Y/N) ²	Stock abundance (CV, N _{min} , most recent abundance survey) ³	PBR	Annual M/SI ⁴	Occurrence in range complexes	Occurrence in associated inshore waters	Occurrence in port and pierside locations
Bottlenose Dol- phin.	<i>Tursiops truncatus</i> ...	St. Andrew Bay	- , - , N	199 (0.09, 185, 2016).	1.5	0.2	Gulf RC	Gulf Inshore	N/A.
Bottlenose Dol- phin.	<i>Tursiops truncatus</i> ...	St. Joseph Bay	- , - , N	142 (0.17, 123, 2011).	1	UNK	Gulf RC	N/A	N/A.
Bottlenose Dol- phin.	<i>Tursiops truncatus</i> ...	St. Joseph Sound, Clearwater Harbor.	- , - , Y	UNK (N/A, UNK, N/A).	UND	0.8	Gulf RC	N/A	N/A.
Bottlenose Dol- phin.	<i>Tursiops truncatus</i> ...	St. Vincent Sound, Apalachicola Bay, St. George Sound.	- , - , Y	439 (0.14, UNK, 2007).	UND	0.2	Gulf RC	N/A	N/A.
Bottlenose Dol- phin.	<i>Tursiops truncatus</i> ...	Tampa Bay	- , - , Y	UNK (N/A, UNK, N/A).	UND	3	Gulf RC	N/A	Civilian Ports: Tampa, FL.
Bottlenose Dol- phin.	<i>Tursiops truncatus</i> ...	Terbonne and Timbalier Bays Es- tuarine System.	- , - , N	3,870 (0.15, 3,426, 2016).	27	0.2	Gulf RC	N/A	N/A.
Bottlenose Dol- phin.	<i>Tursiops truncatus</i> ...	Vermillion Bay, West Cote Blanche Bay, Atchafalaya Bay.	- , - , Y	0 (N/A, N/A, 1992).	UND	0	Gulf RC	Gulf Inshore	N/A.
Bottlenose Dol- phin.	<i>Tursiops truncatus</i> ...	Waccasassa Bay, Withlacoochee Bay, Crystal Bay.	- , - , Y	UNK (N/A, UNK, N/A).	UND	0.4	Gulf RC	N/A	N/A.
Bottlenose Dol- phin.	<i>Tursiops truncatus</i> ...	West Bay	- , - , N	37 (0.05, 35, 2015).	0.3	0	Gulf RC	N/A	N/A.
Bottlenose Dol- phin.	<i>Tursiops truncatus</i> ...	Whitewater Bay	- , - , Y	UNK (N/A, UNK, N/A).	UND	0	Gulf RC	N/A	N/A.
Clymene Dolphin	<i>Stenella clymene</i>	Northern Gulf of America.	- , - , Y	513 (1.03, 250, 2018).	2.5	8.4	Gulf RC; Other AFTT Areas ...	N/A	N/A.
Clymene Dolphin	<i>Stenella clymene</i>	Western North Atlan- tic.	- , - , N	21,778 (0.72, 12,622, 2021).	126	0	Northeast RC, NUWC Division, Newport Testing Range, VACAPES RC, Navy Cherry Point RC, JAX RC, SFOMF, Key West RC, NSWC Pan- ama City Division Testing Range, Gulf RC, Other AFTT Areas.	N/A	N/A.
Common Dolphin	<i>Delphinus delphis</i> ...	Western North Atlan- tic.	- , - , N	93,100 (0.56, 59,897, 2021).	1,452	414	Northeast RC, NUWC Division Newport Testing Range, VACAPES RC, Navy Cherry Point RC, JAX RC, SFOMF, Key West RC, NSWC Pan- ama City Division Testing Range, Gulf RC, Other AFTT Areas.	N/A	N/A.
False Killer Whale.	<i>Pseudorca crassidens</i> .	Northern Gulf of America.	- , - , N	494 (0.79, 276, 2018).	2.8	2.2	Gulf RC; Other AFTT Areas ...	N/A	N/A.
False Killer Whale.	<i>Pseudorca crassidens</i> .	Western North Atlan- tic.	- , - , N	1,298 (0.72, 775, 2021).	7.6	0	NUWC Division, Newport Test- ing Range, VACAPES RC, Navy Cherry Point RC, JAX RC, SFOMF, Key West RC, NSWC Panama City Division Testing Range, Gulf RC; Other AFTT Areas.	N/A	N/A.
Fraser's Dolphin	<i>Lagenodelphis hosei</i>	Northern Gulf of America.	- , - , N	213 (1.03, 104, 2018).	1	UNK	Gulf RC	N/A	N/A.

Fraser's Dolphin	<i>Lagenodelphis hosei</i>	Western North Atlantic.	- , - , N	UNK (UNK, UNK, 2021).	UNK	0	Northeast RC, NUWC Division Newport Testing Range, VACAPES RC, Navy Cherry Point RC, JAX RC, SFOMF, Key West RC, NSWC Panama City Division Testing Range, Gulf RC, Other AFTT Areas.	N/A	N/A.
Killer Whale	<i>Orcinus orca</i>	Northern Gulf of America.	- , - , N	267 (0.75, 152, 2018).	1.5	UNK	Gulf RC	N/A	N/A.
Killer Whale	<i>Orcinus orca</i>	Western North Atlantic.	- , - , N	UNK (UNK, UNK, 2016).	UNK	0	Northeast RC, NUWC Division Newport Testing Range, VACAPES RC, Navy Cherry Point RC, JAX RC, SFOMF, Key West RC, NSWC Panama City Division Testing Range, Gulf RC, Other AFTT Areas.	N/A	N/A.
Long-Finned Pilot Whale.	<i>Globicephala melas</i>	Western North Atlantic.	- , - , N	39,215 (0.30, 30,627, 2021).	306	5.7	Northeast RC, NUWC Division Newport Testing Range, VACAPES RC, Navy Cherry Point RC, JAX RC, SFOMF, Key West RC, NSWC Panama City Division Testing Range, Gulf RC, Other AFTT Areas.	N/A	N/A.
Melon-Headed Whale.	<i>Peponocephala electra</i> .	Northern Gulf of America.	- , - , N	1,749 (0.68, 1,039, 2018).	10	9.5	Gulf RC	N/A	N/A.
Melon-Headed Whale.	<i>Peponocephala electra</i> .	Western North Atlantic.	- , - , N	UNK (UNK, UNK, 2021).	UNK	0	Northeast RC, NUWC Division Newport Testing Range, VACAPES RC, Navy Cherry Point RC, JAX RC, SFOMF, Key West RC, NSWC Panama City Division Testing Range, Gulf RC, Other AFTT Areas.	N/A	N/A.
Pantropical Spotted Dolphin.	<i>Stenella attenuata</i>	Northern Gulf of America.	- , - , N	37,195 (0.24, 30,377, 2018).	304	241	Gulf RC	N/A	N/A.
Pantropical Spotted Dolphin.	<i>Stenella attenuata</i>	Western North Atlantic.	- , D, N	2,757 (0.50, 1,856, 2021).	19	0	Northeast RC, NUWC Division Newport Testing Range, VACAPES RC, Navy Cherry Point RC, JAX RC, SFOMF, Key West RC, NSWC Panama City Division Testing Range, Gulf RC, Other AFTT Areas.	N/A	N/A.
Pygmy Killer Whale.	<i>Feresa attenuata</i>	Northern Gulf of America.	- , - , N	613 (1.15, 283, 2018).	2.8	1.6	Gulf RC	N/A	N/A.
Pygmy Killer Whale.	<i>Feresa attenuata</i>	Western North Atlantic.	- , - , N	UNK (UNK, UNK, 2021).	UNK	0	Northeast RC, NUWC Division Newport Testing Range, VACAPES RC, Navy Cherry Point RC, JAX RC, SFOMF, Key West RC, NSWC Panama City Division Testing Range, Gulf RC, Other AFTT Areas.	N/A	N/A.
Risso's Dolphin	<i>Grampus griseus</i>	Northern Gulf of America.	- , - , N	1,974 (0.46, 1,368, 2018).	14	5.3	Gulf RC	N/A	N/A.

TABLE 14—MARINE MAMMAL OCCURRENCE IN THE AFTT STUDY AREA 1—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	Occurrence in range complexes	Occurrence in associated inshore waters	Occurrence in port and pierside locations
Risso's Dolphin	<i>Grampus griseus</i>	Western North Atlantic.	- , - , N	44,067 (0.19, 30,662, 2021).	307	18	Northeast RC, NUWC Division Newport Testing Range, VACAPES RC, Navy Cherry Point RC, JAX RC, SFOMF, Key West RC, NSWC Panama City Division Testing Range, Gulf RC, Other AFTT Areas.	N/A	N/A.
Rough-Toothed Dolphin.	<i>Steno bredanensis</i>	Northern Gulf of America.	- , - , N	UNK (N/A, UNK, 2018).	UND	39	Gulf RC	N/A	N/A.
Rough-Toothed Dolphin.	<i>Steno bredanensis</i>	Western North Atlantic.	- , - , N	UNK (UNK, UNK, 2021).	UND	0	Navy Cherry Point RC, JAX RC, SFOMF, Key West RC, NSWC Panama City Division Testing Range, Gulf RC, Other AFTT Areas.	N/A	N/A.
Short-Finned Pilot Whale.	<i>Globicephala macrorhynchus</i> .	Northern Gulf of America.	- , - , N	1,321 (0.43, 934, 2018).	7.5	3.9	Gulf RC	N/A	N/A.
Short-Finned Pilot Whale.	<i>Globicephala macrorhynchus</i> .	Puerto Rico and U.S. Virgin Islands.	- , - , Y	UNK (UNK, UNK, N/A).	UNK	UNK	Other AFTT Areas	N/A	N/A.
Short-Finned Pilot Whale.	<i>Globicephala macrorhynchus</i> .	Western North Atlantic.	- , - , Y	18,726 (0.33, 14,292, 2021).	143	218	Northeast RC, NUWC Division Newport Testing Range, VACAPES RC, Navy Cherry Point RC, JAX RC, SFOMF, Key West RC, NSWC Panama City Division Testing Range, Gulf RC, Other AFTT Areas.	N/A	N/A.
Spinner Dolphin	<i>Stenella longirostris</i>	Northern Gulf of America.	- , - , Y	2,991 (0.54, 1,954, 2018).	20	113	Gulf RC	N/A	N/A.
Spinner Dolphin	<i>Stenella longirostris</i>	Puerto Rico and U.S. Virgin Islands.	- , - , Y	UNK (UNK, UNK, N/A).	UNK	UNK	Other AFTT Areas	N/A	N/A.
Spinner Dolphin	<i>Stenella longirostris</i>	Western North Atlantic.	- , D, N	3,181 (0.65, 1,930, 2021).	19	0	Northeast RC, NUWC Division Newport Testing Range, VACAPES RC, Navy Cherry Point RC, JAX RC, SFOMF, Key West RC, NSWC Panama City Division Testing Range, Gulf RC, Other AFTT Areas.	N/A	N/A.
Striped Dolphin	<i>Stenella coeruleoalba</i> .	Northern Gulf of America.	- , - , Y	1,817 (0.56, 1,172, 2018).	12	13	Gulf RC	N/A	N/A.
Striped Dolphin	<i>Stenella coeruleoalba</i> .	Western North Atlantic.	- , - , N	48,274 (0.29, 38,040, 2021).	529	0	Northeast RC, NUWC Division Newport Testing Range, VACAPES RC, Navy Cherry Point RC, JAX RC, SFOMF, Key West RC, NSWC Panama City Division Testing Range, Gulf RC, Other AFTT Areas.	N/A	N/A.

White-Beaked Dolphin.	<i>Lagenorhynchus albirostris</i> .	Western North Atlantic.	*, N	536,016 (0.31, 415,344, 2016).	4,153	0	Northeast RC, NUWC Division Newport Testing Range, VACAPES RC, Navy Cherry Point RC, JAX RC, SFOMF, Key West RC, NSWC Panama City Division Testing Range, Gulf RC, Other AFTT Areas.	N/A	N/A.
<i>Family Phocoenidae (porpoises):</i> Harbor Porpoise	<i>Phocoena phocoena</i>	Gulf of Maine/Bay of Fundy.	*, N	85,765 (0.53, 56,420, 2021).	649	142.4	Northeast RC, NUWC Division Newport Testing Range, VACAPES RC, Navy Cherry Point RC.	Northeast RC Inshore, VACAPES RC Inshore, JAX RC Inshore.	Civilian Ports: Boston, MA, Earle, NJ, Delaware Bay, DE, Hampton Roads, VA, Coast Guard Stations: Boston, MA, Virginia Beach, VA.
Harbor Porpoise	<i>Phocoena phocoena</i>	Greenland	(18 19 20)				Other AFTT Areas.		
Harbor Porpoise	<i>Phocoena phocoena</i>	Gulf of St. Lawrence	(18 19 20)				Other AFTT Areas.		
Harbor Porpoise	<i>Phocoena phocoena</i>	Newfoundland	(18 19 20)				Other AFTT Areas.		

Order Carnivora—Pinnipedia

<i>Family Phocidae (earless seals):</i> Gray Seal	<i>Halichoerus grypus</i>	Western North Atlantic.	*, N	27,911 (0.20, 23,624, 2021).	756	4,491	Northeast RC, NUWC Division Newport Testing Range, VACAPES RC, Navy Cherry Point RC.	Northeast RC Inshore, VACAPES RC Inshore, JAX RC Inshore.	Civilian Ports: Boston, MA, Earle, NJ, Delaware Bay, DE, Hampton Roads, VA, Morehead City, NC, Coast Guard Stations: Boston, MA, Virginia Beach, VA.
Harbor Seal	<i>Phoca vitulina</i>	Western North Atlantic.	*, N	61,336 (0.08, 57,637, 2018).	1,729	339	Northeast RC, NUWC Division Newport Testing Range, VACAPES RC, Navy Cherry Point RC.	Northeast RC Inshore, VACAPES RC Inshore, JAX RC Inshore.	Civilian Ports: Boston, MA, Earle, NJ, Delaware Bay, DE, Hampton Roads, VA, Morehead City, NC, Coast Guard Stations: Boston, MA, Virginia Beach, VA.
Harp Seal	<i>Pagophilus groenlandicus</i> .	Western North Atlantic.	*, N	7.6M (UNK, 7.1M, 2019).	426,000	178,573	Northeast RC, NUWC Division Newport Testing Range, VACAPES RC, Navy Cherry Point RC.	N/A	N/A.
Hooded Seal	<i>Cystophora cristata</i>	Western North Atlantic.	*, N	UNK (UNK, UNK, n/a).	UNK	1,680	Northeast RC, NUWC Division Newport Testing Range, VACAPES RC, Navy Cherry Point RC.	N/A	Civilian Ports: Boston, MA.

Note: %: percent; AFTT: Atlantic Fleet Training and Testing; CV: coefficient of variation; EEZ: Exclusive Economic Zone; EIS: Environmental Impact Statement; ESA: Endangered Species Act; JAX: Jacksonville; Min.: minimum; MMPA: Marine Mammal Protection Act; NMFS: National Marine Fisheries Service; NSWC: Naval Surface Warfare Center; NUWC: Naval Undersea Warfare Center; RC: Range Complex; SAR: Stock Assessment Report; SFOMF: Naval Surface Warfare Center, Carderock Division, South Florida Ocean Measurement Facility Testing Range; U.S.: United States; USFWS: U.S. Fish and Wildlife Service; VACAPES: Virginia Capes. Marine mammals in the Gulf of America are named in the most recent SARs (Hayes *et al.*, 2024) with reference to the formerly named "Gulf of Mexico." This Notice refers to these marine mammal stocks as Northern Gulf of America stocks. The geographical location of the stocks remains the same.

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://marine-mammal-science.org/science-and-publications/list-marine-mammal-species-subspecies/>).

² Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

³ NMFS marine mammal stock assessment reports 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, vessel 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 NMFS uses "credible interval" to characterize the uncertainty as opposed to CV for North Atlantic right whales (Hayes *et al.*, 2024).

⁶ Photo-ID catalog count of 402 recognizable blue whale individuals from the Gulf of St. Lawrence is considered a minimum population estimate for the western North Atlantic stock (Waring *et al.*, 2010). An additional 39 (0.64) were documented in the summer of 2016 for Central Virginia to Bay of Fundy (Waring *et al.*, 2010).

⁷ The West Greenland stock of fin whales is not managed by NMFS and, therefore, does not have an associated Stock Assessment Report. Abundance and a 95% confidence interval were presented in Heide-Jorgensen *et al.* (2010a).

⁸ The Gulf of St. Lawrence stock of fin whales is not managed by NMFS and, therefore, does not have an associated Stock Assessment Report. Abundance and a 95% confidence interval were presented in Heide-Jorgensen *et al.* (2014).

⁹ The West Greenland stock of minke whales is not managed by NMFS and, therefore, does not have an associated Stock Assessment Report. Abundance and 95% confidence interval were presented in Ramp *et al.* (2010b).

¹⁰ Total M/SI is a minimum estimate and does not include Fisheries M/SI.

¹¹ The Labrador Sea stock of sei whales is not managed by NMFS and, therefore, does not have an associated Stock Assessment Report. Information was obtained in Prieto *et al.* (2014).

- ¹² Because *Kogia sima* and *K. breviceps* are difficult to differentiate at sea, the reported abundance estimates for the Western North Atlantic stock are for both species of *Kogia* combined.
- ¹³ Because *Kogia sima* and *K. breviceps* are difficult to differentiate at sea, the reported abundance estimates for the Northern Gulf of America stock are for both species of *Kogia* combined.
- ¹⁴ Estimate includes undifferentiated *Mesoplodon* species.
- ¹⁵ Estimate includes Gervais' and Blainville's beaked whales.
- ¹⁶ There are 32 stocks within the bottlenose dolphin Gulf of America Bay, Sound, and Estuaries strategic stock and there are no stock-specific SARs available at this time.
- ¹⁷ Estimate may include sightings of the coastal form.
- ¹⁸ Harbor porpoises in the Gulf of St. Lawrence are not managed by NMFS and have no associated Stock Assessment Report.
- ¹⁹ Harbor porpoises in Newfoundland are not managed by NMFS and have no associated Stock Assessment Report.
- ²⁰ Harbor porpoises in Greenland are not managed by NMFS and have no associated Stock Assessment Report.

Species Not Included in the Analysis

The species carried forward for analysis (and described in table 14) are those likely to be found in the AFTT Study Area based on the most recent data available and do not include species that may have once inhabited or transited the area but have not been sighted in recent years (*e.g.*, species which were extirpated from factors such as 19th and 20th century commercial exploitation). Several species that may be present in the northwestern Atlantic Ocean have an extremely low probability of presence in the AFTT Study Area. These species are considered extralimital (not anticipated to occur in the Study Area) or rare (occur in the Study Area sporadically, but sightings are rare). These extralimital species include the bowhead whale (*Balaena mysticetus*), beluga whale (*Delphinapterus leucas*), narwhal (*Monodon monoceros*), ringed seal (*Pusa hispida*), and bearded seal (*Erignathus barbatus*). Bowhead whales are likely to be found only in the Labrador Current open ocean area but, in 2012 and 2014, the same bowhead whale was observed in Cape Cod Bay, which represents the southernmost record of this species in the western North Atlantic. In June 2014, a beluga whale was observed in several bays and inlets of Rhode Island and Massachusetts (Swaintek, 2014). This sighting likely represents an extralimital beluga whale occurrence in the Northeast United States Continental Shelf Large Marine Ecosystem. Narwhals prefer cold Arctic waters, and there is no stock of narwhal that occurs in the U.S. EEZ in the Atlantic Ocean; however, populations from Hudson Strait and Davis Strait may extend into the AFTT Study Area at its northwest extreme and those that winter in Hudson Strait likely occur in smaller numbers.

In addition to the species listed above, several stocks that did not overlap areas in or near modeled activities in the AFTT Study Area were not analyzed. These stocks include the West Greenland and Gulf of St. Lawrence stocks of fin whale; the West Greenland stock of minke whale; the Labrador Sea stock of sei whale; and the Gulf of St. Lawrence, Newfoundland, and Greenland stocks of harbor porpoise. NMFS agrees with the Action Proponents' assessment that these species are unlikely to occur in the AFTT Study Area, and they are not discussed further. Further, neither NMFS nor Navy anticipates take of the Puerto Rico/U.S. Virgin Islands stock of sperm whale, as U.S. Navy training

activities in the Vieques Naval Training Range ceased in 2003.

Three species of marine mammals, walrus (*Odobenus rosmarus*), West Indian manatee (*Trichechus manatus*), and polar bear (*Ursus maritimus*), occur in the AFTT Study Area, but are managed by the U.S. Fish and Wildlife Service (U.S. FWS), and thus are not considered further in this document.

Below, we consider additional information about the marine mammals in the area of the specified activities that informs our analysis, such as identifying known areas of important habitat or behaviors, or where Unusual Mortality Events (UME) have been designated.

Critical Habitat

Currently, only the NARW has ESA-designated critical habitat in the AFTT Study Area. However, NMFS has recently published a proposed rule proposing new ESA-designated critical habitat for the Rice's whale (88 FR 47453, July 24, 2023).

North Atlantic Right Whale

On February 26, 2016, NMFS issued a final rule (81 FR 4838) to replace the critical habitat for NARW with two new areas. The areas now designated as critical habitat contain approximately 29,763 nmi² (102,084 km²) of marine habitat in the Gulf of Maine and Georges Bank region (Unit 1), essential for NARW foraging and off the Southeast U.S. coast (Unit 2), including the coast of North Carolina, South Carolina, Georgia, and Florida, which are key areas essential for calving. These two ESA-designated critical habitats were established to replace three smaller previously ESA-designated critical habitats (Cape Cod Bay/Massachusetts Bay/Stellwagen Bank, Great South Channel, and the coastal waters of Georgia and Florida in the southeastern United States) that had been designated by NMFS in 1994 (59 FR 28805, June 3, 1994). Two additional areas in Canadian waters, Grand Manan Basin and Roseway Basin, were identified and designated as critical habitat under Canada's endangered species law (section 58 (5) of the Species at Risk Act (SARA), S. C. 2002, c. 29) and identified in Final Recovery Strategy for the NARW, posted June 2009 on the SARA Public Registry.

Unit 1 encompasses the Gulf of Maine and Georges Bank region including the large embayments of Cape Cod Bay and Massachusetts Bay and deep underwater basins, as well as state waters, except for inshore areas, bays, harbors, and inlets, from Maine through Massachusetts in addition to Federal waters, all of which are key areas (see figure 4.1–1 of the

application). It also does not include waters landward of the 72 COLREGS lines (33 CFR part 80). The essential physical and biological features of foraging habitat for NARW are: (1) The physical oceanographic conditions and structures of the Gulf of Maine and Georges Bank region that combine to distribute and aggregate *Calanus finmarchicus* for right whale foraging, namely prevailing currents and circulation patterns, bathymetric features (basins, banks, and channels), oceanic fronts, density gradients, and temperature regimes; (2) low flow velocities in Jordan, Wilkinson, and Georges Basins that allow diapausing *C. finmarchicus* to aggregate passively below the convective layer so that the copepods are retained in the basins; (3) late stage *C. finmarchicus* in dense aggregations in the Gulf of Maine and Georges Bank region; and (4) diapausing *C. finmarchicus* in aggregations in the Gulf of Maine and Georges Bank region.

Unit 2 consists of all marine waters from Cape Fear, North Carolina, southward to approximately 27 nmi below Cape Canaveral, Florida, within the area bounded on the west by the shoreline and the 72 COLREGS lines, and on the east by rhumb lines connecting the specific points described below (see figure 4.1–2 of the application). The essential physical and biological features correlated with the distribution of NARW in the southern critical habitat area provide an optimum environment for calving. These are: (1) Calm sea surface conditions of Force 4 or less on the Beaufort Wind Scale; (2) sea surface temperatures from a minimum of 44.6 °F (7 °C), and never more than 62.6 °F (17 °C); and (3) water depths of 19.7 to 91.9 ft (6 to 28 m), where these features simultaneously co-occur over contiguous areas of at least 231 nmi² (792.3 km²) of ocean waters during the months of November through April. For example, the bathymetry of the inner and nearshore middle shelf area minimizes the effect of strong winds and offshore waves, limiting the formation of large waves and rough water. The average temperature of critical habitat waters is cooler during the time right whales are present due to a lack of influence by the Gulf Stream and cool freshwater runoff from coastal areas. The water temperatures may provide an optimal balance between offshore waters that are too warm for nursing mothers to tolerate, yet not too cool for calves that may only have minimal fatty insulation. Reproductive females and calves are expected to be concentrated in the critical habitat from December through April.

Rice's Whale

On August 23, 2021, NMFS published a final rule that revised the listing of Rice's whales under the ESA to reflect the change in the scientifically accepted taxonomy and nomenclature of this species (86 FR 47022). Prior to this revision, the Rice's whale was listed in 2019 under the ESA as an endangered subspecies of the Bryde's whale (Gulf of America subspecies (referred to as the Gulf of Mexico subspecies in 86 FR 47022)). The 2019 listing rule indicated that, with a total abundance of approximately 100 individuals, small population size and restricted range are the most serious threats to this species (84 FR 15446, April 15, 2019). However, other threats such as energy exploration, development, and production; oil spills and oil spill responses; vessel collision; fishing gear entanglement; and anthropogenic noise were also identified as threats that contribute to the risk of extinction.

The specific occupied areas proposed for designation as critical habitat for the Rice's whale contain approximately 28,270.65 mi² (73,220.65 km²) of continental shelf and slope associated waters between 100 m and 400 m (328 ft and 1,312 ft) isobaths within the Gulf of America spanning from the U.S. EEZ boundary off the southwestern coast of Texas, to the boundary between the South Atlantic Fishery Management Council and the Gulf Fishery Management Council off the southeastern coast of Florida.

In the final listing rule, NMFS stated that critical habitat was not determinable at the time of the listing, because sufficient information was not currently available on the geographical area occupied by the species (84 FR 15446, April 15, 2019). On July 24, 2023, NMFS published a proposed rule describing the proposed critical habitat designation, including supporting information on Rice's whale biology, distribution, and habitat use, and the methods used to develop the proposed designation (88 FR 47453). The physical and biological features essential to the conservation of the species identified in the proposed rule are:

- (i) Sufficient density, quality, abundance, and accessibility of small demersal and vertically migrating prey species, including scombriformes, stomiiformes, myctophiformes, and myopsida;
- (ii) Marine water with:
 - A. Elevated productivity,
 - B. Bottom temperatures of 50–66.2 °F (10–19 °C), and
 - C. Levels of pollutants that do not preclude or inhibit any demographic function; and

(iii) Sufficiently quiet conditions for normal use and occupancy, including intraspecific communication, navigation, and detection of prey, predators, and other threats.

Biologically Important Areas

LaBrecque *et al.* (2015) identified Biologically Important Areas (BIAs) within U.S. waters of the East Coast and Gulf of America, which represent areas and times in which cetaceans are known to concentrate in areas of known importance for activities related to reproduction, feeding, and migration, or areas where small and resident populations are known to occur. Unlike ESA critical habitat, these areas are not formally designated pursuant to any statute or law, but are a compilation of the best available science intended to inform impact and mitigation analyses. An interactive map of the BIAs is available here: <https://oceannoise.noaa.gov/biologically-important-areas>. In some cases, additional, or newer, information regarding known feeding, breeding, or migratory areas may be available, and is included below.

On the East Coast, 19 of the 24 identified BIAs fall within or overlap with the AFTT Study Area: 10 feeding (2 for minke whale, 1 for sei whale, 3 for fin whale, 3 for NARW, and 1 for humpback), 1 migration (NARW), 2 reproduction (NARW), and 6 small and resident population (1 for harbor porpoise and 5 for bottlenose dolphin). Figures 4.1–1 through 4.1–14 of the application illustrate how these BIAs overlap with OPAREAs on the East Coast. In the Gulf of America, 4 of the 12 identified BIAs for small and resident populations overlap the AFTT Study Area (1 for Rice's (Bryde's) whale and 3 for bottlenose dolphin). Figures 4.1–9 through 4.1–13 of the application illustrates how these BIAs overlap with OPAREAs in the Gulf of America.

Large Whales Feeding BIAs—East Coast

Two minke whale feeding BIAs are located in the northeast Atlantic from March through November in waters less than 200 m (656 ft) in the southern and southwestern section of the Gulf of Maine including Georges Bank, the Great South Channel, Cape Cod Bay and Massachusetts Bay, Stellwagen Bank, Cape Anne, and Jeffreys Ledge (LaBrecque *et al.*, 2015a; LaBrecque *et al.*, 2015b). LaBrecque *et al.* (2015b) delineated a feeding area for sei whales in the northeast Atlantic between the 25-m (82-ft) contour off coastal Maine and Massachusetts to the 200-m (656-ft) contour in central Gulf of Maine, including the northern shelf break area

of Georges Bank. The feeding area also includes the southern shelf break area of Georges Bank from 100–2,000 m (328–6,562 ft) and the Great South Channel. Feeding activity is concentrated from May through November with a peak in July and August. LaBrecque *et al.* (2015b) identified three feeding areas for fin whales in the North Atlantic within the AFTT Study Area: (1) June to October in the northern Gulf of Maine, (2) year-round in the southern Gulf of Maine, and (3) March to October east of Montauk Point. LaBrecque *et al.* (2015b) delineated a humpback whale feeding area in the Gulf of Maine, Stellwagen Bank, and Great South Channel.

North Atlantic Right Whale BIAs—East Coast and Additional Information

LaBrecque *et al.* (2015b) identified three seasonal NARW feeding areas BIAs located in or near the AFTT Study Area (1) February to April on Cape Cod Bay and Massachusetts Bay, (2) April to June in the Great South Channel and on the northern edge of Georges Bank, and (3) June to July and October to December on Jeffreys Ledge in the western Gulf of Maine. A mating BIA was identified in the central Gulf of Maine (from November through January), a calving BIA in the southeast Atlantic (from mid-November to late April), and the migratory corridor area BIA along the U.S. East Coast between the NARW southern calving grounds and northern feeding areas (see figures 4.1–1 through 4.1–14 of the application for how these BIAs overlap with Navy OPAREAs).

In addition to the BIAs described above, an area south of Martha's Vineyard and Nantucket, primarily along the western side of Nantucket Shoals, was recently described as an important feeding area (Kraus *et al.*, 2016; O'Brien *et al.*, 2022, Quintana-Rizzo *et al.*, 2021). Its importance as a foraging habitat is well established (Leiter *et al.*, 2017; Estabrook *et al.*, 2022; O'Brien *et al.*, 2022). Nantucket Shoals' unique oceanographic and bathymetric features, including a persistent tidal front, help sustain year-round elevated phytoplankton biomass and aggregate zooplankton prey for NARW (White *et al.*, 2020; Quintana-Rizzo *et al.*, 2021). O'Brien *et al.* (2022) hypothesize that NARW southern New England habitat use has increased in recent years (*i.e.*, over the last decade) as a result of either, or a combination of, a northward shift in prey distribution (thus increasing local prey availability) or a decline in prey in other abandoned feeding areas (*e.g.*, Gulf of Maine), both induced by climate change. Pendleton *et al.* (2022) characterize southern New

England as a “waiting room” for NARW in the spring, providing sufficient, although sub-optimal, prey choices while NARW wait for *C. finmarchicus* supplies in Cape Cod Bay (and other primary foraging grounds like the Great South Channel) to optimize as seasonal primary and secondary production progresses. Throughout the year, southern New England provides opportunities for NARW to capitalize on *C. finmarchicus* blooms or alternative prey (e.g., *Pseudocalanus elongatus* and *Centropages* species, found in greater concentrations than *C. finmarchicus* in winter), although likely not to the extent provided seasonally in more well-understood feeding habitats like Cape Cod Bay in late spring or the Great South Channel (O’Brien *et al.*, 2022). Although extensive data gaps, highlighted in a recent report by the National Academy of Sciences (NAS) (2023), have prevented development of a thorough understanding of NARW foraging ecology in the Nantucket Shoals region, it is clear that the habitat was historically valuable to the species based on historical whaling records, and observations over the last decade confirm the area’s importance as a feeding habitat.

Harbor Porpoise BIA—East Coast

LaBrecque *et al.* (2015b) identified a small and resident population BIA for harbor porpoise in the Gulf of Maine (see figure 4.1–14 of the application). From July to September, harbor porpoises are concentrated in waters less than 150 m (492 ft) deep in the northern Gulf of Maine and southern Bay of Fundy. During fall (October to December) and spring (April to June), harbor porpoises are widely dispersed from New Jersey to Maine, with lower densities farther north and south (LaBrecque *et al.*, 2015b).

Bottlenose Dolphin BIA—East Coast

LaBrecque *et al.* (2015b) identified nine small and resident bottlenose dolphin population areas within estuarine areas along the east coast of the U.S. (see figure 4.1–11 of the application). These areas include estuarine and nearshore areas extending from Pamlico Sound, North Carolina down to Florida Bay, Florida (LaBrecque *et al.*, 2015b). The Northern North Carolina Estuarine System, Southern North Carolina Estuarine System, and Charleston Estuarine System populations partially overlap with nearshore portions of the Navy Cherry Point Range Complex and Jacksonville Estuarine System. Populations partially overlaps with nearshore portions of the Jacksonville

Range Complex. The Southern Georgia Estuarine System Population area also overlaps with the Jacksonville Range Complex, specifically within Naval Submarine Base Kings Bay, Kings Bay, Georgia and includes estuarine and intercoastal waterways from Altamaha Sound, to the Cumberland River (LaBrecque *et al.*, 2015b). The remaining four BIAs are outside but adjacent to the AFTT Study Area boundaries.

Bottlenose Dolphin BIA—Gulf of America

LaBrecque *et al.* (2015) also described 11 year-round BIAs for small and resident estuarine stocks of bottlenose dolphin that primarily inhabit inshore waters of bays, sounds, and estuaries (BSE) in the Gulf of America (see figures 4.1–12 and 4.1–13 in the application). Of the 11 BIAs identified for the BSE bottlenose dolphins in the Gulf of America, three overlap with the Gulf Range Complex (Aransas Pass Area, Texas; Mississippi Sound Area, Mississippi; and St. Joseph Bay Area, Florida), while eight are located adjacent to the AFTT Study Area boundaries.

Rice’s (Previously Bryde’s) Whale BIA—Gulf of America

The Rice’s (previously Bryde’s) whale is a very small population that is genetically distinct from Bryde’s whales and not genetically diverse within the Gulf of America (Rosel and Wilcox, 2014; Rosel *et al.*, 2021). Further, the species is typically observed only within a narrowly circumscribed area within the eastern Gulf of America. Therefore, this area is described as a year-round BIA by LaBrecque *et al.* (2015). Previous survey effort covered all oceanic waters of the U.S. Gulf of America, and whales were observed only between approximately the 100- and 300-m (328- and 984-ft) isobaths in the eastern Gulf of America from the head of the De Soto Canyon (south of Pensacola, Florida) to northwest of Tampa Bay, Florida (Maze-Foley and Mullin, 2006; Waring *et al.*, 2016; Rosel and Wilcox, 2014; Rosel *et al.*, 2016). Rosel *et al.* (2016) expanded this description by stating that, due to the depth of some sightings, the area is more appropriately defined to the 400-m (1,312-ft) isobath and westward to Mobile Bay, Alabama, in order to provide some buffer around the deeper sightings and to include all sightings in the northeastern Gulf of America. Since then, passive acoustic detections of Rice’s whale have occurred in the north central and western Gulf of America (Soldevilla *et al.*, 2022; Soldevilla *et al.*, 2024), although the highest densities of

Rice’s whales have been confined to the northeastern Gulf of America core habitat. The number of individuals that occur in the central and western Gulf of America and nature of their use of this area is poorly understood. Soldevilla *et al.* (2022) suggest that more than one individual was present on at least one occasion, as overlapping calls of different call subtypes were recorded in that instance, but also state that call detection rates suggest that either multiple individuals are typically calling or that individual whales are producing calls at higher rates in the central and western Gulf of America. Soldevilla *et al.* (2024) provide further evidence that Rice’s whale habitat encompasses all 100–400 m (328–1,312 ft) depth waters encircling the entire Gulf of America, including Mexican waters (as described in the proposed critical habitat designation (88 FR 47453, July 24, 2023)), but they also note that further research is needed to understand the density of whales in these areas, seasonal changes in whale density, and other aspects of habitat usage.

National Marine Sanctuaries

Under Title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (also known as the National Marine Sanctuaries Act (NMSA)), NOAA can establish as national marine sanctuaries (NMS) areas of the marine environment with special conservation, recreational, ecological, historical, cultural, archaeological, scientific, educational, or aesthetic qualities. Sanctuary regulations prohibit destroying, causing the loss of, or injuring any sanctuary resource managed under the law or regulations for that sanctuary (15 CFR part 922). NMS are managed on a site-specific basis, and each sanctuary has site-specific regulations. Most, but not all sanctuaries have site-specific regulatory exemptions from the prohibitions for certain military activities. Separately, section 304(d) of the NMSA requires Federal agencies to consult with the Office of National Marine Sanctuaries whenever their Proposed Activities are likely to destroy, cause the loss of, or injure a sanctuary resource. There are five designated NMSs and one proposed NMS within the AFTT Study Area (see section 6.1.3 of the 2024 AFTT Draft Supplemental EIS/OEIS). Two of these sanctuaries, Flower Garden Banks NMS in the Gulf of America and Monitor NMS off of North Carolina, do not inform our assessment of impacts to marine mammals and their habitat.

Three NMSs and one proposed NMS within the AFTT Study Area are

associated with features that inform our assessment of impacts to marine mammals and their habitat: Gerry E. Studds Stellwagen Bank NMS, Gray's Reef NMS, Florida Keys NMS, and Hudson Canyon Proposed NMS. Stellwagen Bank NMS sits at the mouth of Massachusetts Bay, 3 miles (mi; 4.8 km) south of Cape Ann, 3 mi (4.8 km) north of Cape Cod and 25 mi (40.2 km) due east of Boston and provides feeding and nursery grounds for marine mammals including NARW, humpback, sei, and fin whales. The Stellwagen Bank NMS is within critical habitat for the NARW for foraging (Unit 1). Gray's Reef NMS is 19 mi (30.6 km) east of Sapelo Island Georgia, in the South Atlantic Bight (the offshore area between Cape Hatteras, North Carolina and Cape Canaveral, Florida) and is within the designated critical habitat for NARW calving in the southeast (Unit 2). Florida Keys NMS protects 2,900 nmi² (9,947 km²) of waters surrounding the Florida Keys, from south of Miami westward to encompass the Dry Tortugas, excluding Dry Tortugas National Park and supports a resident group of bottlenose dolphin (Florida Bay Population BIA). The Office of National Marine Sanctuaries is in the process of designating the Hudson Canyon NMS off the coast of New York and New Jersey. Hudson Canyon is the largest submarine canyon along the U.S. Atlantic coast and is one of the largest in the world. Beginning approximately 100 mi (160.9 km) southeast of New York City, the canyon extends about 350 mi (563.3 km) seaward, reaches depths of 2–2.5 mi (3.2–4.0 km), and is up to 7.5 mi (12.1 km) wide. Hudson Canyon is considered an ecological hotspot due to its size and diversity of structures, including steep slopes, firm outcrops for invertebrates, diverse sediments, flux of nutrients, and areas of upwelling that support marine mammals and provides habitat for a range of endangered and protected species, including sperm whales.

Unusual Mortality Events

An Unusual Mortality Event (UME) is defined under section 410(6) of the MMPA as a stranding that is unexpected; involves a significant die-off of any marine mammal population; and demands immediate response. Three UMEs with ongoing investigations in the AFTT Study Area that inform our analysis are discussed below. The 2022 Maine Pinniped UME has closed, and the 2018 Northeast Pinniped UME is non-active and pending closure.

North Atlantic Right Whale (2017–Present)

Beginning in 2017, elevated mortalities in NARW were documented in Canada and the United States and necessitated an UME be declared. The whales impacted by the UME include dead, injured, and sick individuals, who represent more than 20 percent of the population, which is a significant impact on an endangered species where deaths are outpacing births. Additionally, research demonstrates that only about one third of right whale deaths are documented. The preliminary cause of mortality, serious injury, and morbidity (sublethal injury and illness) in most of these whales is from entanglements or vessel strikes. Endangered NARW are approaching extinction. There are approximately 372 individuals remaining, including fewer than 70 reproductively active females. Human impacts continue to threaten the survival of this species. The many individual whales involved in the UME are a significant setback to the recovery of this endangered species.

Since 2017, dead, seriously injured, sublethally injured, or ill NARW along the United States and Canadian coasts have been documented, necessitating a UME declaration and investigation. The leading category for the cause of death for this ongoing UME is “human interaction,” specifically from entanglements or vessel strikes. As of January 2, 2025, there have been 41 confirmed mortalities (dead, stranded, or floating) and 39 seriously injured free-swimming whales for a total of 80 whales. The UME also considers animals with sublethal injury or illness (*i.e.*, “morbidity”; $n = 71$) bringing the total number of whales in the UME to 151. More information about the NARW UME is available online at <https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2025-north-atlantic-right-whale-unusual-mortality-event>.

Humpback Whale (2017–Present)

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 244 known cases (as of February 6, 2025). Of the whales examined (approximately 90), about 40 percent had evidence of human interaction either from vessel strike or entanglement. 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/2016-2025-humpback-whale-unusual-mortality-event-along-atlantic-coast>.

Minke Whale (2017–Present)

Elevated minke whale mortalities detected along the Atlantic coast from Maine through South Carolina resulted in the declaration of an on-going UME in 2017. As of February 10, 2025, a total of 198 minke whales have stranded during this UME. Full or partial necropsy examinations were conducted on more than 60 percent of the whales. Preliminary findings show evidence of human interactions or infectious disease, but these findings are not consistent across all of the minke whales examined, so more research is needed. More information is available at: <https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2025-minke-whale-unusual-mortality-event-along-atlantic-coast>.

Phocid Seals (2018–2020, 2022)

Harbor and gray seals have experienced two UMEs since 2018, although one was recently closed (2022 Pinniped UME in Maine) and closure of the other, described here, is pending. Beginning in July 2018, elevated numbers of harbor seal and gray seal mortalities occurred across Maine, New Hampshire, and Massachusetts. Additionally, stranded seals have shown clinical signs as far south as 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 all species) occurred from July 1, 2018, through March 13, 2020. Full or partial necropsy examinations were conducted on some of the seals and samples were 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, which is pending closure. 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>.

Deepwater Horizon Oil Spill

In 2010, the BP-operated *Macondo* well blowout and explosion aboard the *Deepwater Horizon* drilling rig (also known as the *Deepwater Horizon* explosion, oil spill, and response; hereafter referred to as the DWH oil spill) caused oil, natural gas, and other substances to flow into the Gulf of America for 87 days before the well was sealed. Total oil discharge was estimated at 3.19 million barrels (134 million gallons), resulting in the largest marine oil spill in history (DWH Natural Resource Damage Assessment (NRDA) Trustees, 2016). In addition, the response effort involved extensive application of dispersants at the seafloor and at the surface, and controlled burning of oil at the surface was also used extensively as a response technique. The oil, dispersant, and burn residue compounds present ecological challenges in the region.

At its maximum extent, oil covered over 15,444 mi² (40,000 km²) of ocean. Cumulatively, over the course of the spill, oil was detected on over 43,243 mi² (112,000 km²) of ocean. Currents, winds, and tides carried these surface oil slicks to shore, fouling more than 1,304.9 mi (2,100 km) of shoreline, including beaches, bays, estuaries, and marshes from eastern Texas to the Florida Panhandle. In addition, some lighter oil compounds evaporated from the slicks, exposing air-breathing organisms like marine mammals to noxious fumes at the sea surface.

DWH oil was found to cause problems with the regulation of stress hormone secretion from adrenal cells and kidney cells, which will affect an animal's ability to regulate body functions and respond appropriately to stressful

situations, thus leading to reduced fitness. Bottlenose dolphins living in habitats contaminated with DWH oil showed signs of adrenal dysfunction, and dead, stranded dolphins from areas contaminated with DWH oil had smaller adrenal glands (Schwacke *et al.*, 2014a; Venn-Watson *et al.*, 2015b). Other factors were ruled out as a primary cause for the high prevalence of adverse health effects, reproductive failures, and disease in stranded animals. When all of the data were considered together, the DWH oil spill was determined to be the only reasonable cause for the full suite of observed adverse health effects.

Due to the difficulty of investigating marine mammals in pelagic environments and across the entire region impacted by the event, the injury assessment focused on health assessments conducted on bottlenose dolphins in nearshore habitats and used these populations as case studies for extrapolating to coastal and oceanic populations that received similar or worse exposure to DWH oil, with appropriate adjustments made for differences in behavior, anatomy, physiology, life histories, and population dynamics among species. Investigators then used a population modeling approach to capture the overlapping and synergistic relationships among the metrics for injury, and to quantify the entire scope of DWH marine mammal injury to populations into the future, expressed as "lost cetacean years" due to the DWH oil spill (which represents years lost due to premature mortality as well as the resultant loss of reproductive output). This approach allowed for consideration of long-term impacts resulting from immediate losses and reproductive failures in the few years following the

spill, as well as expected persistent impacts on survival and reproduction for exposed animals well into the future (Takeshita *et al.*, 2017; Smith *et al.*, 2022). For a more detailed overview of the injury quantification for these stocks and their post-DWH population trajectory, please see Schwacke *et al.* (2017) and Marques *et al.* (2023), and for full details of the overall injury quantification, see DWH Marine Mammal Injury Quantification Team (MMIQT) (2015).

The results of the quantification exercise for each affected shelf and oceanic stock, and for northern and western coastal stocks of bottlenose dolphin, are presented in table 15. This is likely a conservative estimate of impacts, because: (1) Shelf and oceanic species experienced long exposures (up to 90 days) to very high concentrations of fresh oil and a diverse suite of response activities, while estuarine dolphins were not exposed until later in the spill period and to weathered oil products at lower water concentrations; (2) oceanic cetaceans dive longer and to deeper depths, and it is possible that the types of lung injuries observed in estuarine dolphins may be more severe for oceanic cetaceans; and (3) cetaceans in deeper waters were exposed to very high concentrations of volatile gas compounds at the water's surface near the wellhead. No analysis was performed for Fraser's dolphins or killer whales; although they are present in the Gulf of America, sightings are rare and there were no historical sightings in the oil spill footprint during the surveys used in the quantification process. These stocks were likely injured, but no information was available on which to base a quantification effort at that time.

TABLE 15—SUMMARY OF MODELED EFFECTS OF THE DEEPWATER HORIZON OIL SPILL
[DWH NRDA Trustees, 2016]

Common name	Stock	Percent of population exposed to oil (95 percent CI)	Percent of population killed (95 percent CI)	Percent of females with reproductive failure (95 percent CI)	Percent of population with adverse health effects (95 percent CI)	Percent of maximum population reduction (95 percent CI)	Years to recovery (95 percent CI)*
Rice's whale (formerly Bryde's whale).	Northern Gulf of America.	48 (23–100)	17 (7–24)	22 (10–31)	18 (7–28)	–22	69
Sperm whale	Northern Gulf of America.	16 (11–23)	6 (2–8)	7 (3–10)	6 (2–9)	–7	21
<i>Kogia spp</i>	Multiple	15 (8–29)	5 (2–7)	7 (3–10)	6 (2–9)	–6	11
Beaked whales	Multiple	12 (7–22)	4 (2–6)	5 (3–8)	4 (2–7)	–6	10
Bottlenose dolphin	Northern Gulf of America, Oceanic.	10 (5–10)	3 (1–5)	5 (2–6)	4 (1–6)	–4	N/A
Bottlenose dolphin	Gulf of America, Northern Coastal.	82 (55–100)	38 (26–58)	37 (17–53)	30 (11–47)	–50 (32–73)	39 (23–76)

TABLE 15—SUMMARY OF MODELED EFFECTS OF THE DEEPWATER HORIZON OIL SPILL—Continued
[DWH NRDA Trustees, 2016]

Common name	Stock	Percent of population exposed to oil (95 percent CI)	Percent of population killed (95 percent CI)	Percent of females with reproductive failure (95 percent CI)	Percent of population with adverse health effects (95 percent CI)	Percent of maximum population reduction (95 percent CI)	Years to recovery (95 percent CI)*
Bottlenose dolphin	Gulf of America, Western Coastal.	23 (16–32)	1 (1–2)	10 (5–15)	8 (3–13)	–5 (3–9)	N/A
Shelf dolphins**	Multiple	13 (9–19)	4 (2–6)	6 (3–8)	5 (2–7)	–3	N/A
Clymene dolphin ...	Northern Gulf of America.	7 (3–15)	2 (1–4)	3 (2–5)	3 (1–4)	–3	N/A
False killer whale ..	Northern Gulf of America.	18 (7–48)	6 (3–9)	8 (4–12)	7 (3–11)	–9	42
Melon-headed whale.	Northern Gulf of America.	15 (6–36)	5 (2–7)	7 (3–10)	6 (2–9)	–7	29
Pantropical spotted dolphin.	Northern Gulf of America.	20 (15–26)	7 (3–10)	9 (4–13)	7 (3–11)	–9	39
Pygmy killer whale	Northern Gulf of America.	15 (7–33)	5 (2–8)	7 (3–10)	6 (2–9)	–7	29
Risso's dolphin	Northern Gulf of America.	8 (5–13)	3 (1–4)	3 (2–5)	3 (1–4)	–3	N/A
Rough-toothed dolphin.	Northern Gulf of America.	41 (16–100)	14 (6–20)	19 (9–26)	15 (6–23)	–17	54
Short-finned pilot whale.	Northern Gulf of America.	6 (4–9)	2 (1–3)	3 (1–40)	2 (1–3)	–3	N/A
Spinner dolphin	Northern Gulf of America.	47 (24–91)	16 (7–23)	21 (10–30)	17 (6–27)	–23	105
Striped dolphin	Northern Gulf of America.	13 (8–22)	5 (2–7)	6 (3–9)	5 (2–8)	–6	14

Note: Table modified from the DWH NRDA Trustees (2016). CI = confidence interval. No CI was calculated for population reduction or years to recovery for shelf or oceanic stocks. Marine mammals in the Gulf of America are named in DWH NRDA Trustees (2016) with reference to the formerly named “Gulf of Mexico.” This Notice refers to these marine mammal stocks as Northern Gulf of America stocks. The geographical location of the stocks remains the same.

* It is not possible to calculate years to recovery for stocks with maximum population reductions of less than or equal to 5 percent.

** Shelf dolphins includes Atlantic spotted dolphins and the shelf stock of bottlenose dolphins (20–200 m water depth). These two species were combined because the abundance estimate used in population modeling was derived from aerial surveys and the species could not generally be distinguished from the air.

However, a recent study by Frasier *et al.* (2024), using a widely-spaced passive acoustic monitoring array, found that of eight groups monitored from 2010–2020, seven groups experienced long-term density declines, including beaked whales (up to 83 percent), small delphinids (up to 43 percent), and sperm whales (up to 31 percent). These measured density declines exceed model-predicted changes and do not suggest recovery trends for affected species to date (Frasier *et al.*, 2024). Population consequences of 15 cetacean taxonomic units in pelagic and continental shelf waters (not including killer whales, false killer whales, and Fraser's dolphins) were assessed by Marques *et al.* (2023), who found that the DWH oil spill had the greatest population

impacts on spinner dolphins, striped dolphins, sperm whales, oceanic bottlenose dolphins, and *Kogia* species. The number of lost cetacean years was highest for the shelf bottlenose dolphin population (32,584 years) and pantropical spotted dolphin population (31,372 years) (Marques *et al.*, 2023).

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), Southall *et al.* (2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (e.g., behavioral response data, anatomical modeling). NMFS (2024) generalized hearing ranges were chosen based on the approximately 65-dB threshold from the composite audiograms, previous analysis in NMFS (2018), and/or data from Southall *et al.* (2007) and Southall *et al.* (2019). We note that the names of two hearing groups and the generalized hearing ranges of all marine mammal hearing groups have been recently updated (NMFS, 2024) as reflected below in table 16.

TABLE 16—MARINE MAMMAL HEARING GROUPS
[NMFS, 2024]

Hearing group	Generalized hearing range*
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 36** kHz.

TABLE 16—MARINE MAMMAL HEARING GROUPS—Continued
[NMFS, 2024]

Hearing group	Generalized hearing range *
High-frequency (HF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
Very High-frequency (VHF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, Cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>).	200 Hz to 165 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	40 Hz to 90 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 68 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 the ~65-dB threshold from composite audiogram, previous analysis in NMFS (2018), and/or data from Southall *et al.* (2007) and Southall *et al.* (2019). Additionally, animals are able to detect very loud sounds above and below that "generalized" hearing range.

** The Action Proponents split the LF functional hearing group into LF and VLF based on Houser *et al.*, (2024) while NMFS Updated Technical Guidance (NMFS, 2024) does not include these data. NMFS is aware these data and data collected during a final field season by Houser *et al.* (in prep) have implications for the generalized hearing range for low-frequency cetaceans and their weighting function, however, as described in the 2024 Updated Technical Guidance, it is premature for us to propose any changes to our current Updated Technical Guidance. Mysticete hearing data is identified as a special circumstance that could merit reevaluating the acoustic criteria for low-frequency cetaceans in the 2024 Updated Technical Guidance once the data from the final field season is published. Therefore, we anticipate that once the data are published, it will likely necessitate updating this document (*i.e.*, likely after the data gathered in the summer 2024 field season and associated analysis are published).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2024) for a review of available information.

The Navy adjusted these hearing groups using data from recent hearing measurements in minke whales (Houser *et al.*, 2024). These data support separating mysticetes (the LF cetacean marine mammal hearing group in table 16) into two hearing groups, which the Navy designates as "very low-frequency (VLF) cetaceans" and "low-frequency (LF) cetaceans," which follows the recommendations of Southall *et al.* (2019a). Within the Navy's adjusted hearing groups, the VLF cetacean group contains the larger mysticetes (blue, fin, right, and bowhead whales) and the LF cetacean group contains the mysticete species not included in the VLF group (*e.g.*, minke, humpback, gray, pygmy right whales). Although there have been no direct measurements of hearing sensitivity in the larger mysticetes included in Navy's VLF hearing group, an audible frequency range of approximately 10 Hz to 30 kHz has been estimated from measured vocalization frequencies, observed responses to playback of sounds, and anatomical analyses of the auditory system. The upper frequency limit of hearing in Navy's LF hearing group has been estimated in a minke whale from direct measurements of auditory evoked potentials (Houser *et al.*, 2024).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The *Estimated Take of Marine Mammals* section later in this document includes

a quantitative analysis of the number of individuals that are expected to be taken by this activity. The *Preliminary Analysis and Negligible Impact Determination* section considers the content of this section, the *Estimated Take of Marine Mammals* section, and the *Proposed Mitigation Measures* section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts on individuals are likely to adversely affect the species through effects on annual rates of recruitment or survival.

The Action Proponents have requested authorization for the take of marine mammals that may occur incidental to training and testing activities in the AFTT Study Area. The Action Proponents analyzed potential impacts to marine mammals from acoustic and explosive sources and from vessel use in the application. NMFS carefully reviewed the information provided by the Action Proponents and concurs with their synthesis of science, along with independently reviewing applicable scientific research and literature and other information to evaluate the potential effects of the Action Proponents' activities on marine mammals, which are presented in this section (see appendix D in the 2024 AFTT Draft Supplemental EIS/OEIS for additional information).

Other potential impacts to marine mammals from training and testing activities in the AFTT Study Area were analyzed in the 2024 AFTT Draft Supplemental EIS/OEIS, in consultation with NMFS as a cooperating agency, and determined to be unlikely to result in marine mammal take. Therefore, the Action Proponents have not requested

authorization for take of marine mammals incidental to other components of their proposed Specified Activities, and we agree that incidental take is unlikely to occur from those components. In this proposed rule, NMFS analyzes the potential effects on marine mammals from the activity components that may cause the take of marine mammals: exposure to acoustic or explosive stressors including non-impulsive (sonar and other transducers, and vibratory pile driving) and impulsive (explosives, impact pile driving, and air guns) stressors and vessel movement.

For the purpose of MMPA incidental take authorizations, NMFS' effects assessments serve four primary purposes: (1) to determine whether the specified activities would have a negligible impact on the affected species or stocks of marine mammals (based on whether it is likely that the activities would adversely affect the species or stocks through effects on annual rates of recruitment or survival); (2) to determine whether the specified activities would have an unmitigable adverse impact on the availability of the species or stocks for subsistence uses; (3) to prescribe the permissible methods of taking (*i.e.*, Level B harassment (behavioral harassment and temporary threshold shift (TTS)), Level A harassment (auditory (AUD INJ) and non-auditory injury), serious injury, or mortality), including identification of the number and types of take that could occur by harassment, serious injury, or mortality, and to prescribe other means of effecting the least practicable adverse impact on the species or stocks and their habitat (*i.e.*, mitigation measures); and (4) to prescribe requirements pertaining to monitoring and reporting.

In this section, NMFS provides a description of the ways marine mammals may be generally affected by these activities in the form of mortality, physical injury, sensory impairment (permanent and temporary threshold shifts and acoustic masking), physiological responses (particular stress responses), behavioral disturbance, or habitat effects. Explosives and vessel strikes, which have the potential to result in incidental take by serious injury and/or mortality, will be discussed in more detail in the *Estimated Take of Marine Mammals* section. The *Estimated Take of Marine Mammals* section also discusses how the potential effects on marine mammals from non-impulsive and impulsive sources relate to the MMPA definitions of Level A Harassment and Level B Harassment, and quantifies those effects that rise to the level of a take. The *Preliminary Analysis and Negligible Impact Determination* section assesses whether the proposed authorized take would have a negligible impact on the affected species and stocks.

Potential Effects of Underwater Sound on Marine Mammals

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far (ANSI, 1995). The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources, which may include physical (e.g., waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (e.g., sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (e.g., vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise “ambient” or “background” sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary

by 10–20 dB from day to day (Richardson *et al.*, 1995). The result is that, depending on the source type and its intensity, sound from the specified activities may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can possibly result in one or more of the following: temporary or permanent hearing impairment, other auditory injury, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.*, 1995; Gordon *et al.*, 2004; Nowacek *et al.*, 2007; Southall *et al.*, 2007; Götz *et al.*, 2009; Southall *et al.*, 2019a). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high-level sounds can cause auditory injury, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing can occur after exposure to noise, and occurs almost exclusively for noise within an animal’s hearing range.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal’s hearing range. First is the area within which the acoustic signal would be audible (potentially perceived) to the animal, but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or non-auditory injury to auditory systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.*, when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

We also describe more severe potential effects (*i.e.*, certain non-auditory physical or physiological effects). Potential effects from impulsive

sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or, in the case of explosives, more severe injuries or mortality (Yelverton *et al.*, 1973). Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high levels of underwater sound or as a secondary effect of extreme behavioral responses (e.g., change in dive profile as a result of an avoidance response) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or non-auditory injury (Cox *et al.*, 2006; Southall *et al.*, 2007; Zimmer and Tyack, 2007; Tal *et al.*, 2015).

Hearing

Marine mammals have adapted hearing based on their biology and habitat: amphibious marine mammals (e.g., pinnipeds that spend time on land and underwater) have modified ears that allow them to hear both in-air and in-water, while fully aquatic marine mammals (e.g., cetaceans that are always underwater) have specialized ear adaptations for in-water hearing (Wartzok and Ketten, 1999). These adaptations explain the variation in hearing ability and sensitivity among marine mammals and have led to the characterization of marine mammal functional hearing groups based on those sensitivities: very low-frequency cetaceans (VLF group: blue, fin, right, and bowhead whales), low-frequency cetaceans (LF group: minke, sei, Bryde’s, Rice’s, humpback, gray, and pygmy right whales), high-frequency cetaceans (HF group: sperm whales, beaked whales, killer whale, melon-headed whale, false/pygmy killer whale, pilot whales, and some dolphin species), very high-frequency cetaceans (VHF group: some dolphin species, porpoises, Amazon River dolphin, *Kogia* species, Baiji, and La Plata dolphin), sirenians (SI group: manatees, dugongs), otariids and other non-phocid marine carnivores in water and in air (OCW and OCA groups: sea lion, fur seal, walrus, otter), and phocids in water and in air (PCW and PCA groups: true seals) (Southall *et al.*, 2019c). In Phase III, VLF and LF cetaceans were part of one, combined LF cetacean hearing group. However, as described in the Navy’s report “Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase 4)” (U.S. Department of the Navy, 2024), Houser *et al.* (2024) recently reported hearing measurements for minke whales. The Action

Proponents incorporated these measurements, as well as Southall *et al.* (2019c), into their analysis. They determined that the data support dividing mysticetes into two separate hearing groups: VLF and LF cetacean, and NMFS concurs (as described further in the Estimated Take of Marine Mammals section), that this approach is appropriate for this action.

The hearing sensitivity of marine mammals is also directional, meaning the angle between an animal's position and the location of a sound source impacts the animal's hearing threshold, thereby impacting an animal's ability to perceive the sound emanating from that source. This directionality is likely useful for determining the general location of a sound, whether for detection of prey, predators, or members of the same species, and can be dependent upon the frequency of the sound (Accomando *et al.*, 2020; Au and Moore, 1984; Byl *et al.*, 2016; Byl *et al.*, 2019; Kastelein *et al.*, 2005; Kastelein *et al.*, 2019; Popov and Supin, 2009).

Acoustic Signaling

An acoustic signal refers to the sound waves used to communicate underwater, and marine mammals use a variety of acoustic signals for socially important functions, such as communicating, as well as biologically important functions, such as echolocating (Richardson *et al.*, 1995; Wartzok and Ketten, 1999). Acoustic signals used for communication are lower frequency (*i.e.*, 20 Hz to 30 kHz) than those signals used for echolocation, which are high-frequency (approximately 10–200 kHz peak frequency) signals used by odontocetes to sense their underwater environment. Lower frequency vocalizations used for communication may have a specific, prominent fundamental frequency (Brady *et al.*, 2021) or have a wide frequency range, depending on the functional hearing group and whether the marine mammal is vocalizing in-water or in-air. Acoustic signals used for echolocation are high-frequency, high-energy sounds with patterns and peak frequencies that are often species-specific (Baumann-Pickering *et al.*, 2013).

Marine mammal species typically produce sounds at frequencies within their own hearing range, though auditory and vocal ranges do not perfectly align (*e.g.*, odontocetes may only hear a portion of the frequencies of an echolocation click). Because determining a species vocal range is easier than determining a species' hearing range, vocal ranges are often used to infer a species' hearing range

when species-specific hearing data are not available (*e.g.*, large whale species).

Hearing Loss and Auditory Injury

Marine mammals, like all mammals, lose their ability to hear over time due to age-related degeneration of auditory pathways and sensory cells of the inner ear. This natural, age-related hearing loss is distinct from acute noise-induced hearing loss (Møller, 2013). Noise-induced hearing loss can be temporary (*i.e.*, TTS) or permanent (permanent threshold shift, PTS), and higher-level sound exposures are more likely to cause PTS or other AUD INJ. For marine mammals, AUD INJ is considered to be possible when sound exposures are sufficient to produce 40 dB of TTS measured approximately 4 minutes after exposure (U.S. Department of the Navy, 2024). Numerous studies have directly examined noise-induced hearing loss in marine mammals by measuring an animal's hearing threshold before and after exposure to intense sounds. The difference between the post-exposure and pre-exposure hearing thresholds is then used to determine the amount of TTS (in dB) that was produced as a result of the sound exposure (see appendix D of the 2024 AFTT Draft Supplemental EIS/OEIS for additional details). The Navy used these studies to generate exposure functions, which are predictions of the onset of TTS or PTS based on sound frequency, level, and type (continuous or impulsive), for each marine mammal functional hearing group (U.S. Department of the Navy, 2024).

TTS can last from minutes to hours to days (*i.e.*, there is recovery back to baseline/pre-exposure hearing threshold), can occur within a specific frequency range (*i.e.*, an animal might only have a temporary loss of hearing sensitivity within a limited frequency band of its auditory range), and can be of varying amounts (*e.g.*, an animal's hearing sensitivity might be reduced by only 6 dB or reduced by 30 dB). While there is no simple functional relationship between TTS and PTS or other AUD INJ (*e.g.*, neural degeneration), as TTS increases, the likelihood that additional exposure to increased sound pressure level (SPL) or duration will result in PTS or other injury also increases (see the 2024 AFTT Draft Supplemental EIS/OEIS for additional discussion). Exposure thresholds for the occurrence of AUD INJ, which include the potential for PTS, as well as situations when AUD INJ occurs without PTS, can therefore be defined based on a specific amount of TTS; that is, although an exposure has been shown to produce only TTS, we

assume that any additional exposure may result in some AUD INJ. The specific upper limit of TTS is based on experimental data showing amounts of TTS that have not resulted in AUD INJ. In other words, we do not need to know the exact functional relationship between TTS and AUD INJ, we only need to know the upper limit for TTS before some AUD INJ is possible. In severe cases of AUD INJ, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985).

The following physiological mechanisms are thought to play a role in inducing auditory threshold shift: effects to sensory hair cells in the inner ear that reduce their sensitivity; modification of the chemical environment within the sensory cells; residual muscular activity in the middle ear; displacement of certain inner ear membranes; increased blood flow; and post-stimulatory reduction in both efferent and sensory neural output (Southall *et al.*, 2007). The amplitude, duration, frequency, temporal pattern, and energy distribution of sound exposure all can affect the amount of associated threshold shift and the frequency range in which it occurs. Generally, the amount of threshold shift, and the time needed to recover from the effect, increase as amplitude and duration of sound exposure increases. Human non-impulsive noise exposure guidelines are based on the assumption that exposures of equal energy (the same SEL) produce equal amounts of hearing impairment regardless of how the sound energy is distributed in time (NIOSH, 1998). Previous marine mammal TTS studies have also generally supported this equal energy relationship (Southall *et al.*, 2007). SEL is used to predict TTS in marine mammals and is considered a good predictor of TTS for shorter duration exposures than longer duration exposures. The amount of TTS increases with exposure SPL and duration, and is correlated with SEL, but duration of the exposure has a more significant effect on TTS than would be predicted based on SEL alone (*e.g.*, Finneran *et al.*, 2010b; Kastak *et al.*, 2007; Kastak *et al.*, 2005; Kastelein *et al.*, 2014a; Mooney *et al.*, 2009a; Popov *et al.*, 2014; Gransier and Kastelein, 2024). These studies highlight the inherent complexity of predicting TTS onset in marine mammals, as well as the importance of considering exposure duration when assessing potential impacts.

Generally, TTS increases with SEL in a non-linear fashion, where lower SEL exposures will elicit a steady rate of TTS increase while higher SEL

exposures will either increase TTS more rapidly or plateau (Finneran, 2015; U.S. Department of the Navy, 2024). Additionally, with sound exposures of equal energy, those that had lower SPL with longer duration were found to induce TTS onset at lower levels than those of higher SPL and shorter duration. Less threshold shift will occur from intermittent sounds than from a continuous exposure with the same energy (some recovery can occur between intermittent exposures) (Kryter *et al.*, 1966; Ward, 1997; Mooney *et al.*, 2009a, 2009b; Finneran *et al.*, 2010; Kastelein *et al.*, 2014; Kastelein *et al.*, 2015). For example, one short higher SPL sound exposure may induce the same impairment as one longer lower SPL sound, which in turn may cause more impairment than a series of several intermittent softer sounds with the same total energy (Ward, 1997). Additionally, though TTS is temporary, very prolonged or repeated exposure to sound strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause AUD INJ, at least in terrestrial mammals (Kryter, 1985; Lonsbury-Martin *et al.*, 1987).

Although TTS increases non-linearly in marine mammals, recovery from TTS typically occurs in a linear fashion with the logarithm of time (Finneran, 2015; Finneran *et al.*, 2010a; Finneran *et al.*, 2010b; Finneran and Schlundt, 2013; Kastelein *et al.*, 2012a; Kastelein *et al.*, 2012b; Kastelein *et al.*, 2013a; Kastelein *et al.*, 2014a; Kastelein *et al.*, 2014b; Kastelein *et al.*, 2014c; Popov *et al.*, 2014; Popov *et al.*, 2013; Popov *et al.*, 2011; Muslow *et al.*, 2023; Finneran *et al.*, 2023). Considerable variation has been measured in individuals of the same species in both the amount of TTS incurred from similar SELs (Kastelein *et al.*, 2012a; Popov *et al.*, 2013) and the time-to-recovery from TTS (Finneran, 2015; Kastelein *et al.*, 2019e). Many of these studies relied on continuous sound exposures, but intermittent, impulsive sound exposures have also been tested. The sound resulting from an explosive detonation is considered an impulsive sound, but no direct measurements of hearing loss from exposure to explosive sources have been made. Few studies (Finneran *et al.*, 2002; Lucke *et al.*, 2009; Sills *et al.*, 2020; Muslow *et al.*, 2023) using impulsive sounds have produced enough TTS to make predictions about hearing loss due to this source type (see U.S. Department of the Navy, 2024a). In general, predictions of TTS based on SEL for this type of sound exposure are likely to overestimate TTS because some

recovery from TTS may occur in the quiet periods between impulsive sounds—especially when the duty cycle is low. Peak SPL (unweighted) is also used to predict TTS due to impulsive sounds (Southall *et al.*, 2007; Southall *et al.*, 2019c; U.S. Department of the Navy, 2024a).

In some cases, intense noise exposures have caused AUD INJ (*e.g.*, loss of cochlear neuron synapses), despite thresholds eventually returning to normal; *i.e.*, it is possible to have AUD INJ without a resulting PTS (*e.g.*, Kujawa and Liberman, 2006, 2009; Kujawa, 2010; Fernandez *et al.*, 2015; Ryan *et al.*, 2016; Houser, 2021). In these situations, however, threshold shifts were 30–50 dB measured 24 hours after the exposure; *i.e.*, there is no evidence that an exposure resulting in less than 40 dB TTS measured a few minutes after exposure can produce AUD INJ. Therefore, an exposure producing 40 dB of TTS, measured a few minutes after exposure, can also be used as an upper limit to prevent AUD INJ; *i.e.*, it is assumed that exposures beyond those capable of causing 40 dB of TTS have the potential to result in INJ (which may or may not result in PTS).

Irreparable damage to the inner or outer cochlear hair cells may cause PTS; however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.*, 2007). When AUD INJ occurs, there is physical damage to the sound receptors in the ear, whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.*, 2007). AUD INJ is permanent (*i.e.*, there is incomplete recovery back to baseline/pre-exposure levels) but also can occur in a specific frequency range and amount as mentioned above for TTS. In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.*, Ward, 1997). Therefore, NMFS does not consider less than 40 dB of TTS to constitute AUD INJ. The NMFS Acoustic Updated Technical Guidance (NMFS, 2024), which was used in the assessment of effects for this rule, compiled, interpreted, and synthesized the best available scientific information for noise-induced hearing effects for marine mammals to derive updated thresholds for assessing the impacts of noise on marine mammal hearing.

While many studies have examined noise-induced hearing loss in marine mammals (see Finneran (2015) and

Southall *et al.* (2019a) for summaries), published data on the onset of TTS for cetaceans are limited to the captive bottlenose dolphin, beluga, harbor porpoise, and Yangtze finless porpoise, and for pinnipeds in water, measurements of TTS are limited to harbor seals, elephant seals, California sea lions, and bearded seals. These studies examine hearing thresholds measured in marine mammals before and after exposure to intense sounds, which can then be used to determine the amount of threshold shift at various post-exposure times. NMFS has reviewed the available studies, which are summarized below (see also the 2024 AFTT Draft Supplemental EIS/OEIS which includes additional discussion on TTS studies related to sonar and other transducers).

- The method used to test hearing may affect the resulting amount of measured TTS, with neurophysiological measures producing larger amounts of TTS compared to psychophysical measures (Finneran *et al.*, 2007; Finneran, 2015; Finneran *et al.*, 2023).

- The amount of TTS varies with the hearing test frequency. As the exposure SPL increases, the frequency at which the maximum TTS occurs also increases (Kastelein *et al.*, 2014b). For high-level exposures, the maximum TTS typically occurs one-half to one octave above the exposure frequency (Finneran *et al.*, 2007; Mooney *et al.*, 2009a; Nachtigall *et al.*, 2004; Popov *et al.*, 2011; Popov *et al.*, 2013; Schlundt *et al.*, 2000). The overall spread of TTS from tonal exposures can therefore extend over a large frequency range (*i.e.*, narrowband exposures can produce broadband (greater than one octave) TTS).

- The amount of TTS increases with exposure SPL and duration and is correlated with SEL, especially if the range of exposure durations is relatively small (Kastak *et al.*, 2007; Kastelein *et al.*, 2014b; Popov *et al.*, 2014). As the exposure duration increases, however, the relationship between TTS and SEL begins to break down. Specifically, duration has a more significant effect on TTS than would be predicted on the basis of SEL alone (Finneran *et al.*, 2010a; Kastak *et al.*, 2005; Mooney *et al.*, 2009a). This means if two exposures have the same SEL but different durations, the exposure with the longer duration (thus lower SPL) will tend to produce more TTS than the exposure with the higher SPL and shorter duration. In most acoustic impact assessments, the scenarios of interest involve shorter duration exposures than the marine mammal experimental data from which impact thresholds are derived; therefore, use of SEL tends to

over-estimate the amount of TTS. Despite this, SEL continues to be used in many situations because it is relatively simple, more accurate than SPL alone, and lends itself easily to scenarios involving multiple exposures with different SPL (Finneran, 2015).

- Gradual increases of TTS may not be directly observable with increasing exposure levels, before the onset of PTS (Reichmuth *et al.*, 2019). Similarly, PTS can occur without measurable behavioral modifications (Reichmuth *et al.*, 2019).

- The amount of TTS depends on the exposure frequency. Sounds at low frequencies, well below the region of best sensitivity, are less hazardous than those at higher frequencies, near the region of best sensitivity (Finneran and Schlundt, 2013). The onset of TTS—defined as the exposure level necessary to produce 6 dB of TTS (*i.e.*, clearly above the typical variation in threshold measurements)—also varies with exposure frequency. At the low frequency end of a species' hearing curve, onset-TTS exposure levels are higher compared to those in the region of best sensitivity.

- TTS can accumulate across multiple exposures, but the resulting TTS will be less than the TTS from a single, continuous exposure with the same SEL (Finneran *et al.*, 2010a; Kastelein *et al.*, 2014b; Kastelein *et al.*, 2015b; Mooney *et al.*, 2009b). This means that TTS predictions based on the total, cumulative SEL will overestimate the amount of TTS from intermittent exposures such as sonars and impulsive sources.

- The amount of observed TTS tends to decrease with increasing time following the exposure; however, the relationship is not monotonic (*i.e.*, increasing exposure does not always increase TTS). The time required for complete recovery of hearing depends on the magnitude of the initial shift; for relatively small shifts recovery may be complete in a few minutes, while large shifts (*e.g.*, approximately 40 dB) may require several days for recovery. Under many circumstances TTS recovers linearly with the logarithm of time (Finneran *et al.*, 2010a, 2010b; Finneran and Schlundt, 2013; Kastelein *et al.*, 2012a; Kastelein *et al.*, 2012b; Kastelein *et al.*, 2013a; Kastelein *et al.*, 2014b; Kastelein *et al.*, 2014c; Popov *et al.*, 2011; Popov *et al.*, 2013; Popov *et al.*, 2014). This means that for each doubling of recovery time, the amount of TTS will decrease by the same amount (*e.g.*, 6 dB recovery per doubling of time).

Nachtigall *et al.* (2018) and Finneran (2018) describe the measurements of

hearing sensitivity of multiple odontocete species (bottlenose dolphin, harbor porpoise, beluga, and false killer whale) when a relatively loud sound was preceded by a warning sound. These captive animals were shown to reduce hearing sensitivity when warned of an impending intense sound. Based on these experimental observations of captive animals, the authors suggest that wild animals may dampen their hearing during prolonged exposures or if conditioned to anticipate intense sounds. Finneran (2018) recommends further investigation of the mechanisms of hearing sensitivity reduction in order to understand the implications for interpretation of existing TTS data obtained from captive animals, notably for considering TTS due to short duration, unpredictable exposures.

Marine mammal hearing plays a critical role in communication with conspecifics and in interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.*, recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious similar to those discussed in auditory masking, below. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts if it were in the same frequency band as the necessary vocalizations and of a severity that impeded communication. The fact that animals exposed to high levels of sound that would be expected to result in this physiological response would also be expected to have behavioral responses of a comparatively more severe or sustained nature is potentially more significant than the simple existence of a TTS. However, it is important to note that TTS could occur due to longer exposures to sound at lower levels so that a behavioral response may not be elicited.

Depending on the degree and frequency range, the effects of AUD INJ on an animal could also range in severity, although it is considered generally more serious than TTS because it is a permanent condition (Reichmuth *et al.*, 2019). Of note, reduced hearing sensitivity as a simple

function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.*, 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without some cost to the animal.

As the amount of research on hearing sensitivity has grown, so, too, has the understanding that marine mammals may be able to self-mitigate, or protect, against noise-induced hearing loss. An animal may learn to reduce or suppress their hearing sensitivity when warned of an impending intense sound exposure, or if the duty cycle of the sound source is predictable (Finneran, 2018; Finneran *et al.*, 2024; Nachtigall and Supin, 2013, 2014, 2015; Nachtigall *et al.*, 2015; Nachtigall *et al.*, 2016a, 2018; Nachtigall *et al.*, 2016b). This has been shown with several species, including the false killer whale (Nachtigall and Supin, 2013), bottlenose dolphin (Finneran, 2018; Nachtigall and Supin, 2014, 2015; Nachtigall *et al.*, 2016b), beluga whale (Nachtigall *et al.*, 2015), and harbor porpoise (Nachtigall *et al.*, 2016a). Additionally, Finneran *et al.* (2023) and Finneran *et al.* (2024) found that odontocetes that had participated in TTS experiments in the past could have learned from that experience and subsequently protected their hearing during new sound exposure experiments.

Behavioral Responses

Behavioral responses to sound are highly variable and context-specific (Nowacek *et al.*, 2007; Southall *et al.*, 2007; Southall *et al.*, 2019). Many different variables can influence an animal's perception of and response to (nature and magnitude) an acoustic event. An animal's prior experience with a sound or sound source affects whether it is less likely (habituation, self-mitigation) or more likely (sensitization) to respond to certain sounds in the future (animals can also be innately predisposed to respond to certain sounds in certain ways) (Southall *et al.*, 2007; Southall *et al.*, 2016; Finneran, 2018; Finneran *et al.*, 2024; Nachtigall & Supin, 2013, 2014, 2015; Nachtigall *et al.*, 2015; Nachtigall *et al.*, 2016a, 2018; Nachtigall *et al.*, 2016b). Related to the sound itself, the perceived proximity of the sound, bearing of the sound (approaching vs. retreating), the similarity of a sound to biologically relevant sounds in the animal's environment (*i.e.*, calls of predators, prey, or conspecifics), familiarity of the sound, and navigational constraints may affect the way an animal responds to the sound (Ellison *et al.*, 2011; Southall *et al.*,

2007, DeRuiter *et al.*, 2013, Southall *et al.*, 2021; Wartzok *et al.*, 2003). Individuals (of different age, gender, reproductive status, *etc.*) among most populations will have variable hearing capabilities, and differing behavioral sensitivities to sounds that will be affected by prior conditioning, experience, and current activities of those individuals. Southall *et al.* (2007) and Southall *et al.* (2021) have developed and subsequently refined methods developed to categorize and assess the severity of acute behavioral responses, considering impacts to individuals that may consequently impact populations. Often, specific acoustic features of the sound and contextual variables (*i.e.*, proximity, duration, or recurrence of the sound or the current behavior that the marine mammal is engaged in or its prior experience), as well as entirely separate factors such as the physical presence of a nearby vessel, may be more relevant to the animal's response than the received level alone.

Studies by DeRuiter *et al.* (2012) 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. Another study by DeRuiter *et al.* (2013) examined behavioral responses of goose-beaked whales to MF sonar and found that whales responded strongly at low received levels (89–127 dB re 1 μ Pa) by ceasing normal fluking and echolocation, swimming rapidly away, and extending both dive duration and subsequent non-foraging intervals when the sound source was 2.1–5.9 mi (3.4–9.5 km) away. Importantly, this study also showed that whales exposed to a similar range of received levels (78–106 dB re 1 μ Pa) from distant sonar exercises 73.3 mi (118 km away) did not elicit such responses, suggesting that context may moderate responses.

Ellison *et al.* (2012) outlined an approach to assessing the effects of sound on marine mammals that incorporates contextual-based factors. The authors recommend considering not just the received level of sound, but also the activity the animal is engaged in at the time the sound is received, the nature and novelty of the sound (*i.e.*, is this a new sound from the animal's perspective), and the distance between the sound source and the animal. They submit that this “exposure context,” as described, greatly influences the type of behavioral response exhibited by the animal. Forney *et al.* (2017) also point out that an apparent lack of response (*e.g.*, no displacement or avoidance of a sound source) may not necessarily mean

there is no cost to the individual or population, as some resources or habitats may be of such high value that animals may choose to stay, even when experiencing stress or hearing loss. Forney *et al.* (2017) recommend considering both the costs of remaining in an area of noise exposure such as TTS, PTS, or masking, which could lead to an increased risk of predation or other threats or a decreased capability to forage, and the costs of displacement, including potential increased risk of vessel strike, increased risks of predation or competition for resources, or decreased habitat suitability for foraging, resting, or socializing. This sort of contextual information is challenging to predict with accuracy for ongoing activities that occur over large spatial and temporal expanses. However, distance is one contextual factor for which data exist to quantitatively inform a take estimate, and the method for predicting Level B harassment in this rule does consider distance to the source. Other factors are often considered qualitatively in the analysis of the likely consequences of sound exposure, where supporting information is available.

Friedlaender *et al.* (2016) provided the first integration of direct measures of prey distribution and density variables incorporated into across-individual analyses of behavior responses of blue whales to sonar, and demonstrated a five-fold increase in the ability to quantify variability in blue whale diving behavior. These results illustrate that responses evaluated without such measurements for foraging animals may be misleading, which again illustrates the context-dependent nature of the probability of response.

Exposure of marine mammals to sound sources can result in, but is not limited to, no response or any of the following observable responses: increased alertness; orientation or attraction to a sound source; vocal modifications; cessation of feeding; cessation of social interaction; alteration of movement or diving behavior; habitat abandonment (temporary or permanent); and, in severe cases, panic, flight, stampede, or stranding, potentially resulting in death (Southall *et al.*, 2007). A review of marine mammal responses to anthropogenic sound was first conducted by Richardson (1995). More recent reviews (Nowacek *et al.*, 2007; DeRuiter *et al.*, 2012 and 2013; Ellison *et al.*, 2012; Gomez *et al.*, 2016) address studies conducted since 1995 and focused on observations where the received sound level of the exposed marine mammal(s) was known or could be estimated. Gomez *et al.* (2016)

conducted a review of the literature considering the contextual information of exposure in addition to received level and found that higher received levels were not always associated with more severe behavioral responses and vice versa. Southall *et al.* (2016) state that results demonstrate that some individuals of different species display clear yet varied responses, some of which have negative implications, while others appear to tolerate high levels, and that responses may not be fully predictable with simple acoustic exposure metrics (*e.g.*, received sound level). Rather, the authors state that differences among species and individuals along with contextual aspects of exposure (*e.g.*, behavioral state) appear to affect response probability (Southall *et al.*, 2019). The following subsections provide examples of behavioral responses to stressors that provide an idea of the variability in responses that would be expected given the differential sensitivities of marine mammal species to sound and the wide range of potential acoustic sources to which a marine mammal may be exposed. Behavioral responses that could occur for a given sound exposure should be determined from the literature that is available for each species (see section D.6.5 (Behavioral Reactions) of the 2024 AFTT Draft Supplemental EIS/OEIS for a comprehensive list of behavioral studies and species-specific findings), or extrapolated from closely related species when no information exists, along with contextual factors.

Responses Due to Sonar and Other Transducers—

Mysticetes responses to sonar and other duty-cycled tonal sounds are dependent upon the characteristics of the signal, behavioral state of the animal, sensitivity and previous experience of an individual, and other contextual factors including distance of the source, movement of the source, physical presence of vessels, time of year, and geographic location (Goldbogen *et al.*, 2013; Harris *et al.*, 2019a; Harris *et al.*, 2015; Martin *et al.*, 2015; Sivle *et al.*, 2015b). For example, a behavioral response study (BRS) in Southern California demonstrated that individual behavioral state was critically important in determining response of blue whales to Navy sonar. In this BRS, some blue whales engaged in deep (greater than 164 ft (50 m)) feeding behavior had greater dive responses than those in shallow feeding or non-feeding conditions, while some blue whales that were engaged in shallow feeding behavior demonstrated

no clear changes in diving or movement even when received levels were high (approximately 160 dB re 1 μ Pa) from exposures to 3–4 kHz sonar signals, while others showed a clear response at exposures at lower received level of sonar and pseudorandom noise (Goldbogen *et al.*, 2013). Generally, behavioral responses were brief and of low to moderate severity, and the whales returned to baseline behavior shortly after the end of the acoustic exposure (DeRuiter *et al.*, 2017; Goldbogen *et al.*, 2013; Southall *et al.*, 2019c). To better understand the context to these behavioral responses, Friedlaender *et al.* (2016) mapped the prey field of the deep-diving blue whales and found that the response to sound was more apparent for individuals engaged in feeding than those that were not. The probability of a moderate behavioral response increased when the source was closer for these foraging blue whales, although there was a high degree of uncertainty in that relationship (Southall *et al.*, 2019b). In the same BRS, none of the tagged fin whales demonstrated more than a brief or minor response regardless of their behavioral state (Harris *et al.*, 2019a). The fin whales were exposed to both mid-frequency simulated sonar and pseudorandom noise of similar frequency, duration, and source level. They were less sensitive to disturbance than blue whales, with no significant differences in response between behavioral states or signal types. The authors rated responses as low-to-moderate severity with no negative impact to foraging success (Southall *et al.*, 2023).

Similarly, while the rates of foraging lunges decrease in humpback whales due to sonar exposure, there was variability in the response across individuals, with one animal ceasing to forage completely and another animal starting to forage during the exposure (Sivle *et al.*, 2016). In addition, almost half of the animals that exhibited avoidance behavior were foraging before the exposure, but the others were not; the animals that exhibited avoidance behavior while not feeding responded at a slightly lower received level and greater distance than those that were feeding (Wensveen *et al.*, 2017). These findings indicate that the behavioral state of the animal plays a role in the type and severity of a behavioral response. Henderson *et al.* (2019) examined tagged humpback whale dive and movement behavior, including individuals incidentally exposed to Navy sonar during training activities, at the Pacific Missile Range Facility off

Kaua'i, Hawaii. Tracking data showed that, regardless of exposure to sonar, individual humpbacks spent limited time, no more than a few days, in the vicinity of Kaua'i. Potential behavioral responses due to sonar exposure were limited and may have been influenced by breeding and social behaviors. Martin *et al.* (2015) found that the density of calling minke whales was reduced during periods of Navy training involving sonar relative to the periods before training began and increased again in the days following the completion of training activities. The responses of individual whales could not be assessed, so in this case it is unknown whether the decrease in calling animals indicated that the animals left the range or simply ceased calling. Harris *et al.* (2019b) utilized acoustically generated minke whale tracks to statistically demonstrate changes in the spatial distribution of minke whale acoustic presence before, during, and after surface ship MFAS training. The spatial distribution of probability of acoustic presence was different in the “during” phase compared to the “before” phase, and the probability of presence at the center of ship activity during MFAS training was close to zero for both years. The “after” phases for both years retained lower probabilities of presence suggesting the return to baseline conditions may take more than five days. The results show a clear spatial redistribution of calling minke whales during surface ship MFAS training, however a limitation of passive acoustic monitoring is that one cannot conclude if the whales moved away, went silent, or a combination of the two.

Building on this work, Durbach *et al.* (2021) used the same data and determined that individual minke whales tended to be in either a fast or slow movement behavior state while on the missile range, where whales tended to be in the slow state in baseline or before periods but transitioned into the fast state with more directed movement during sonar exposures. They also moved away from the area of sonar activity on the range, either to the north or east depending on where the activity was located; this explains the spatial redistribution found by Harris *et al.* (2019b). Minke whales were also more likely to stop calling when in the fast state, regardless of sonar activity, or when in the slow state during sonar activity (Durbach *et al.*, 2021). Similarly, minke whale detections were reduced or ceased altogether during periods of sonar use off Jacksonville, Florida, (Norris *et al.*, 2012; Simeone *et*

al., 2015; U.S. Department of the Navy, 2013), especially with an increased ping rate (Charif *et al.*, 2015).

Odontocetes have varied, context-dependent behavioral responses to sonar and other transducers. Much of the research on odontocetes has been focused on understanding the impacts of sonar and other transducers on beaked whales because they were hypothesized to be more susceptible to behavioral disturbance after several strandings of beaked whales in which military MFAS was identified as a contributing factor (see *Stranding and Mortality* section). Subsequent BRSs have shown beaked whales are likely more sensitive to disturbance than most other cetaceans. Many species of odontocetes have been studied during BRSs, including Blainville's beaked whale, goose-beaked whale, Baird's beaked whale, northern bottlenose whale, harbor porpoise, pilot whale, killer whale, sperm whale, false killer whale, melon-headed whale, bottlenose dolphin, rough-toothed dolphin, Risso's dolphin, Pacific white-sided dolphin, and Commerson's dolphin. Observed responses by Blainville's beaked whales, goose-beaked whales, Baird's beaked whales, and northern bottlenose whales (the largest of the beaked whales), to mid-frequency sonar sounds include cessation of clicking, decline in group vocal periods, termination of foraging dives, changes in direction to avoid the sound source, slower ascent rates to the surface, longer deep and shallow dive durations, and other unusual dive behaviors (DeRuiter *et al.*, 2013b; Hewitt *et al.*, 2022; Jacobson *et al.*, 2022; McCarthy *et al.*, 2011; Miller *et al.*, 2015; Moretti *et al.*, 2014; Southall *et al.*, 2011; Stimpert *et al.*, 2014; Tyack *et al.*, 2011).

During a BRS in Southern California, a tagged Baird's beaked whale exposed to simulated MFA sonar within 3 km increased swim speed and modified its dive behavior (Stimpert *et al.*, 2014). One goose-beaked whale was also incidentally exposed to real Navy sonar located over 62.1 mi (100 km) away in addition to the source used in the controlled exposure study, and the authors did not detect similar responses at comparable received levels. Received levels from the MFA sonar signals from the controlled (2.1 to 5.9 mi (3.4 to 9.5 km)) exposures were calculated as 84–144 dB re 1 μ Pa, and incidental (73.3 mi (118 km)) exposures were calculated as 78–106 dB re 1 μ Pa, indicating that context of the exposures (*e.g.*, source proximity, controlled source ramp-up) may have been a significant factor in the responses to the simulated sonars (DeRuiter *et al.*, 2013b).

Long-term tagging work during the same BRS demonstrated that the longer duration dives considered a behavioral response by DeRuiter *et al.* (2013b) fell within the normal range of dive durations found for eight tagged goose-beaked whales on the Southern California Offshore Range (Schorr *et al.*, 2014). However, the longer inter-deep dive intervals found by DeRuiter *et al.* (2013b), which were among the longest found by Schorr *et al.* (2014) and Falcone *et al.* (2017), may indicate a response to sonar. Williams *et al.* (2017) note that during normal deep dives or during fast swim speeds, beaked whales and other marine mammals use strategies to reduce their stroke rates (e.g., leaping, wave surfing when swimming, interspersing glides between bouts of stroking when diving). The authors determined that in the post-exposure dives by the tagged goose-beaked whales described in DeRuiter *et al.* (2013b), the whales ceased gliding and swam with almost continuous strokes. This change in swim behavior was calculated to increase metabolic costs about 30.5 percent and increase the amount of energy expending on fast swim speeds from 27–59 percent of their overall energy budget. This repartitioning of energy was detected in the model up to 1.7 hours after the single sonar exposure. Therefore, while the overall post-exposure dive durations were similar, the metabolic energy calculated by Williams *et al.* (2017) was higher. However, Southall *et al.* (2019a) found that prey availability was higher in the western area of the Southern California Offshore Range where goose-beaked whales preferentially occurred, while prey resources were lower in the eastern area and moderate in the area just north of the Range. This high prey availability may indicate that goose-beaked whales need fewer foraging dives to meet energy requirements than would be needed in another area with fewer resources.

During a BRS in Norway, northern bottlenose whales avoided a sonar sound source over a wide range of distances (0.5 to 17.4 mi (0.8 to 28 km)) and estimated avoidance thresholds ranging from received SPLs of 117 to 126 dB re 1 μ Pa. The behavioral response characteristics and avoidance thresholds were comparable to those previously observed in beaked whale studies; however, researchers did not observe an effect of distance on behavioral response and found that onset and intensity of behavioral response were better predicted by received SPL. There was one instance where an individual northern bottlenose

whale approached the vessel, circled the sound source (source level was only 122 dB re 1 μ Pa), and resumed foraging after the exposure. Conversely, one northern bottlenose whale exposed to a sonar source was documented performing the longest and deepest dive on record for the species, and continued swimming away from the source for more than 7 hours (Miller *et al.*, 2015; Siegal *et al.*, 2022; Wensveen *et al.*, 2019).

Research on Blainville's beaked whales at the Atlantic Undersea Test and Evaluation Center (AUTEK) range has shown that individuals move off-range during sonar use, only returning after the cessation of sonar transmission (Boyd *et al.*, 2009; Henderson *et al.*, 2015; Jones-Todd *et al.*, 2021; Manzano-Roth *et al.*, 2022; Manzano-Roth *et al.*, 2016; McCarthy *et al.*, 2011; Tyack *et al.*, 2011). Five Blainville's beaked whales estimated to be within 1.2 to 18 mi (2 to 29 km) of the AUTEK range at the onset of active sonar were displaced a maximum of 17.4 to 42.3 mi (28 to 68 km) after moving away from the range, although one individual did approach the range during active sonar use. Researchers found a decline in deep dives at the onset of the training and an increase in time spent on foraging dives as whales moved away from the range. Predicted received levels at which presumed responses were observed were comparable to those previously observed in beaked whale studies. Acoustic data indicated that vocal periods were detected on the range within 72 hours after training ended (Joyce *et al.*, 2019). However, Blainville's beaked whales have been documented to remain on-range to forage throughout the year (Henderson *et al.*, 2016), indicating the AUTEK range may be a preferred foraging habitat regardless of the effects of active sonar noise, or it could be that there are no long-term consequences of the sonar activity. In the SOCAL Range Complex, researchers conducting photo-identification studies have identified approximately 100 individual goose-beaked whales, with 40 percent having been seen in one or more prior years, with re-sightings up to 7 years apart, indicating a possible on-range resident population (Falcone & Schorr, 2014; Falcone *et al.*, 2009).

The probability of Blainville's beaked whale group vocal periods on the Pacific Missile Range Facility were modeled during periods of (1) no naval activity, (2) naval activity without hull-mounted MFA sonar, and (3) naval activity with hull-mounted MFA sonar (Jacobson *et al.*, 2022). At a received level of 150 dB re 1 μ Pa RMS, the probability of detecting a group vocal

period during MFA sonar use decreased by 77 percent compared to periods when general training activity was ongoing, and by 87 percent compared to baseline (no naval activity) conditions. Jacobsen *et al.* (2022) found a greater reduction in probability of a group vocal period with MFA sonar than observed in a prior study of the same species at the AUTEK range (Moretti *et al.*, 2014), which may be due to the baseline period in the AUTEK study including naval activity without MFA sonar, potentially lowering the baseline group vocal period activity in that study, or due to differences in the residency of the populations at each range.

Stanistreet *et al.* (2022) used passive acoustic recordings during a multinational navy activity to assess marine mammal acoustic presence and behavioral response to especially long bouts of sonar lasting up to 13 consecutive hours, occurring repeatedly over 8 days (median and maximum SPL = 120 dB and 164 dB). Goose-beaked whales and sperm whales substantially reduced how often they produced clicks during sonar, indicating a decrease or cessation in foraging behavior. Few previous studies have shown sustained changes in foraging or displacement of sperm whales, but there was an absence of sperm whale clicks for 6 consecutive days of sonar activity. Sperm whales returned to baseline levels of clicks within days after the activity, but beaked whale detection rates remained low even 7 days after the exercise. In addition, there were no detections from a *Mesoplodon* beaked whale species within the area during, and at least 7 days after, the sonar activity. Clicks from northern bottlenose whales and Sowerby's beaked whales were also detected but were not frequent enough at the recording site used to compare clicks between baseline and sonar conditions.

Goose-beaked whale behavioral responses (i.e., deep and shallow dive durations, surface interval durations, inter-deep dive intervals) on the Southern California Anti-Submarine Warfare Range were modeled against predictor values that included helicopter dipping sonar, mid-power MFA sonar and hull-mounted, high-power MFA sonar along with other non-MFA sonar predictors (Falcone *et al.*, 2017). They found both shallow and deep dive durations increased as the proximity to both mid- and high-powered sources decreased, and found that surface intervals and inter-deep dive intervals increased in the presence of both types of sonars (helicopter dipping and hull-mounted), although surface intervals shortened during

periods without MFA sonar. Proximity of source and receiver were important considerations, as the responses to the mid-power MFA sonar at closer ranges were comparable to the responses to the higher source level vessel sonar, as was the context of the exposure. Helicopter dipping sonars are shorter duration and randomly located, therefore more difficult to predict or track by beaked whales and potentially more likely to elicit a response, especially at closer distances (3.7 to 15.5 mi (6 to 25 km))(Falcone *et al.*, 2017). Sea floor depths and quantity of light (*i.e.*, lunar cycle) are also important variables to consider in BRSs, as goose-beaked whale foraging dive depth increased with sea floor depth (maximum 6,561.7 ft (2,000 m)) and the amount of time spent at foraging depths (and likely foraging) was greater at night (likely avoiding predation by staying deeper during periods of bright lunar illumination), although they spent more time near the surface during the night, as well, particularly on dark nights with little moonlight, (Barlow *et al.*, 2020). Sonar occurred during 10 percent of the dives studied and had little effect on the resulting dive metrics. Watwood *et al.* (2017) found that the longer the duration of a sonar event, the greater reduction in detected goose-beaked whale group dives and, as helicopter dipping events occurred more frequently but with shorter durations than periods of hull-mounted sonar, when looking at the number of detected group dives there was a greater reduction during periods of hull-mounted sonar than during helicopter dipping sonar. DiMarzio *et al.* (2019) also found that group vocal periods (*i.e.*, clusters of foraging pulses), on average, decreased during sonar events on the Southern California Anti-Submarine Warfare Range, though the decline from before the event to during the event was significantly less for helicopter dipping events than hull-mounted events, and there was no difference in the magnitude of the decline between vessel-only events and events with both vessels and helicopters. Manzano-Roth *et al.* (2022) analyzed long-term passive acoustic monitoring data from the Pacific Missile Range Facility in Kaua'i, Hawaii, and found beaked whales reduced group vocal periods during submarine command course events and remained low for a minimum of 3 days after the MFA sonar activity.

Harbor porpoise behavioral responses have been researched extensively using acoustic deterrent and acoustic harassment devices; however, BRSs using sonar are limited. Kastelein *et al.*

(2018b) found harbor porpoises did not respond to low-duty cycle mid-frequency sonar tones (3.5–4.1 kHz at 2.7 percent duty cycle; *e.g.*, one tone per minute) at any received level, but one individual did respond (*i.e.*, increased jumping, increased respiration rates) to high-duty cycle sonar tones (3.5–4.1 kHz at 96 percent duty cycle; *e.g.*, continuous tone for almost a minute).

Behavioral responses by odontocetes (other than beaked whales and harbor porpoises) to sonar and other transducers include horizontal avoidance, reduced breathing rates, changes in behavioral state, changes in dive behavior (Antunes *et al.*, 2014; Isojunno *et al.*, 2018; Isojunno *et al.*, 2017; Isojunno *et al.*, 2020; Miller, 2012; Miller *et al.*, 2011; Miller *et al.*, 2014), and, in one study, separation of a killer whale calf from its group (Miller *et al.*, 2011). Some species of dolphin (*e.g.*, bottlenose, spotted, spinner, Clymene, Pacific white-sided, rough-toothed) are frequently documented bowriding with vessels and the drive to engage in bowriding, whether for pleasure or energetic savings (Fiori *et al.*, 2024) may supersede the impact of associated sonar noise (Würsig *et al.*, 1998).

In controlled exposure experiments on captive odontocetes, Houser *et al.*, (2013a) recorded behavioral responses from bottlenose dolphins with 3 kHz sonar-like tones between 115–185 dB re 1 μ Pa, and individuals across 10 trials demonstrated a 50 percent probability of response at 172 dB re 1 μ Pa. Multiple studies have been conducted on bottlenose dolphins and beluga whales to measure TTS (Finneran *et al.*, 2003a; Finneran *et al.*, 2001; Finneran *et al.*, 2005; Finneran & Schlundt, 2004; Schlundt *et al.*, 2000). During these studies, when individuals were presented with 1-second tones up to 203 dB re 1 μ Pa, responses included changes in respiration rate, fluke slaps, and a refusal to participate or return to the location of the sound stimulus, including what appeared to be deliberate attempts by animals to avoid a sound exposure or to avoid the location of the exposure site during subsequent tests (Finneran *et al.*, 2002; Schlundt *et al.*, 2000). Bottlenose dolphins exposed to more intense 1-second tones exhibited short-term changes in behavior above received levels of 178–193 dB re 1 μ Pa, and beluga whales did so at received levels of 180–196 dB re 1 μ Pa and above.

While several opportunistic observations of odontocete (other than beaked whales and harbor porpoises) responses have been recorded during previous Navy activities and BRSs that employed sonar and sonar-like sources,

it is difficult to definitively attribute responses of non-focal species to sonar exposure. Responses range from no response to potential highlight-impactful responses, such as the separation of a killer whale calf from its group (Miller *et al.*, 2011). This may be due, in part, to the variety of species and sensitivities of the odontocete taxonomic group, as well as the breadth of study types conducted and field observations, leading to the assessment of both contextually driven and dose-based responses. The available data indicate exposures to sonar in close proximity and with multiple vessels approaching an animal likely lead to higher-level responses by most odontocete species, regardless of received level or behavioral state. However, when sources are further away and moving in variable directions, behavioral responses are likely driven by behavioral state, individual experience, or species-level sensitivities, as well as exposure duration and received level, with the likelihood of response increasing with increased received levels. As such, it is expected odontocete behavioral responses to sonar and other transducers will vary by species, populations, and individuals, and long-term consequences or population-level effects are likely dependent upon the frequency and duration of the exposure and resulting behavioral response.

Pinniped behavioral response to sonar and other transducers is context-dependent (*e.g.*, Hastie *et al.*, 2014; Southall *et al.*, 2019). All studies on pinniped response to sonar thus far have been limited to captive animals, though, based on exposures of wild pinnipeds to vessel noise and impulsive sounds (see Responses Due to Vessel Noise section and Responses Due to Impulsive Noise section below), pinnipeds may only respond strongly to military sonar that is in close proximity or approaching an animal. Kvadsheim *et al.* (2010b) found that captive hooded seals exhibited avoidance response to sonar signals between 1–7 kHz (160 to 170 dB re 1 μ Pa rms) by reducing diving activity, rapid surface swimming away from the source, and eventually moving to areas of least SPL. However, the authors noted a rapid adaptation in behavior (passive surface floating) during the second and subsequent exposures, indicating a level of habituation within a short amount of time. Kastelein *et al.* (2015c) exposed captive harbor seals to three different sonar signals at 25 kHz with variable waveform characteristics and duty cycles and found individuals responded

to a frequency modulated signal at received levels over 137 dB re 1 μ Pa by hauling out more, swimming faster, and raising their heads or jumping out of the water. However, seals did not respond to a continuous wave or combination signals at any received level (up to 156 dB re 1 μ Pa). Houser *et al.* (2013a) conducted a study to determine behavioral responses of captive California sea lions to MFA sonar at various received levels (125 to 185 dB re 1 μ Pa). They found younger animals (less than 2 years old) were more likely to respond than older animals and responses included increased respiration rate, increased time spent submerged, refusal to participate in a repetitive task, and hauling out. Most responses below 155 dB re 1 μ Pa were changes in respiration, while more severe responses (*i.e.*, refusing to participate, hauling out) began to occur over 170 dB re 1 μ Pa, and many of the most severe responses came from the young sea lions.

Responses Due to Impulsive Noise—

Impulsive signals have a rapid rise time and higher instantaneous peak pressure than other signal types, particularly at close range, which means they are more likely to cause startle or avoidance responses. At long distances, however, the rise time increases as the signal duration lengthens (similar to a “ringing” sound), making the impulsive signal more similar to a non-impulsive signal (Hastie *et al.*, 2019; Martin *et al.*, 2020). Behavioral responses from explosive sounds are likely to be similar to responses studied for other impulsive noise, such as those produced by air guns and impact pile driving. Data on behavioral responses to impulsive sound sources are limited across all marine mammal groups, with only a few studies available for mysticetes and odontocetes.

Mysticetes have varied responses to impulsive sound sources, including avoidance, aggressive directed movement towards the source, reduced surface intervals, altered swimming behavior, and changes in vocalization rates (Gordon *et al.*, 2003; McCauley *et al.*, 2000a; Richardson *et al.*, 1985; Southall *et al.*, 2007). Studies have been conducted on many baleen whale species, including gray, humpback, blue, fin and bowhead whales; it is assumed that these responses are representative of all baleen whale species. The behavioral state of the whale seems to be an integral part of whether the animal responds and how they respond, as does the location and movement of the sound source, more than the received level of the sound.

If an individual is engaged in migratory behavior, it may be more likely to respond to impulsive noise, and some species may be more sensitive than others. Migrating gray whales showed avoidance responses to seismic vessels at received levels between 164 and 190 dB re 1 μ Pa (Malme *et al.*, 1986; Malme *et al.*, 1988). In one study, McCauley *et al.* (1998) found that migrating humpback whales in Australia showed avoidance behavior at ranges of 3.1–5 mi (5–8 km) from a seismic array during observational studies and controlled exposure experiments, and another study found humpback whales in Australia decreased their dive times and reduced their swimming speeds (Dunlop *et al.*, 2015). However, when comparing received levels and behavioral responses between air gun ramp-up versus constant noise level of air guns, humpback whales did not change their dive behavior but did deviate from their predicted heading and decreased their swim speeds, deviating more during the constant noise source trials but reducing swim speeds more during ramp-up trials (Dunlop *et al.*, 2016). In both cases, there was no dose-response relationship with the received level of the air gun noise, and similar responses were observed in control trials without air guns (vessel movement remained constant across trials), so some responses may have been due to vessel presence and not received level from the air guns. Social interactions between males and mother-calf pairs were reduced in the presence of vessels towing seismic air gun arrays, regardless of whether the air guns were active or not; which indicates that it was likely the presence of vessels (rather than the impulsive noise generated from active air guns) that affected humpback whale behavior (Dunlop *et al.*, 2020).

Proximity of the impulsive source is another important factor to consider when assessing the potential for behavioral responses in marine mammals. Dunlop *et al.* (2017) found that groups of humpback whales were more likely to avoid a smaller air gun array at closer proximity than a larger air gun array, despite the same received level, showing the difference in response between arrays has more to do with the combined effects of received level and source proximity. In this study, responses were varied and generally small, with short-term course deviations of about 1,640 ft (500 m). Deviations on bowhead whales have shown they may be more sensitive than other species to impulsive noise, as individuals have shown clear changes

in diving and breathing patterns up to 45.4 mi (73 km) from seismic vessels with received levels as low as 125 dB re 1 μ Pa (Malme *et al.* 1988). Richardson *et al.* (1995b) documented bowhead whales exhibiting avoidance behaviors at a distance of more than 12.4 mi (20 km) from seismic vessels when received levels were as low as 120 dB re 1 μ Pa, although most did not show active avoidance until 5 mi (8 km) from the source. Although bowhead whales may avoid the area around seismic surveys, from 3.7 to 5 mi (6 to 8 km) (Koski and Johnson 1987, as cited in Gordon *et al.*, 2003) out to 12.4 or 18.6 mi (20 or 30 km) (Richardson *et al.*, 1999), a study by Robertson *et al.* (2013) supports the idea that behavioral responses are contextually dependent, and that during seismic operations, bowhead whales may be less “available” for counting due to alterations in dive behavior but that they may not have completely vacated the area.

In contrast, noise from seismic surveys was not found to impact feeding behavior or exhalation rates in western gray whales while resting or diving off the coast of Russia (Gailey *et al.*, 2007; Yazvenko *et al.*, 2007); however, the increase in vessel traffic associated with surveys and the proximity of the vessels to the whales did affect the orientation of the whales relative to the vessels and shortened their dive-surface intervals (Gailey *et al.*, 2016). They also increased their speed and distance from the noise source and have been documented in one case study swimming towards shore to avoid an approaching seismic vessel (Gailey *et al.*, 2022). Todd *et al.* (1996) found no clear short-term behavioral responses by foraging humpbacks to explosions associated with construction operations in Newfoundland but did see a trend of increased rates of net entanglement closer to the noise source, possibly indicating a reduction in net detection associated with the noise through masking or TTS. Distributions of fin and minke whales were modeled with multiple environmental variables and with the occurrence or absence of seismic surveys, and no evidence of a decrease in sighting rates relative to seismic activity was found for either species (Vilela *et al.*, 2016). Their distributions were driven entirely by environmental variables, particularly those linked to prey, including warmer sea surface temperatures, higher chlorophyll-a values, and higher photosynthetically available radiation (a measure of primary productivity). Sighting rates based on over 8,000 hours of baleen and toothed whale survey data were compared on regular vessel

surveys versus both active and passive periods of seismic surveys (Kavanagh *et al.*, 2019). Models of sighting numbers were developed, and it was determined that baleen whale sightings were reduced by 88 percent during active and 87 percent during inactive phases of seismic surveys compared to regular surveys. These results seemed to occur regardless of geographic location of the survey; however, when only comparing active versus inactive periods of seismic surveys the geographic location did seem to affect the change in sighting rates.

Mysticetes seem to be the most behaviorally sensitive taxonomic group of marine mammals to impulsive sound sources, with possible avoidance responses occurring out to 18.6 mi (30 km) and vocal changes occurring in response to sounds over 62.1 mi (100 km) away. However, they are also the most studied taxonomic group, yielding a larger sample size and greater chance of finding behavioral responses to impulsive noise. Also, their responses appear to be behavior-dependent, with most avoidance responses occurring during migration behavior and little observed response during feeding behavior. These response patterns are likely to hold true for impulsive sources used by the Action Proponents; however, their impulsive sources would largely be stationary (*e.g.*, explosives fired at a fixed target, small air guns), and short term (hours rather than days or weeks) versus those in the aforementioned studies, so responses would likely occur in closer proximity to animals or not at all.

Odontocete responses to impulsive noise are not well studied and the majority of data have come from seismic (*i.e.*, air gun) surveys, pile driving, and construction activities, while only a few studies have been done to understand how explosive sounds impact odontocetes. What data are available show they may be less sensitive than mysticetes to impulsive sound and that responses occur at closer distances. This may be due to the predominance of low-frequency sound associated with impulsive sources that propagates across long distances and overlaps with the range of best hearing for mysticetes but is below that range for odontocetes. Even harbor porpoises—shown to be highly sensitive to most sound sources, avoiding both stationary (*e.g.*, pile driving) and moving (*e.g.*, seismic survey vessels) impulsive sound sources out to approximately 12.4 mi (20 km) (*e.g.*, Haelters *et al.*, 2014; Pirotta *et al.*, 2014)—have short-term responses, returning to an area within hours upon cessation of the impulsive noise.

Although odontocetes are generally considered less sensitive, impulsive noise does impact toothed whales in a variety of ways. In one study, dolphin detections were compared during 30 second periods before, during, and after underwater detonations near naval mine neutralization exercises in VACAPES. Lammers *et al.* (2017) found that within 30 seconds after an explosion, the immediate response was an increase in whistles compared to the 30 seconds before an explosion, and that there was a reduction in dolphin acoustic activity during the day of and day after the exercise within 3.7 mi (6 km). This held true only during daytime, as nighttime activity did not appear different than before the exercise, and two days after the explosion there seemed to be an increase in daytime acoustic activity, indicating dolphins may have returned to the area or resumed vocalizations (Lammers *et al.*, 2017). Weaver (2015) documented potential sex-based differences in behavioral responses to impulsive noise during construction (including blasting) of a bridge over a waterway commonly used by bottlenose dolphins, where females decreased area use and males continued using the area, perhaps indicating differential habitat uses.

When exposed to multiple impulses from a seismic air gun, Finneran *et al.* (2015) noted some captive dolphins turned their heads away from the source just before the impulse, indicating they could anticipate the timing of the impulses and may be able to behaviorally mediate the exposure to reduce their received level. Kavanagh *et al.* (2019) found sightings of odontocete whales decreased by 53 percent during active phases of seismic air gun surveys and 29 percent during inactive phases compared to control surveys. Heide-Jorgensen *et al.* (2021) found that narwhals exposed to air gun noise in an Arctic fjord were sensitive to seismic vessels over 6.8 mi (11 km) away, even though the small air gun source reached ambient noise levels around 1.9 mi (3 km) (source level of 231 dB re 1 μ Pa at 1 m) and large air gun source reached ambient noise levels around 6.2 mi (10 km) (source level 241 dB re 1 μ Pa at 1 m). Behavioral responses included changes in swimming speed and swimming direction away from the impulsive sound source and towards the shoreline. Changes in narwhal swimming speed was context-dependent and usually increased in the presence of vessels but decreased (a “freeze” response) in response to closely approaching air gun pulses (Heide-Jorgensen *et al.*, 2021). A

cessation of feeding was also documented, when the impulsive noise was less than 6.2 mi (10 km) away, although received SELs were less than 130 dB re 1 μ Pa²s for either air gun at this distance. However, because of this study’s research methods and criteria, the long-distance responses of narwhals may be conservatively estimating narwhals’ range to behavioral response.

Similarly, harbor porpoises seem to have an avoidance response to seismic surveys by leaving the area and decreasing foraging activity within 3.1–6.2 mi (5–10 km) of the survey, as evidenced by both a decrease in vocalizations near the survey and an increase in vocalizations at a distance (Pirotta *et al.*, 2014; Thompson *et al.*, 2013a). The response was short-term, as the porpoises returned to the area within 1 day upon cessation of the air gun operation. Sarnocińska *et al.* (2020) placed autonomous recording devices near oil and gas platforms and control sites to measure harbor porpoise acoustic activity during seismic air gun surveys. They noted a dose-response effect, with the lowest amount of porpoise activity closest to the seismic vessel (SEL_{single shot} = 155 dB re 1 μ Pa²s) and increasing porpoise activity out to 5 to 7.5 mi (8 to 12 km), and that distance to the seismic vessel, rather than sound level, was a better model predictor of porpoise activity. Overall porpoise activity in the seismic survey area was similar to the control sites (approximately 9.3 mi (15 km) apart), which may indicate the harbor porpoises were moving around the area to avoid the seismic vessel without leaving the area entirely.

Pile driving, another activity that produces impulsive sound, elicited a similar response in harbor porpoises. Benhemma-Le Gall *et al.*, 2021 examined changes in porpoise presence and foraging at two offshore windfarms between control (102–104 dB) and construction periods (155–161 dB), and found decreased presence (8–17 percent) and decreased foraging activity (41–62 percent) during construction periods. Porpoises were displaced up to 7.5 mi (12 km) away from pile driving and 2.5 mi (4 km) from construction vessels. Multiple studies have documented strong avoidance responses by harbor porpoises out to 12.4 mi (20 km) during pile driving activity, however, animals returned to the area after the activity stopped (Brandt *et al.*, 2011; Dähne *et al.*, 2014; Haelters *et al.*, 2014; Thompson *et al.*, 2010; Tougaard *et al.*, 2005; Tougaard *et al.*, 2009). When bubble curtains were deployed around pile driving, the avoidance distance appeared to be reduced by half

to 7.5 mi (12 km), and the animals returned to the area after approximately 5 hours rather than 1 day later (Dähne *et al.*, 2017). Further, Bergström *et al.* (2014) found that although there was a high likelihood of acoustic disturbance during wind farm construction (including pile driving), the impact was short-term, and Graham *et al.* (2019) found that the distance at which behavioral responses of harbor porpoises were likely decreased over the course of a construction project, suggesting habituation to impulsive pile-driving noise. Kastelein *et al.* (2013b) exposed captive harbor porpoises to impact pile driving noise, and found that respiration rates increased above 136 dB re 1 μ Pa (zero-to-peak), and at higher sound levels individuals jumped more frequently. When a single harbor porpoise was exposed to playbacks of impact pile driving noise with different bandwidths, Kastelein *et al.* (2022) found the animal's behavioral response (*i.e.*, swim speed, respiration rate, jumping) decreased with bandwidth.

Overall, odontocete behavioral responses to impulsive sound sources are likely species- and context-dependent. Responses might be expected close to a noise source, under specific behavioral conditions such as females with offspring, or for sensitive species such as harbor porpoises, while many other species demonstrate little to no behavioral response.

Pinnipeds seem to be the least sensitive marine mammal group to impulsive noise (Richardson *et al.*, 1995b; Southall *et al.*, 2007), and some may even experience hearing effects before exhibiting a behavioral response (Southall *et al.*, 2007). Some species may be more sensitive and are only likely to respond (*e.g.*, startling, entering the water, ceasing foraging) to loud impulsive noises in close proximity, but only for brief periods of time before returning to their previous behavior. Demarchi *et al.* (2012) exposed Steller sea lions to in-air explosive blasts, which resulted in increased activity levels and often caused re-entry into the water from a hauled out state. These responses were brief (lasting only minutes) and the animals returned to haul outs and there were no documented lasting behavioral impacts in the days following the explosions.

Ringed seals exhibited little or no response to pile driving noise with mean underwater levels of 157 dB re 1 μ Pa and in-air levels of 112 dB re 20 μ Pa (Blackwell *et al.*, 2004) while harbor seals vacated the area surrounding an active pile driving site at estimated received levels between 166–178 dB re

1 μ Pa SPL (peak to peak), returning within 2 hours of the completion of piling activities (Russell *et al.*, 2016). Wild-captured gray seals exposed to a startling treatment (sound with a rapid rise time and a 93 dB sensation level (the level above the animal's hearing threshold at that frequency) avoided a known food source, whereas animals exposed to a non-startling treatment (sound with a slower rise time but peaking at the same level) did not react or habituated during the exposure period (Götz and Janik, 2011). These results underscore the importance of the characteristics of an acoustic signal in predicting an animal's response of habituation.

Hastie *et al.* (2021) studied how the number and severity of avoidance events may be an outcome of marine mammal cognition and risk assessment using captive grey seals. Five individuals were given the option to forage in a high- or low-density prey patch while continuously exposed to silence or anthropogenic noise (pile driving or tidal turbine operation) playbacks (148 dB re 1 μ Pa at 1 m). For each trial, one prey patch was closer to the source, therefore having a higher received level in experimental exposures than the other prey patch. The authors found that foraging success was highest during silent periods and that the seals avoided both anthropogenic noises with higher received levels when the prey density was limited (low-density prey patch). The authors concluded the seals made foraging decisions within the trials based on both the energetic value of the prey patch (low-density corresponding to low energetic value, high-density corresponding to high energetic value), and the nature and location of the acoustic signal relative to the prey patches of different value.

Responses Due to Vessel Noise—

Mysticetes have varied responses to vessel noise and presence, from having no response to approaching vessels to exhibiting an avoidance response by both horizontal (swimming away) and vertical (increased diving) movement (Baker *et al.*, 1983; Fiori *et al.*, 2019; Gende *et al.*, 2011; Watkins, 1981). Avoidance responses include changing swim patterns, speed, or direction (Jahoda *et al.*, 2003), remaining submerged for longer periods of time (Au & Green, 2000), and performing shallower dives with more frequent surfacing. Behavioral responses to vessels range from smaller-scale changes, such as altered breathing patterns (*e.g.*, Baker *et al.*, 1983; Jahoda *et al.*, 2003), to larger-scale changes such

as a decrease in apparent presence (Anderwald *et al.*, 2013). Other common behavioral responses include changes in vocalizations, surface time, feeding and social behaviors (Au & Green, 2000; Dunlop, 2019; Fournet *et al.*, 2018; Machernis *et al.*, 2018; Richter *et al.*, 2003; Williams *et al.*, 2002a). For example, NARWs have been reported to increase the amplitude or frequency of their vocalizations or call at a lower rate in the presence of increased vessel noise (Parks *et al.*, 2007; Parks *et al.*, 2011), but generally demonstrate little to no response to vessels or sounds from approaching vessels and often continue to use habitats in high vessel traffic areas (Nowacek *et al.* 2004a). This lack of response may be due to habituation to the presence and associated noise of vessels in NARW habitat or may be due to propagation effects that may attenuate vessel noise near the surface (Nowacek *et al.*, 2004a; Terhune & Verboom, 1999).

Similarly, sei whales have been observed ignoring the presence of vessels entirely and even pass close to vessels (Reeves *et al.*, 1998). Historically, fin whales tend to ignore vessels at a distance (Watkins, 1981) or habituate to vessels over time (Watkins, 1986) but still demonstrate vocal modifications (*e.g.*, decreased frequency parameters of calls) during vessel traffic. Ramesh *et al.* (2021) found that fin whale calls in Ireland were less likely to be detected for every 1 dB re 1 μ Pa/minute increase in shipping noise levels. In the presence of tour boats in Chile, fin whales were changing their direction of movement more frequently, with less linear movement than occurred before the boats arrived; this behavior may represent evasion or avoidance of the boats (Santos-Carvalho *et al.*, 2021). The increase in travel swim speeds after the vessels departed may be related to the rapid speeds at which the vessels traveled, sometimes in front of fin whales, leading to additional avoidance behavior post-exposure.

Mysticete behavioral responses to vessels may also be affected by vessel behavior (Di Clemente *et al.*, 2018; Fiori *et al.*, 2019). Avoidance responses occurred most often after “J” type vessel approaches (*i.e.*, traveling parallel to the whales' direction of travel, then overtaking the whales by turning in front of the group) compared to parallel or direct approaches. Mother humpbacks were particularly sensitive to direct and J type approaches and spent significantly more time diving in response (Fiori *et al.*, 2019). The presence of a passing vessel did not change the behavior of resting humpback whale mother-calf pairs, but

fast vessels with louder low-frequency weighted source levels (173 dB re 1 μ Pa, equating to weighted received levels of 133 dB re 1 μ Pa) at an average distance of 328 ft (100 m) resulted in a decreased resting behavior and increases in dives, swim speeds, and respiration rates (Sprogis *et al.*, 2020). Humpback whale responses to vessel disturbance were dependent on their behavioral state. Di Clemente *et al.* (2018) found that when vessels passed within 1,640 ft (500 m) of humpback whales, individuals would continue to feed if already engaged in feeding behavior but were more likely to start swimming if they were surface active when approached. In response to an approaching large commercial vessel in an area of high ambient noise levels (125–130 dB re 1 μ Pa), a tagged female blue whale turned around mid-ascent and descended perpendicular to the vessel's path (Szesciorka *et al.*, 2019). The whale did not respond until the vessel's closest point of approach (328 ft (100 m) distance, 135 dB re 1 μ Pa), which was 10 dB above the ambient noise levels. After the vessel passed, the whale ascended to the surface again with a three-minute delay.

Overall, mysticete responses to vessel noise and traffic are varied, and habituation or changes to vocalization are predominant long-term responses. When baleen whales do avoid vessels, they seem to do so by altering their swim and dive patterns to move away from the vessel. Although a lack of response in the presence of a vessel may minimize potential disturbance from passing vessels, it does increase the whales' vulnerability to vessel strike, which may be of greater concern for mysticetes than vessel noise.

Odontocete responses due to vessel noise are varied and context-dependent, and it is difficult to separate the impacts of vessel noise from the impacts of vessel presence. Vessel presence has been shown to interrupt feeding behavior in delphinids in some studies (Meissner *et al.*, 2015; Pirotta *et al.*, 2015b) while a recent study by Mills *et al.* (2023) found that, in an important foraging area, bottlenose dolphins may continue to forage and socialize even while constantly exposed to high vessel traffic. Ng and Leung (2003) found that the type of vessel, approach, and speed of approach can all affect the probability of a negative behavioral response and, similarly, Guerra *et al.* (2014) documented varied responses in group structure and vocal behavior.

While most odontocetes have documented neutral responses to vessels, avoidance (Bejder *et al.*, 2006a; Würsig *et al.*, 1998) and attraction (Norris & Prescott, 1961; Ritter, 2002;

Shane *et al.*, 1986; Westdal *et al.*, 2023; Würsig *et al.*, 1998) behaviors have also been observed (Hewitt, 1985). Archer *et al.* (2010) compared the responses of dolphin populations far offshore that were often targeted by tuna fisheries to populations closer (less than 100 nmi (185.2 km)) to shore and found the fisheries-associated populations (spotted, spinner, and common dolphins) showed evasive behavior when approached by vessels while those nearshore species not associated with offshore fisheries (coastal spotted and bottlenose dolphins) tended to be attracted to vessels.

Arranz *et al.* (2021) used different engine types to determine whether behavioral responses of short-finned pilot whales were attributable to vessel noise, vessel presence, or both. Mother-calf pairs were approached by the same vessel outfitted with either “quiet” electric engines or “noisy” traditional combustion engines, controlling for approach speed and distance. Arranz *et al.* (2021) found mother pilot whales rested less and calves nursed less in response to both types of engines compared to control conditions, but only the “noisy” engine caused significant impacts (29 percent and 81 percent, respectively).

Smaller vessels tend to generate more noise in higher frequency bands, are more likely to approach odontocetes directly, and spend more time near an animal. Carrera *et al.* (2008) found tour boat activity can cause short-term displacement of dolphins, and Haviland-Howell *et al.* (2007) documented longer term or repetitive displacement of dolphins due to chronic vessel noise. Delphinid behavioral states also change in the presence of small tour vessels that often approach animals: travel and resting increases, foraging and social behavior decreases, and animals move closer together (Cecchetti *et al.*, 2017; Clarkson *et al.*, 2020; Kassamali-Fox *et al.*, 2020; Meissner *et al.*, 2015). Most studies on behavioral responses of bottlenose dolphin to vessel traffic show at least short-term changes in behavior, activities, or vocalization patterns when vessels are nearby (Acevedo, 1991; Arcangeli & Crosti, 2009; Berrow & Holmes, 1999; Fumagalli *et al.*, 2018; Gregory & Rowden, 2001; Janik & Thompson, 1996; Lusseau, 2004; Marega *et al.*, 2018; Mattson *et al.*, 2005; Perez-Ortega *et al.*, 2021; Puszka *et al.*, 2021; Scarpaci *et al.*, 2000).

Information is limited on beaked whale responses to vessel noise, but Würsig *et al.* (1998) noted that most beaked whales seem to exhibit avoidance behaviors when exposed to

vessels and beaked whales may respond to all anthropogenic noise (*i.e.*, sonar, vessel) at similar sound levels (Aguilar de Soto *et al.*, 2006; Tyack *et al.*, 2011; Tyack, 2009). The information available includes a disruption of foraging by a vocalizing goose-beaked whale in the presence of a passing vessel (Aguilar de Soto *et al.*, 2006) and restriction of group movement, or possibly reduction in the number of individuals clicking within the group, after exposure to broadband (received level of 135 dB re 1 μ Pa) vessel noise up to at least 3.2 mi (5.2 km) away from the source, though no change in duration of Blainville's beaked whale foraging dives was observed (Pirotta *et al.*, 2012).

Porpoises and small delphinids are known to be sensitive to vessel noise, as well. Frankish *et al.* (2023) found harbor porpoises more likely to avoid large commercial vessels via horizontal movement during the day and vertical movement at night, which supports previous research that the species routinely avoids large motorized vessels (Polacheck and Thorpe, 1990). Harbor porpoises have also been documented responding to vessels with increased changes in behavioral state and significantly decreased feeding (Akkaya Bas *et al.*, 2017), fewer clicks (Sairanen, 2014), and fewer prey capture attempts and have disrupted foraging when vessels pass closely and noise levels are higher (Wisniewska *et al.*, 2018). Habituation to vessel noise and presence was observed for a resident population of harbor porpoises that was in regular proximity to vessel traffic (32.8 ft to 0.6 mi (10 m to 1 km) away); the population had no response in 74 percent of interactions and an avoidance response in 26 percent of interactions. It should be noted that fewer responses in populations of odontocetes regularly subjected to high levels of vessel traffic could be a sign of habituation, or it could be that the more sensitive individuals in the population have abandoned that area of higher human activity. Most avoidance responses were the result of fast-moving or steady plane-hulling motorized vessels and the vessel type and speed were considered to be more relevant than vessel presence, as few responses were observed to non-motorized or stationary vessels (Oakley *et al.*, 2017). Similarly, Akkaya Bas *et al.* (2017) found that when fast moving vessels were within 164 ft (50 m) of harbor porpoises, there was an 80 percent probability of change in swimming direction but only a 40 percent probability of change when vessels were beyond 1,312.3 ft (400 m). Frankish *et al.* (2023) found that harbor

porpoises were most likely to avoid vessels less than 984.3 ft (300 m) away but, 5–10 percent of the time, they would also respond to vessels more than 1.2 mi (2 km) away, signifying that were not just attuning to vessel presence but vessel noise, as well. Although most vessel noise is constrained to frequencies below 1 kHz, at close ranges vessel noise can extend into mid- and high frequencies (into the tens of kHz) (Hermannsen *et al.*, 2014; Li *et al.*, 2015) and it is these frequencies that harbor porpoises are likely responding to; the mean M-weighted received SPL threshold for a response at these frequencies is 123 dB re 1 μ Pa (Dyndo *et al.*, 2015). M-weighting functions are generalized frequency weightings for various groups of marine mammals that were defined by Southall *et al.* (2007) based on known or estimated auditory sensitivity at different frequencies, and are used to characterize auditory effects of strong sounds. Hermannsen *et al.* (2019) estimated that noise in the 16 kHz frequency band resulting from small recreational vessels could cause behavioral directions in harbor porpoises, and could be elevated up to 124 dB re 1 μ Pa and raise ambient noise levels by a maximum of 51 dB. The higher noise levels were associated with vessel speed and range, which exceeded the threshold levels found by Dyndo *et al.* (2015) and Wisniewska *et al.* (2018) by 49–85 percent of events with high levels of vessel noise.

Lusseau and Bejder (2007) have reported some long-term consequences of vessel noise on odontocetes but, overall, there is little information on the long-term and cumulative impacts of vessel noise (National Academies of Sciences Engineering and Medicine, 2017; National Marine Fisheries Service, 2007). Many researchers speculate that long-term impacts may occur on odontocete populations that experience repeated interruption of foraging behaviors (Stockin *et al.*, 2008), and Southall *et al.* (2021) indicates that, in many contexts, the localized and coastal home ranges typical of many species make them less resilient to this chronic stressor than mysticetes.

Context and experience likely play a role in pinnipeds response to vessel noise, which vary from negative responses including increased vigilance and alerting to avoidance to reduced time spent doing biologically important activities (e.g., resting, feeding, and nursing) (Martin *et al.*, 2023a; Martin *et al.*, 2022; Mikkelsen *et al.*, 2019; Richardson *et al.*, 1995b) to attraction or lack of observable response (Richardson *et al.*, 1995b). More severe responses, like flushing, could be more detrimental

to individuals during biologically important activities and times, such as during pupping season. Blundell and Pendleton (2015) found that vessel presence reduces haul out time of Alaskan harbor seals during pupping season and larger vessels elicit stronger responses. Cates and Acevedo-Gutiérrez (2017) modeled harbor seal responses to passing vessels at haul out sites in less trafficked areas and found the model best predicting flushing behavior included number of boats, type of boats, and distance of seals to boats. The authors noted flushing occurred more in response to non-motorized vessels (e.g., kayaks), likely because they tended to pass closer (82 to 603.7 ft (25 to 184 m)) to haul out sites than motorized vessels (180.4 to 1,939 ft (55 to 591 m)) and tended to occur in groups rather than as a single vessel. Cape fur seals were also more responsive to vessel noise at sites with a large breeding colony than at sites with lower abundances of conspecifics (Martin *et al.*, 2023a). A field study of harbor and gray seals showed that seal responses to vessels included interruption of resting and foraging during times when vessel noise was increasing or at its peak (Mikkelsen *et al.*, 2019). And, although no behavioral differences were observed in hauled out wild cape fur seals exposed to low (60–64 dB re 20 μ Pa RMS SPL), medium (64–70 dB) and high-level (70–80 dB) vessel noise playbacks, mother-pup pairs spent less time nursing (15–31 percent) and more time awake (13–26 percent), vigilant (7–31 percent), and mobile (2–4 percent) during vessel noise conditions compared to control conditions (Martin *et al.*, 2022).

Masking

Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, interpret, or discriminate between acoustic signals of interest (e.g., those used for intraspecific communication and social interactions, prey detection, predator avoidance, or navigation) (Clark *et al.*, 2009; Richardson *et al.*, 1995; Erbe and Farmer, 2000; Tyack, 2000; Erbe *et al.*, 2016; Branstetter and Sills, 2022). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity and may occur whether the coincident sound is natural (e.g., snapping shrimp, wind, waves, precipitation) or anthropogenic (e.g., shipping, sonar, seismic exploration) in origin. As described in detail in appendix D, section D.6.4 (Masking), of the 2024 AFTT Draft Supplemental EIS/OEIS, the ability of a noise source to mask

biologically important sounds depends on the characteristics of both the noise source and the signal of interest (e.g., signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (e.g., sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age, or TTS hearing loss), and existing ambient noise and propagation conditions. Masking these acoustic signals can disturb the behavior of individual animals, groups of animals, or entire populations. Masking can lead to behavioral changes including vocal changes (e.g., Lombard effect, increasing amplitude, or changing frequency), cessation of foraging, and leaving an area, to both signalers and receivers, in an attempt to compensate for noise levels (Erbe *et al.*, 2016).

Most research on auditory masking is focused on energetic masking, or the ability of the receiver (*i.e.*, listener) to detect a signal in noise. However, from a fitness perspective, both signal detection and signal interpretation are necessary for success. This type of masking is called informational masking and occurs when a signal is detected by an animal but the meaning of that signal has been lost. Few data exist on informational masking in marine mammals but studies have shown that some recognition of predator cues might be missed by species that are preyed upon by killer whales if killer whale vocalizations are masked (Curé *et al.*, 2016; Curé *et al.*, 2015; Deecke *et al.*, 2002; Isojunno *et al.*, 2016; Visser *et al.*, 2016). von Benda-Beckman *et al.* (2021) modeled the effect of pulsed and continuous active sonars (CAS) on sperm whale echolocation and found that sonar sounds could reduce the ability of sperm whales to find prey under certain conditions.

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is man-made, it may be considered harassment when disrupting natural behavioral patterns to the point where the behavior is abandoned or significantly altered. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which only occurs during the sound exposure. Because masking (without resulting in threshold shift) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

Richardson *et al.* (1995) argued that the maximum radius of influence of an industrial noise (including broadband low-frequency sound transmission) on a marine mammal is the distance from the source to the point at which the noise can barely be heard. This range is determined by either the hearing sensitivity (including critical ratios, or the lowest signal-to-noise ratio in which animals can detect a signal) of the animal (Finneran and Branstetter, 2013; Johnson *et al.*, 1989; Southall *et al.*, 2000) or the background noise level present. Industrial masking is most likely to affect some species' ability to detect communication calls and natural sounds (*i.e.*, surf noise, prey noise, *etc.*) (Richardson *et al.*, 1995).

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.*, Clark *et al.*, 2009; Matthews *et al.*, 2016) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.*, Miller *et al.*, 2000; Foote *et al.*, 2004; Parks *et al.*, 2007; Di Iorio and Clark, 2009; Holt *et al.*, 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.*, 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore, 2014). Masking can be tested directly in captive species, but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.*, Cholewiak *et al.*, 2018; Branstetter and Sills, 2023; Branstetter *et al.*, 2024).

High-frequency sounds may mask the echolocation calls of toothed whales. Human data indicate low-frequency sound can mask high-frequency sounds (*i.e.*, upward masking). Studies on captive odontocetes by Au *et al.* (1974, 1985, 1993) indicate that some species may use various processes to reduce masking effects (*e.g.*, adjustments in echolocation call intensity or frequency as a function of background noise conditions). There is also evidence that

the directional hearing abilities of odontocetes are useful in reducing masking at the high-frequencies these cetaceans use to echolocate, but not at the low-to-moderate frequencies they use to communicate (Zaitseva *et al.*, 1980). A study by Nachtigall and Supin (2018) showed that false killer whales adjust their hearing to compensate for ambient sounds and the intensity of returning echolocation signals.

Impacts on signal detection, measured by masked detection thresholds, are not the only important factors to address when considering the potential effects of masking. As marine mammals use sound to recognize conspecifics, prey, predators, or other biologically significant sources (Branstetter *et al.*, 2016), it is also important to understand the impacts of masked recognition thresholds (informational masking). Branstetter *et al.* (2016) measured masked recognition thresholds for whistle-like sounds of bottlenose dolphins and observed that they are approximately 4 dB above detection thresholds (energetic masking) for the same signals. Reduced ability to recognize a conspecific call or the acoustic signature of a predator could have severe negative impacts. Branstetter *et al.* (2016) observed that if "quality communication" is set at 90 percent recognition the output of communication space models (which are based on 50 percent detection) would likely result in a significant decrease in communication range.

As marine mammals use sound to recognize predators (Allen *et al.*, 2014; Cummings and Thompson, 1971; Cure, *et al.*, 2015; Fish and Vania, 1971), the presence of masking noise may also prevent marine mammals from responding to acoustic cues produced by their predators, particularly if it occurs in the same frequency band. For example, harbor seals that reside in the coastal waters of British Columbia are frequently targeted by mammal-eating killer whales. The seals acoustically discriminate between the calls of mammal-eating and fish-eating killer whales (Deecke *et al.*, 2002), a capability that should increase survivorship while reducing the energy required to identify all killer whale calls. Similarly, sperm whales (Cure, *et al.*, 2016; Isojunno *et al.*, 2016), long-finned pilot whales (Visser *et al.*, 2016), and humpback whales (Cure, *et al.*, 2015) changed their behavior in response to killer whale vocalization playbacks. The potential effects of masked predator acoustic cues depends on the duration of the masking noise and the likelihood of a marine mammal encountering a predator during

the time that detection and recognition of predator cues are impeded.

Redundancy and context can also facilitate detection of weak signals. These phenomena may help marine mammals detect weak sounds in the presence of natural or anthropogenic noise. Most masking studies in marine mammals present the test signal and the masking noise from the same direction. The dominant background noise may be highly directional if it comes from a particular anthropogenic source such as a vessel or industrial site. Directional hearing may significantly reduce the masking effects of these sounds by improving the effective signal-to-noise ratio.

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, with most of the increase from distant commercial shipping (Hildebrand, 2009; Cholewiak *et al.*, 2018). All anthropogenic sound sources, but especially chronic and lower-frequency signals (*e.g.*, from commercial vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking for marine mammals.

Masking Due to Sonar and Other Transducers—

The functional hearing ranges of mysticetes, odontocetes, and pinnipeds underwater overlap the frequencies of the sonar sources used in the Action Proponents' LFAS/MFAS/high-frequency active sonar (HFAS) training and the Navy's testing exercises. Additionally, almost all affected species' vocal repertoires span across the frequencies of these sonar sources used by the Action Proponents. The closer the characteristics of the masking signal to the signal of interest, the more likely masking is to occur. Masking by LFAS or MFAS with relatively low-duty cycles is not anticipated (or would be of very short duration) for most cetaceans as sonar signals occur over a relatively short duration and narrow bandwidth (overlapping with only a small portion of the hearing range). LFAS could overlap in frequency with mysticete vocalizations, however LFAS does not overlap with vocalizations for most marine mammal species. For example, in the presence of LFAS, humpback whales were observed to increase the length of their songs (Fristrup *et al.*, 2003; Miller *et al.*, 2000), potentially

due to the overlap in frequencies between the whale song and the LFAS. While dolphin whistles and MFAS are similar in frequency, masking is not anticipated (or would be of very short duration) due to the low-duty cycle and short durations of most sonars.

As described in additional detail in the 2024 AFTT Draft Supplemental EIS/OEIS, high duty-cycle or CAS have more potential to mask vocalizations. These sonars transmit more frequently (greater than 80 percent duty cycle) than traditional sonars, but typically at lower source levels. HFAS, such as pingers that operate at higher repetition rates, also operate at lower source levels and have faster attenuation rates due to the higher frequencies used. These lower source levels limit the range of impacts, however, compared to traditional sonar systems, individuals close to the source are likely to experience masking at longer time scales. The frequency range at which high-duty cycle systems operate overlaps the vocalization frequency of many mid-frequency cetaceans. Continuous noise at the same frequency of communicative vocalizations may cause disruptions to communication, social interactions, and acoustically mediated cooperative behaviors (Sørensen *et al.*, 2023) such as foraging and mating. Similarly, because the high-duty cycle or CAS includes mid-frequency sources, there is also the potential for the mid-frequency sonar signals to mask important environmental cues (*e.g.*, predator or conspecific acoustic cues), possibly affecting survivorship for targeted animals. Spatial release from masking may occur with higher duty cycle or CAS.

While there are currently few studies of the impacts of high-duty cycle sonars on marine mammals, masking due to these systems is likely analogous to masking produced by other continuous sources (*e.g.*, vessel noise and low-frequency cetaceans), and would likely have similar short-term consequences, though longer in duration due to the duration of the masking noise. These may include changes to vocalization amplitude and frequency (Brumm and Slabbekoorn, 2005; Hotchkiss and Parks, 2013) and behavioral impacts such as avoidance of the area and interruptions to foraging or other essential behaviors (Gordon *et al.*, 2003). Long-term consequences could include changes to vocal behavior and vocalization structure (Foote *et al.*, 2004; Parks *et al.*, 2007), abandonment of habitat if masking occurs frequently enough to significantly impair communication (Brumm and Slabbekoorn, 2005), a

potential decrease in survivorship if predator vocalizations are masked (Brumm and Slabbekoorn, 2005), and a potential decrease in recruitment if masking interferes with reproductive activities or mother-calf communication (Gordon *et al.*, 2003).

von Benda-Beckmann *et al.* (2021) modeled the effect of pulsed and continuous 1 to 2 kHz active sonar on sperm whale echolocation clicks and found that the presence of upper harmonics in the sonar signal increased masking of clicks produced in the search phase of foraging compared to buzz clicks produced during prey capture. Different levels of sonar caused intermittent to continuous masking (120 to 160 dB re 1 μPa^2 , respectively), but varied based on click level, whale orientation, and prey target strength. CAS resulted in a greater percentage of time that echolocation clicks were masked compared to pulsed active sonar. This means that sonar sounds could reduce the ability of sperm whales to find prey under certain conditions. However, echoes from prey are most likely spatially separated from the sonar source, and so spatial release from masking would be expected.

Masking Due to Impulsive Noise—

Impulsive sound sources, including explosions, are intense and short in duration. Since impulsive noise is intermittent, the length of the gap between sounds (duty-cycle) and received level are relevant when considering the potential for masking. Impulsive sounds with lower duty cycles or lower received levels are less likely to result in masking than higher duty cycles or received levels. There are no direct observations of masking in marine mammals due to exposure to explosive sources. Potential masking from explosive sounds or weapon noise is likely similar to masking studied for other impulsive sounds, such as air guns or pile-driving.

Masking of mysticete calls could occur due to the overlap between their low-frequency vocalizations and the dominant frequencies of impulsive sources (Castellote *et al.*, 2012; Nieuwkerk *et al.*, 2012). For example, blue whale feeding/social calls increased when seismic exploration was underway (Di Lorio & Clark, 2010), indicative of a possible compensatory response to masking effects of the increased noise level. However, mysticetes that call at higher rates are less likely to be masked by impulsive noise with lower duty cycles (Clark *et al.*, 2009) because of the decreased likelihood that the noise would overlap with the calls, and because of dip listening. Field observations of masking effects such as

vocal modifications are difficult to interpret because when recordings indicate that call rates decline, this could be caused by (1) animals calling less frequently (actual noise-induced vocal modifications), (2) the calls being masked from the recording hydrophone due to the noise (*e.g.*, animals are not calling less frequently but are being detected less frequently), or (3) the animals moving away from the noise, or any combination of these causes (Blackwell *et al.*, 2013; Cerchio *et al.*, 2014).

Masking of pinniped communication sounds at 100 Hz center frequency is possible when vocalizations occur at the same time as an air gun pulse (Sills *et al.*, 2017). This might result in some percentage of vocalizations being masked if an activity such as a seismic survey is being conducted in the vicinity, even when the sender and receiver are near one another. Release from masking due to “dip listening” is likely in this scenario.

While a masking effect of impulsive noise can depend on the received level (Blackwell *et al.*, 2015) and other characteristics of the noise, the vocal response of the affected animal to masking noise is an equally important consideration for inferring overall impacts to an animal. It is possible that the receiver would increase the rate and/or level of calls to compensate for masking; or, conversely, cease calling.

In general, impulsive noise has the potential to mask sounds that are biologically important for marine mammals, reducing communication space or resulting in noise-induced vocal modifications that might impact marine mammals. Masking by close-range impulsive sound sources is most likely to impact marine mammal communication.

Masking Due to Vessel Noise—

Masking is more likely to occur in the presence of broadband, relatively continuous noise sources such as vessels. Several studies have shown decreases in marine mammal communication space and changes in behavior as a result of the presence of vessel noise. For example, NARW were observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.*, 2007) as well as increasing the amplitude (intensity) of their calls (Parks, 2009; Parks *et al.*, 2011). Fournet *et al.* (2018) observed that humpback whales in Alaska responded to increasing ambient sound levels (natural and anthropogenic) by increasing the source levels of their calls (non-song

vocalizations). Clark *et al.* (2009) also observed that right whales communication space decreased by up to 84 percent in the presence of vessels (Clark *et al.*, 2009). Cholewiak *et al.* (2018) also observed loss in communication space in Stellwagen National Marine Sanctuary for NARW, fin whales, and humpback whales with increased ambient noise and shipping noise. Gabriele *et al.* (2018) modeled the effects of vessel traffic sound on communication space in Glacier Bay National Park in Alaska and found that typical summer vessel traffic in the Park causes losses of communication space to singing whales (reduced by 13–28 percent), calling whales (18–51 percent), and roaring seals (32–61 percent), particularly during daylight hours and even in the absence of cruise ships. Dunlop (2019) observed that an increase in vessel noise reduced modeled communication space and resulted in significant reduction in group social interactions in Australian humpback whales. However, communication signal masking did not fully explain this change in social behavior in the model, indicating there may also be an additional effect of the physical presence of the vessel on social behavior (Dunlop, 2019). Although humpback whales off Australia did not change the frequency or duration of their vocalizations in the presence of ship noise, their source levels were lower than expected based on source level changes to wind noise, potentially indicating some signal masking (Dunlop, 2016). Multiple delphinid species have also been shown to increase the minimum or maximum frequencies of their whistles in the presence of anthropogenic noise and reduced communication space (*e.g.*, Holt *et al.*, 2009; Holt *et al.*, 2011; Gervaise *et al.*, 2012; Williams *et al.*, 2013; Hermannsen *et al.*, 2014; Papale *et al.*, 2015; Liu *et al.*, 2017).

Other Physiological Response

Physiological stress is a natural and adaptive process that helps an animal survive changing conditions. When an animal perceives a potential threat, whether or not the stimulus actually poses a threat, a stress response is triggered (Seyle, 1950; Moberg, 2000; Sapolsky *et al.*, 2005). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses.

The primary distinction between stress (which is adaptive and does not

normally place an animal at risk) and distress is the biotic cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other biotic functions. For example, when a stress response diverts energy away from growth in young animals, those animals may experience stunted growth. When a stress response diverts energy from a fetus, an animal's reproductive success and its fitness will suffer. In these cases, the animals will have entered a pre-pathological or pathological state which is called "distress" (Seyle, 1950) or "allostatic loading" (McEwen and Wingfield, 2003). This pathological state of distress will last until the animal replenishes its energetic reserves sufficiently to restore normal function.

According to Moberg (2000), in the case of many stressors, an animal's first and sometimes most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of continued exposure to a stressor. An animal's second line of defense to stressors involves the sympathetic part of the autonomic nervous system and the classical "fight or flight" response which includes the cardiovascular system, the gastrointestinal system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with "stress." These responses have a relatively short duration and may or may not have significant long-term effect on an animal's welfare.

An animal's third line of defense to stressors involves its neuroendocrine systems or sympathetic nervous systems; the system that has received the most study has been the hypothalamus-pituitary-adrenal system (also known as the HPA axis in mammals or the hypothalamus-pituitary-interrenal axis in fish and some reptiles). Unlike stress responses associated with the autonomic nervous system, virtually all neuro-endocrine functions that are affected by stress, including immune competence, reproduction, metabolism, and behavior, are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg, 1987; Rivier and Rivest, 1991),

altered metabolism (Elasser *et al.*, 2000), reduced immune competence (Blecha, 2000), and behavioral disturbance (Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; see Romano *et al.*, 2004) have been equated with stress for many years.

Marine mammals naturally experience stressors within their environment and as part of their life histories. Changing weather and ocean conditions, exposure to disease and naturally occurring toxins, lack of prey availability, and interactions with predators all contribute to the stress a marine mammal experiences (Atkinson *et al.*, 2015). Breeding cycles, periods of fasting, social interactions with members of the same species, and molting (for pinnipeds) are also stressors, although they are natural components of an animal's life history. Anthropogenic activities have the potential to provide additional stressors beyond those that occur naturally (*e.g.*, fishery interactions, pollution, tourism, ocean noise) (Fair *et al.*, 2014; Meissner *et al.*, 2015; Rolland *et al.*, 2012).

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments for both laboratory and free-ranging animals (*e.g.*, Holberton *et al.*, 1996; Hood *et al.*, 1998; Jessop *et al.*, 2003; Krausman *et al.*, 2004; Lankford *et al.*, 2005; Reneerkens *et al.*, 2002; Thompson and Hamer, 2000). However, it should be noted (and as is described in additional detail in the 2024 AFTT Draft Supplemental EIS/OEIS) that our understanding of the functions of various stress hormones (*e.g.*, cortisol), is based largely upon observations of the stress response in terrestrial mammals. Atkinson *et al.* (2015) note that the endocrine response of marine mammals to stress may not be the same as that of terrestrial mammals because of the selective pressures marine mammals faced during their evolution in an ocean environment. For example, due to the necessity of breath-holding while diving and foraging at depth, the physiological role of epinephrine and norepinephrine (the catecholamines) in marine mammals might be different than in other mammals. Relatively little information exists on the linkage between anthropogenic sound exposure and stress in marine mammals, and even less information exists on the ultimate consequences of sound-induced stress responses (either acute or chronic). Most studies to date have focused on acute responses to sound

either by measuring neurohormones (i.e., catecholamines) or heart rate as a proxy for an acute stress response.

The ability to make predictions from stress hormones about impacts on individuals and populations exposed to various forms of natural and anthropogenic stressors relies on understanding the linkages between changes in stress hormones and resulting physiological impacts. Currently, the sound characteristics that correlate with specific stress responses in marine mammals are poorly understood, as are the ultimate consequences of these changes. Several research efforts have improved the understanding of, and the ability to predict, how stressors ultimately affect marine mammal populations (e.g., King *et al.*, 2015; New *et al.*, 2013a; Pirotta *et al.*, 2015a; Pirotta *et al.*, 2022b). This includes determining how and to what degree various types of anthropogenic sound cause stress in marine mammals and understanding what factors may mitigate those physiological stress responses. Factors potentially affecting an animal's response to a stressor include life history, sex, age, reproductive status, overall physiological and behavioral adaptability, and whether they are naïve or experienced with the sound (e.g., prior experience with a stressor may result in a reduced response due to habituation) (Finneran and Branstetter, 2013; St. Aubin and Dierauf, 2001). Because there are many unknowns regarding the occurrence of acoustically induced stress responses in marine mammals, any physiological response (e.g., hearing loss or injury) or significant behavioral response is assumed to be associated with a stress response.

Non-impulsive sources of sound can cause direct physiological effects including noise-induced loss of hearing sensitivity (or “threshold shift”) or other auditory injury, nitrogen decompression, acoustically-induced bubble growth, and injury due to sound-induced acoustic resonance. Separately, an animal's behavioral response to an acoustic exposure might lead to physiological effects that might ultimately lead to injury or death, which is discussed later in the *Stranding and Mortality* section.

Heart Rate Response—

Several experimental studies have measured the heart rate response of a variety of marine mammals. For example, Miksis *et al.* (2001) observed increases in heart rates of captive bottlenose dolphins to which known calls of other dolphins were played,

although no increase in heart rate was observed when background tank noise was played back. However, it cannot be determined whether the increase in heart rate was due to stress or social factors, such as expectation of an encounter with a known conspecific. Similarly, a young captive beluga's heart rate increased during exposure to noise, with increases dependent upon the frequency band of noise and duration of exposure, and with a sharp decrease to normal or below normal levels upon cessation of the exposure (Lyamin *et al.*, 2011). Spectral analysis of heart rate variability corroborated direct measures of heart rate (Bakhchina *et al.*, 2017). This response might have been in part due to the conditions during testing, the young age of the animal, and the novelty of the exposure; a year later the exposure was repeated at a slightly higher received level and there was no heart rate response, indicating the beluga whale had potentially habituated to the noise exposure.

Kvadsheim *et al.* (2010a) measured the heart rate of captive hooded seals during exposure to sonar signals and found an increase in the heart rate of the seals during exposure periods versus control periods when the animals were at the surface. When the animals dove, the normal dive-related heart rate decrease was not impacted by the sonar exposure. Similarly, Thompson *et al.* (1998) observed a rapid, short-lived decrease in heart rates in wild harbor and grey seals exposed to seismic air guns (cited in Gordon *et al.*, 2003).

Two captive harbor porpoises showed significant bradycardia (reduced heart rate), below that which occurs with diving, when they were exposed to pinger-like sounds with frequencies between 100–140 kHz (Teilmann *et al.*, 2006). The bradycardia was found only in the early noise exposures and the porpoises acclimated quickly across successive noise exposures. Elmegaard *et al.* (2021) also found that initial exposures to sonar sweeps produced bradycardia but did not elicit a startle response in captive harbor porpoises. As with Teilmann *et al.* (2006), the cardiac response disappeared over several repeat exposures suggesting rapid acclimation to the noise. In the same animals, 40-kHz noise pulses induced startle responses but without a change in heart rate. Bakkeren *et al.* (2023) found no change in the heart rate of a harbor porpoise during exposure to masking noise ($\frac{1}{3}$ octave band noise, centered frequency of 125 kHz, maximum received level of 125 dB re 1 μ Pa) during an echolocation task but showed significant bradycardia while blindfolded for the same task. The

authors attributed the change in heart rate to sensory deprivation, although no strong conclusions about acoustic masking could be made since the animal was still able to perform the echolocation task in the presence of the masking noise. Williams *et al.* (2022) observed periods of increased heart rate variability in narwhals during seismic air gun impulse exposure, but profound bradycardia was not noted. Conversely, Williams *et al.* (2017) found that a profound bradycardia persisted in narwhals, even though exercise effort increased dramatically as part of their escape response following release from capture and handling.

Limited evidence across several different species suggests that increased heart rate might occur as part of the acute stress response of marine mammals that are at the surface. However, the decreased heart rate typical of diving marine mammals can be enhanced in response to an acute stressor, suggesting that the context of the exposure is critical to understanding the cardiac response. Furthermore, in instances where a cardiac response was noted, there appears to be rapid habituation when repeat exposures occur. Additional research is required to understand the interaction of dive bradycardia, noise-induced cardiac responses, and the role of habituation in marine mammals.

Stress Hormone and Immune Response—

What is known about the function of the various stress hormones is based largely upon observations of the stress response in terrestrial mammals. The endocrine response of marine mammals to stress may not be the same as that of terrestrial mammals because of the selective pressures marine mammals faced during their evolution in an ocean environment (Atkinson *et al.*, 2015). For example, due to the necessity of breath-holding while diving and foraging at depth, the physiological role of epinephrine and norepinephrine (the catecholamines) might be different in marine versus other mammals.

Catecholamines increase during breath-hold diving in seals, co-occurring with a reduction in heart rate, peripheral vasoconstriction (constriction of blood vessels), and an increased reliance on anaerobic metabolism during extended dives (Hance *et al.*, 1982; Hochachka *et al.*, 1995; Hurford *et al.*, 1996); the catecholamine increase is not associated with increased heart rate, glycemic release, and increased oxygen consumption typical of terrestrial mammals. Captive belugas

demonstrated no catecholamine response to the playback of oil drilling sounds (Thomas *et al.*, 1990b) but showed a small but statistically significant increase in catecholamines following exposure to impulsive sounds produced from a seismic water gun (Romano *et al.*, 2004). A captive bottlenose dolphin exposed to the same sounds did not demonstrate a catecholamine response but did demonstrate a statistically significant elevation in aldosterone (Romano *et al.*, 2004); however, the increase was within the normal daily variation observed in this species (St. Aubin *et al.*, 1996) and was likely of little biological significance. Aldosterone has been speculated to not only contribute to electrolyte balance, but possibly also the maintenance of blood pressure during periods of vasoconstriction (Houser *et al.*, 2011). In marine mammals, aldosterone is thought to play a role in mediating stress (St. Aubin & Dierauf, 2001; St. Aubin & Geraci, 1989).

Yang *et al.* (2021) measured cortisol concentrations in two captive bottlenose dolphins and found significantly higher concentrations after exposure to 140 dB re 1 μ Pa impulsive noise playbacks. Two out of six tested indicators of immune system function underwent acoustic dose-dependent changes, suggesting that repeated exposures or sustained stress response to impulsive sounds may increase an affected individual's susceptibility to pathogens. Unfortunately, absolute values of cortisol were not provided, and it is not possible from the study to tell if cortisol rose to problematic levels (*e.g.*, see normal variation and changes due to handling in Houser *et al.* (2021) and Champagne *et al.* (2018)). Exposing dolphins to a different acoustic stressor yielded contrasting results. Houser *et al.* (2020) measured cortisol and epinephrine obtained from 30 captive bottlenose dolphins exposed to simulated Navy MFAS and found no correlation between SPL and stress hormone levels, even though sound exposures were as high as 185 dB re 1 μ Pa. In the same experiment (Houser *et al.*, 2013b), behavioral responses were shown to increase in severity with increasing received SPLs. These results suggest that behavioral responses to sonar signals are not necessarily indicative of a hormonal stress response.

Whereas a limited amount of work has addressed the potential for acute sound exposures to produce a stress response, almost nothing is known about how chronic exposure to acoustic stressors affects stress hormones in marine mammals, particularly as it

relates to survival or reproduction. In what is probably the only study of chronic noise exposure in marine mammals associating changes in a stress hormone with changes in anthropogenic noise, Rolland *et al.* (2012) compared the levels of cortisol metabolites in NARW feces collected before and after September 11, 2001. Following the events of September 11, 2001, shipping was significantly reduced in the region where fecal collections were made, and regional ocean background noise declined. Fecal cortisol metabolites significantly decreased during the period of reduced ship traffic and ocean noise (Rolland *et al.*, 2012). Rolland *et al.* (2017) also compared acute (death by vessel strike) to chronic (entanglement or live stranding) stressors in NARW and found that whales subject to chronic stressors had higher levels of glucocorticoid stress hormones (cortisol and corticosterone) than either healthy whales or those killed by ships. It was presumed that whales subjected to acute stress may have died too quickly for increases in fecal glucocorticoids to be detected.

Considerably more work has been conducted in an attempt to determine the potential effect of vessel disturbance on smaller cetaceans, particularly killer whales (Bain, 2002; Erbe, 2002; Lusseau, 2006; Noren *et al.*, 2009; Pirotta *et al.*, 2015b; Read *et al.*, 2014; Rolland *et al.*, 2012; Williams *et al.*, 2009; Williams *et al.*, 2014a; Williams *et al.*, 2014b; Williams *et al.*, 2006b). Most of these efforts focused primarily on estimates of metabolic costs associated with altered behavior or inferred consequences of boat presence and noise but did not directly measure stress hormones. However, Ayres *et al.* (2012) investigated Southern Resident killer whale fecal thyroid hormone and cortisol metabolites to assess two potential threats to the species' recovery: lack of prey (salmon) and impacts from exposure to the physical presence of vessel traffic (but without measuring vessel traffic noise). Ayres *et al.* (2012) concluded from these stress hormone measures that the lack of prey overshadowed any population-level physiological impacts on Southern Resident killer whales due to vessel traffic. Lemos *et al.* (2022) investigated the potential for vessel traffic to affect gray whales. By assessing gray whale fecal cortisol metabolites across years in which vessel traffic was variable, Lemos *et al.* (2022) found a direct relationship between the presence/density of vessel traffic and fecal cortisol metabolite levels. Unfortunately, no direct noise exposure measurements were made on

any individual making it impossible to tell if other natural and anthropogenic factors could also be related to the results. Collectively, these studies indicate the difficulty in determining which factors are primarily influence the secretion of stress hormones, including the separate and additive effects of vessel presence and vessel noise. While vessel presence could contribute to the variation in fecal cortisol metabolites in NARW and gray whales, there are other potential influences on fecal hormone metabolites, so it is difficult to establish a direct link between ocean noise and fecal hormone metabolites.

Non-Auditory Injury

Non-auditory injury, or direct injury, is considered less likely to occur in the context of the Action Proponents' activities than auditory injury and the primary anticipated source of non-auditory injury for these activities is exposure to the pressure generated by explosive detonations, which is discussed in the *Potential Effects of Explosive Sources on Marine Mammals* section below. Here, we discuss less direct non-auditory injury impacts, including acoustically induced bubble formation, injury from sonar-induced acoustic resonance, and behaviorally mediated injury.

One theoretical cause of injury to marine mammals is rectified diffusion (Crum and Mao, 1996), the process of increasing the size of a bubble by exposing it to a sound field. This process could be facilitated if the environment in which the ensonified bubbles exist is supersaturated with gas. Repetitive diving by marine mammals can cause the blood and some tissues to accumulate gas to a greater degree than is supported by the surrounding environmental pressure (Ridgway and Howard, 1979). The deeper and longer dives of some marine mammals (for example, beaked whales) are theoretically predicted to induce greater supersaturation (Houser *et al.*, 2001b). If rectified diffusion were possible in marine mammals exposed to high-level sound, conditions of tissue supersaturation could theoretically speed the rate and increase the size of bubble growth. Subsequent effects due to tissue trauma and emboli would presumably mirror those observed in humans suffering from decompression sickness. Acoustically-induced (or mediated) bubble growth and other pressure-related physiological impacts are addressed below but are not expected to result from the Action Proponents' proposed activities.

It is unlikely that the short duration (in combination with the source levels) of sonar pings would be long enough to drive bubble growth to any substantial size, if such a phenomenon occurs. However, an alternative but related hypothesis has also been suggested: stable bubbles could be destabilized by high-level sound exposures such that bubble growth then occurs through static diffusion of gas out of the tissues. In such a scenario the marine mammal would need to be in a gas-supersaturated state for a long enough period of time for bubbles to become of a problematic size. Recent research with *ex vivo* supersaturated bovine tissues suggested that, for a 37 kHz signal, a sound exposure of approximately 215 dB referenced to (re) 1 μ Pa would be required before microbubbles became destabilized and grew (Crum *et al.*, 2005). Assuming spherical spreading loss and a nominal sonar source level of 235 dB re 1 μ Pa at 1 m, a whale would need to be within 33 ft (10 m) of the sonar dome to be exposed to such sound levels. Furthermore, tissues in the study were supersaturated by exposing them to pressures of 400–700 kilopascals for periods of hours and then releasing them to ambient pressures. Assuming the equilibration of gases with the tissues occurred when the tissues were exposed to the high pressures, levels of supersaturation in the tissues could have been as high as 400–700 percent. These levels of tissue supersaturation are substantially higher than model predictions for marine mammals (Fahlman *et al.*, 2009; Fahlman *et al.*, 2014; Houser *et al.*, 2001; Saunders *et al.*, 2008). It is improbable that this mechanism is responsible for stranding events or traumas associated with beaked whale strandings because both the degree of supersaturation and exposure levels observed to cause microbubble destabilization are unlikely to occur, either alone or in concert.

Yet another hypothesis (decompression sickness) has speculated that rapid ascent to the surface following exposure to a startling sound might produce tissue gas saturation sufficient for the evolution of nitrogen bubbles (Jepson *et al.*, 2003; Fernandez *et al.*, 2005; Fernández *et al.*, 2012). In this scenario, the rate of ascent would need to be sufficiently rapid to compromise behavioral or physiological protections against nitrogen bubble formation. Alternatively, Tyack *et al.* (2006) studied the deep diving behavior of beaked whales and concluded that: “Using current models of breath-hold diving, we infer that their natural diving behavior is inconsistent with known

problems of acute nitrogen supersaturation and embolism.” Collectively, these hypotheses can be referred to as “hypotheses of acoustically mediated bubble growth.”

Although theoretical predictions suggest the possibility for acoustically mediated bubble growth, there is considerable disagreement among scientists as to its likelihood (Piantadosi and Thalmann, 2004; Evans and Miller, 2003; Cox *et al.*, 2006; Rommel *et al.*, 2006). Crum and Mao (1996) hypothesized that received levels would have to exceed 190 dB in order for there to be the possibility of significant bubble growth due to supersaturation of gases in the blood (*i.e.*, rectified diffusion). Work conducted by Crum *et al.* (2005) demonstrated the possibility of rectified diffusion for short duration signals, but at SELs and tissue saturation levels that are highly improbable to occur in diving marine mammals. To date, energy levels predicted to cause *in vivo* bubble formation within diving cetaceans have not been evaluated (NOAA, 2002b). Jepson *et al.* (2003, 2005) and Fernandez *et al.* (2004, 2005, 2012) concluded that *in vivo* bubble formation, which may be exacerbated by deep, long-duration, repetitive dives may explain why beaked whales appear to be relatively vulnerable to MFAS/HFAS exposures. It has also been argued that traumas from some beaked whale strandings are consistent with gas emboli and bubble-induced tissue separations (Jepson *et al.*, 2003); however, there is no conclusive evidence of this (Rommel *et al.*, 2006). Based on examination of sonar-associated strandings, Bernaldo de Quiros *et al.* (2019) list diagnostic features, the presence of all of which suggest gas and fat embolic syndrome for beaked whales stranded in association with sonar exposure.

As described in additional detail in the Behaviorally Mediated Injury section of appendix D the 2024 AFTT Draft Supplemental EIS/OEIS, marine mammals generally are thought to deal with nitrogen loads in their blood and other tissues, caused by gas exchange from the lungs under conditions of high ambient pressure during diving, through anatomical, behavioral, and physiological adaptations (Hooker *et al.*, 2012). Although not a direct injury, variations in marine mammal diving behavior or avoidance responses have been hypothesized to result in nitrogen off-gassing in super-saturated tissues, possibly to the point of deleterious vascular and tissue bubble formation (Hooker *et al.*, 2012; Jepson *et al.*, 2003; Saunders *et al.*, 2008) with resulting symptoms similar to decompression

sickness, however the process is still not well understood.

In 2009, Hooker *et al.* tested two mathematical models to predict blood and tissue tension P_{N_2} using field data from three beaked whale species: northern bottlenose whales, goose-beaked whales, and Blainville's beaked whales. The researchers aimed to determine if physiology (body mass, diving lung volume, and dive response) or dive behavior (dive depth and duration, changes in ascent rate, and diel behavior) would lead to differences in P_{N_2} levels and thereby decompression sickness risk between species. In their study, they compared results for previously published time depth recorder data (Hooker and Baird, 1999; Baird *et al.*, 2006, 2008) from goose-beaked whale, Blainville's beaked whale, and northern bottlenose whale. They reported that diving lung volume and extent of the dive response had a large effect on end-dive P_{N_2} . Also, results showed that dive profiles had a larger influence on end-dive P_{N_2} than body mass differences between species. Despite diel changes (*i.e.*, variation that occurs regularly every day or most days) in dive behavior, P_{N_2} levels showed no consistent trend. Model output suggested that all three species live with tissue P_{N_2} levels that would cause a significant proportion of decompression sickness cases in terrestrial mammals. The authors concluded that the dive behavior of goose-beaked whale was different from both Blainville's beaked whale and northern bottlenose whale, and resulted in higher predicted tissue and blood N_2 levels (Hooker *et al.*, 2009). They also suggested that the prevalence of goose-beaked whales stranding after naval sonar exercises could be explained by either a higher abundance of this species in the affected areas or by possible species differences in behavior and/or physiology related to MF active sonar (Hooker *et al.*, 2009).

Bernaldo de Quiros *et al.* (2012) showed that, among stranded whales, deep diving species of whales had higher abundances of gas bubbles compared to shallow diving species. Kvadsheim *et al.* (2012) estimated blood and tissue P_{N_2} levels in species representing shallow, intermediate, and deep diving cetaceans following behavioral responses to sonar and their comparisons found that deep diving species had higher end-dive blood and tissue N_2 levels, indicating a higher risk of developing gas bubble emboli compared with shallow diving species. Fahlmann *et al.* (2014) evaluated dive data recorded from sperm, killer, long-finned pilot, Blainville's, and goose-beaked whales before and during

exposure to low-frequency (1–2 kHz), as defined by the authors, and mid-frequency (2–7 kHz) active sonar in an attempt to determine if either differences in dive behavior or physiological responses to sonar are plausible risk factors for bubble formation. The authors suggested that CO₂ may initiate bubble formation and growth, while elevated levels of N₂ may be important for continued bubble growth. The authors also suggest that if CO₂ plays an important role in bubble formation, a cetacean escaping a sound source may experience increased metabolic rate, CO₂ production, and alteration in cardiac output, which could increase risk of gas bubble emboli. However, as discussed in Kvadsheim *et al.* (2012), the actual observed behavioral responses to sonar from the species in their study (sperm, killer, long-finned pilot, Blainville's beaked, and goose-beaked whales) did not imply any significantly increased risk of decompression sickness due to high levels of N₂. Therefore, further information is needed to understand the relationship between exposure to stimuli, behavioral response (discussed in more detail below), elevated N₂ levels, and gas bubble emboli in marine mammals. The hypotheses for gas bubble formation related to beaked whale strandings is that beaked whales potentially have strong avoidance responses to MFAS because they sound similar to their main predator, the killer whale (Cox *et al.*, 2006; Southall *et al.*, 2007; Zimmer and Tyack, 2007; Baird *et al.*, 2008; Hooker *et al.*, 2009). Further investigation is needed to assess the potential validity of these hypotheses.

To summarize, while there are several hypotheses, there is little data directly connecting intense, anthropogenic underwater sounds with non-auditory physical effects in marine mammals. The available data do not support identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.*, 2007) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in these ways. In addition, such effects, if they occur at all, would be expected to be limited to situations where marine mammals were exposed to high powered sounds at very close range over a prolonged period of time, which is not expected to occur based on the speed of the vessels operating sonar in combination with the speed and behavior of marine mammals in the vicinity of sonar.

An object exposed to its resonant frequency will tend to amplify its vibration at that frequency, a

phenomenon called acoustic resonance. Acoustic resonance has been proposed as a potential mechanism by which a sonar or sources with similar operating characteristics could damage tissues of marine mammals. In 2002, NMFS convened a panel of government and private scientists to investigate the potential for acoustic resonance to occur in marine mammals (NOAA, 2002). They modeled and evaluated the likelihood that Navy MFAS (2–10 kHz) caused resonance effects in beaked whales that eventually led to their stranding. The workshop participants concluded that resonance in air-filled structures was not likely to have played a primary role in the Bahamas stranding in 2000. They listed several reasons supporting this finding including (among others): tissue displacements at resonance are estimated to be too small to cause tissue damage (*i.e.*, non-auditory injury); tissue-lined air spaces most susceptible to resonance are too large in marine mammals to have resonant frequencies in the ranges used by MFAS or LFAS; lung resonant frequencies increase with depth, and tissue displacements decrease with depth so if resonance is more likely to be caused at depth it is also less likely to have an affect there; and lung tissue damage has not been observed in any mass, multi-species stranding of beaked whales. The frequency at which resonance was predicted to occur in the animals' lungs was 50 Hz, well below the frequencies used by the MFAS systems associated with the Bahamas event. The workshop participants focused on the March 2000 stranding of beaked whales in the Bahamas as high-quality data were available, but the workshop report notes that the results apply to other sonar-related stranding events. For the reasons given by the 2002 workshop participants, we do not anticipate injury due to sonar-induced acoustic resonance from the Action Proponents' proposed activity.

Potential Effects of Explosive Sources on Marine Mammals

Underwater explosive detonations send a shock wave and sound energy through the water and can release gaseous by-products, create an oscillating bubble, or cause a plume of water to shoot up from the water surface. The shock wave and accompanying noise are of most concern to marine animals and the potential effects of an explosive injury to marine mammals would consist of primary blast injury, which refers to injuries resulting from the compression of a body exposed to a blast wave. Blast effects are greatest at the gas-liquid

interface (Landsberg, 2000) and are usually observed as barotrauma of gas-containing structures (*e.g.*, lung, gastrointestinal tract) and structural damage to the auditory system (Goertner, 1982; Greaves *et al.*, 1943; Hill, 1978; Office of the Surgeon General, 1991; Richmond *et al.*, 1973; Yelverton *et al.*, 1973). Depending on the intensity of the shock wave and size, location, and depth of the animal, an animal can be injured, killed, suffer non-lethal physical effects, experience hearing related effects with or without behavioral responses, or exhibit temporary behavioral responses or tolerance from hearing the blast sound. Generally, exposures to higher levels of impulse and pressure levels would result in greater impacts to an individual animal.

The near instantaneous high magnitude pressure change near an explosion can injure an animal where tissue material properties significantly differ from the surrounding environment, such as around air-filled cavities in the lungs or gastrointestinal tract. Large pressure changes at tissue-air interfaces in the lungs and gastrointestinal tract may cause tissue rupture, resulting in a range of injuries depending on degree of exposure. The lungs are typically the first site to show any damage, while the solid organs (*e.g.*, liver, spleen, and kidney) are more resistant to blast injury (Clark & Ward, 1943). Odontocetes can also incur hemorrhaging in the acoustic fats in the melon and jaw (Siebert *et al.*, 2022). Recoverable injuries would include slight lung injury, such as capillary interstitial bleeding, and contusions to the gastrointestinal tract. More severe injuries, such as tissue lacerations, major hemorrhage, organ rupture, or air in the chest cavity (pneumothorax), would significantly reduce fitness and likely cause death in the wild. Rupture of the lung may also introduce air into the vascular system, producing air emboli that can cause a stroke or heart attack by restricting oxygen delivery to critical organs.

Injuries resulting from a shock wave take place at boundaries between tissues of different densities. Different velocities are imparted to tissues of different densities, and this can lead to their physical disruption. Intestinal walls can bruise or rupture, with subsequent hemorrhage and escape of gut contents into the body cavity. Less severe gastrointestinal tract injuries include contusions, petechiae (small red or purple spots caused by bleeding in the skin), and slight hemorrhaging (Yelverton *et al.*, 1973).

Relatively little is known about auditory system trauma in marine mammals resulting from explosive exposure, although it is assumed that auditory structures would be vulnerable to blast injuries because the ears are the most sensitive to pressure and, therefore, they are the organs most sensitive to injury (Ketten, 2000). Sound-related damage associated with sound energy from detonations can be theoretically distinct from injury from the shock wave, particularly farther from the explosion. If a noise is audible to an animal, it has the potential to damage the animal's hearing by causing decreased sensitivity (Ketten, 1995). Lethal impacts are those that result in immediate death or serious debilitation in or near an intense source and are not, technically, pure acoustic trauma (Ketten, 1995). Sublethal impacts include hearing loss, which is caused by exposures to perceptible sounds. Severe damage (from the shock wave) to the ears includes tympanic membrane rupture, fracture of the ossicles, damage to the cochlea, hemorrhage, and cerebrospinal fluid leakage into the middle ear. Moderate injury implies partial hearing loss due to tympanic membrane rupture and blood in the middle ear. Permanent hearing loss also can occur when the hair cells are damaged by one very loud event, as well as by prolonged exposure to a loud noise or chronic exposure to noise. The level of impact from blasts depends on both an animal's location and, at outer zones, on its sensitivity to the residual noise (Ketten, 1995). Auditory trauma was found in 2 humpback whales that died after the detonation of a 11,023 lb (5,000 kg) explosive used off Newfoundland during demolition of an offshore oil rig platform (Ketten *et al.*, 1993), but the proximity of the whales to the detonation was unknown. Eardrum rupture was examined in submerged terrestrial mammals exposed to underwater explosions (Richmond *et al.*, 1973; Yelverton *et al.*, 1973); however, results may not be applicable to the anatomical adaptations for underwater hearing in marine mammals.

In general, models predict that an animal would be less susceptible to injury near the water surface because the pressure wave reflected from the water surface would interfere with the direct path pressure wave, reducing positive pressure exposure (Goertner, 1982; Yelverton & Richmond, 1981). This is shown in the records of humans exposed to blast while in the water, which show that the gastrointestinal tract was more likely to be injured than

the lungs, likely due to the shallower exposure geometry of the lungs (*i.e.*, closer to the water surface) (Lance *et al.*, 2015). Susceptibility would increase with depth, until normal lung collapse (due to increasing hydrostatic pressure) and increasing ambient pressures again reduce susceptibility (Goertner, 1982). The only known occurrence of mortality or injury to a marine mammal due to a Navy training event involving explosives occurred in March 2011 in nearshore waters off San Diego, California, at the Silver Strand Training Complex (see Strandings Associated with Explosive Use section below).

Controlled tests with a variety of lab animals (mice, rats, dogs, pigs, sheep, and other species) are the best data sources on actual injury to mammals due to underwater exposure to explosions. In the early 1970s, the Lovelace Foundation for Medical Education and Research conducted a series of tests in an artificial pond at Kirtland Air Force Base, New Mexico, to determine the effects of underwater explosions on mammals, with the goal of determining safe ranges for human divers. The resulting data were summarized in two reports (Richmond *et al.*, 1973; Yelverton *et al.*, 1973). Specific physiological observations for each test animal are documented in Richmond *et al.* (1973). Gas-containing internal organs, such as lungs and intestines, were the principle damage sites in submerged terrestrial mammals; this is consistent with earlier studies of mammal exposures to underwater explosions in which lungs were consistently the first areas to show damage, with less consistent damage observed in the gastrointestinal tract (Clark & Ward, 1943; Greaves *et al.*, 1943).

In the Lovelace studies, the first positive acoustic impulse was found to be the metric most related to degree of injury, and size of an animal's gas-containing cavities was thought to play a role in blast injury susceptibility. For these shallow exposures of small terrestrial mammals (masses ranging from 3.4 to 50 kg) to underwater detonations, Richmond *et al.* (1973) reported that no blast injuries were observed when exposures were less than 6 pounds per square inch per millisecond (psi-ms) (40 pascal seconds (Pa-s)), no instances of slight lung hemorrhage occurred below 20 psi-ms (140 Pa-s), and instances of no lung damage were observed in some exposures at higher levels up to 40 psi-ms (280 Pa-s). An impulse of 34 psi-ms (230 Pa-s) resulted in about 50 percent incidence of slight lung hemorrhage. About half of the animals had

gastrointestinal tract contusions (with slight ulceration, *i.e.*, some perforation of the mucosal layer) at exposures of 25–27 psi-ms (170–190 Pa-s). Lung injuries were found to be slightly more prevalent than gastrointestinal tract injuries for the same exposure. The anatomical differences between the terrestrial animals used in the Lovelace tests and marine mammals are summarized in Fetherston *et al.* (2019). Goertner (1982) examined how lung cavity size would affect susceptibility to blast injury by considering both marine mammal size and depth in a bubble oscillation model of the lung; however, the Goertner (1982) model did not consider how tissues surrounding the respiratory air spaces would reflect shock wave energy or constrain oscillation (Fetherston *et al.*, 2019).

Goertner (1982) suggested a peak overpressure gastrointestinal tract injury criterion because the size of gas bubbles in the gastrointestinal tract are variable, and their oscillation period could be short relative to primary blast wave exposure duration. The potential for gastrointestinal tract injury, therefore, may not be adequately modeled by the single oscillation bubble methodology used to estimate lung injury due to impulse. Like impulse, however, high instantaneous pressures may damage many parts of the body, but damage to the gastrointestinal tract is used as an indicator of any peak pressure-induced injury due to its vulnerability.

Because gas-containing organs are more vulnerable to primary blast injury, adaptations for diving that allow for collapse of lung tissues with depth may make animals less vulnerable to lung injury with depth. Adaptations for diving include a flexible thoracic cavity, distensible veins that can fill space as air compresses, elastic lung tissue, and resilient tracheas with interlocking cartilaginous rings that provide strength and flexibility (Ridgway, 1972). Denk *et al.* (2020) found intra-species differences in the compliance of tracheobronchial structures of post-mortem cetaceans and pinnipeds under diving hydrostatic pressures, which would affect depth of alveolar collapse. Older literature suggested complete lung collapse depths at approximately 229.7 ft (70 m) for dolphins (Ridgway & Howard, 1979) and 65.6 to 164 ft (20 to 50 m) for phocid seals (Falke *et al.*, 1985; Kooyman *et al.*, 1972). Follow-on work by Kooyman and Sinnett (1982), in which pulmonary shunting was studied in harbor seals and sea lions, suggested that complete lung collapse for these species would be about 557.7 ft (170 m) and about 590.6 (180 m), respectively. Evidence in sea lions suggests that

complete collapse might not occur until depths as great as 738.2 ft (225 m); although the depth of collapse and depth of the dive are related, sea lions can affect the depth of lung collapse by varying the amount of air inhaled on a dive (McDonald and Ponganis, 2012). This is an important consideration for all divers who can modulate lung volume and gas exchange prior to diving via the degree of inhalation and during diving via exhalation (Fahlman *et al.*, 2009); indeed, there are noted differences in pre-dive respiratory behavior, with some marine mammals exhibiting pre-dive exhalation to reduce the lung volume (e.g., phocid seals) (Kooyman *et al.*, 1973).

Further Potential Effects of Behavioral Disturbance on Marine Mammal Fitness

The different ways that marine mammals respond to sound are sometimes indicators of the ultimate effect that exposure to a given stimulus will have on the well-being (survival, reproduction, *etc.*) of an animal. The long-term consequences of disturbance, hearing loss, chronic masking, and acute or chronic physiological stress are difficult to predict because of the different factors experienced by individual animals, such as context of stressor exposure, underlying health conditions, and other environmental or anthropogenic stressors. Linking these non-lethal effects on individuals to changes in population growth rates requires long-term data, which is lacking for many populations. We summarize several studies below, but there are few quantitative marine mammal data relating the exposure of marine mammals to sound to effects on reproduction or survival, though data exists for terrestrial species to which we can draw comparisons for marine mammals. Several authors have reported that disturbance stimuli may cause animals to abandon nesting and foraging sites (Sutherland and Crockford, 1993); may cause animals to increase their activity levels and suffer premature deaths or reduced reproductive success when their energy expenditures exceed their energy budgets (Daan *et al.*, 1996; Feare, 1976; Mullner *et al.*, 2004); or may cause animals to experience higher predation rates when they adopt risk-prone foraging or migratory strategies (Frid and Dill, 2002). Each of these studies addressed the consequences of animals shifting from one behavioral state (e.g., resting or foraging) to another behavioral state (e.g., avoidance or escape behavior) because of human disturbance or disturbance stimuli.

Lusseau and Bejder (2007) present data from three long-term studies illustrating the connections between disturbance from whale-watching boats and population-level effects in cetaceans. In Shark Bay Australia, the abundance of bottlenose dolphins was compared within adjacent control and tourism sites over three consecutive 4.5-year periods of increasing tourism levels. Between the second and third time periods, in which tourism doubled, dolphin abundance decreased by 15 percent in the tourism area and did not change significantly in the control area. In Fiordland, New Zealand, two populations (Milford and Doubtful Sounds) of bottlenose dolphins with tourism levels that differed by a factor of seven were observed and significant increases in travelling time and decreases in resting time were documented for both. Consistent short-term avoidance strategies were observed in response to tour boats until a threshold of disturbance was reached (average 68 minutes between interactions), after which the response switched to a longer-term habitat displacement strategy. For one population, tourism only occurred in a part of the home range. However, tourism occurred throughout the home range of the Doubtful Sound population and once boat traffic increased beyond the 68-minute threshold (resulting in abandonment of their home range/preferred habitat), reproductive success drastically decreased (increased stillbirths) and abundance decreased significantly (from 67 to 56 individuals in a short period). Last, in a study of Northern Resident killer whales off Vancouver Island, exposure to boat traffic was shown to reduce foraging opportunities and increase traveling time. A simple bioenergetics model was applied to show that the reduced foraging opportunities equated to a decreased energy intake of 18 percent, while the increased traveling incurred an increased energy output of 3–4 percent, which suggests that a management action based on avoiding interference with foraging might be particularly effective.

An important variable to consider is duration of disturbance. Severity scales used to assess behavioral responses or marine mammals to acute sound exposures are not appropriate to apply to sustained or chronic exposures, which requires considering the health of a population over time rather than a focus on immediate impacts to individuals (Southall *et al.*, 2021). For example, short-term costs experienced over the course of a week by an

otherwise healthy individual may be recouped over time after exposure to the stressor ends. These short-term costs would be unlikely to result in long-term consequences to that individual or to that individual's population. Comparatively, long-term costs accumulated by otherwise healthy individuals over an entire season, year, or throughout a life stage (e.g., pup, juvenile, adult) would be less easily recouped and more likely to result in long-term consequences to that individual or population.

Marine mammals exposed to frequent or intense anthropogenic activities may leave the area, habituate to the activity, or tolerate the disturbance and remain in the area (Wartzok *et al.*, 2003). Highly resident or localized populations may also stay in an area of disturbance because the cost of displacement is higher than the cost of remaining in the area (Forney *et al.*, 2017). As such, an apparent lack of response (e.g., no displacement or avoidance of a sound source) does not necessarily indicate there is no cost to the individual or population, as some resources or habitats may be of such high value that animals may choose to stay, even when experiencing the consequences of stress, masking, or hearing loss (Forney *et al.*, 2017).

Longer term displacement can lead to changes in abundance or distribution patterns of the species in the affected region (Bejder *et al.*, 2006b; Blackwell *et al.*, 2004; Teilmann *et al.*, 2006). For example, gray whales in Baja California, Mexico, abandoned a historical breeding lagoon in the mid-1960s due to an increase in dredging and commercial shipping operations, and only repopulated the lagoon after shipping activities had ceased for several years (Bryant *et al.*, 1984). Mysticetes in the northeast tended to adjust to vessel traffic over several years, trending towards more neutral behavioral responses to passing vessels (Watkins, 1986), indicating that some animals may habituate to high levels of human activity. A study on bottlenose dolphin responses to vessel approaches found that lesser responses in populations of dolphins regularly subjected to high levels of vessel traffic could be a sign of habituation, or it could be that the more sensitive animals in this population previously abandoned the area of higher human activity (Bejder *et al.*, 2006a).

Population characteristics (e.g., whether a population is open or closed to immigration and emigration) can influence sensitivity to disturbance as well; closed populations could not withstand a higher probability of disturbance compared to open

populations with no limitation on food (New *et al.*, 2020). Predicting population trends or long-term displacement patterns due to anthropogenic disturbance is challenging due to limited information and survey data for many species over sufficient spatiotemporal scales, as well as a full understanding of how other factors, such as oceanographic oscillations and climate change, affect marine mammal presence (Moore and Barlow, 2013; Barlow, 2016; Moore and Barlow, 2017).

Population models are necessary to understand and link short-term effects to individuals from disturbance (anthropogenic impacts or environmental change) to long-term population consequences. Population models require inputs for the population size and changes in vital rates of the population (*e.g.*, the mean values for survival age, lifetime reproductive success, recruitment of new individuals into the population), to predict changes in population dynamics (*e.g.*, population growth rate). These efforts often rely on bioenergetic models, or energy budget models, which analyze energy intake from food and energy costs for life functions, such as maintenance, growth, and reproduction, either at the individual or population level (Pirota, 2022), and model sensitivity analyses have identified the most consequential parameters, including prey characteristics, feeding processes, energy expenditure, body size, energy storage, and lactation capability (Pirota, 2022). However, there is a high level of uncertainty around many parameters in these models (Hütt *et al.*, 2023).

The U.S. National Research Council (NRC) committee on Characterizing Biologically Significant Marine Mammal Behavior developed an initial conceptual model to link acoustic disturbance to population effects and inform data and research needs (NRC, 2005). This Population Consequences of Acoustic Disturbance, or PCAD, conceptual model linked the parameters of sound exposure, behavior change, life function immediately affected, vital rates, and population effects. In its report, the committee found that the relationships between vital rates and population effects were relatively well understood, but that the relationships between the other components of the model were not well-known or easily observed.

Following the PCAD framework (NRC, 2005), an ONR working group developed the Potential Consequences of Disturbance (PCoD), outlining an updated conceptual model of the

relationships linking disturbance to changes in behavior and physiology, health, vital rates, and population dynamics. The PCoD model considers all types of disturbance, not solely anthropogenic or acoustic, and incorporates physiological changes, such as stress or injury, along with behavioral changes as a direct result of disturbance (National Academies of Sciences Engineering and Medicine, 2017). In this framework, behavioral and physiological changes can have direct (acute) effects on vital rates, such as when changes in habitat use or increased stress levels raise the probability of mother-calf separation or predation; they can have indirect and long-term (chronic) effects on vital rates, such as when changes in time/energy budgets or increased disease susceptibility affect health, which then affects vital rates; or they can have no effect to vital rates (New *et al.*, 2014; Pirota *et al.*, 2018a). In addition to outlining this general framework and compiling the relevant literature that supports it, the authors chose four example species for which extensive long-term monitoring data exist (southern elephant seals, NARW, *Ziphiidae* beaked whales, and bottlenose dolphins) and developed state-space energetic models that can be used to forecast longer-term, population-level impacts from behavioral changes. While these are very specific models with very specific data requirements that cannot yet be applied broadly to project-specific risk assessments for the majority of species, as well as requiring significant resources and time to conduct (more than is typically available to support regulatory compliance for one project), they are a critical first step towards being able to quantify the likelihood of a population level effect. Since New *et al.* (2014), several publications have described models developed to examine the long-term effects of environmental or anthropogenic disturbance of foraging on various life stages of selected species (sperm whale, Farmer *et al.* (2018); California sea lion, McHuron *et al.* (2018); and blue whale, Pirota, *et al.* (2018a)).

The PCoD model identifies the types of data that would be needed to assess population-level impacts. These data are lacking for many marine mammal species (Booth *et al.*, 2020). Southall *et al.* (2021) states that future modeling and population simulation studies can help determine population-wide long-term consequences and impact analysis. However, the method to do so is still developing, as there are gaps in the

literature, possible sampling biases, and results are rarely ground-truthed, with a few exceptions (Booth *et al.*, 2022; Schwarz *et al.*, 2022). Nowacek *et al.* (2016) reviewed technologies such as passive acoustic monitoring, tagging, and the use of unmanned aerial vehicles which can improve scientists' abilities to study these model inputs and link behavioral changes to individual life functions and ultimately population-level effects. Relevant data needed for improving analyses of population-level consequences resulting from disturbances will continue to be collected during the 7-year period of the LOAs through projects funded by the Navy's Marine Species Monitoring Program. Multiple case studies across marine mammal taxonomic groups have been conducted following the PCoD framework. From these studies, Keen *et al.* (2021) identified themes and contextual factors relevant to assessing impacts to populations due to disturbance, which have been considered in the context of the impacts of the Action Proponents' activities.

A population's movement ecology determines the potential for spatiotemporal overlap with a disturbance. Resident populations or populations that rely on spatially limited habitats for critical life functions (*i.e.*, foraging, breeding) would be at greater risk of repeated or chronic exposure to disturbances than populations that are wide-ranging relative to the footprint of a disturbance (Keen *et al.*, 2021). Even for the same species, differences in habitat use between populations can result in different potential for repeated exposure to individuals for a similar stressor (Costa *et al.*, 2016a). The location and radius of disturbance can impact how many animals are exposed and for how long (Costa *et al.*, 2016b). While some models have shown the advantages of populations with larger ranges, namely the decreased chance of being exposed (Costa *et al.*, 2016b), it's important to consider that for some species, the energetic cost of a longer migration could make a population more sensitive to energy lost through disturbance (Villegas-Amtmann *et al.*, 2017). In addition to ranging patterns, a species' activity budgets and lunging rates can cause variability in their predicted cost of disturbance as well (Pirota *et al.*, 2021).

Bioenergetics frameworks that examine the impact of foraging disruption on body reserves of individual whales found that rates of daily foraging disruption can predict the number of days to terminal starvation for various life stages (Farmer *et al.*,

2018b). Similarly, when a population is displaced by a stressor, and only has access to areas of poor habitat quality (*i.e.*, low prey abundance) for relocation, bioenergetic models may be more likely to predict starvation, longer recovery times, or extinction (Hin *et al.*, 2023). There is some debate over the use of blubber thickness as a metric of cetacean energy stores and health, as marine mammals may not use their fat stores in a similar manner to terrestrial mammals (Derous *et al.*, 2020).

Resource limitation can impact marine mammal population growth rate regardless of additional anthropogenic disturbance. Stochastic Dynamic Programming models have been used to explore the impact declining prey species has on focal marine mammal predators (McHuron *et al.*, 2023a; McHuron *et al.*, 2023b). A Stochastic Dynamic Programming model determined that a decrease in walleye pollock (*Gadus chalcogrammus*) availability increased the time and distance northern fur seal mothers had to travel offshore, which negatively impacted pup growth rate and wean mass, despite attempts to compensate with longer recovery time on land (McHuron *et al.*, 2023b). Prey is an important factor in long-term consequence models for many species of marine mammals. In disturbance models that predict habitat displacement or otherwise reduced foraging opportunities, populations are being deprived of energy dense prey or “high quality” areas which can lead to long-term impacts on fecundity and survival (Czapanskiy *et al.*, 2021; Hin *et al.*, 2019; McHuron *et al.*, 2023a; New *et al.*, 2013b). Prey density limits the energy available for growth, reproduction, and survival. Some disturbance models indicate that the immediate decrease in a portion of the population (*e.g.*, young lactating mothers) is not necessarily detrimental to a population, since as a result, prey availability increases and the population’s overall improved body condition reduces the age at first calf (Hin *et al.*, 2021). The timing of a disturbance with seasonally available resources is also important; if a disturbance occurs during periods of low resource availability, the population-level consequences are greater and occur faster than if the disturbance occurs during periods when resource levels are high (Hin *et al.*, 2019). Further, when resources are not evenly distributed, populations with cautious strategies and knowledge of resource variation have an advantage (Pirota *et al.*, 2020).

Even when modeled alongside several anthropogenic sources of disturbance (*e.g.*, vessel strike, vessel noise, chemical contaminants, sonar), several species of marine mammals are most influenced by lack of prey (Czapanskiy *et al.*, 2021; Murray *et al.*, 2021). Some species like killer whales are especially sensitive to prey abundance due to their limited diet (Murray *et al.*, 2021). The short-term energetic cost of eleven species of cetaceans and mysticetes exposed to mid-frequency active sonar was influenced more by lost foraging opportunities than increased locomotor effort during avoidance (Czapanskiy *et al.*, 2021). Additionally, the model found that mysticetes incurred more energetic cost than odontocetes, even during mild behavioral responses to sonar. These results may be useful in the development of future Population Consequences of Multiple Stressors and PCoD models since they should seek to qualify cetacean health in a more ecologically relevant manner.

PCoD models have been used to assess the impacts of multiple and recurring stressors. A marine mammal population that is already subject to chronic stressors like climate change will likely be more vulnerable to acute disturbances. Models that have looked at populations of cetaceans who are exposed to multiple stressors over several years have found that even one major chronic stressor (*e.g.*, climate change, epizootic disease, oil spill) has severe impacts on population size. A layer of one or more stressor (*e.g.*, seismic surveys) in addition to a chronic stressor (like an oil spill) can yield devastating impacts on a population. These results may vary based on species and location, as one population may be more impacted by chronic shipping noise, while another population may not. However, just because a population doesn’t appear to be impacted by one chronic stressor (*e.g.*, shipping noise), does not mean they aren’t affected by others, such as climate change or disease (Reed *et al.*, 2020). Recurring or chronic stressors can impact population abundance even when instances of disturbance are short and have minimal behavioral impact on an individual (Farmer *et al.*, 2018a; McHuron *et al.*, 2018b; Pirota *et al.*, 2019). Some changes to response variables like pup recruitment (survival to age one) aren’t noticeable for several years, as the impacts on pup survival does not affect the population until those pups are mature but impacts to young animals will ultimately lead to population-wide declines. The severity of the repeated disturbance can also impact a

population’s long-term reproductive success. Scenarios with severe repeated disturbance (*e.g.*, 95 percent probability of exposure, with 95 percent reduction in feeding efficiency) can severely reduce fecundity and calf survival, while a weaker disturbance (25 percent probability of exposure, with 25 percent reduction in feeding efficiency) had no population-wide effect on vital rates (Pirota *et al.*, 2019).

Farmer *et al.* (2018a) modeled how an oil spill led to chronic declines in a sperm whale population over 10 years, and if models included even one more stressor (*i.e.*, behavioral responses to air guns), the population declined even further. However, the amount of additional population decline due to acoustic disturbance depended on the way the dose-response of the noise levels were modeled. A single step-function led to higher impacts than a function with multiple steps and frequency weighting. In addition, the amount of impact from both disturbances was mediated when the metric in the model that described animal resilience was changed to increase resilience to disturbance (*e.g.*, able to make up reserves through increased foraging).

Not all stressors have the same impact for all species and all locations. Another model analyzed the effect of a number of chronic disturbances on two bottlenose dolphin populations in Australia over 5 years (Reed *et al.*, 2020). Results indicated that disturbance from fisheries interactions and shipping noise had little overall impact on population abundances in either location, even in the most extreme impact scenarios modeled. At least in this area, epizootic and climate change scenarios had the largest impact on population size and fecundity.

Recurring stressors can impact population abundance even when individual instances of disturbance are short and have minimal behavioral impact on an individual. A model on California sea lions introduced a generalized disturbance at different times throughout the breeding cycle, with their behavior response being an increase in the duration of a foraging trip by the female (McHuron *et al.*, 2018b). Very short duration disturbances or responses led to little change, particularly if the disturbance was a single event, and changes in the timing of the event in the year had little effect. However, with even relatively short disturbances or mild responses, when a disturbance was modeled as recurring there were resulting reductions in population size and pup recruitment (survival to age one). Often,

the effects weren't noticeable for several years, as the impacts on pup survival did not affect the population until those pups were mature.

Stranding and Mortality

The definition for a stranding under title IV of the MMPA is that (A) a marine mammal is dead and is (i) on a beach or shore of the United States; or (ii) in waters under the jurisdiction of the United States (including any navigable waters); or (B) a marine mammal is alive and is (i) on a beach or shore of the United States and is unable to return to the water; (ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or (iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance (see MMPA section 410(3)). This definition is useful for considering stranding events even when they occur beyond lands and waters under the jurisdiction of the United States.

Marine mammal strandings have been linked to a variety of causes, such as illness from exposure to infectious agents, biotoxins, or parasites; starvation; unusual oceanographic or weather events; or anthropogenic causes including fishery interaction, vessel strike, entrapment, sound exposure, or combinations of these stressors sustained concurrently or in series. Historically, the cause or causes of most strandings have remained unknown (Geraci *et al.*, 1976; Eaton, 1979; Odell *et al.*, 1980; Best, 1982), but the development of trained, professional stranding response networks and improved analyses have led to a greater understanding of marine mammal stranding causes (Simeone and Moore 2017).

Numerous studies suggest that the physiology, behavior, habitat, social relationships, age, or condition of cetaceans may cause them to strand or might predispose them to strand when exposed to another phenomenon. These suggestions are consistent with the conclusions of numerous other studies that have demonstrated that combinations of dissimilar stressors commonly combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other does not produce the same result (Bernaldo de Quiros *et al.*, 2019; Chroussos, 2000; Creel, 2005; DeVries *et al.*, 2003; Fair and Becker, 2000; Foley *et al.*, 2001; Moberg, 2000; Relyea, 2005a; 2005b, Romero, 2004; Sih *et al.*, 2004).

Historically, stranding reporting and response efforts have been inconsistent, although significant improvements have occurred over the last 25 years. Reporting forms for basic ("Level A") information, rehabilitation disposition, and human interaction have been standardized nationally (available at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/level-data-collection-marine-mammal-stranding-events>). However, data collected beyond basic information varies by region (and may vary from case to case), and are not standardized across the United States. Logistical conditions such as weather, time, location, and decomposition state may also affect the ability of the stranding network to thoroughly examine a specimen (Carretta *et al.*, 2023; Moore *et al.*, 2013). While the investigation of stranded animals provides insight into the types of threats marine mammal populations face, full investigations are only possible and conducted on a small fraction of the total number of strandings that occur, limiting our understanding of the causes of strandings (Carretta *et al.*, 2016a). Additionally, and due to the variability in effort and data collected, the ability to interpret long-term trends in stranded marine mammals is complicated.

In the United States from 2006–2022, there were 27,781 cetacean strandings and 79,572 pinniped strandings (107,353 total) (P. Onens, NMFS, *pers comm.*, 2024). Several mass strandings (strandings that involve two or more individuals of the same species, excluding a single mother-calf pair) that have occurred over the past two decades have been associated with anthropogenic activities that introduced sound into the marine environment such as naval operations and seismic surveys. An in-depth discussion of strandings can be found in appendix D of the 2024 AFTT Draft Supplemental EIS/OEIS and in the Navy's Technical Report on Marine Mammal Strandings Associated with U.S. Navy Sonar Activities (U.S. Navy Marine Mammal Program & Space and Naval Warfare Systems Command Center Pacific, 2017).

Worldwide, there have been several efforts to identify relationships between cetacean mass stranding events and military active sonar (Cox *et al.*, 2006, Hildebrand, 2004; Taylor *et al.*, 2004). For example, based on a review of mass stranding events around the world consisting of two or more individuals of goose-beaked whales, records from the International Whaling Commission (IWC) (2005) show that a quarter (9 of 41) were associated with concurrent

naval patrol, explosion, maneuvers, or MFAS. D'Amico *et al.* (2009) reviewed beaked whale stranding data compiled primarily from the published literature, which provides an incomplete record of stranding events, as many are not written up for publication, along with unpublished information from some regions of the world.

Most of the stranding events reviewed by the IWC involved beaked whales. A mass stranding of goose-beaked whales in the eastern Mediterranean Sea occurred in 1996 (Frantzis, 1998), and mass stranding events involving Gervais' beaked whales, Blainville's beaked whales, and goose-beaked whales occurred off the coast of the Canary Islands in the late 1980s (Simmonds and Lopez-Jurado, 1991). The stranding events that occurred in the Canary Islands and Kyparissiakos Gulf in the late 1990s and the Bahamas in 2000 have been the most intensively-studied mass stranding events and have been associated with naval maneuvers involving the use of tactical sonar. Other cetacean species with naval sonar implicated in stranding events include harbor porpoise (Norman *et al.*, 2004, Wright *et al.*, 2013) and common dolphin (Jepson and Deaville 2009).

Strandings Associated With Active Sonar

Over the past 21 years, there have been 5 stranding events coincident with military MFAS use in which exposure to sonar is believed to have been a contributing factor: Greece (1996); the Bahamas (2000); Madeira (2000); Canary Islands (2002); and Spain (2006) (Cox *et al.*, 2006; Fernandez, 2006; U.S. Navy Marine Mammal Program & Space and Naval Warfare Systems Command Center Pacific, 2017). These five mass strandings have resulted in about 40 known cetacean deaths consisting mostly of beaked whales and with close linkages to MFAS activity. In these circumstances, exposure to non-impulsive acoustic energy was considered a potential indirect cause of death of the marine mammals (Cox *et al.*, 2006). Only one of these stranding events, the Bahamas (2000), was associated with exercises conducted by the U.S. Navy. Additionally, in 2004, during the Rim of the Pacific (RIMPAC) exercises, between 150 and 200 usually pelagic melon-headed whales occupied the shallow waters of Hanalei Bay, Kaua'i, Hawaii for over 28 hours. NMFS determined that MFAS was a plausible, if not likely, contributing factor in what may have been a confluence of events that led to the Hanalei Bay stranding. A number of other stranding events coincident with the operation of MFAS,

including the death of beaked whales or other species (minke whales, dwarf sperm whales, pilot whales), have been reported; however, the majority have not been investigated to the degree necessary to determine the cause of the stranding. Most recently, the Independent Scientific Review Panel investigating potential contributing factors to a 2008 mass stranding of melon-headed whales in Antsohihy, Madagascar released its final report suggesting that the stranding was likely initially triggered by an industry seismic survey (Southall *et al.*, 2013). This report suggests that the operation of a commercial high-powered 12 kHz multibeam echosounder during an industry seismic survey was a plausible and likely initial trigger that caused a large group of melon-headed whales to leave their typical habitat and then ultimately strand as a result of secondary factors such as malnourishment and dehydration. The report indicates that the risk of this particular convergence of factors and ultimate outcome is likely very low, but recommends that the potential be considered in environmental planning. Because of the association between tactical MFAS use and a small number of marine mammal strandings, the Navy and NMFS have been considering and addressing the potential for strandings in association with Navy activities for years. In addition to the proposed mitigation measures intended to more broadly minimize impacts to marine mammals, the Navy will abide by the Notification and Reporting Plan, which sets out notification, reporting, and other requirements when dead, injured, or stranded marine mammals are detected in certain circumstances.

Greece (1996)—

Twelve goose-beaked whales stranded typically (in both time and space) along a 23.7 mi (38.2 km) strand of the Kyparissiakos Gulf coast on May 12 and 13, 1996 (Frantzis, 1998). From May 11 through May 15, the North Atlantic Treaty Organization (NATO) research vessel Alliance was conducting sonar tests with signals of 600 Hz and 3 kHz and source levels of 228 and 226 dB re 1 μ Pa, respectively (D'Amico and Verboom, 1998; D'Spain *et al.*, 2006). The timing and location of the testing encompassed the time and location of the strandings (Frantzis, 1998).

Necropsies of eight of the animals were performed but were limited to basic external examination and sampling of stomach contents, blood, and skin. No ears or organs were collected, and no histological samples were preserved. No significant apparent

abnormalities or wounds were found, however examination of photos of the animals, taken soon after their death, revealed that the eyes of at least four of the individuals were bleeding (Frantzis, 2004). Stomach contents contained the flesh of cephalopods, indicating that feeding had recently taken place (Frantzis, 1998).

All available information regarding the conditions associated with this stranding event was compiled, and many potential causes were examined including major pollution events, prominent tectonic activity, unusual physical or meteorological events, magnetic anomalies, epizootics, and conventional military activities (International Council for the Exploration of the Sea, 2005). However, none of these potential causes coincided in time or space with the mass stranding, or could explain its characteristics (International Council for the Exploration of the Sea, 2005). The robust condition of the animals, plus the recent stomach contents, is inconsistent with pathogenic causes. In addition, environmental causes can be ruled out as there were no unusual environmental circumstances or events before or during this time period and within the general proximity (Frantzis, 2004).

Because of the rarity of this mass stranding of goose-beaked whales in the Kyparissiakos Gulf (first one in historical records), the probability for the two events (the military exercises and the strandings) to coincide in time and location, while being independent of each other, was thought to be extremely low (Frantzis, 1998). However, because full necropsies had not been conducted, and no abnormalities were noted, the cause of the strandings could not be precisely determined (Cox *et al.*, 2006). A Bioacoustics Panel convened by NATO concluded that the evidence available did not allow them to accept or reject sonar exposures as a causal agent in these stranding events. The analysis of this stranding event provided support for, but no clear evidence for, the cause-and-effect relationship of tactical sonar training activities and beaked whale strandings (Cox *et al.*, 2006).

Bahamas (2000)—

NMFS and the Navy prepared a joint report addressing the multi-species stranding in the Bahamas in 2000, which took place within 24 hours of U.S. Navy ships using MFAS as they passed through the Northeast and Northwest Providence Channels on March 15–16, 2000. The ships, which operated both AN/SQS–53C and AN/SQS–56, moved through the channel

while emitting sonar pings approximately every 24 seconds. Of the 17 cetaceans that stranded over a 36-hour period (goose-beaked whales, Blainville's beaked whales, minke whales, and a spotted dolphin), 7 animals died on the beach (5 goose-beaked whales, 1 Blainville's beaked whale, and 1 spotted dolphin), while the other 10 were returned to the water alive (though their ultimate fate is unknown). As discussed in the Bahamas report (DOC/DON, 2001), there is no likely association between the minke whale and spotted dolphin strandings and the operation of MFAS.

Necropsies were performed on five of the stranded beaked whales. All five necropsied beaked whales were in good body condition, showing no signs of infection, disease, vessel strike, blunt trauma, or fishery related injuries, and three still had food remains in their stomachs. Auditory structural damage was discovered in four of the whales, specifically bloody effusions or hemorrhaging around the ears. Bilateral intracochlear and unilateral temporal region subarachnoid hemorrhage, with blood clots in the lateral ventricles, were found in two of the whales. Three of the whales had small hemorrhages in their acoustic fats (located along the jaw and in the melon).

A comprehensive investigation was conducted and all possible causes of the stranding event were considered, whether they seemed likely at the outset or not. Based on the way in which the strandings coincided with ongoing naval activity involving tactical MFAS use, in terms of both time and geography, the nature of the physiological effects experienced by the dead animals, and the absence of any other acoustic sources, the investigation team concluded that MFAS aboard U.S. Navy ships that were in use during the active sonar exercise in question were the most plausible source of this acoustic or impulse trauma to beaked whales. This sound source was active in a complex environment that included the presence of a surface duct, unusual and steep bathymetry, a constricted channel with limited egress, intensive use of multiple, active sonar units over an extended period of time, and the presence of beaked whales that appear to be sensitive to the frequencies produced by these active sonars. The investigation team concluded that the cause of this stranding event was the confluence of the Navy MFAS and these contributory factors working together, and further recommended that the Navy avoid operating MFAS in situations where these five factors would be likely to occur. This report does not conclude

that all five of these factors must be present for a stranding to occur, nor that beaked whales are the only species that could potentially be affected by the confluence of the other factors. Based on this, NMFS believes that the operation of MFAS in situations where surface ducts exist, or in marine environments defined by steep bathymetry and/or constricted channels may increase the likelihood of producing a sound field with the potential to cause cetaceans (especially beaked whales) to strand, and therefore, suggests the need for increased vigilance while operating MFAS in these areas, especially when beaked whales (or potentially other deep divers) are likely present.

Madeira, Portugal (2000)—

From May 10–14, 2000, three goose-beaked whales were found atypically stranded on two islands in the Madeira archipelago, Portugal (Cox *et al.*, 2006). A fourth animal was reported floating in the Madeiran waters by fisherman but did not come ashore (Woods Hole Oceanographic Institution, 2005). Joint NATO amphibious training peacekeeping exercises involving participants from 17 countries and 80 warships, took place in Portugal during May 2–15, 2000.

The bodies of the three stranded whales were examined postmortem (Woods Hole Oceanographic Institution, 2005), though only one of the stranded whales was fresh enough (24 hours after stranding) to be necropsied (Cox *et al.*, 2006). Results from the necropsy revealed evidence of hemorrhage and congestion in the right lung and both kidneys (Cox *et al.*, 2006). There was also evidence of intercochlear and intracranial hemorrhage similar to that which was observed in the whales that stranded in the Bahamas event (Cox *et al.*, 2006). There were no signs of blunt trauma, and no major fractures, and the cranial sinuses and airways were found to be clear with little or no fluid deposition, which may indicate good preservation of tissues (Woods Hole Oceanographic Institution, 2005).

Several observations on the Madeira stranded beaked whales, such as the pattern of injury to the auditory system, are the same as those observed in the Bahamas strandings. Blood in and around the eyes, kidney lesions, pleural hemorrhages, and congestion in the lungs are particularly consistent with the pathologies from the whales stranded in the Bahamas, and are consistent with stress and pressure related trauma. The similarities in pathology and stranding patterns between these two events suggest that a similar pressure event may have

precipitated or contributed to the strandings at both sites (Woods Hole Oceanographic Institution, 2005).

Even though no definitive causal link can be made between the stranding event and naval exercises, certain conditions may have existed in the exercise area that, in their aggregate, may have contributed to the marine mammal strandings (Freitas, 2004): exercises were conducted in areas of at least 547 fathoms (1,000 m) depth near a shoreline where there is a rapid change in bathymetry on the order of 547 to 3,281 fathoms (1,000 to 6,000 m) occurring across a relatively short horizontal distance (Freitas, 2004); multiple ships were operating around Madeira, though it is not known if MFAS was used, and the specifics of the sound sources used are unknown (Cox *et al.*, 2006; Freitas, 2004); and exercises took place in an area surrounded by landmasses separated by less than 35 nmi (65 km) and at least 10 nmi (19 km) in length, or in an embayment. Exercises involving multiple ships employing MFAS near land may produce sound directed towards a channel or embayment that may cut off the lines of egress for marine mammals (Freitas, 2004).

Canary Islands, Spain (2002)—

The southeastern area within the Canary Islands is well known for aggregations of beaked whales due to its ocean depths of greater than 547 fathoms (1,000 m) within a few hundred meters of the coastline (Fernandez *et al.*, 2005). On September 24, 2002, 14 beaked whales were found stranded on Fuerteventura and Lanzarote Islands in the Canary Islands (International Council for Exploration of the Sea, 2005a). Seven whales died, while the remaining seven live whales were returned to deeper waters (Fernandez *et al.*, 2005). Four beaked whales were found stranded dead over the next three days either on the coast or floating offshore. These strandings occurred within close proximity of an international naval exercise that utilized MFAS and involved numerous surface warships and several submarines. Strandings began about four hours after the onset of MFAS activity (International Council for Exploration of the Sea, 2005a; Fernandez *et al.*, 2005).

Eight goose-beaked whales, one Blainville's beaked whale, and one Gervais' beaked whale were necropsied, 6 of them within 12 hours of stranding (Fernandez *et al.*, 2005). No pathogenic bacteria were isolated from the carcasses (Jepson *et al.*, 2003). The animals displayed severe vascular congestion and hemorrhage especially around the

tissues in the jaw, ears, brain, and kidneys, displaying marked disseminated microvascular hemorrhages associated with widespread fat emboli (Jepson *et al.*, 2003; International Council for Exploration of the Sea, 2005a). Several organs contained intravascular bubbles, although definitive evidence of gas embolism in vivo is difficult to determine after death (Jepson *et al.*, 2003). The livers of the necropsied animals were the most consistently affected organ, which contained macroscopic gas-filled cavities and had variable degrees of fibrotic encapsulation. In some animals, cavitory lesions had extensively replaced the normal tissue (Jepson *et al.*, 2003). Stomachs contained a large amount of fresh and undigested contents, suggesting a rapid onset of disease and death (Fernandez *et al.*, 2005). Head and neck lymph nodes were enlarged and congested, and parasites were found in the kidneys of all animals (Fernandez *et al.*, 2005).

The association of NATO MFAS use close in space and time to the beaked whale strandings, and the similarity between this stranding event and previous beaked whale mass strandings coincident with sonar use, suggests that a similar scenario and causative mechanism of stranding may be shared between the events. Beaked whales stranded in this event demonstrated brain and auditory system injuries, hemorrhages, and congestion in multiple organs, similar to the pathological findings of the Bahamas and Madeira stranding events. In addition, the necropsy results of the Canary Islands stranding event lead to the hypothesis that the presence of disseminated and widespread gas bubbles and fat emboli were indicative of nitrogen bubble formation, similar to what might be expected in decompression sickness (Jepson *et al.*, 2003; Fernández *et al.*, 2005).

Hanalei Bay (2004)—

On July 3 and 4, 2004, approximately 150 to 200 melon-headed whales occupied the shallow waters of Hanalei Bay, Kaua'i, Hawaii for over 28 hours. Attendees of a canoe blessing observed the animals entering the Bay in a single wave formation at 7 a.m. on July 3, 2004. The animals were observed moving back into the shore from the mouth of the Bay at 9 a.m. The usually pelagic animals milled in the shallow bay and were returned to deeper water with human assistance beginning at 9:30 a.m. on July 4, 2004, and were out of sight by 10:30 a.m.

Only one animal, a calf, was known to have died following this event. The animal was noted alive and alone in the Bay on the afternoon of July 4, 2004, and was found dead in the Bay the morning of July 5, 2004. A full necropsy, magnetic resonance imaging, and computerized tomography examination were performed on the calf to determine the manner and cause of death. The combination of imaging, necropsy and histological analyses found no evidence of infectious, internal traumatic, congenital, or toxic factors. Cause of death could not be definitively determined, but it is likely that maternal separation, poor nutritional condition, and dehydration contributed to the final demise of the animal. Although it is not known when the calf was separated from its mother, the animals' movement into the Bay and subsequent milling and re-grouping may have contributed to the separation or lack of nursing, especially if the maternal bond was weak or this was an inexperienced mother with her first calf.

Environmental factors, abiotic and biotic, were analyzed for any anomalous occurrences that would have contributed to the animals entering and remaining in Hanalei Bay. The Bay's bathymetry is similar to many other sites within the Hawaiian Island chain and dissimilar to sites that have been associated with mass strandings in other parts of the United States. The weather conditions appeared to be normal for that time of year with no fronts or other significant features noted. There was no evidence of unusual distribution, occurrence of predator or prey species, or unusual harmful algal blooms, although Mobley *et al.* (2007) suggested that the full moon cycle that occurred at that time may have influenced a run of squid into the Bay. Weather patterns and bathymetry that have been associated with mass strandings elsewhere were not found to occur in this instance.

The Hanalei event was spatially and temporally correlated with RIMPAC. Official sonar training and tracking exercises in the Pacific Missile Range Facility (PMRF) warning area did not commence until approximately 8 a.m. on July 3 and were thus ruled out as a possible trigger for the initial movement into the bay. However, six naval surface vessels transiting to the operational area on July 2 intermittently transmitted active sonar (for approximately 9 hours total from 1:15 p.m. to 12:30 a.m.) as they approached from the south. The potential for these transmissions to have triggered the whales' movement into Hanalei Bay was investigated. Analyses with the information available indicated

that animals to the south and east of Kaua'i could have detected active sonar transmissions on July 2, and reached Hanalei Bay on or before 7 a.m. on July 3. However, data limitations regarding the position of the whales prior to their arrival in the Bay, the magnitude of sonar exposure, behavioral responses of melon-headed whales to acoustic stimuli, and other possible relevant factors preclude a conclusive finding regarding the role of sonar in triggering this event. Propagation modeling suggests that transmissions from sonar use during the July 3 exercise in the PMRF warning area may have been detectable at the mouth of the bay. If the animals responded negatively to these signals, it may have contributed to their continued presence in the bay. The U.S. Navy ceased all active sonar transmissions during exercises in this range on the afternoon of July 3. Subsequent to the cessation of sonar use, the animals were herded out of the bay.

While causation of this stranding event may never be unequivocally determined, NMFS considers the active sonar transmissions of July 2–3, 2004, a plausible, if not likely, contributing factor in what may have been a confluence of events. This conclusion is based on the following: (1) the evidently anomalous nature of the stranding; (2) its close spatiotemporal correlation with wide-scale, sustained use of sonar systems previously associated with stranding of deep-diving marine mammals; (3) the directed movement of two groups of transmitting vessels toward the southeast and southwest coast of Kaua'i; (4) the results of acoustic propagation modeling and an analysis of possible animal transit times to the bay; and (5) the absence of any other compelling causative explanation. The initiation and persistence of this event may have resulted from an interaction of biological and physical factors. The biological factors may have included the presence of an apparently uncommon, deep-diving cetacean species (and possibly an offshore, non-resident group), social interactions among the animals before or after they entered the bay, and/or unknown predator or prey conditions. The physical factors may have included the presence of nearby deep water, multiple vessels transiting in a directed manner while transmitting active sonar over a sustained period, the presence of surface sound ducting conditions, and/or intermittent and random human interactions while the animals were in the bay.

A separate event involving melon-headed whales and rough-toothed

dolphins took place over the same period of time in the Northern Mariana Islands (Jefferson *et al.*, 2006), which is several thousand miles from Hawaii. Some 500 to 700 melon-headed whales came into Sasanhaya Bay on July 4, 2004, near the island of Rota and then left of their own accord after 5.5 hours; no known active sonar transmissions occurred in the vicinity of that event. The Rota incident led to scientific debate regarding what, if any, relationship the event had to the simultaneous events in Hawaii and whether they might be related by some common factor (*e.g.*, there was a full moon on July 2, 2004, as well as during other melon-headed whale strandings and nearshore aggregations (Brownell *et al.*, 2009; Lignon *et al.*, 2007; Mobley *et al.*, 2007). Brownell *et al.* (2009) compared the two incidents, along with one other stranding incident at Nuka Hiva in French Polynesia and normal resting behaviors observed at Palmyra Island, in regard to physical features in the areas, melon-headed whale behavior, and lunar cycles. Brownell *et al.*, (2009) concluded that the rapid entry of the whales into Hanalei Bay, their movement into very shallow water far from the 328-ft (100-m) contour, their milling behavior (typical pre-stranding behavior), and their reluctance to leave the bay constituted an unusual event that was not similar to the events that occurred at Rota, which appear to be similar to observations of melon-headed whales resting normally at Palmyra Island. Additionally, there was no correlation between lunar cycle and the types of behaviors observed in the Brownell *et al.* (2009) examples.

Spain (2006)—

The Spanish Cetacean Society reported an atypical mass stranding of four beaked whales that occurred January 26, 2006, on the southeast coast of Spain, near Mojácar (Gulf of Vera) in the Western Mediterranean Sea. According to the report, two of the whales were discovered the evening of January 26 and were found to be still alive. Two other whales were discovered during the day on January 27 but had already died. The first three animals were located near the town of Mojácar and the fourth animal was found dead, a few kilometers north of the first three animals. From January 25–26, 2006, Standing NATO Response Force Maritime Group Two (five of seven ships including one U.S. ship under NATO Operational Control) had conducted active sonar training against a Spanish submarine within 50 nmi (93 km) of the stranding site.

Veterinary pathologists necropsied the two male and two female goose-beaked whales. According to the pathologists, the most likely primary cause of this type of beaked whale mass stranding event was anthropogenic acoustic activities, most probably anti-submarine MFAS used during the military naval exercises. However, no positive acoustic link was established as a direct cause of the stranding. Even though no causal link can be made between the stranding event and naval exercises, certain conditions may have existed in the exercise area that, in their aggregate, may have contributed to the marine mammal strandings (Freitas, 2004). Exercises were conducted in areas of at least 547 fathoms (1,000 m) depth near a shoreline where there is a rapid change in bathymetry on the order of 547 to 3,281 fathoms (1,000 to 6,000 m) occurring across a relatively short horizontal distance (Freitas, 2004). Multiple ships (in this instance, five) were operating MFAS in the same area over extended periods of time (in this case, 20 hours) in close proximity; and exercises took place in an area surrounded by landmasses, or in an embayment. Exercises involving multiple ships employing MFAS near land may have produced sound directed towards a channel or embayment that may have cut off the lines of egress for the affected marine mammals (Freitas, 2004).

Honaunau Bay (2022)—

On March 25, 2022, a beaked whale (species unknown) stranded in Honaunau Bay, Hawaii. The animal was observed swimming into shore and over rocks. Bystanders intervened to turn the animal off of the rocks, and it swam back out of the Bay on its own. Locals reported hearing a siren or alarm type of sound underwater on the same day, and a Navy vessel was observed from shore on the following day. The Navy confirmed it used CAS within 27 nmi (50 km) and 48 hours of the time of stranding, though the stranding has not been definitively linked to the Navy's CAS use.

Behaviorally Mediated Responses to MFAS That May Lead To Stranding

Although the confluence of Navy MFAS with the other contributory factors noted in the 2001 NMFS/Navy joint report was identified as the cause of the 2000 Bahamas stranding event, the specific mechanisms that led to that stranding (or the others) are not well understood, and there is uncertainty regarding the ordering of effects that led to the stranding. It is unclear whether beaked whales were directly injured by

sound (*e.g.*, acoustically mediated bubble growth, as addressed above) prior to stranding or whether a behavioral response to sound occurred that ultimately caused the beaked whales to be injured and strand.

Although causal relationships between beaked whale stranding events and active sonar remain unknown, several authors have hypothesized that stranding events involving these species in the Bahamas and Canary Islands may have been triggered when the whales changed their dive behavior in a startled response to exposure to active sonar or to further avoid exposure (Cox *et al.*, 2006; Rommel *et al.*, 2006). These authors proposed three mechanisms by which the behavioral responses of beaked whales upon being exposed to active sonar might result in a stranding event. These include the following: gas bubble formation caused by excessively fast surfacing; remaining at the surface too long when tissues are supersaturated with nitrogen; or diving prematurely when extended time at the surface is necessary to eliminate excess nitrogen. More specifically, beaked whales that occur in deep waters that are in close proximity to shallow waters (for example, the “canyon areas” that are cited in the Bahamas stranding event; see D'Spain and D'Amico, 2006), may respond to active sonar by swimming into shallow waters to avoid further exposures and strand if they were not able to swim back to deeper waters. Second, beaked whales exposed to active sonar might alter their dive behavior. Changes in their dive behavior might cause them to remain at the surface or at depth for extended periods of time which could lead to hypoxia directly by increasing their oxygen demands or indirectly by increasing their energy expenditures (to remain at depth) and increase their oxygen demands as a result. If beaked whales are at depth when they detect a ping from an active sonar transmission and change their dive profile, this could lead to the formation of significant gas bubbles, which could damage multiple organs or interfere with normal physiological function (Cox *et al.*, 2006; Rommel *et al.*, 2006; Zimmer and Tyack, 2007). Baird *et al.* (2005) found that slow ascent rates from deep dives and long periods of time spent within 164 ft (50 m) of the surface were typical for both goose-beaked and Blainville's beaked whales, the two species involved in mass strandings related to naval sonar. These two behavioral mechanisms may be necessary to purge excessive dissolved nitrogen concentrated in their tissues during

their frequent long dives (Baird *et al.*, 2005). Baird *et al.* (2005) further suggests that abnormally rapid ascents or premature dives in response to high-intensity sonar could indirectly result in physical harm to the beaked whales, through the mechanisms described above (gas bubble formation or non-elimination of excess nitrogen). In a review of the previously published data on the potential impacts of sonar on beaked whales, Bernaldo de Quirós *et al.* (2019) suggested that the effect of MFAS on beaked whales varies among individuals or populations, and that predisposing conditions such as previous exposure to sonar and individual health risk factors may contribute to individual outcomes (such as decompression sickness).

Because many species of marine mammals make repetitive and prolonged dives to great depths, it has long been assumed that marine mammals have evolved physiological mechanisms to protect against the effects of rapid and repeated decompressions. Although several investigators have identified physiological adaptations that may protect marine mammals against nitrogen gas supersaturation (alveolar collapse and elective circulation; Kooyman *et al.*, 1972; Ridgway and Howard, 1979), Ridgway and Howard (1979) reported that bottlenose dolphins that were trained to dive repeatedly had muscle tissues that were substantially supersaturated with nitrogen gas. Houser *et al.* (2001b) used these data to model the accumulation of nitrogen gas within the muscle tissue of other marine mammal species and concluded that cetaceans that dive deep and have slow ascent or descent speeds would have tissues that are more supersaturated with nitrogen gas than other marine mammals. Based on these data, Cox *et al.* (2006) hypothesized that a critical dive sequence might make beaked whales more prone to stranding in response to acoustic exposures. The sequence began with (1) very deep (to depths as deep as 1.2 mi (2 km)) and long (as long as 90 minutes) foraging dives; (2) relatively slow, controlled ascents; and (3) a series of “bounce” dives between 328 and 1,312 ft (100 and 400 m) in depth (see Zimmer and Tyack, 2007). They concluded that acoustic exposures that disrupted any part of this dive sequence (for example, causing beaked whales to spend more time at surface without the bounce dives that are necessary to recover from the deep dive) could produce excessive levels of nitrogen supersaturation in their tissues, leading to gas bubble and emboli

formation that produces pathologies similar to decompression sickness.

Zimmer and Tyack (2007) modeled nitrogen tension and bubble growth in several tissue compartments for several hypothetical dive profiles and concluded that repetitive shallow dives (defined as a dive where depth does not exceed the depth of alveolar collapse, approximately 236 ft (72 m) for goose-beaked whale), perhaps as a consequence of an extended avoidance response to sonar sound, could pose a risk for decompression sickness and that this risk should increase with the duration of the response. Their models also suggested that unrealistically rapid rates of ascent from normal dive behaviors are unlikely to result in supersaturation to the extent that bubble formation would be expected. Tyack *et al.* (2006) suggested that emboli observed in animals exposed to mid-frequency range sonar (Jepson *et al.*, 2003; Fernandez *et al.*, 2005; Fernández *et al.*, 2012) could stem from a behavioral response that involves repeated dives shallower than the depth of lung collapse. Given that nitrogen gas accumulation is a passive process (*i.e.*, nitrogen is metabolically inert), a bottlenose dolphin was trained to repetitively dive a profile predicted to elevate nitrogen saturation to the point that nitrogen bubble formation was predicted to occur. However, inspection of the vascular system of the dolphin via ultrasound did not demonstrate the formation of asymptomatic nitrogen gas bubbles (Houser *et al.*, 2007). Baird *et al.* (2008), in a beaked whale tagging study off Hawaii, showed that deep dives are equally common during day or night, but “bounce dives” are typically a daytime behavior, possibly associated with visual predator avoidance. This may indicate that “bounce dives” are associated with something other than behavioral regulation of dissolved nitrogen levels, which would be necessary day and night.

Additional predictive modeling conducted to date has been performed with many unknowns about the respiratory physiology of deep-diving breath-hold animals. For example, Denk *et al.* (2020) found intra-species differences in the compliance of tracheobronchial structures of post-mortem cetaceans and pinnipeds under diving hydrostatic pressures, which would affect depth of alveolar collapse. Although, as hypothesized by Garcia Parraga *et al.* (2018) and reviewed in Fahlman *et al.*, (2021), mechanisms may exist that allow marine mammals to create a pulmonary shunt without the need for hydrostatic pressure-induced lung collapse, *i.e.*, by varying perfusion

to the lung independent of lung collapse and degree of ventilation. If such a mechanism exists, then assumptions in prior gas models require reconsideration, the degree of nitrogen gas accumulation associated with dive profiles needs to be re-evaluated, and behavioral responses potentially leading to a destabilization of the relationship between pulmonary ventilation and perfusion should be considered. Costidis and Rommel (2016) suggested that gas exchange may continue to occur across the tissues of air-filled sinuses in deep diving odontocetes below the depth of lung collapse if hydrostatic pressures are high enough to drive gas exchange across into non-capillary veins.

If marine mammals respond to an Action Proponent vessel that is transmitting active sonar in the same way that they might respond to a predator, their probability of flight responses could increase when they perceive that Action Proponent vessels are approaching them directly, because a direct approach may convey detection and intent to capture (Burger and Gochfeld, 1981, 1990; Cooper, 1997; Cooper, 1998). The probability of flight responses could also increase as received levels of active sonar increase (and the ship is, therefore, closer) and as ship speeds increase (that is, as approach speeds increase). For example, the probability of flight responses in Dall's sheep (*Ovis dalli dalli*) (Frid 2001a; Frid 2001b), ringed seals (Born *et al.*, 1999), Pacific brant (*Branta bernicla nigricans*) and Canada geese (*B. canadensis*) increased as a helicopter or fixed-wing aircraft approached groups of these animals more directly (Ward *et al.*, 1999). Bald eagles (*Haliaeetus leucocephalus*) perched on trees alongside a river were also more likely to flee from a paddle raft when their perches were closer to the river or were closer to the ground (Steidl and Anthony, 1996).

Despite the many theories involving bubble formation (both as a direct cause of injury, see Non-Auditory Injury section and an indirect cause of stranding), Southall *et al.* (2007) summarizes that there is either scientific disagreement or a lack of information regarding each of the following important points: (1) received acoustical exposure conditions for animals involved in stranding events; (2) pathological interpretation of observed lesions in stranded marine mammals; (3) acoustic exposure conditions required to induce such physical trauma directly; (4) whether noise exposure may cause behavioral responses (such as atypical diving behavior) that

secondarily cause bubble formation and non-auditory injury; and (5) the extent the post mortem artifacts introduced by decomposition before sampling, handling, freezing, or necropsy procedures affect interpretation of observed lesions.

Strandings Associated With Explosive Use

Silver Strand (2011)—

During a Navy training event on March 4, 2011, at the Silver Strand Training Complex in San Diego, California, three or possibly four dolphins were killed in an explosion. During an underwater detonation training event, a pod of 100 to 150 long-beaked common dolphins were observed moving towards the 700-yd (640.1-m) exclusion zone around the explosive charge, monitored by personnel in a safety boat and participants in a dive boat. Approximately 5 minutes remained on a time-delay fuse connected to a single 8.76 lb (3.97 kg) explosive charge (C-4 and detonation cord). Although the dive boat was placed between the pod and the explosive in an effort to guide the dolphins away from the area, that effort was unsuccessful and three long-beaked common dolphins near the explosion died. The Navy recovered those animals and transferred them to the local stranding network for necropsy. In addition to the three dolphins found dead on March 4, the remains of a fourth dolphin were discovered on March 7, 2011, near Oceanside, California (3 days later and approximately 42 mi (68 km) north of the detonation), which might also have been related to this event. Upon necropsy, all four animals were found to have sustained typical mammalian primary blast injuries (Danil and St Leger, 2011). Association of the fourth stranding with the training event is uncertain because dolphins strand on a regular basis in the San Diego area. Details such as the dolphins' depth and distance from the explosive at the time of the detonation could not be estimated from the 250 yd (228.6 m) standoff point of the observers in the dive boat or the safety boat.

These dolphin mortalities are the only known occurrence of a Navy training or testing event involving impulsive energy (underwater detonation) that caused mortality or injury to a marine mammal. Despite this being a rare occurrence, the Navy reviewed training requirements, safety procedures, and possible mitigation measures and implemented changes to reduce the potential for this to occur in the future.

Discussions of procedures associated with underwater explosives training and other training events are presented in the Proposed Mitigation Measures section.

Kyle of Durness, Scotland (2011)—

On July 22, 2011, a mass stranding event involving long-finned pilot whales occurred at Kyle of Durness, Scotland. An investigation by Brownlow *et al.* (2015) considered unexploded ordnance detonation activities at a Ministry of Defense bombing range, conducted by the Royal Navy prior to and during the strandings, as a plausible contributing factor in the mass stranding event. While Brownlow *et al.* (2015) concluded that the serial detonations of underwater ordnance were an influential factor in the mass stranding event (along with the presence of a potentially compromised animal and navigational error in a topographically complex region), they also suggest that mitigation measures—which included observations from a zodiac only and by personnel not experienced in marine mammal observation, among other deficiencies—were likely insufficient to assess if cetaceans were in the vicinity of the detonations. The authors also cite information from the Ministry of Defense indicating “an extraordinarily high level of activity” (*i.e.*, frequency and intensity of underwater explosions) on the range in the days leading up to the stranding.

Strandings on the Atlantic Coast and the Gulf of America

Stranded marine mammals are reported along the entire Atlantic Coast and Gulf of America each year. Marine mammals strand due to natural or anthropogenic causes; the majority of reported type of occurrences in marine mammal strandings in this region include fishery interactions, illness, predation, and vessel strikes (Henry *et al.*, 2024). Stranding events that are associated with active UMEs on the Atlantic Coast and the Gulf of America (inclusive of the AFTT Study Area) were previously discussed in the Description of Marine Mammals in the Area of Specified Activities section.

Potential Effects of Vessel Strike

Vessel strikes of marine mammals can result in death or serious injury of the animal. Wounds resulting from vessel strike may include massive trauma, hemorrhaging, broken bones, or propeller lacerations (Knowlton and Kraus, 2001). An animal at the surface could be struck directly by a vessel, a surfacing animal could hit the bottom of a vessel, or an animal just below the

surface could be cut by a vessel's propeller. Superficial strikes may not kill or result in the death of the animal. Lethal interactions are typically associated with large whales, which are occasionally found draped across the bulbous bow of large commercial ships upon arrival in port. Although smaller cetaceans are more maneuverable in relation to large vessels than are large whales, they may also be susceptible to strike. The severity of injuries typically depends on the size and speed of the vessel (Knowlton and Kraus, 2001; Laist *et al.*, 2001; Vanderlaan and Taggart, 2007; Conn and Silber, 2013). Impact forces increase with speed, as does the probability of a strike at a given distance (Silber *et al.*, 2010; Gende *et al.*, 2011).

The most vulnerable marine mammals are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (*e.g.*, the sperm whale; Jaquet & Whitehead, 1996; Watkins *et al.*, 1999). Additionally, NARW mother-calf pairs spend 45 to 80 percent of their time surface resting or near-surface feeding during the first nine months of the calf's life (Cusano *et al.*, 2019), making them more susceptible to vessel strike. Further, some baleen whales seem generally unresponsive to vessel sound, making them more susceptible to vessel strikes (Nowacek *et al.*, 2004). These species are primarily large, slow-moving whales. Marine mammal responses to vessels may include avoidance and changes in dive pattern (NRC, 2003).

Wounds resulting from vessel strike may include massive trauma, hemorrhaging, broken bones, or propeller lacerations (Knowlton and Kraus, 2001). An animal at the surface could be struck directly by a vessel, a surfacing animal could hit the bottom of a vessel, or an animal just below the surface could be cut by a vessel's propeller. Impact forces increase with speed as does the probability of a strike at a given distance (Silber *et al.*, 2010; Gende *et al.*, 2011). An examination of all known vessel strikes from all shipping sources (civilian and military) indicates vessel speed is a principal factor in whether a vessel strike results in death or serious injury (Knowlton and Kraus, 2001; Laist *et al.*, 2001; Jensen and Silber, 2003; Pace and Silber, 2005; Vanderlaan and Taggart, 2007). In assessing records in which vessel speed was known, Laist *et al.* (2001) found a direct relationship between the occurrence of a whale strike and the speed of the vessel involved in the collision. The authors concluded that most deaths occurred

when a vessel was traveling in excess of 13 kn (24 km/hr).

Jensen and Silber (2003) detailed 292 records of known or probable vessel strikes of all large whale species from 1975 to 2002. Of these, vessel speed at the time of collision was reported for 58 cases. Of these 58 cases, 39 (or 67 percent) resulted in serious injury or death (19 of those resulted in serious injury as determined by blood in the water, propeller gashes or severed tailstock, and fractured skull, jaw, vertebrae, hemorrhaging, massive bruising or other injuries noted during necropsy and 20 resulted in death). Operating speeds of vessels that struck various species of large whales ranged from 2 to 51 kn (3.7 to 94.5 km/hr). The majority (79 percent) of these strikes occurred at speeds of 13 kn (24 km/hr) or greater. The average speed that resulted in serious injury or death was 18.6 kn (34.4 km/hr). Pace and Silber (2005) found that the probability of death or serious injury increased rapidly with increasing vessel speed. Specifically, the predicted probability of serious injury or death increased from 45 to 75 percent as vessel speed increased from 10 to 14 kn (18.5 to 25.9 km/hr), and exceeded 90 percent at 17 kn (31.5 km/hr). Higher speeds during strikes result in greater force of impact and also appear to increase the chance of severe injuries or death. While modeling studies have suggested that hydrodynamic forces pulling whales toward the vessel hull increase with increasing speed (Clyne, 1999; Knowlton *et al.*, 1995), this is inconsistent with Silber *et al.* (2010), which demonstrated that there is no such relationship (*i.e.*, hydrodynamic forces are independent of speed).

In a separate study, Vanderlaan and Taggart (2007) analyzed the probability of lethal mortality of large whales at a given speed, showing that the greatest rate of change in the probability of a lethal injury to a large whale as a function of vessel speed occurs between 8.6 and 15 kn (15.9 and 27.8 km/hr). The chances of a lethal injury decline from approximately 80 percent at 15 kn to approximately 20 percent at 8.6 kn (15.9 km/hr). At speeds below 11.8 kn (21.9 km/hr), the chances of lethal injury drop below 50 percent, while the probability asymptotically increases toward 100 percent above 15 kn (27.8 km/hr). Garrison *et al.* (2025) reviewed and updated available data on whale-vessel interactions in U.S. waters to determine the effects of vessel speed and size on lethality of strikes of large whales, and found vessel size class had a significant effect on the probability of lethality. Decreasing vessel speeds

reduced the likelihood of a lethal outcome for all vessel size classes modeled, with the strongest effect for vessels less than 354 ft (108 m) long. Notably, the probability that a strike by a very large vessel (length) will be lethal exceeded 0.80 at all speeds greater than 5 kn (9.26 km/hr) (Garrison *et al.*, 2025).

The Jensen and Silber (2003) report notes that the database represents a minimum number of strikes, because the vast majority probably goes undetected or unreported. In contrast, Action Proponent vessels are likely to detect any strike that does occur because of the required personnel training and Lookouts (as described in the Proposed Mitigation Measures section), and they are required to report all vessel strikes involving marine mammals.

In the AFTT Study Area, commercial traffic is heaviest in the nearshore waters, near major ports and in the shipping lanes along the entire U.S. East Coast and along the northern coast of the Gulf of America, while military vessel traffic is primarily concentrated between the mouth of the Chesapeake Bay and Jacksonville, Florida (Mintz, 2016). An examination of vessel traffic within the AFTT Study Area determined that military vessel occurrence is two orders of magnitude lower than that of commercial traffic. The study also revealed that while commercial traffic is relatively steady throughout the year, military vessel usage within the range complexes is episodic, based on specific exercises being conducted at different times of the year (Mintz, 2012); however, military vessel use within inshore waters occurs regularly and routinely consists of high-speed small craft movements. Juvenile whales of some species may be particularly vulnerable to vessel strikes due to their particular habitat use and surface foraging behavior in nearshore waters, where smaller vessel numbers are higher (Stepanuk *et al.*, 2021).

Over a period of 18 years from 1995 to 2012 there were a total of 19 Navy vessel strikes in the AFTT Study Area. Eight of the strikes resulted in a confirmed death; but in 11 of the 19 strikes, the fate of the animal was unknown. It is possible that some of the 11 reported strikes resulted in recoverable injury or were not marine mammals at all, but another large marine species (*e.g.*, basking shark). However, it is prudent to consider that all of the strikes could have resulted in the death of a marine mammal. From 2009 to 2024, there have been a total of three whale strikes by the U.S. Navy (one in 2011, two in 2012), and three whale strikes by the U.S. Coast Guard

(two in 2009, one in 2024) reported in the AFTT Study Area. In the 2009 Coast Guard strike of two whales, the whales were observed swimming away with no apparent injuries. All known strikes of large whales by the U.S. Navy and the U.S. Coast Guard in the AFTT Study Area have been in the VACAPES Operating Area. In 2021, a small Navy vessel struck a dolphin in Saint Andrew's Pass, Florida (offshore Panama City, Florida).

Between 2007 and 2009, the Navy developed and distributed additional training, mitigation, and reporting tools to Navy operators to improve marine mammal protection and to ensure compliance with permit requirements. In 2009, the Navy implemented Marine Species Awareness Training designed to improve effectiveness of visual observation for marine mammals and other marine resources. In subsequent years, the Navy issued refined policy guidance on vessel strikes in order to collect the most accurate and detailed data possible in response to a possible incident (also see the Notification and Reporting Plan for this proposed rule). For over a decade, the Navy has implemented the Protective Measures Assessment Protocol software tool, which provides operators with notification of the required mitigation and a visual display of the planned training or testing activity location overlaid with relevant environmental data.

Marine Mammal Habitat

The proposed training and testing activities could potentially affect marine mammal habitat through the introduction of impacts to the prey species of marine mammals, acoustic habitat (sound in the water column), water quality, and biologically important habitat for marine mammals. Each of these potential effects was considered in the 2024 AFTT Draft Supplemental EIS/OEIS and was determined not to have adverse effects on marine mammal habitat. Based on the information below and the supporting information included in the 2024 AFTT Draft Supplemental EIS/OEIS, NMFS has determined that the proposed training and training activities would not have adverse or long-term impacts on marine mammal habitat.

Effects to Prey

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.*, crustaceans, cephalopods, fish, zooplankton). Marine mammal prey varies by species, season, and location and, for some species, is not well-

documented. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.*, Zelick *et al.*, 1999; Fay, 2009). The most likely effects on fishes exposed to loud, intermittent, low-frequency sounds are behavioral responses (*i.e.*, flight or avoidance). Short duration, sharp sounds (such as pile driving or air guns) can cause overt or subtle changes in fish behavior and local distribution. The response of fish to acoustic sources depends on the physiological state of the fish, past exposures, motivation (*e.g.*, feeding, spawning, migration), and other environmental factors. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality. While it is clear that the behavioral responses of individual prey, such as displacement or other changes in distribution, can have direct impacts on the foraging success of marine mammals, the effects on marine mammals of individual prey that experience hearing damage, barotrauma, or mortality is less clear, though obviously population scale impacts that meaningfully reduce the amount of prey available could have more serious impacts.

Fishes, like other vertebrates, have a variety of different sensory systems to glean information from ocean around them (Astrup and Mohl, 1993; Astrup, 1999; Braun and Grande, 2008; Carroll *et al.*, 2017; Hawkins and Johnstone, 1978; Ladich and Popper, 2004; Ladich and Schulz-Mirbach, 2016; Mann, 2016; Nedwell *et al.*, 2004; Popper *et al.*, 2003; Popper *et al.*, 2005). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.*, 2008) (terrestrial vertebrates generally only detect pressure). Most marine fishes primarily detect particle motion using the inner ear and lateral line system, while some fishes possess additional morphological adaptations or specializations that can enhance their sensitivity to sound pressure, such as a gas-filled swim bladder (Braun and Grande, 2008; Popper and Fay, 2011). Hearing capabilities vary considerably between different fish species with data only available for just over 100 species out of the 34,000 marine and freshwater fish species (Eschmeyer and Fong, 2016). In order to better understand acoustic

impacts on fishes, fish hearing groups are defined by species that possess a similar continuum of anatomical features which result in varying degrees of hearing sensitivity (Popper and Hastings, 2009a). There are four hearing groups defined for all fish species (modified from Popper *et al.*, 2014) within this analysis and they include: fishes without a swim bladder (*e.g.*, flatfish, sharks, rays, *etc.*); fishes with a swim bladder not involved in hearing (*e.g.*, salmon, cod, pollock, *etc.*); fishes with a swim bladder involved in hearing (*e.g.*, sardines, anchovy, herring, *etc.*); and fishes with a swim bladder involved in hearing and high-frequency hearing (*e.g.*, shad and menhaden). Most marine mammal fish prey species would not be likely to perceive or hear mid- or high-frequency sonars. While hearing studies have not been done on sardines and northern anchovies, it would not be unexpected for them to possess hearing similarities to Pacific herring (up to 2–5 kHz) (Mann *et al.*, 2005). Currently, less data are available to estimate the range of best sensitivity for fishes without a swim bladder.

In terms of physiology, multiple scientific studies have documented a lack of mortality or physiological effects to fish from exposure to low- and mid-frequency sonar and other sounds (Halvorsen *et al.*, 2012; Jørgensen *et al.*, 2005; Juanes *et al.*, 2017; Kane *et al.*, 2010; Kvadsheim and Sevaldsen, 2005; Popper *et al.*, 2007; Popper *et al.*, 2016; Watwood *et al.*, 2016). Techer *et al.* (2017) exposed carp in floating cages for up to 30 days to low-power 23 and 46 kHz sources without any significant physiological response. Other studies have documented either a lack of TTS in species whose hearing range cannot perceive military sonar, or for those species that could perceive sonar-like signals, any TTS experienced would be recoverable (Halvorsen *et al.*, 2012; Ladich and Fay, 2013; Popper and Hastings, 2009a, 2009b; Popper *et al.*, 2014; Smith, 2016). Only fishes that have specializations that enable them to hear sounds above about 2,500 Hz (2.5 kHz) such as herring (Halvorsen *et al.*, 2012; Mann *et al.*, 2005; Mann, 2016; Popper *et al.*, 2014) would have the potential to receive TTS or exhibit behavioral responses from exposure to mid-frequency sonar. In addition, any sonar induced TTS to fish whose hearing range could perceive sonar would only occur in the narrow spectrum of the source (*e.g.*, 3.5 kHz) compared to the fish's total hearing range (*e.g.*, 0.01 kHz to 5 kHz). Overall, military sonar sources are much narrower in terms of source frequency

compared to a given fish species full hearing range (Halvorsen *et al.*, 2012; Jørgensen *et al.*, 2005; Juanes *et al.*, 2017; Kane *et al.*, 2010; Kvadsheim & Sevaldsen, 2005; Popper *et al.*, 2007; Popper and Hawkins, 2016; Watwood *et al.*, 2016).

In terms of behavioral responses, Juanes *et al.* (2017) discuss the potential for negative impacts from anthropogenic soundscapes on fish, but the author's focus was on broader based sounds such as ship and boat noise sources. Watwood *et al.* (2016) also documented no behavioral responses by reef fish after exposure to MFAS. Doksaeter *et al.* (2009; 2012) reported no behavioral responses to mid-frequency military sonar by Atlantic herring; specifically, no escape responses (vertically or horizontally) were observed in free swimming herring exposed to mid-frequency sonar transmissions. Based on these results (Doksaeter *et al.*, 2009; Doksaeter *et al.*, 2012; Sivle *et al.*, 2012), Sivle *et al.* (2014) created a model in order to report on the possible population-level effects on Atlantic herring from active naval sonar. The authors concluded that the use of military sonar poses little risk to populations of herring regardless of season, even when the herring populations are aggregated and directly exposed to sonar. Finally, Bruintjes *et al.* (2016) commented that fish exposed to any short-term noise within their hearing range might initially startle, but would quickly return to normal behavior. Occasional behavioral responses to intermittent explosions and impulsive sound sources are unlikely to cause long-term consequences for individual fish or populations. Fish that experience hearing loss as a result of exposure to explosions and impulsive sound sources may have a reduced ability to detect relevant sounds such as predators, prey, or social vocalizations. However, PTS has not been known to occur in fishes and any hearing loss in fish may be as temporary as the timeframe required to repair or replace the sensory cells that were damaged or destroyed (Popper *et al.*, 2005; Popper *et al.*, 2014; Smith *et al.*, 2006). It is not known if damage to auditory nerve fibers could occur, and if so, whether fibers would recover during this process.

It is also possible for fish to be injured or killed by an explosion in the immediate vicinity of the surface from dropped or fired ordnance, or near the bottom from shallow water bottom-placed underwater mine warfare detonations. Physical effects from pressure waves generated by underwater sounds (*e.g.*, underwater explosions)

could potentially affect fish within proximity of training or testing activities. SPLs of sufficient strength have been known to cause injury to fish and fish mortality (summarized in Popper *et al.*, 2014). The shock wave from an underwater explosion is lethal to fish at close range, causing massive organ damage and non-auditory injury and internal bleeding (Keevin and Hempen, 1997). At greater distance from the detonation point, the extent of mortality or injury depends on a number of factors including fish size, body shape, orientation, and species (Keevin and Hempen, 1997; Wright, 1982). At the same distance from the source, larger fish are generally less susceptible to death or injury, elongated forms that are round in cross-section are less at risk than deep-bodied forms, and fish oriented sideways to the blast suffer the greatest impact (Edds-Walton and Finneran, 2006; O'Keeffe, 1984; O'Keeffe and Young, 1984; Wiley *et al.*, 1981; Yelverton *et al.*, 1975). Species with gas-filled organs are more susceptible to injury and mortality than those without them (Gaspin, 1975; Gaspin *et al.*, 1976; Goertner *et al.*, 1994). Barotrauma injuries have been documented during controlled exposure to impact pile driving (an impulsive noise source, as are explosives and air guns) (Halvorsen *et al.*, 2012b; Casper *et al.*, 2013).

Fish not killed or driven from a location by an explosion might change their behavior, feeding pattern, or distribution. Changes in behavior of fish have been observed as a result of sound produced by explosives, with effect intensified in areas of hard substrate (Wright, 1982). However, Navy explosive use avoids hard substrate to the best extent practical during underwater detonations, or deep-water surface detonations. Stunning from pressure waves could also temporarily immobilize fish, making them more susceptible to predation. The abundances of various fish (and invertebrates) near the detonation point for explosives could be altered for a few hours before animals from surrounding areas repopulate the area. However, these populations would likely be replenished as waters near the detonation point are mixed with adjacent waters. Repeated exposure of individual fish to sounds from underwater explosions is not likely and exposures are expected to be short-term and localized. Long-term consequences for fish populations would not be expected. Several studies have demonstrated that air gun sounds might affect the distribution and behavior of

some fishes, potentially impacting foraging opportunities or increasing energetic costs (e.g., Fewtrell and McCauley, 2012; Pearson *et al.*, 1992; Skalski *et al.*, 1992; Santulli *et al.*, 1999; Paxton *et al.*, 2017).

For fishes exposed to military sonar, there would be limited sonar use spread out in time and space across large offshore areas such that only small areas are actually ensonified (tens of miles) compared to the total life history distribution of fish prey species. There would be no probability for mortality or physical injury from sonar, and for most species, no or little potential for hearing or behavioral effects, except to a few select fishes with hearing specializations (e.g., herring) that could perceive mid-frequency sonar. Training and testing exercises involving explosions are dispersed in space and time; therefore, repeated exposure of individual fishes is unlikely. Mortality and injury effects to fishes from explosives would be localized around the area of a given in-water explosion, but only if individual fish and the explosive (and immediate pressure field) were co-located at the same time. Fishes deeper in the water column or on the bottom would not be affected by water surface explosions. Repeated exposure of individual fish to sound and energy from underwater explosions is not likely given fish movement patterns, especially schooling prey species. Most acoustic effects, if any, are expected to be short-term and localized. Long-term consequences for fish populations, including key prey species within the AFTT Study Area, would not be expected.

Vessels and in-water devices do not normally collide with adult fish, particularly those that are common marine mammal prey, most of which can detect and avoid them. Exposure of fishes to vessel strike stressors is limited to those fish groups that are large, slow-moving, and may occur near the surface, such as ocean sunfish, whale sharks, basking sharks, and manta rays. With the exception of sturgeon, these species are distributed widely in offshore portions of the AFTT Study Area. Any isolated cases of a military vessel striking an individual could injure that individual, impacting the fitness of an individual fish. Vessel strikes would not pose a risk to most of the other marine fish groups, because many fish can detect and avoid vessel movements, making strikes rare and allowing the fish to return to their normal behavior after the ship or device passes. As a vessel approaches a fish, they could have a detectable behavioral or physiological response (e.g., swimming

away and increased heart rate) as the passing vessel displaces them. However, such responses are not expected to have lasting effects on the survival, growth, recruitment, or reproduction of these marine fish groups at the population level and therefore would not have an impact on marine mammal species as prey items.

In addition to fish, prey sources such as marine invertebrates could potentially be impacted by sound stressors as a result of the proposed activities. However, most marine invertebrates' ability to sense sounds is very limited. In most cases, marine invertebrates would not respond to impulsive and non-impulsive sounds, although they may detect and briefly respond to nearby low-frequency sounds. These short-term responses would likely be inconsequential to invertebrate populations.

Invertebrates appear to be able to detect sounds (Pumphrey, 1950; Frings and Frings, 1967) and are most sensitive to low-frequency sounds (Packard *et al.*, 1990; Budelmann and Williamson, 1994; Lovell *et al.*, 2005; Mooney *et al.*, 2010). Data on response of invertebrates such as squid, another marine mammal prey species, to anthropogenic sound is more limited (de Soto, 2016; Sole *et al.*, 2017b). Data suggest that cephalopods are capable of sensing the particle motion of sounds and detect low frequencies up to 1–1.5 kHz, depending on the species, and so are likely to detect air gun noise (Kaifu *et al.*, 2008; Hu *et al.*, 2009; Mooney *et al.*, 2010; Samson *et al.*, 2014). Sole *et al.* (2017b) reported physiological injuries to cuttlefish in cages placed at-sea when exposed during a controlled exposure experiment to low-frequency sources (315 Hz, 139 to 142 dB re 1 μPa^2 and 400 Hz, 139 to 141 dB re 1 μPa^2). Fewtrell and McCauley (2012) reported squids maintained in cages displayed startle responses and behavioral changes when exposed to seismic air gun sonar (136–162 re 1 μPa^2 s). However, the sources Sole *et al.* (2017a) and Fewtrell and McCauley (2012) used are not similar and were much lower than typical military sources within the AFTT Study Area. Nor do the studies address the issue of individual displacement outside of a zone of impact when exposed to sound. Jones *et al.* (2020) found that when squid (*Doryteuthis (Amerigo) pealeii*) were exposed to impulse pile driving noise, body pattern changes, inking, jetting, and startle responses were observed and nearly all squid exhibited at least one response. However, these responses occurred primarily during the first eight impulses and diminished quickly,

indicating potential rapid, short-term habituation.

Cephalopods have a specialized sensory organ inside the head called a statocyst that may help an animal determine its position in space (orientation) and maintain balance (Budelmann, 1992). Packard *et al.* (1990) showed that cephalopods were sensitive to particle motion, not sound pressure, and Mooney *et al.* (2010) demonstrated that squid statocysts act as an accelerometer through which particle motion of the sound field can be detected. Auditory injuries (lesions occurring on the statocyst sensory hair cells) have been reported upon controlled exposure to low-frequency sounds, suggesting that cephalopods are particularly sensitive to low-frequency sound (Andre *et al.*, 2011; Sole *et al.*, 2013). Behavioral responses, such as inking and jetting, have also been reported upon exposure to low-frequency sound (McCauley *et al.*, 2000b; Samson *et al.*, 2014). Squids, like most fish species, are likely more sensitive to low frequency sounds, and may not perceive mid- and high-frequency sonars such as military sonars. Cumulatively for squid as a prey species, individual and population impacts from exposure to military sonar and explosives, like fish, are not likely to be significant, and explosive impacts would be short-term and localized.

Explosions and pile driving would likely kill or injure nearby marine invertebrates. Vessels also have the potential to impact marine invertebrates by disturbing the water column or sediments, or directly striking organisms (Bishop, 2008). The propeller wash (water displaced by propellers used for propulsion) from vessel movement and water displaced from vessel hulls can potentially disturb marine invertebrates in the water column and is a likely cause of zooplankton mortality (Bickel *et al.*, 2011). The localized and short-term exposure to explosions or vessels could displace, injure, or kill zooplankton, invertebrate eggs or larvae, and macro-invertebrates. However, mortality or long-term consequences for a few animals is unlikely to have measurable effects on overall populations. Long-term consequences to marine invertebrate populations would not be expected as a result of exposure to sounds of vessels in the AFTT Study Area. Impacts to benthic communities from impulsive sound generated by active acoustic sound sources are not well documented. (e.g., Andriquetto-Filho *et al.*, 2005; Payne *et al.*, 2007; 2008; Boudreau *et al.*, 2009). There are no published data that indicate whether

temporary or permanent threshold shifts, auditory masking, or behavioral effects occur in benthic invertebrates (Hawkins *et al.*, 2014) and some studies showed no short-term or long-term effects of air gun exposure (*e.g.*, Andriguetto-Filho *et al.*, 2005; Payne *et al.*, 2007; 2008; Boudreau *et al.*, 2009). Exposure to air gun signals was found to significantly increase mortality in scallops, in addition to causing significant changes in behavioral patterns during exposure (Day *et al.*, 2017). However, the authors state that the observed levels of mortality were not beyond naturally occurring rates. Explosions and pile driving could potentially kill or injure nearby marine invertebrates; however, mortality or long-term consequences for a few animals is unlikely to have measurable effects on overall populations.

There is little information concerning potential impacts of noise on zooplankton populations. However, one study (McCauley *et al.*, 2017) investigated zooplankton abundance, diversity, and mortality before and after exposure to air gun noise, finding that the mortality rate for zooplankton after air gun exposure was two to three times more compared with controls for all taxa. The majority of taxa present were copepods and cladocerans; for these taxa, the range within which effects on abundance were detected was up to approximately 0.75 mi (1.2 km). In order to have significant impacts on *r*-selected species (species that produce a large number of offspring and contribute few resources to each individual offspring) such as plankton, the spatial or temporal scale of impact must be large in comparison with the ecosystem concerned (McCauley *et al.*, 2017).

Notably, a recently described study produced results inconsistent with those of McCauley *et al.* (2017). Researchers conducted a field and laboratory study to assess if exposure to air gun noise affects mortality, predator escape response, or gene expression of the copepod *Calanus finmarchicus* (Fields *et al.*, 2019). Immediate mortality of copepods was significantly higher, relative to controls, at distances of 16.4 ft (5 m) or less from the air guns. Mortality one week after the air gun blast was significantly higher in the copepods placed 32.8 ft (10 m) from the air gun but was not significantly different from the controls at a distance of 65.6 ft (20 m) from the air gun. The increase in mortality, relative to controls, did not exceed 30 percent at any distance from the air gun. Moreover, the authors caution that even this higher mortality in the immediate vicinity of the air guns may be more pronounced

than what would be observed in free-swimming animals due to increased flow speed of fluid inside bags containing the experimental animals. There were no sublethal effects on the escape performance or the sensory threshold needed to initiate an escape response at any of the distances from the air gun that were tested. Whereas McCauley *et al.* (2017) reported an SEL of 156 dB at a range of 1,670–2,158.8 ft (509–658 m), with zooplankton mortality observed at that range, Fields *et al.* (2019) reported an SEL of 186 dB at a range of 82 ft (25 m), with no reported mortality at that distance. The large scale of effect observed here is of concern—particularly where repeated noise exposure is expected—and further study is warranted.

Military expended materials resulting from training and testing activities could potentially result in minor long-term changes to benthic habitat, however the impacts of small amounts of expended materials are unlikely to have measurable effects on overall populations. Military expended materials may be colonized over time by benthic organisms that prefer hard substrate and would provide structure that could attract some species of fish or invertebrates.

Overall, the combined impacts of sound exposure, explosions, vessel strikes, and military expended materials resulting from the proposed activities would not be expected to have measurable effects on populations of marine mammal prey species. Prey species exposed to sound might move away from the sound source, experience TTS, experience masking of biologically relevant sounds, or show no obvious direct effects. Mortality from decompression injuries is possible in close proximity to a sound, but only limited data on mortality in response to air gun noise exposure are available (Fields *et al.*, 2019; Hawkins *et al.*, 2014; McCauley *et al.*, 2017). The most likely impacts for most prey species in a given area would be temporary avoidance of the area. Surveys using towed air gun arrays move through an area relatively quickly, limiting exposure to multiple impulsive sounds. In all cases, sound levels would return to ambient once a survey ends and the noise source is shut down and, when exposure to sound ends, behavioral and/or physiological responses are expected to end relatively quickly (McCauley *et al.*, 2000b). The duration of fish avoidance of a given area after survey effort stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated. While the potential for disruption of spawning aggregations or

schools of important prey species can be meaningful on a local scale, the mobile and temporary nature of most surveys and the likelihood of temporary avoidance behavior suggest that impacts would be minor. Long-term consequences to marine invertebrate populations would not be expected as a result of exposure to sounds or vessels in the AFTT Study Area.

Acoustic Habitat

Acoustic habitat is the soundscape which encompasses all of the sound present in a particular location and time, as a whole when considered from the perspective of the animals experiencing it. Animals produce sound for, or listen for sounds produced by, conspecifics (communication during feeding, mating, and other social activities), other animals (finding prey or avoiding predators), and the physical environment (finding suitable habitats, navigating). Together, sounds made by animals and the geophysical environment (*e.g.*, produced by earthquakes, lightning, wind, rain, waves) make up the natural contributions to the total acoustics of a place. These acoustic conditions, termed acoustic habitat, are one attribute of an animal's total habitat.

Soundscapes are also defined by, and acoustic habitat influenced by, the total contribution of anthropogenic sound. This may include incidental emissions from sources such as vessel traffic or may be intentionally introduced to the marine environment for data acquisition purposes (as in the use of air gun arrays) or for military training and testing purposes (as in the use of sonar and explosives and other acoustic sources). Anthropogenic noise varies widely in its frequency, content, duration, and loudness, and these characteristics greatly influence the potential habitat-mediated effects to marine mammals (please also see the previous discussion in the Masking section), which may range from local effects for brief periods of time to chronic effects over large areas and for long durations. Depending on the extent of effects to habitat, animals may alter their communications signals (thereby potentially expending additional energy) or miss acoustic cues (either conspecific or adventitious). Problems arising from a failure to detect cues are more likely to occur when noise stimuli are chronic and overlap with biologically relevant cues used for communication, orientation, and predator/prey detection (Francis and Barber, 2013). For more detail on these concepts see, *e.g.*, Barber *et al.*, 2009; Pijanowski *et al.*, 2011; Francis and Barber, 2013; Lillis *et al.*, 2014.

The term “listening area” refers to the region of ocean over which sources of sound can be detected by an animal at the center of the space. Loss of communication space concerns the area over which a specific animal signal (used to communicate with conspecifics in biologically important contexts such as foraging or mating) can be heard, in noisier relative to quieter conditions (Clark *et al.*, 2009). Lost listening area concerns the more generalized contraction of the range over which animals would be able to detect a variety of signals of biological importance, including eavesdropping on predators and prey (Barber *et al.*, 2009). Such metrics do not, in and of themselves, document fitness consequences for the marine animals that live in chronically noisy environments. Long-term population-level consequences mediated through changes in the ultimate survival and reproductive success of individuals are difficult to study, and particularly so underwater. However, it is increasingly well documented that aquatic species rely on qualities of natural acoustic habitats, with researchers quantifying reduced detection of important ecological cues (*e.g.*, Francis and Barber, 2013; Slabbekoorn *et al.*, 2010) as well as survivorship consequences in several species (*e.g.*, Simpson *et al.*, 2014; Nedelec *et al.*, 2015).

The sounds produced during training and testing activities can be widely dispersed or concentrated in small areas for varying periods. Sound produced from training and testing activities in the AFTT Study Area is temporary and transitory. Any anthropogenic noise attributed to training and testing activities in the AFTT Study Area would be temporary and the affected area would be expected to immediately return to the original state when these activities cease.

Water Quality

Training and testing activities may introduce water quality constituents into the water column. Based on the analysis of the 2024 AFTT Draft Supplemental EIS/OEIS, military expended materials (*e.g.*, undetonated explosive materials) would be released in quantities and at rates that would not result in a violation of any water quality standard or criteria. NMFS has reviewed this analysis and concurs that it reflects the best available science. High-order explosions consume most of the explosive material, creating typical combustion products. For example, in the case of Royal Demolition Explosive, 98 percent of the products are common seawater constituents and the remainder

is rapidly diluted below threshold effect level. Explosion by-products associated with high order detonations present no secondary stressors to marine mammals through sediment or water. However, low order detonations and unexploded ordnance present elevated likelihood of impacts on marine mammals.

Indirect effects of explosives and unexploded ordnance to marine mammals via sediment is possible in the immediate vicinity of the ordnance. Degradation products of Royal Demolition Explosive are not toxic to marine organisms at realistic exposure levels (Rosen and Lotufo, 2010). Relatively low solubility of most explosives and their degradation products means that concentrations of these contaminants in the marine environment are relatively low and readily diluted. Furthermore, while explosives and their degradation products were detectable in marine sediment approximately 6–12 inches (0.15–0.3 m) away from degrading ordnance, the concentrations of these compounds were not statistically distinguishable from background beyond 3–6 ft (1–2 m) from the degrading ordnance. Taken together, it is possible that marine mammals could be exposed to degrading explosives, but it would be within a very small radius of the explosive (1–6 ft (0.3–2 m)).

Equipment used by the Action Proponents within the AFTT Study Area, including ships and other marine vessels, aircraft, and other equipment, are also potential sources of by-products. All equipment is properly maintained in accordance with applicable Navy, Coast Guard and legal requirements. All such operating equipment meets Federal water quality standards, where applicable.

Estimated Take of Marine Mammals

This section indicates the number of takes that NMFS is proposing to authorize, which is based on the amount of take that NMFS anticipates is reasonably likely to occur. NMFS coordinated closely with the Action Proponents in the development of their incidental take application, and preliminarily agrees that the methods the Action Proponents have put forth described herein to estimate take (including the model, thresholds, and density estimates), and the resulting numbers are based on the best available science and appropriate for authorization.

Takes would be predominantly in the form of harassment, but a small number of mortalities are also possible. For this military readiness activity, the MMPA defines “harassment” as (i) Any act that

injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where the behavioral patterns are abandoned or significantly altered (Level B harassment).

Proposed authorized takes would primarily be in the form of Level B harassment, as use of the acoustic (*e.g.*, active sonar, pile driving, and seismic air guns) and explosive sources is most likely to result in disruption of natural behavioral patterns to a point where they are abandoned or significantly altered (as defined specifically at the beginning of this section, but referred to generally as behavioral disturbance) for marine mammals, either via direct behavioral disturbance or TTS. There is also the potential for Level A harassment, in the form of auditory injury to result from exposure to the sound sources utilized in military readiness activities. Lastly, no more than 6 serious injuries or mortalities total (over the 7-year period) of large whales could potentially occur through vessel strikes, and 13 serious injuries or mortalities (over the 7-year period) from explosive use. Although we analyze the impacts of these potential serious injuries or mortalities that are proposed for authorization, the proposed mitigation and monitoring measures are expected to minimize the likelihood (*i.e.*, further lower the already low probability) that vessel strike (and the associated serious injury or mortality) would occur, as well as the severity of other takes.

Generally speaking, for acoustic impacts NMFS estimates the amount and type of harassment by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals would experience behavioral disturbance or incur some degree of temporary or permanent hearing impairment; (2) the area or volume of water that would be ensonified above these levels in a day or event; (3) the density or occurrence of marine mammals within these ensonified areas; and (4) the number of days of activities or events.

Acoustic Thresholds

Using the best available science, NMFS, in coordination with the Navy, has established acoustic thresholds that identify the most appropriate received

level of underwater sound above which marine mammals exposed to these sound sources could be reasonably expected to directly incur a disruption in behavior patterns to a point where they are abandoned or significantly altered (equated to onset of Level B harassment), or to incur TTS onset (equated to Level B harassment via the indirect disruptions of behavioral patterns) or AUD INJ onset (equated to Level A harassment). Thresholds have also been developed to identify the pressure and impulse levels above which animals may incur non-auditory injury or mortality from exposure to explosive detonation.

Hearing Impairment (TTS/AUD INJ), Non-Auditory Injury, and Mortality

NMFS' 2024 Technical Guidance (NMFS, 2024) identifies dual criteria to assess AUD INJ (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The Updated Technical Guidance also identifies criteria to predict TTS, which is not considered injury and falls into the Level B harassment category. The Action Proponents' specified activities include the use of non-impulsive (sonar, vibratory pile driving) and impulsive (explosives, air guns, impact pile driving) sources.

For the consideration of impacts on hearing in Phase IV, marine mammals were divided into nine groups for analysis: very low-frequency cetaceans (VLF), low-frequency cetaceans (LF), high-frequency cetaceans (HF), very high-frequency cetaceans (VHF), sirenians (SI), phocid carnivores in water and in air (PCW and PCA, respectively), and otariids and other non-phocid marine carnivores in water and air (OCW and OCA, respectively). For each group, a frequency-dependent weighting function and numeric thresholds for the onset of TTS and the onset of AUD INJ were estimated. The onset of TTS is defined as a TTS of 6 dB measured approximately 2–5 minutes after exposure. A TTS of 40 dB is used as a proxy for the onset of AUD INJ; *i.e.*, it is assumed that exposures beyond those capable of causing 40 dB

of TTS have the potential to result in PTS or other auditory injury (*e.g.*, loss of cochlear neuron synapses). Exposures just sufficient to cause TTS or AUD INJ are denoted as "TTS onset" or "AUD INJ onset" exposures. Onset levels are treated as step functions or "all-or-nothing" thresholds: exposures above the TTS or AUD INJ onset level are assumed to always result in TTS or AUD INJ, while exposures below the TTS or AUD INJ onset level are assumed to not cause TTS or AUD INJ. For non-impulsive exposures, onset levels are specified in frequency-weighted sound exposure level (SEL); for impulsive exposures, dual metrics of weighted SEL and unweighted peak sound pressure level (SPL) are used.

To compare Phase IV weighting functions and TTS/AUD INJ SEL thresholds to those used in Phase III, both the weighting function shape and the weighted threshold values were considered; the weighted thresholds by themselves only indicate the TTS/AUD INJ threshold at the most susceptible frequency (based on the relevant weighting function). In contrast, the TTS/AUD INJ exposure functions incorporate both the shape of the weighting function and the weighted threshold value and provide the best means of comparing the frequency-dependent TTS/AUD INJ thresholds for Phase III and Phase IV.

The most significant differences between the Phase III and Phase IV functions and thresholds include the following:

(1) Mysticetes were divided into two groups (VLF and LF), with the upper hearing limit for the LF group increased from Phase III to match recent hearing measurements in minke whales (Houser *et al.*, 2024);

(2) Group names were changed from Phase III to be consistent with Southall *et al.* (2019). Specifically, the Phase III mid-frequency (MF) cetacean group is now designated as the high-frequency (HF) cetacean group, and the group previously designated as high-frequency (HF) cetaceans is now the very-high frequency (VHF) cetacean group;

(3) For the HF group, Phase IV onset TTS/AUD INJ thresholds are lower compared to Phase III at frequencies below approximately 10 kHz. This is a

result of new TTS onset data for dolphins at low frequencies (Finneran *et al.*, 2023);

(4) For the PCW group, new TTS data for harbor seals (Kastelein *et al.*, 2020b; Kastelein *et al.*, 2020e) resulted in slightly lower TTS/AUD INJ thresholds at high frequencies compared to Phase III; and

(5) For group OCW, new TTS data for California sea lions (Kastelein *et al.*, 2021b; Kastelein *et al.*, 2022a, 2022b) resulted in significantly lower TTS/AUD INJ thresholds compared to Phase III.

Of note, the thresholds and weighting function for the LF cetacean hearing group in NMFS' 2024 Technical Guidance (NMFS, 2024) match the Navy's VLF cetacean hearing group. However, the weighting function for those hearing groups differs between the two documents (*i.e.*, the Navy's LF cetacean group has a different weighting function from NMFS) due to the Houser *et al.* (2024) minke whale data incorporated into Navy 2024, but not NMFS (2024). While NMFS' 2024 Technical Guidance differs from the criteria that the Action Proponents used to assess AUD INJ and TTS for low-frequency cetaceans, NMFS concurs that the criteria the Action Proponents applied are appropriate for assessing the impacts of their proposed action. The criteria used by the Action Proponents are conservative in that those criteria show greater sensitivity at higher frequencies (*i.e.*, application of those criteria result in a higher amount of estimated take by higher frequency sonars than would result from application of NMFS' 2024 Technical Guidance) which is where more of the take is expected.

These thresholds (table 17 and table 18) were developed by compiling and synthesizing the best available science and soliciting input multiple times from both public and peer reviewers. The references, analysis, and methodology used in the development of the thresholds are described in Updated Technical Guidance, which may be accessed at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>.

TABLE 17—ACOUSTIC THRESHOLDS IDENTIFYING THE ONSET OF TTS AND AUD INJ FOR NON-IMPULSIVE SOUND SOURCES BY FUNCTIONAL HEARING GROUP

Group	TTS threshold SEL (weighted)	AUD INJ threshold SEL (weighted)
Very low-frequency (VLF)	177	197
Low-frequency (LF)	177	197

TABLE 17—ACOUSTIC THRESHOLDS IDENTIFYING THE ONSET OF TTS AND AUD INJ FOR NON-IMPULSIVE SOUND SOURCES BY FUNCTIONAL HEARING GROUP—Continued

Group	TTS threshold SEL (weighted)	AUD INJ threshold SEL (weighted)
High-frequency (HF)	181	201
Very high-frequency (VHF)	161	181
Otariid carnivores in water (OW)	179	199
Phocid carnivores in water (PW)	175	195

Note: SEL thresholds in dB re 1 μ Pa²s underwater.

Based on the best available science, the Action Proponents (in coordination with NMFS) used the acoustic and pressure thresholds indicated in table 17 to predict the onset of behavioral harassment, AUD INJ, TTS, non-auditory injury, and mortality due to explosive sources.

For explosive activities using single detonations (*i.e.*, no more than one detonation within a day), such as those described in the proposed activity,

NMFS uses TTS onset thresholds to assess the likelihood of behavioral harassment, rather than the Level B harassment threshold for multiple detonations indicated in table 18. While marine mammals may also respond to single explosive detonations, these responses are expected to more typically be in the form of startle response, rather than a more meaningful disruption of a behavioral pattern. On the rare occasion that a single detonation might result in

a behavioral response that qualifies as Level B harassment, it would be expected to be in response to a comparatively higher received level. Accordingly, NMFS considers the potential for these responses to be quantitatively accounted for through the application of the TTS criteria, which, as noted above, is 5 dB higher than the behavioral harassment threshold for multiple explosives.

TABLE 18—EXPLOSIVE THRESHOLDS FOR MARINE MAMMALS FOR AUD INJ, TTS, AND BEHAVIOR
[Multiple detonations]

Hearing group	AUD INJ impulsive threshold *	TTS impulsive threshold *	Behavioral threshold (multiple detonations)
Very Low-Frequency (VLF)/Low-Frequency (LF) Cetaceans.	<i>Cell 1:</i> $L_{pk,flat}$: 222 dB; $L_{E,LF,24h}$: 183 dB.	<i>Cell 2:</i> $L_{pk,flat}$: 216 dB $L_{E,LF,24h}$: 168 dB.	<i>Cell 3:</i> $L_{E,LF,24h}$: 163 dB.
High-Frequency (HF) Cetaceans	<i>Cell 4:</i> $L_{pk,flat}$: 230 dB $L_{E,HF,24h}$: 193 dB.	<i>Cell 5:</i> $L_{pk,flat}$: 224 dB $L_{E,HF,24h}$: 178 dB.	<i>Cell 6:</i> $L_{E,HF,24h}$: 173 dB.
Very High-Frequency (VHF) Cetaceans.	<i>Cell 7:</i> $L_{pk,flat}$: 202 dB $L_{E,VHF,24h}$: 159 dB.	<i>Cell 8:</i> $L_{pk,flat}$: 196 dB $L_{E,VHF,24h}$: 144 dB.	<i>Cell 9:</i> $L_{E,VHF,24h}$: 139 dB.
Phocid Pinnipeds (PW) (Underwater).	<i>Cell 10:</i> $L_{pk,flat}$: 223 dB $L_{E,PW,24h}$: 183 dB.	<i>Cell 11:</i> $L_{pk,flat}$: 217 dB $L_{E,PW,24h}$: 168 dB.	<i>Cell 12:</i> $L_{E,PW,24h}$: 163 dB.
Otariid Pinnipeds (OW) (Underwater).	<i>Cell 13:</i> $L_{pk,flat}$: 230 dB $L_{E,OW,24h}$: 185 dB.	<i>Cell 14:</i> $L_{pk,flat}$: 224 dB $L_{E,OW,24h}$: 170 dB.	<i>Cell 15:</i> $L_{E,OW,24h}$: 165 dB.

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, criteria are abbreviated to be more reflective of International Organization for Standardization standards (ISO, 2017; ISO, 2020). The subscript “flat” is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals underwater (*i.e.*, 7 Hz to 165 kHz). The subscript associated with cumulative sound exposure level criteria indicates the designated marine mammal auditory weighting function (LF, HF, and VHF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The weighted cumulative sound exposure level criteria 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 criteria will be exceeded.

*Dual metric criteria for impulsive sounds: Use whichever criteria results in the larger isopleth for calculating AUD INJ onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level criteria associated with impulsive sounds, the PK SPL criteria are recommended for consideration for non-impulsive sources.

The criterion for mortality is based on severe lung injury observed in terrestrial mammals exposed to underwater explosions as recorded in Goertner (1982). The criteria for non-auditory injury are based on slight lung injury or gastrointestinal (G.I.) tract injury observed in the same data set. Mortality and slight lung injury impacts to marine mammals are estimated using impulse

thresholds based on both calf/pup/ juvenile and adult masses (see the “Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase 4)” technical report (U.S. Department of the Navy, 2024)). The peak pressure threshold applies to all species and age classes. Unlike the prior analysis (Phase III), this analysis relies on the onset rather than the mean

estimated threshold for these effects. This revision results in a small increase in the predicted non-auditory injuries and mortalities for the same event versus prior analyses. Thresholds are provided in table 19 for use in non-auditory injury assessment for marine mammals exposed to underwater explosives.

TABLE 19—NON-AUDITORY INJURY THRESHOLDS FOR UNDERWATER EXPLOSIVES

Hearing group	Mortality—Impulse *	Injury—Impulse *	Injury—Peak pressure
All Marine Mammals	Cell 1: Modified Goertner model; Equation 1.	Cell 2: Modified Goertner model; Equation 2.	Cell 3: $L_{p,0-pk,flat}$: 237 dB.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μ Pa. In this table, thresholds are abbreviated to reflect ANSI (2013). However, ANSI defines peak sound pressure 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 overall marine mammal generalized hearing range.

* Lung injury (severe and slight) thresholds are dependent on animal mass (Recommendation: table C.9 from U.S. Department of the Navy (2017) based on adult and/or calf/pup mass by species).

Modified Goertner Equations for severe and slight lung injury (pascal-second):

Equation 1: $103M^{1/3}(1 + D/10.1)^{1/6}$ Pa-s

Equation 2: $47.5M^{1/3}(1 + D/10.1)^{1/6}$ Pa-s

M animal (adult and/or calf/pup) mass (kg) (table C.9 in DoN 2017).

D animal depth (meters).

Level B Harassment by Behavioral Disturbance

Though significantly driven by received level and distance, the onset of Level B harassment by behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors and can be difficult to predict (Southall *et al.*, 2007, Ellison *et al.*, 2012). As discussed in the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section, marine mammal responses to sound (some of which are considered disturbances that rise to the level of a take) are highly variable and context specific, *i.e.*, they are affected by differences in acoustic conditions; differences between species and populations; differences in gender, age, reproductive status, or social behavior; and other prior experience of the individuals. This means there is support for considering alternative approaches for estimating Level B behavioral harassment. Although the statutory definition of Level B harassment for military readiness activities means that a natural behavior pattern of a marine mammal is significantly altered or abandoned, the current state of science for determining those thresholds is somewhat unsettled.

Despite the rapidly evolving science, there are still challenges in quantifying expected behavioral responses that qualify as take by Level B harassment, especially where the goal is to use one or two predictable indicators (*e.g.*, received level and distance) to predict responses that are also driven by additional factors that cannot be easily incorporated into the thresholds (*e.g.*, context). So, while the criteria that identify Level B harassment by behavioral disturbance (referred to as “behavioral harassment thresholds”) have been refined to better consider the best available science (*e.g.*, incorporating both received level and distance), they also still have some

built-in factors to address the challenge noted. For example, while duration of observed responses in the data are now considered in the thresholds, some of the responses that are informing take thresholds are of a very short duration, such that it is possible some of these responses might not always rise to the level of disrupting behavior patterns to a point where they are abandoned or significantly altered. We describe the application of this behavioral harassment threshold as identifying the maximum number of instances in which marine mammals could be reasonably expected to experience a disruption in behavior patterns to a point where they are abandoned or significantly altered. In summary, we believe these behavioral harassment criteria are the most appropriate method for predicting Level B harassment by behavioral disturbance given the best available science and the associated uncertainty.

Sonar—

In its analysis of impacts associated with sonar acoustic sources (which was coordinated with NMFS), the Action Proponents used an updated approach, as described below. Many of the behavioral responses identified using the Action Proponents’ quantitative analysis are most likely to be of moderate severity as described in the Southall *et al.* (2021) behavioral response severity scale. These “moderate” severity responses were considered significant if they were sustained for the duration of the exposure or longer. Within the Action Proponents’ quantitative analysis, many responses are predicted from exposure to sound that may exceed an animal’s Level B behavioral harassment threshold for only a single exposure (a few seconds) to several minutes, and it is likely that some of the resulting estimated behavioral responses that are counted as Level B harassment would not constitute “significantly altering or

abandoning natural behavioral patterns,” *i.e.*, the estimated number of takes by Level B harassment due to behavioral disturbance and response is likely somewhat of an overestimate.

As noted above, the Action Proponents coordinated with NMFS to develop behavioral harassment thresholds specific to their military readiness activities utilizing active sonar that identify at what received level and distance Level B harassment by behavioral disturbance would be expected to result. These behavioral harassment thresholds consist of behavioral response functions (BRFs) and associated distance cut-off conditions, and are also referred to, together, as “the criteria.” These criteria are used to estimate the number of animals that may exhibit a behavioral response that rises to the level of a take when exposed to sonar and other transducers. The way the criteria were derived is discussed in detail in the “Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase 4)” technical report (U.S. Department of the Navy, 2024). Developing these behavioral harassment criteria involved multiple steps. All peer-reviewed published behavioral response studies conducted both in the field and on captive animals were examined in order to understand the breadth of behavioral responses of marine mammals to sonar and other transducers. Marine mammals were divided into four groups for analysis: mysticetes (all baleen whales), odontocetes (most toothed whales, dolphins, and porpoises), sensitive species (beaked whales and harbor porpoise), and pinnipeds (true seals, sea lions, walruses, sea otters, polar bears). These groups are like the groups used in the behavioral response analysis (Phase III), with the exception of combining beaked whales and harbor porpoise into a single curve. For each group, a biphasic BRF was developed using the

best available data and Bayesian dose response models developed at the University of St. Andrews. The BRF base probability of response on the highest SPL (rms) received level.

The analysis of BRFs differs from the previous phase (Phase III) due to the addition of new data and the separation of some species groups. The Sensitive Species BRF is more sensitive at lower received levels but less sensitive at higher received levels than the prior beaked whale and harbor porpoise functions. The Odontocete BRF is less sensitive across all received levels due to including additional behavioral response research, which will result in a lower number of behavioral responses than in the prior analysis for the same event, but also reduces the avoidance of auditory effects. The Pinnipeds (in-water) BRF is more sensitive due to the inclusion of additional captive pinniped data (only three behavioral studies using captive pinnipeds were available for the derivation of the BRF). Behavioral studies of captive animals can be difficult to extrapolate to wild animals due to several factors (*e.g.*, use of trained subjects). This means the pinniped BRF likely overestimates effects compared to observed responses of wild pinnipeds to sound and anthropogenic activity. The Mysticete BRF is less sensitive across most received levels due to including additional behavioral response research. This will result in a lower number of behavioral responses than in the prior analysis for the same event, but also reduces the avoidance of auditory effects.

The BRFs only relate the highest received level of sound to the probability that an animal will have a behavioral response. The BRFs do not account for the duration or pattern of use of any individual sound source or of the activity as a whole; the number of sound sources that may be operating simultaneously; or how loud the animal may perceive the sonar signal to be based on the frequency of the sonar versus the animal's hearing range.

Criteria for assessing marine mammal behavioral responses to sonars use the metric of highest received sound level (rms) to evaluate the risk of immediate responses by exposed animals. Currently, there are limited data to develop criteria that include the context of an exposure, characteristics of individual animals, behavioral state, duration of an exposure, sound source duty cycle, and the number of individual sources in an activity (although these factors certainly influence the severity of a behavioral response) and, further, even where certain contextual factors may be predictive where known, it is difficult to reliably predict when such factors will be present.

The BRFs also do not account for distance. At moderate to low received levels the correlation between probability of response and received level is very poor and it appears that other variables mediate behavioral responses (*e.g.*, Ellison *et al.*, 2011) such as the distance between the animal and the sound source. For this analysis, distance between the animal and the sound source (*i.e.*, range) was initially included, however, range was too confounded with received level and therefore did not provide additional information about the possibility of response.

Data suggest that beyond a certain distance, significant behavioral responses are unlikely. At shorter ranges (less than 10 km) some behavioral responses have been observed at received levels below 140 dB re 1 μ Pa. Thus, proximity may mediate behavioral responses at lower received levels. Since most data used to derive the BRFs are within 10 km of the source, probability of response at farther ranges is not well-represented. Therefore, the source-receiver range must be considered separately to estimate likely significant behavioral responses.

This analysis applies behavioral cut-off conditions to responses predicted using the BRFs. Animals within a specified distance and above a minimum probability of response are

assumed to have a significant behavioral response. The cut-off distance is based on the farthest source-animal distance across all known studies where animals exhibited a significant behavioral response. Animals beyond the cut-off distance but with received levels above the sound pressure level associated with a probability of response of 0.50 on the BRF are also assumed to have a significant behavioral response. The actual likelihood of significant behavioral responses occurring beyond the distance cut-off is unknown. Significant behavioral responses beyond 100 km are unlikely based on source-animal distance and attenuated received levels. The behavioral cut-off conditions and additional information on the derivation of the cut-off conditions can be found in table 2.2–3 of the “Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase 4)” technical report (U.S. Department of the Navy, 2024).

The Action Proponents used cutoff distances beyond which the potential of significant behavioral responses (and therefore Level B harassment) is considered to be unlikely (see table 20). These distances were determined by examining all available published field observations of behavioral responses to sonar or sonar-like signals that included the distance between the sound source and the marine mammal. Behavioral effects calculations are based on the maximum SPL to which a modeled marine mammal is exposed. There is empirical evidence to suggest that animals are more likely to exhibit significant behavioral responses to moderate levels sounds that are closer and less likely to exhibit behavioral responses when exposed to moderate levels of sound from a source that is far away. To account for this, the Action Proponents have implemented behavioral cutoffs that consider both received sound level and distance from the source. These updated cutoffs conditions are unique to each behavioral hearing group, and are outlined in table 20.

TABLE 20—BEHAVIORAL CUT-OFF CONDITIONS FOR EACH BEHAVIORAL HEARING GROUP

Behavioral group	Received level associated with p(0.50) on the behavioral response function (dB rms)	Cut-off range (km)
Sensitive Species	133	40
Odontocetes	168	15
Mysticetes	185	10
Pinnipeds	156	5

Note: Sensitive Species includes beaked whales and harbor porpoises.

The Action Proponents and NMFS have used the best available science to address the challenging differentiation between significant and non-significant behavioral responses (*i.e.*, whether the behavior has been abandoned or significantly altered such that it qualifies as harassment), but have erred on the cautious side where uncertainty exists (*e.g.*, counting these lower duration responses as take), which likely results in some degree of overestimation of Level B harassment by behavioral disturbance. We consider application of these behavioral harassment thresholds, therefore, as identifying the maximum number of instances in which marine mammals could be reasonably expected to experience a disruption in behavior patterns to a point where they are abandoned or significantly altered (*i.e.*, Level B harassment). NMFS has carefully reviewed the criteria (*i.e.*, BRFs and cutoff distances for the species), and agrees that it is the best available science and is the appropriate

method to use at this time for determining impacts to marine mammals from military sonar and other transducers and for calculating take and to support the determinations made in this proposed rule. Because this is the most appropriate method for estimating Level B harassment given the best available science and uncertainty on the topic, it is these numbers of Level B harassment by behavioral disturbance that are analyzed in the Preliminary Analysis and Negligible Impact Determination section and would be authorized.

Air Guns, Pile Driving, and Explosives—

Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses generalized acoustic thresholds based on received level to estimate the onset of behavioral harassment for sources other than active sonar. NMFS predicts that marine

mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μ Pa (rms) for continuous (*e.g.*, vibratory pile-driving, drilling) and above 160 dB re 1 μ Pa (rms) for non-explosive impulsive (*e.g.*, seismic air guns) or intermittent (*e.g.*, scientific sonar) sources. For the Action Proponents' activities, to estimate behavioral effects from air guns, the threshold of 160 dB re 1 μ Pa (rms) is used and the root mean square calculation for air guns is based on the duration defined by 90 percent of the cumulative energy in the impulse. The indicated thresholds were also applied to estimate behavioral effects from impact and vibratory pile driving (table 21). These thresholds are the same as those applied in the prior analysis (Phase III) of these stressors in the Study Area, although the explosive behavioral threshold has shifted, corresponding to changes in the TTS thresholds.

TABLE 21—BEHAVIORAL RESPONSE THRESHOLDS FOR AIR GUN, PILE DRIVING, AND EXPLOSIVES

Sound source	Behavioral threshold
Air gun	160 dB rms re 1 μ Pa SPL.
Impact pile driving	160 dB rms re 1 μ Pa SPL.
Vibratory pile driving	120 dB rms re 1 μ Pa SPL.
Single explosion	TTS onset threshold (weighted SEL).
Multiple explosions	5 dB less than the TTS onset threshold (weighted SEL).

While the best available science for assessing behavioral responses of marine mammals to impulsive sounds relies on data from seismic and pile driving sources, it is likely that these predicted responses using a threshold based on seismic and pile driving represent a worst-case scenario compared to behavioral responses to explosives used in military readiness activities, which would typically consist of single impulses or a cluster of impulses rather than long-duration, repeated impulses (*e.g.*, large-scale air gun arrays).

For single explosions at received sound levels below hearing loss thresholds, the most likely behavioral response is a brief alerting or orienting response. Since no further sounds follow the initial brief impulses, significant behavioral responses would not be expected to occur. If a significant response were to occur, the Action Proponents' analysis assumes it would be as a result of an exposure at levels within the range of auditory impacts (TTS and AUD INJ). Because of this approach, the number of auditory impacts is higher than the number of

behavioral impacts in the quantified results for some stocks.

If more than one explosive event occurs within any given 24-hour period during a military readiness activity, behavioral disturbance is considered more likely to occur and specific criteria are applied to predict the number of animals that may have a behavioral response. For events with multiple explosions, the behavioral threshold used in this analysis is 5 dB less than the TTS onset threshold. This value is derived from observed onsets of behavioral response by test subjects (bottlenose dolphins) during non-impulse TTS testing (Schlundt *et al.*, 2000).

Navy Acoustic Effects Model

The Navy Acoustic Effects Model (NAEMO) is their standard model for assessing acoustic effects on marine mammals. NAEMO calculates sound energy propagation from sonar and other transducers, air guns, and explosives during military readiness activities and the sound received by animat dosimeters. Animat dosimeters are virtual representations of marine

mammals distributed in the area around the modeled activity and each dosimeter records its individual sound “dose.” The model bases the distribution of animats over the AFTT Study Area on the density values in the Navy Marine Species Density Database (NMSDD) and distributes animats in the water column proportional to the known time that species spend at varying depths.

The model accounts for environmental variability of sound propagation in both distance and depth when computing the sound level received by the animats. The model conducts a statistical analysis based on multiple model runs to compute the estimated effects on animals. The number of animats that exceed the thresholds for effects is tallied to provide an estimate of the number of marine mammals that could be affected.

Assumptions in NAEMO intentionally err on the side of overestimation when there are unknowns. The specified activities are modeled as though they would occur regardless of proximity to marine mammals, meaning that the implementation of power downs or shut downs are not modeled or, thereby,

considered in the take estimates. For more information on this process, see the discussion in the *Estimated Take from Acoustic Stressors* section below. Many explosions from ordnance such as bombs and missiles actually occur upon impact with above-water targets. However, for this analysis, sources such as these were modeled as exploding underwater. This overestimates the amount of explosive and acoustic energy entering the water.

The model estimates the acoustic impacts caused by sonars and other transducers, explosives, and air guns during individual military readiness exercises. During any individual modeled event, impacts to individual animals are considered over 24-hour periods. The animals do not represent actual animals, but rather they represent a distribution of animals based on density and abundance data, which allows for a statistical analysis of the number of instances that marine mammals may be exposed to sound levels resulting in an effect. Therefore, the model estimates the number of instances in which an effect threshold was exceeded over the course of a year, but does not estimate the number of individual marine mammals that may be impacted over a year (*i.e.*, some marine mammals could be impacted several times, while others would not experience any impact). A detailed explanation of the Navy's Acoustic Effects Model is provided in the technical report "Quantifying Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase IV Training and Testing" (U.S. Department of the Navy, 2024).

As NAEMO interrogates the simulation data in the Animat Processor, exposures that are both outside the distance cutoff and below the received level cutoff are omitted when determining the maximum SPL for each animal. This differs from Phase III, in which only distance cutoffs were applied, meaning that all exposures outside the distance cutoffs were omitted, with no consideration of received level.

The presence of the two cutoff criteria in Phase IV provides a more accurate and conservative estimation of

behavioral effects because louder exposures that would have been omitted previously, when only a distance cutoff was applied, are considered in Phase IV, while the estimation of behavioral effects still omits exposures at distances and received levels that would be unlikely to produce a significant behavioral response. NAEMO retains the capability of calculating behavioral effects without the cutoffs applied, depending on user preference.

The impulsive behavioral criteria are not based on the probability of a behavioral response but rather on a single SPL metric. For consideration of impulsive behavioral effects, the cutoff conditions in table 20 are not applied.

Pile Driving

The Action Proponents performed a quantitative analysis without NAEMO to estimate the number of times marine mammals could be affected by pile driving and extraction used during proposed training activities. The analysis considered details of the activity, sound exposure criteria, and the number and distribution of marine mammals. This information was then used in an "area*density" model in which the areas within each footprint (*i.e.*, harassment zone) that encompassed a potential effect were calculated for a given day's activities. The effects analyzed included behavioral response, TTS, and AUD INJ for marine mammals.

Then, these areas were multiplied by the density of each marine species within the nearshore environment to estimate the number of effects. Uniform density values for species expected to be present in the nearshore areas where pile driving could occur were estimated using the NMSDD or available survey data specific to the activity location. More detail is provided in the 2024 AFTT Draft Supplemental EIS/OEIS. Since the same animal can be "taken" every day (*i.e.*, 24-hour reset time), the number of predicted effects from a given day were multiplied by the number of days for that activity. This generated a total estimated number of effects over the entire activity, which was then multiplied by the maximum number of times per year this activity could happen. The result was the estimated effects per species and stock in a year.

Range to Effects

This section provides range (distance) to effects for sonar and other active acoustic sources as well as explosives to specific acoustic thresholds determined using NAEMO. Ranges are determined by modeling the distance that noise from a source will need to propagate to reach exposure level thresholds specific to a hearing group that will cause behavioral response, TTS, AUD INJ, non-auditory injury, and mortality. Ranges to effects (tables 22 through 42) are utilized to help predict impacts from acoustic and explosive sources and assess the benefit of mitigation zones. Marine mammals exposed within these ranges for the shown duration are predicted to experience the associated effect. Range to effects is important information in not only predicting acoustic impacts, but also in verifying the accuracy of model results against real-world situations and determining adequate mitigation ranges to avoid higher level effects, especially physiological effects to marine mammals.

Sonar

Ranges to effects for sonar were determined by modeling the distance that sound would need to propagate to reach exposure level thresholds specific to a hearing group that would cause behavioral response, TTS, and AUD INJ, as described in the "Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase 4)" technical report (U.S. Department of the Navy, 2024). The ranges do not account for an animal avoiding a source nor for the movement of the platform, both of which would influence the actual range to onset of auditory effects during an actual exposure.

Table 22 through table 26 below provide the ranges to TTS and AUD INJ for marine mammals from exposure durations of 1, 30, 60, and 120 seconds for six sonar systems proposed for use (see also appendix A of the application). Due to the lower acoustic thresholds for TTS versus AUD INJ, ranges to TTS are larger. Successive pings can be expected to add together, further increasing the range to the onset of TTS and AUD INJ.

TABLE 22—VERY LOW-FREQUENCY CETACEAN RANGES TO EFFECTS FOR SONAR

Sonar type	Depth (m)	Duration (s)	Range to TTS	Range to AUD INJ
Dipping Sonar	≤200	1	160 m (34 m)	12 m (6 m).
Dipping Sonar	≤200	30	330 m (70 m)	21 m (10 m).
Dipping Sonar	≤200	60	460 m (98 m)	25 m (10 m).
Dipping Sonar	≤200	120	700 m (145 m)	35 m (8 m).

TABLE 22—VERY LOW-FREQUENCY CETACEAN RANGES TO EFFECTS FOR SONAR—Continued

Sonar type	Depth (m)	Duration (s)	Range to TTS	Range to AUD INJ
Dipping Sonar	>200	1	140 m (42 m)	0 m (1 m).
Dipping Sonar	>200	30	250 m (81 m)	0 m (8 m).
Dipping Sonar	>200	60	330 m (115 m)	18 m (11 m).
Dipping Sonar	>200	120	499 m (172 m)	35 m (15 m).
MF1 Ship Sonar	≤200	1	1,528 m (635 m)	90 m (10 m).
MF1 Ship Sonar	≤200	30	1,528 m (635 m)	90 m (10 m).
MF1 Ship Sonar	≤200	60	2,514 m (1,176 m)	140 m (19 m).
MF1 Ship Sonar	≤200	120	3,264 m (1,592 m)	180 m (27 m).
MF1 Ship Sonar	>200	1	1,000 m (449 m)	85 m (3 m).
MF1 Ship Sonar	>200	30	1,000 m (449 m)	85 m (3 m).
MF1 Ship Sonar	>200	60	1,750 m (804 m)	130 m (6 m).
MF1 Ship Sonar	>200	120	2,250 m (1,143 m)	170 m (9 m).
MF1C Ship Sonar	≤200	1	1,542 m (637 m)	90 m (10 m).
MF1C Ship Sonar	≤200	30	3,306 m (1,596 m)	180 m (27 m).
MF1C Ship Sonar	≤200	60	4,917 m (2,648 m)	273 m (51 m).
MF1C Ship Sonar	≤200	120	6,944 m (4,219 m)	447 m (92 m).
MF1C Ship Sonar	>200	1	1,000 m (460 m)	85 m (3 m).
MF1C Ship Sonar	>200	30	2,250 m (1,162 m)	170 m (9 m).
MF1C Ship Sonar	>200	60	4,278 m (1,747 m)	250 m (15 m).
MF1C Ship Sonar	>200	120	5,750 m (2,558 m)	370 m (37 m).
MF1K Ship Sonar	≤200	1	200 m (27 m)	13 m (2 m).
MF1K Ship Sonar	≤200	30	412 m (77 m)	24 m (1 m).
MF1K Ship Sonar	≤200	60	575 m (106 m)	30 m (1 m).
MF1K Ship Sonar	≤200	120	885 m (191 m)	45 m (3 m).
MF1K Ship Sonar	>200	1	190 m (7 m)	11 m (6 m).
MF1K Ship Sonar	>200	30	340 m (18 m)	23 m (11 m).
MF1K Ship Sonar	>200	60	440 m (31 m)	30 m (2 m).
MF1K Ship Sonar	>200	120	625 m (58 m)	40 m (2 m).
Mine-Hunting Sonar	≤200	1	3 m (2 m)	0 m (0 m).
Mine-Hunting Sonar	≤200	30	6 m (3 m)	0 m (0 m).
Mine-Hunting Sonar	≤200	60	9 m (5 m)	0 m (0 m).
Mine-Hunting Sonar	≤200	120	13 m (7 m)	1 m (0 m).
Mine-Hunting Sonar	>200	1	0 m (0 m)	0 m (0 m).
Mine-Hunting Sonar	>200	30	5 m (2 m)	0 m (0 m).
Mine-Hunting Sonar	>200	60	8 m (4 m)	0 m (0 m).
Mine-Hunting Sonar	>200	120	12 m (6 m)	0 m (0 m).
Sonobuoy Sonar	≤200	1	13 m (7 m)	0 m (0 m).
Sonobuoy Sonar	≤200	30	25 m (11 m)	0 m (0 m).
Sonobuoy Sonar	≤200	60	35 m (15 m)	0 m (1 m).
Sonobuoy Sonar	≤200	120	50 m (16 m)	0 m (2 m).
Sonobuoy Sonar	>200	1	0 m (7 m)	0 m (0 m).
Sonobuoy Sonar	>200	30	23 m (12 m)	0 m (0 m).
Sonobuoy Sonar	>200	60	35 m (17 m)	0 m (0 m).
Sonobuoy Sonar	>200	120	50 m (20 m)	0 m (0 m).

Note: Median ranges are shown with standard deviation ranges in parentheses. The Action Proponents split the LF functional hearing group into LF and VLF based on Houser *et al.*, (2024), however, NMFS updated acoustic technical guidance (NMFS, 2024) does not include these data but we have included the VLF group here for reference.

TABLE 23—LOW-FREQUENCY CETACEAN RANGES TO EFFECTS FOR SONAR

Sonar type	Depth (m)	Duration (s)	Range to TTS	Range to AUD INJ
Dipping Sonar	≤200	1	166 m (63 m)	12 m (5 m).
Dipping Sonar	≤200	30	333 m (109 m)	21 m (7 m).
Dipping Sonar	≤200	60	465 m (138 m)	25 m (8 m).
Dipping Sonar	≤200	120	701 m (154 m)	35 m (12 m).
Dipping Sonar	>200	1	140 m (78 m)	0 m (6 m).
Dipping Sonar	>200	30	220 m (120 m)	13 m (10 m).
Dipping Sonar	>200	60	280 m (156 m)	24 m (12 m).
Dipping Sonar	>200	120	440 m (110 m)	35 m (18 m).
MF1 Ship Sonar	≤200	1	1,653 m (658 m)	95 m (10 m).
MF1 Ship Sonar	≤200	30	1,653 m (658 m)	95 m (10 m).
MF1 Ship Sonar	≤200	60	2,653 m (1,213 m)	140 m (20 m).
MF1 Ship Sonar	≤200	120	3,486 m (1,632 m)	180 m (27 m).
MF1 Ship Sonar	>200	1	1,042 m (498 m)	90 m (4 m).
MF1 Ship Sonar	>200	30	1,042 m (498 m)	90 m (4 m).
MF1 Ship Sonar	>200	60	1,819 m (863 m)	140 m (5 m).
MF1 Ship Sonar	>200	120	2,694 m (1,210 m)	180 m (8 m).
MF1C Ship Sonar	≤200	1	1,653 m (660 m)	93 m (10 m).

TABLE 23—LOW-FREQUENCY CETACEAN RANGES TO EFFECTS FOR SONAR—Continued

Sonar type	Depth (m)	Duration (s)	Range to TTS	Range to AUD INJ
MF1C Ship Sonar	≤200	30	3,528 m (1,637 m)	180 m (27 m).
MF1C Ship Sonar	≤200	60	5,208 m (2,724 m)	286 m (52 m).
MF1C Ship Sonar	≤200	120	7,458 m (4,345 m)	461 m (95 m).
MF1C Ship Sonar	>200	1	1,056 m (511 m)	90 m (4 m).
MF1C Ship Sonar	>200	30	2,708 m (1,231 m)	180 m (8 m).
MF1C Ship Sonar	>200	60	4,514 m (1,834 m)	260 m (16 m).
MF1C Ship Sonar	>200	120	6,167 m (2,656 m)	380 m (41 m).
MF1K Ship Sonar	≤200	1	200 m (28 m)	14 m (1 m).
MF1K Ship Sonar	≤200	30	429 m (80 m)	25 m (0 m).
MF1K Ship Sonar	≤200	60	596 m (112 m)	30 m (1 m).
MF1K Ship Sonar	≤200	120	915 m (203 m)	45 m (3 m).
MF1K Ship Sonar	>200	1	190 m (6 m)	14 m (1 m).
MF1K Ship Sonar	>200	30	350 m (14 m)	24 m (1 m).
MF1K Ship Sonar	>200	60	450 m (33 m)	30 m (0 m).
MF1K Ship Sonar	>200	120	650 m (72 m)	45 m (0 m).
Mine-Hunting Sonar	≤200	1	9 m (5 m)	0 m (0 m).
Mine-Hunting Sonar	≤200	30	18 m (9 m)	1 m (1 m).
Mine-Hunting Sonar	≤200	60	25 m (11 m)	2 m (1 m).
Mine-Hunting Sonar	≤200	120	35 m (14 m)	3 m (2 m).
Mine-Hunting Sonar	>200	1	8 m (4 m)	0 m (0 m).
Mine-Hunting Sonar	>200	30	17 m (8 m)	1 m (0 m).
Mine-Hunting Sonar	>200	60	25 m (11 m)	2 m (1 m).
Mine-Hunting Sonar	>200	120	35 m (10 m)	3 m (1 m).
Sonobuoy Sonar	≤200	1	12 m (8 m)	0 m (0 m).
Sonobuoy Sonar	≤200	30	25 m (11 m)	0 m (0 m).
Sonobuoy Sonar	≤200	60	40 m (16 m)	0 m (1 m).
Sonobuoy Sonar	≤200	120	55 m (23 m)	0 m (1 m).
Sonobuoy Sonar	>200	1	0 m (7 m)	0 m (0 m).
Sonobuoy Sonar	>200	30	20 m (12 m)	0 m (0 m).
Sonobuoy Sonar	>200	60	35 m (19 m)	0 m (0 m).
Sonobuoy Sonar	>200	120	55 m (27 m)	0 m (0 m).

Note: Median ranges are shown with standard deviation ranges in parentheses. The Action Proponents split the LF functional hearing group into LF and VLF based on Houser *et al.*, (2024), however, NMFS updated acoustic technical guidance (NMFS, 2024) does not include these data but we have included the VLF group here for reference.

TABLE 24—HIGH-FREQUENCY CETACEAN RANGES TO EFFECTS FOR SONAR

Sonar type	Depth (m)	Duration (s)	Range to TTS	Range to AUD INJ
Dipping Sonar	≤200	1	55 m (18 m)	5 m (2 m).
Dipping Sonar	≤200	30	120 m (42 m)	9 m (3 m).
Dipping Sonar	≤200	60	170 m (60 m)	12 m (5 m).
Dipping Sonar	≤200	120	270 m (90 m)	18 m (6 m).
Dipping Sonar	>200	1	50 m (27 m)	0 m (2 m).
Dipping Sonar	>200	30	100 m (56 m)	0 m (4 m).
Dipping Sonar	>200	60	140 m (77 m)	0 m (6 m).
Dipping Sonar	>200	120	209 m (113 m)	0 m (8 m).
MF1 Ship Sonar	≤200	1	832 m (189 m)	45 m (3 m).
MF1 Ship Sonar	≤200	30	832 m (189 m)	45 m (3 m).
MF1 Ship Sonar	≤200	60	1,208 m (357 m)	65 m (6 m).
MF1 Ship Sonar	≤200	120	1,500 m (561 m)	85 m (9 m).
MF1 Ship Sonar	>200	1	600 m (117 m)	45 m (11 m).
MF1 Ship Sonar	>200	30	600 m (117 m)	45 m (11 m).
MF1 Ship Sonar	>200	60	892 m (263 m)	65 m (13 m).
MF1 Ship Sonar	>200	120	1,000 m (421 m)	85 m (6 m).
MF1C Ship Sonar	≤200	1	835 m (189 m)	45 m (3 m).
MF1C Ship Sonar	≤200	30	1,500 m (562 m)	85 m (9 m).
MF1C Ship Sonar	≤200	60	2,514 m (1,075 m)	130 m (17 m).
MF1C Ship Sonar	≤200	120	4,069 m (1,805 m)	200 m (30 m).
MF1C Ship Sonar	>200	1	600 m (120 m)	45 m (11 m).
MF1C Ship Sonar	>200	30	1,000 m (432 m)	85 m (6 m).
MF1C Ship Sonar	>200	60	1,736 m (783 m)	130 m (8 m).
MF1C Ship Sonar	>200	120	3,028 m (1,363 m)	200 m (12 m).
MF1K Ship Sonar	≤200	1	100 m (9 m)	7 m (3 m).
MF1K Ship Sonar	≤200	30	190 m (25 m)	13 m (3 m).
MF1K Ship Sonar	≤200	60	270 m (42 m)	17 m (3 m).
MF1K Ship Sonar	≤200	120	430 m (80 m)	25 m (1 m).
MF1K Ship Sonar	>200	1	100 m (19 m)	7 m (3 m).
MF1K Ship Sonar	>200	30	180 m (11 m)	13 m (6 m).

TABLE 24—HIGH-FREQUENCY CETACEAN RANGES TO EFFECTS FOR SONAR—Continued

Sonar type	Depth (m)	Duration (s)	Range to TTS	Range to AUD INJ
MF1K Ship Sonar	>200	60	240 m (11 m)	17 m (7 m).
MF1K Ship Sonar	>200	120	350 m (18 m)	25 m (9 m).
Mine-Hunting Sonar	≤200	1	8 m (4 m)	0 m (0 m).
Mine-Hunting Sonar	≤200	30	15 m (6 m)	1 m (0 m).
Mine-Hunting Sonar	≤200	60	22 m (8 m)	1 m (1 m).
Mine-Hunting Sonar	≤200	120	30 m (9 m)	2 m (1 m).
Mine-Hunting Sonar	>200	1	7 m (3 m)	0 m (0 m).
Mine-Hunting Sonar	>200	30	15 m (5 m)	0 m (0 m).
Mine-Hunting Sonar	>200	60	21 m (7 m)	0 m (1 m).
Mine-Hunting Sonar	>200	120	25 m (6 m)	0 m (1 m).
Sonobuoy Sonar	≤200	1	8 m (4 m)	0 m (0 m).
Sonobuoy Sonar	≤200	30	18 m (8 m)	0 m (0 m).
Sonobuoy Sonar	≤200	60	25 m (12 m)	0 m (0 m).
Sonobuoy Sonar	≤200	120	35 m (13 m)	0 m (1 m).
Sonobuoy Sonar	>200	1	0 m (4 m)	0 m (0 m).
Sonobuoy Sonar	>200	30	0 m (9 m)	0 m (0 m).
Sonobuoy Sonar	>200	60	0 m (12 m)	0 m (0 m).
Sonobuoy Sonar	>200	120	25 m (16 m)	0 m (1 m).

Note: Median ranges are shown with standard deviation ranges in parentheses.

TABLE 25—VERY HIGH-FREQUENCY CETACEAN RANGES TO EFFECTS FOR SONAR

Sonar type	Depth (m)	Duration (s)	Range to TTS	Range to AUD INJ
Dipping Sonar	≤200	1	100 m (37 m)	8 m (3 m).
Dipping Sonar	≤200	30	210 m (79 m)	14 m (5 m).
Dipping Sonar	≤200	60	291 m (97 m)	19 m (6 m).
Dipping Sonar	≤200	120	454 m (104 m)	25 m (8 m).
Dipping Sonar	>200	1	95 m (49 m)	0 m (3 m).
Dipping Sonar	>200	30	180 m (98 m)	0 m (6 m).
Dipping Sonar	>200	60	230 m (125 m)	14 m (8 m).
Dipping Sonar	>200	120	310 m (75 m)	24 m (12 m).
MF1 Ship Sonar	≤200	1	2,750 m (1,203 m)	150 m (19 m).
MF1 Ship Sonar	≤200	30	2,750 m (1,203 m)	150 m (19 m).
MF1 Ship Sonar	≤200	60	4,347 m (2,022 m)	230 m (36 m).
MF1 Ship Sonar	≤200	120	5,306 m (2,709 m)	293 m (51 m).
MF1 Ship Sonar	>200	1	1,806 m (867 m)	150 m (6 m).
MF1 Ship Sonar	>200	30	1,806 m (867 m)	150 m (6 m).
MF1 Ship Sonar	>200	60	3,569 m (1,420 m)	220 m (12 m).
MF1 Ship Sonar	>200	120	4,500 m (1,761 m)	270 m (15 m).
MF1C Ship Sonar	≤200	1	2,778 m (1,206 m)	150 m (19 m).
MF1C Ship Sonar	≤200	30	5,472 m (2,717 m)	295 m (51 m).
MF1C Ship Sonar	≤200	60	7,861 m (4,337 m)	480 m (94 m).
MF1C Ship Sonar	≤200	120	10,896 m (6,387 m)	750 m (163 m).
MF1C Ship Sonar	>200	1	1,806 m (892 m)	150 m (6 m).
MF1C Ship Sonar	>200	30	4,514 m (1,802 m)	270 m (16 m).
MF1C Ship Sonar	>200	60	6,139 m (2,607 m)	390 m (42 m).
MF1C Ship Sonar	>200	120	8,403 m (3,750 m)	550 m (95 m).
MF1K Ship Sonar	≤200	1	350 m (61 m)	20 m (1 m).
MF1K Ship Sonar	≤200	30	724 m (139 m)	35 m (1 m).
MF1K Ship Sonar	≤200	60	976 m (222 m)	50 m (3 m).
MF1K Ship Sonar	≤200	120	1,306 m (456 m)	85 m (6 m).
MF1K Ship Sonar	>200	1	300 m (9 m)	16 m (3 m).
MF1K Ship Sonar	>200	30	525 m (46 m)	35 m (0 m).
MF1K Ship Sonar	>200	60	700 m (78 m)	50 m (2 m).
MF1K Ship Sonar	>200	120	1,000 m (138 m)	85 m (3 m).
Mine-Hunting Sonar	≤200	1	130 m (54 m)	9 m (1 m).
Mine-Hunting Sonar	≤200	30	291 m (115 m)	16 m (2 m).
Mine-Hunting Sonar	≤200	60	453 m (161 m)	24 m (3 m).
Mine-Hunting Sonar	≤200	120	653 m (198 m)	35 m (6 m).
Mine-Hunting Sonar	>200	1	90 m (6 m)	8 m (1 m).
Mine-Hunting Sonar	>200	30	150 m (15 m)	15 m (0 m).
Mine-Hunting Sonar	>200	60	210 m (30 m)	22 m (0 m).
Mine-Hunting Sonar	>200	120	300 m (45 m)	30 m (0 m).
Sonobuoy Sonar	≤200	1	65 m (22 m)	0 m (3 m).
Sonobuoy Sonar	≤200	30	140 m (67 m)	9 m (4 m).
Sonobuoy Sonar	≤200	60	218 m (98 m)	15 m (5 m).
Sonobuoy Sonar	≤200	120	349 m (128 m)	22 m (7 m).
Sonobuoy Sonar	>200	1	65 m (31 m)	0 m (1 m).

TABLE 25—VERY HIGH-FREQUENCY CETACEAN RANGES TO EFFECTS FOR SONAR—Continued

Sonar type	Depth (m)	Duration (s)	Range to TTS	Range to AUD INJ
Sonobuoy Sonar	>200	30	110 m (60 m)	0 m (5 m).
Sonobuoy Sonar	>200	60	180 m (87 m)	10 m (6 m).
Sonobuoy Sonar	>200	120	280 m (72 m)	21 m (10 m).

Note: Median ranges are shown with standard deviation ranges in parentheses.

TABLE 26—PHOCID CARNIVORE IN WATER RANGES TO EFFECTS FOR SONAR

Sonar type	Depth (m)	Duration (s)	Range to TTS	Range to AUD INJ
Dipping Sonar	≤200	1	208 m (63 m)	0 m (7 m).
Dipping Sonar	≤200	30	410 m (87 m)	22 m (8 m).
Dipping Sonar	≤200	60	564 m (117 m)	30 m (10 m).
Dipping Sonar	≤200	120	853 m (170 m)	45 m (15 m).
Dipping Sonar	>200	1	170 m (80 m)	0 m (6 m).
Dipping Sonar	>200	30	300 m (73 m)	0 m (11 m).
Dipping Sonar	>200	60	400 m (84 m)	0 m (14 m).
Dipping Sonar	>200	120	600 m (131 m)	35 m (21 m).
MF1 Ship Sonar	≤200	1	2,181 m (982 m)	120 m (16 m).
MF1 Ship Sonar	≤200	30	2,181 m (982 m)	120 m (16 m).
MF1 Ship Sonar	≤200	60	3,417 m (1,671 m)	186 m (28 m).
MF1 Ship Sonar	≤200	120	4,306 m (2,258 m)	240 m (41 m).
MF1 Ship Sonar	>200	1	1,500 m (708 m)	120 m (5 m).
MF1 Ship Sonar	>200	30	1,500 m (708 m)	120 m (5 m).
MF1 Ship Sonar	>200	60	2,667 m (1,231 m)	180 m (9 m).
MF1 Ship Sonar	>200	120	3,819 m (1,543 m)	230 m (13 m).
MF1C Ship Sonar	≤200	1	2,181 m (982 m)	120 m (16 m).
MF1C Ship Sonar	≤200	30	4,333 m (2,258 m)	240 m (41 m).
MF1C Ship Sonar	≤200	60	6,194 m (3,650 m)	381 m (77 m).
MF1C Ship Sonar	≤200	120	8,556 m (5,510 m)	606 m (130 m).
MF1C Ship Sonar	>200	1	1,500 m (708 m)	120 m (5 m).
MF1C Ship Sonar	>200	30	3,819 m (1,543 m)	230 m (13 m).
MF1C Ship Sonar	>200	60	5,264 m (2,269 m)	330 m (28 m).
MF1C Ship Sonar	>200	120	7,292 m (3,235 m)	480 m (59 m).
MF1K Ship Sonar	≤200	1	270 m (43 m)	17 m (6 m).
MF1K Ship Sonar	≤200	30	557 m (104 m)	30 m (4 m).
MF1K Ship Sonar	≤200	60	775 m (155 m)	40 m (3 m).
MF1K Ship Sonar	≤200	120	1,000 m (312 m)	65 m (5 m).
MF1K Ship Sonar	>200	1	240 m (8 m)	16 m (6 m).
MF1K Ship Sonar	>200	30	430 m (27 m)	30 m (11 m).
MF1K Ship Sonar	>200	60	550 m (47 m)	35 m (14 m).
MF1K Ship Sonar	>200	120	800 m (98 m)	60 m (3 m).
Mine-Hunting Sonar	≤200	1	15 m (5 m)	0 m (0 m).
Mine-Hunting Sonar	≤200	30	25 m (6 m)	0 m (1 m).
Mine-Hunting Sonar	≤200	60	40 m (8 m)	0 m (2 m).
Mine-Hunting Sonar	≤200	120	65 m (13 m)	4 m (2 m).
Mine-Hunting Sonar	>200	1	14 m (4 m)	0 m (0 m).
Mine-Hunting Sonar	>200	30	25 m (2 m)	0 m (1 m).
Mine-Hunting Sonar	>200	60	35 m (2 m)	0 m (1 m).
Mine-Hunting Sonar	>200	120	50 m (2 m)	3 m (2 m).
Sonobuoy Sonar	≤200	1	21 m (9 m)	0 m (0 m).
Sonobuoy Sonar	≤200	30	35 m (11 m)	0 m (1 m).
Sonobuoy Sonar	≤200	60	50 m (15 m)	0 m (2 m).
Sonobuoy Sonar	≤200	120	75 m (23 m)	0 m (3 m).
Sonobuoy Sonar	>200	1	0 m (10 m)	0 m (0 m).
Sonobuoy Sonar	>200	30	35 m (17 m)	0 m (1 m).
Sonobuoy Sonar	>200	60	50 m (22 m)	0 m (2 m).
Sonobuoy Sonar	>200	120	75 m (33 m)	0 m (2 m).

Note: Median ranges are shown with standard deviation ranges in parentheses.

Air Guns

Ranges to effects for air guns were determined by modeling the distance that sound would need to propagate to reach exposure level thresholds specific

to a hearing group that would cause behavioral response, TTS, and AUD INJ, as described in the “Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase 4)”

report (U.S. Department of the Navy, 2024)). The air gun ranges to effects for TTS and AUD INJ in table 27 are based on the metric (*i.e.*, SEL or SPL) that produced larger ranges.

TABLE 27—RANGE TO EFFECTS FOR AIR GUNS

Functional hearing group	Depth (m)	Behavioral disturbance	Range to TTS	Range to AUD INJ
VLF	≤200	145 m (20 m)	27 m (1 m)	4 m (1 m).
VLF	>200	143 m (20 m)	26 m (1 m)	4 m (1 m).
LF	≤200	130 m (18 m)	12 m (0 m)	2 m (0 m).
LF	>200	130 m (17 m)	12 m (0 m)	2 m (0 m).
HF	≤200	146 m (20 m)	2 m (0 m)	1 m (0 m).
HF	>200	145 m (18 m)	2 m (0 m)	1 m (0 m).
VHF	≤200	150 m (18 m)	56 m (3 m)	27 m (2 m).
VHF	>200	148 m (16 m)	55 m (3 m)	27 m (2 m).
PW	≤200	142 m (18 m)	5 m (1 m)	2 m (0 m).
PW	>200	139 m (17 m)	5 m (1 m)	2 m (0 m).

Note: The values listed for TTS and AUD INJ are the greater of the respective SPL and SEL ranges. Median ranges are shown with standard deviation ranges in parentheses. The Action Proponents split the LF functional hearing group into LF and VLF based on Houser *et al.*, (2024), however, NMFS updated acoustic technical guidance (NMFS, 2024) does not include these data but we have included the VLF group here for reference.

Pile Driving

Only two stocks of bottlenose dolphins (Gulf of America Northern Coastal stock and Mississippi Sound, Lake Borgne, and Bay Boudreau stock) are expected to be present in the nearshore waters of Gulfport, Mississippi, where impact and vibratory pile driving and extraction is proposed to occur up to four times per year. Table

28 shows the predicted ranges to AUD INJ, TTS, and behavioral response for the HF hearing group (the only functional hearing group expected in the vicinity of pile driving and extraction activities) that were analyzed for their exposure to impact and vibratory pile driving. These ranges were estimated based on activity parameters described in the Acoustic

Stressors section of the Explosive and Acoustic Analysis Report (see appendix A of the application) and using the calculations described in the Quantitative Analysis Technical Report (see “Quantifying Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase IV Training and Testing” (U.S. Department of the Navy, 2024)).

TABLE 28—RANGE TO EFFECTS FOR HIGH-FREQUENCY CETACEANS FROM PILE DRIVING

Pile type	Method	Behavioral response (m)	TTS (m)	AUD INJ (m)
16-inch timber/plastic	Impact	46	17	2
16-inch timber/plastic	Vibratory	6,310	17	1
24-inch steel sheet	Vibratory	3,981	11	0

Explosives

The following section provides the range (distance) over which specific physiological or behavioral effects are expected to occur based on the explosive criteria (see section 6.2.1 (Impacts from Explosives) of the application and the “Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase 4)” report (U.S. Department of the Navy, 2024)) and the explosive propagation calculations from NAEMO. The range to effects are shown for a range of explosive bins, from E1 (0.1–0.25 lb NEW) to E16 (greater than 7,250–14,500 lb NEW (ship shock trial only)) (table 29 through table 33). Ranges are determined by modeling the distance that noise from an explosion would need to propagate to reach exposure level thresholds specific to a hearing group that would cause behavioral response (to the degree of Level B behavioral harassment), TTS, and AUD INJ. NMFS has reviewed the range distance to effect data provided by the

Action Proponents and concurs with the analysis. Range to effects is important information in not only predicting impacts from explosives, but also in verifying the accuracy of model results against real-world situations and determining adequate mitigation ranges to avoid higher level effects, especially injury to marine mammals. For additional information on how ranges to impacts from explosions were estimated, see the technical report “Quantifying Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase IV Training and Testing” (U.S. Department of the Navy, 2024).

Table 29 through table 33 show the minimum, average, and maximum ranges to onset of auditory and likely behavioral effects that rise to the level of Level B harassment for all functional hearing groups based on the developed thresholds. Ranges are provided for a representative source depth and cluster size (the number of rounds fired, or buoys dropped, within a very short

duration) for each bin. Ranges for behavioral response are only provided if more than one explosive cluster occurs. As noted previously, single explosions at received sound levels below TTS and AUD INJ thresholds are most likely to result in a brief alerting or orienting response. For events with multiple explosions, sound from successive explosions can be expected to accumulate and increase the range to the onset of an impact based on SEL thresholds. Modeled ranges to TTS and AUD INJ based on peak pressure for a single explosion generally exceed the modeled ranges based on SEL even when accumulated for multiple explosions. Peak pressure-based ranges are estimated using the best available science; however, data on peak pressure at far distances from explosions are very limited. The explosive ranges to effects for TTS and AUD INJ that are in the tables are based on the metric (*i.e.*, SEL or SPL) that produced larger ranges.

Table 34 shows ranges to non-auditory injury and mortality as a

function of animal mass and explosive bin. For non-auditory injury, the larger of the ranges to slight lung injury or gastrointestinal tract injury was used as a conservative estimate, and the boxplots in appendix A to the

application present ranges for both metrics for comparison. For the non-auditory metric, ranges are only available for a cluster size of one. Animals within water volumes encompassing the estimated range to

non-auditory injury would be expected to receive minor injuries at the outer ranges, increasing to more substantial injuries, and finally mortality as an animal approaches the detonation point.

TABLE 29—VERY LOW-FREQUENCY CETACEAN RANGES TO EFFECTS FOR EXPLOSIVES

Bin	Depth (m)	Cluster size	Range to behavioral disturbance	Range to TTS	Range to AUD INJ
E1	≤200	1	NA	310 m (149 m)	97 m (6 m).
E1	≤200	25	1,250 m (336 m)	800 m (112 m)	199 m (39 m).
E1	≤200	100	5,049 m (2,982 m)	1,604 m (1,238 m)	353 m (74 m).
E1	>200	1	NA	305 m (88 m)	96 m (6 m).
E2	≤200	1	NA	292 m (9 m)	98 m (0 m).
E3	≤200	1	NA	542 m (531 m)	206 m (22 m).
E3	≤200	10	3,569 m (2,949 m)	1,264 m (904 m)	274 m (75 m).
E3	>200	1	NA	480 m (275 m)	208 m (20 m).
E3	>200	10	1,500 m (881 m)	925 m (301 m)	290 m (67 m).
E4	≤200	1	NA	2,625 m (1,017 m)	378 m (143 m).
E4	>200	1	NA	1,000 m (160 m)	353 m (34 m).
E5	≤200	1	NA	879 m (1,240 m)	309 m (35 m).
E5	≤200	8	11,590 m (7,473 m)	5,375 m (3,258 m)	389 m (119 m).
E5	>200	1	NA	650 m (221 m)	304 m (33 m).
E5	>200	8	1,750 m (1,403 m)	1,000 m (654 m)	420 m (92 m).
E6	≤200	1	NA	1,472 m (2,322 m)	421 m (56 m).
E6	≤200	4	16,812 m (4,849 m)	7,131 m (3,505 m)	421 m (56 m).
E6	>200	1	NA	743 m (100 m)	426 m (43 m).
E7	≤200	1	NA	2,649 m (919 m)	510 m (62 m).
E7	>200	1	NA	2,989 m (1,004 m)	515 m (66 m).
E8	≤200	1	NA	5,619 m (1,462 m)	767 m (114 m).
E8	>200	1	NA	5,577 m (1,617 m)	781 m (115 m).
E9	≤200	1	NA	6,717 m (3,010 m)	676 m (98 m).
E9	>200	1	NA	6,141 m (2,970 m)	646 m (89 m).
E10	≤200	1	NA	12,778 m (4,320 m)	875 m (153 m).
E10	>200	1	NA	12,964 m (3,612 m)	912 m (158 m).
E11	≤200	1	NA	23,156 m (5,301 m)	3,790 m (770 m).
E11	>200	1	NA	22,108 m (4,622 m)	3,625 m (664 m).
E12	≤200	1	NA	14,652 m (4,177 m)	1,105 m (465 m).
E12	>200	1	NA	16,150 m (3,598 m)	1,093 m (205 m).
E16	>200	1	NA	57,600 m (5,145 m)	16,753 m (2,305 m).

Note: Behavioral response criteria are applied to explosive clusters >1. The values listed for TTS and AUD INJ are the greater of the respective SPL and SEL ranges. Median ranges are shown with standard deviation ranges in parentheses. The Action Proponents split the LF functional hearing group into LF and VLF based on Houser *et al.*, (2024), however, NMFS updated acoustic technical guidance (NMFS, 2024) does not include these data but we have included the VLF group here for reference. E1 (0.1–0.25 lbs), E2 (>0.25–0.5 lbs), E3 (>0.5–2.5 lbs), E4 (>2.5–5 lbs), E5 (>5–10 lbs), E6 (>10–20 lbs), E7 (>20–60 lbs), E8 (>60–100 lbs), E9 (>100–250 lbs), E10 (>250–500 lbs), E11 (>500–675 lbs), E12 (>675–1,000 lbs), E16 (10,000 lbs).

TABLE 30—LOW-FREQUENCY CETACEAN RANGES TO EFFECTS FOR EXPLOSIVES

Bin	Depth (m)	Cluster size	Range to behavioral disturbance	Range to TTS	Range to AUD INJ
E1	≤200	1	NA	350 m (149 m)	99 m (4 m).
E1	≤200	25	1,625 m (321 m)	982 m (46 m)	288 m (28 m).
E1	≤200	100	5,021 m (2,386 m)	1,993 m (1,282 m)	501 m (53 m).
E1	>200	1	NA	340 m (51 m)	99 m (5 m).
E2	≤200	1	NA	375 m (6 m)	98 m (0 m).
E3	≤200	1	NA	626 m (459 m)	195 m (22 m).
E3	≤200	10	3,312 m (2,425 m)	1,500 m (817 m)	371 m (62 m).
E3	>200	1	NA	550 m (254 m)	196 m (18 m).
E3	>200	10	1,743 m (1,121 m)	1,000 m (333 m)	330 m (41 m).
E4	≤200	1	NA	2,347 m (913 m)	353 m (120 m).
E4	>200	1	NA	1,000 m (152 m)	350 m (36 m).
E5	≤200	1	NA	956 m (1,114 m)	292 m (33 m).
E5	≤200	8	9,667 m (5,924 m)	4,569 m (2,412 m)	509 m (78 m).
E5	>200	1	NA	725 m (173 m)	289 m (33 m).
E5	>200	8	1,750 m (1,640 m)	1,250 m (793 m)	470 m (78 m).
E6	≤200	1	NA	1,431 m (2,018 m)	412 m (79 m).
E6	≤200	4	11,125 m (4,506 m)	6,000 m (2,989 m)	500 m (51 m).
E6	>200	1	NA	922 m (855 m)	417 m (76 m).
E7	≤200	1	NA	2,818 m (1,316 m)	492 m (147 m).
E7	>200	1	NA	2,822 m (1,165 m)	495 m (173 m).

TABLE 30—LOW-FREQUENCY CETACEAN RANGES TO EFFECTS FOR EXPLOSIVES—Continued

Bin	Depth (m)	Cluster size	Range to behavioral disturbance	Range to TTS	Range to AUD INJ
E8	≤200	1	NA	4,664 m (1,107 m)	745 m (111 m).
E8	>200	1	NA	4,656 m (1,243 m)	746 m (106 m).
E9	≤200	1	NA	4,954 m (2,390 m)	656 m (92 m).
E9	>200	1	NA	4,786 m (3,126 m)	623 m (92 m).
E10	≤200	1	NA	9,549 m (3,317 m)	850 m (166 m).
E10	>200	1	NA	10,163 m (3,324 m)	889 m (171 m).
E11	≤200	1	NA	17,248 m (5,803 m)	2,753 m (791 m).
E11	>200	1	NA	15,925 m (5,288 m)	2,625 m (668 m).
E12	≤200	1	NA	11,344 m (2,290 m)	1,003 m (112 m).
E12	>200	1	NA	12,974 m (2,952 m)	982 m (108 m).
E16	>200	1	NA	43,847 m (4,420 m)	9,408 m (2,314 m).

Note: Behavioral response criteria are applied to explosive clusters >1. The values listed for TTS and AUD INJ are the greater of the respective SPL and SEL ranges. Median ranges are shown with standard deviation ranges in parentheses. The Action Proponents split the LF functional hearing group into LF and VLF based on Houser *et al.*, (2024), however, NMFS updated acoustic technical guidance (NMFS, 2024) does not include these data but we have included the VLF group here for reference. E1 (0.1–0.25 lbs), E2 (>0.25–0.5 lbs), E3 (>0.5–2.5 lbs), E4 (>2.5–5 lbs), E5 (>5–10 lbs), E6 (>10–20 lbs), E7 (>20–60 lbs), E8 (>60–100 lbs), E9 (>100–250 lbs), E10 (>250–500 lbs), E11 (>500–675 lbs), E12 (>675–1,000 lbs), E16 (10,000 lbs).

TABLE 31—HIGH-FREQUENCY CETACEAN RANGES TO EFFECTS FOR EXPLOSIVES

Bin	Depth (m)	Cluster size	Range to behavioral disturbance	Range to TTS	Range to AUD INJ
E1	≤200	1	NA	110 m (19 m)	45 m (1 m).
E1	≤200	25	757 m (71 m)	514 m (49 m)	113 m (6 m).
E1	≤200	100	1,004 m (133 m)	747 m (77 m)	240 m (18 m).
E1	>200	1	NA	90 m (3 m)	44 m (1 m).
E2	≤200	1	NA	156 m (1 m)	45 m (1 m).
E3	≤200	1	NA	230 m (57 m)	94 m (5 m).
E3	≤200	10	881 m (205 m)	597 m (114 m)	150 m (15 m).
E3	>200	1	NA	190 m (23 m)	95 m (5 m).
E3	>200	10	525 m (172 m)	366 m (79 m)	120 m (7 m).
E4	≤200	1	NA	427 m (108 m)	130 m (13 m).
E4	>200	1	NA	278 m (20 m)	126 m (15 m).
E5	≤200	1	NA	370 m (118 m)	138 m (11 m).
E5	≤200	8	1,083 m (343 m)	787 m (105 m)	220 m (19 m).
E5	>200	1	NA	250 m (28 m)	137 m (10 m).
E5	>200	8	625 m (209 m)	450 m (139 m)	170 m (10 m).
E6	≤200	1	NA	479 m (174 m)	187 m (15 m).
E6	≤200	4	884 m (122 m)	674 m (95 m)	220 m (18 m).
E6	>200	1	NA	341 m (27 m)	191 m (11 m).
E7	≤200	1	NA	544 m (67 m)	239 m (18 m).
E7	>200	1	NA	552 m (68 m)	237 m (20 m).
E8	≤200	1	NA	719 m (93 m)	333 m (37 m).
E8	>200	1	NA	713 m (101 m)	327 m (40 m).
E9	≤200	1	NA	731 m (90 m)	336 m (29 m).
E9	>200	1	NA	739 m (99 m)	325 m (31 m).
E10	≤200	1	NA	872 m (96 m)	400 m (37 m).
E10	>200	1	NA	898 m (107 m)	398 m (36 m).
E11	≤200	1	NA	1,857 m (420 m)	839 m (153 m).
E11	>200	1	NA	1,788 m (375 m)	840 m (159 m).
E12	≤200	1	NA	1,053 m (96 m)	490 m (43 m).
E12	>200	1	NA	1,053 m (67 m)	488 m (40 m).
E16	>200	1	NA	4,306 m (646 m)	1,986 m (367 m).

Note: Behavioral response criteria are applied to explosive clusters >1. The values listed for TTS and AUD INJ are the greater of the respective SPL and SEL ranges. Median ranges are shown with standard deviation ranges in parentheses. E1 (0.1–0.25 lbs), E2 (>0.25–0.5 lbs), E3 (>0.5–2.5 lbs), E4 (>2.5–5 lbs), E5 (>5–10 lbs), E6 (>10–20 lbs), E7 (>20–60 lbs), E8 (>60–100 lbs), E9 (>100–250 lbs), E10 (>250–500 lbs), E11 (>500–675 lbs), E12 (>675–1,000 lbs), E16 (10,000 lbs).

TABLE 32—VERY HIGH-FREQUENCY CETACEAN RANGES TO EFFECTS FOR EXPLOSIVES

Bin	Depth (m)	Cluster size	Range to behavioral disturbance	Range to TTS	Range to AUD INJ
E1	≤200	1	NA	2,306 m (1,200 m)	756 m (54 m).
E1	≤200	25	8,750 m (2,277 m)	6,201 m (1,446 m)	1,507 m (294 m).
E1	≤200	100	12,639 m (3,565 m)	9,500 m (2,588 m)	2,986 m (991 m).
E1	>200	1	NA	1,750 m (1,283 m)	756 m (67 m).
E2	≤200	1	NA	2,319 m (189 m)	636 m (41 m).
E3	≤200	1	NA	4,229 m (1,812 m)	1,369 m (214 m).

TABLE 32—VERY HIGH-FREQUENCY CETACEAN RANGES TO EFFECTS FOR EXPLOSIVES—Continued

Bin	Depth (m)	Cluster size	Range to behavioral disturbance	Range to TTS	Range to AUD INJ
E3	≤200	10	12,403 m (5,829 m)	9,181 m (4,143 m)	2,319 m (986 m).
E3	>200	1	NA	3,188 m (2,063 m)	1,358 m (218 m).
E3	>200	10	7,931 m (3,781 m)	5,417 m (2,727 m)	1,750 m (521 m).
E4	≤200	1	NA	7,708 m (3,229 m)	3,718 m (510 m).
E4	>200	1	NA	6,956 m (940 m)	3,708 m (476 m).
E5	≤200	1	NA	6,188 m (2,432 m)	2,389 m (607 m).
E5	≤200	8	16,743 m (6,550 m)	12,785 m (4,590 m)	3,708 m (1,410 m).
E5	>200	1	NA	5,139 m (1,394 m)	2,400 m (650 m).
E5	>200	8	6,944 m (3,970 m)	5,139 m (1,394 m)	2,400 m (650 m).
E6	≤200	1	NA	8,450 m (1,848 m)	4,163 m (982 m).
E6	≤200	4	14,139 m (2,139 m)	10,806 m (1,894 m)	4,163 m (982 m).
E6	>200	1	NA	8,161 m (1,685 m)	4,142 m (886 m).
E7	≤200	1	NA	9,972 m (2,473 m)	5,417 m (1,153 m).
E7	>200	1	NA	10,797 m (2,602 m)	5,417 m (1,234 m).
E8	≤200	1	NA	15,042 m (2,913 m)	8,474 m (1,510 m).
E8	>200	1	NA	14,576 m (2,952 m)	8,508 m (1,647 m).
E9	≤200	1	NA	17,125 m (4,607 m)	9,306 m (2,744 m).
E9	>200	1	NA	18,111 m (4,553 m)	9,257 m (2,571 m).
E10	≤200	1	NA	23,389 m (5,616 m)	14,477 m (3,639 m).
E10	>200	1	NA	24,140 m (5,392 m)	14,360 m (3,368 m).
E11	≤200	1	NA	32,167 m (5,134 m)	20,460 m (3,618 m).
E11	>200	1	NA	31,136 m (5,579 m)	19,871 m (3,817 m).
E12	≤200	1	NA	22,356 m (4,938 m)	13,444 m (3,602 m).
E12	>200	1	NA	23,368 m (4,434 m)	14,097 m (2,913 m).
E16	>200	1	NA	63,764 m (5,297 m)	46,979 m (5,225 m).

Note: Behavioral response criteria are applied to explosive clusters >1. The values listed for TTS and AUD INJ are the greater of the respective SPL and SEL ranges. Median ranges are shown with standard deviation ranges in parentheses. E1 (0.1–0.25 lbs), E2 (>0.25–0.5 lbs), E3 (>0.5–2.5 lbs), E4 (>2.5–5 lbs), E5 (>5–10 lbs), E6 (>10–20 lbs), E7 (>20–60 lbs), E8 (>60–100 lbs), E9 (>100–250 lbs), E10 (>250–500 lbs), E11 (>500–675 lbs), E12 (>675–1,000 lbs), E16 (10,000 lbs).

TABLE 33—PHOCID CARNIVORE IN WATER RANGES TO EFFECTS FOR EXPLOSIVES

Bin	Depth (m)	Cluster size	Range to behavioral disturbance	Range to TTS	Range to AUD INJ
E1	≤200	1	NA	342 m (110 m)	88 m (4 m).
E1	≤200	25	1,493 m (265 m)	994 m (40 m)	309 m (25 m).
E1	≤200	100	3,861 m (2,008 m)	1,833 m (880 m)	500 m (52 m).
E1	>200	1	NA	310 m (36 m)	88 m (5 m).
E2	≤200	1	NA	382 m (5 m)	91 m (1 m).
E3	≤200	1	NA	625 m (278 m)	188 m (16 m).
E3	≤200	10	2,715 m (1,485 m)	1,319 m (604 m)	393 m (50 m).
E3	>200	1	NA	550 m (174 m)	188 m (13 m).
E3	>200	10	1,500 m (909 m)	974 m (267 m)	320 m (20 m).
E4	≤200	1	NA	1,569 m (638 m)	303 m (37 m).
E4	>200	1	NA	925 m (83 m)	304 m (32 m).
E5	≤200	1	NA	879 m (736 m)	273 m (22 m).
E5	≤200	8	5,840 m (3,339 m)	2,611 m (1,253 m)	517 m (61 m).
E5	>200	1	NA	625 m (144 m)	270 m (20 m).
E5	>200	8	1,750 m (1,211 m)	1,083 m (616 m)	420 m (50 m).
E6	≤200	1	NA	1,055 m (1,248 m)	361 m (40 m).
E6	≤200	4	6,556 m (3,277 m)	2,410 m (1,313 m)	487 m (43 m).
E6	>200	1	NA	725 m (178 m)	368 m (29 m).
E7	≤200	1	NA	1,471 m (301 m)	418 m (35 m).
E7	>200	1	NA	1,480 m (304 m)	411 m (36 m).
E8	≤200	1	NA	2,974 m (660 m)	683 m (96 m).
E8	>200	1	NA	2,900 m (761 m)	704 m (92 m).
E9	≤200	1	NA	2,761 m (812 m)	611 m (88 m).
E9	>200	1	NA	2,713 m (702 m)	578 m (87 m).
E10	≤200	1	NA	4,917 m (1,223 m)	770 m (117 m).
E10	>200	1	NA	4,967 m (1,132 m)	790 m (148 m).
E11	≤200	1	NA	12,592 m (2,706 m)	2,312 m (460 m).
E11	>200	1	NA	11,950 m (2,415 m)	2,225 m (366 m).
E12	≤200	1	NA	5,578 m (1,142 m)	903 m (110 m).
E12	>200	1	NA	6,146 m (1,343 m)	869 m (93 m).
E16	>200	1	NA	24,319 m (1,977 m)	5,478 m (1,106 m).

Note: Behavioral response criteria are applied to explosive clusters >1. The values listed for TTS and AUD INJ are the greater of the respective SPL and SEL ranges. Median ranges are shown with standard deviation ranges in parentheses. E1 (0.1–0.25 lbs), E2 (>0.25–0.5 lbs), E3 (>0.5–2.5 lbs), E4 (>2.5–5 lbs), E5 (>5–10 lbs), E6 (>10–20 lbs), E7 (>20–60 lbs), E8 (>60–100 lbs), E9 (>100–250 lbs), E10 (>250–500 lbs), E11 (>500–675 lbs), E12 (>675–1,000 lbs), E16 (10,000 lbs).

TABLE 34—EXPLOSIVE RANGES TO NON-AUDITORY INJURY AND MORTALITY FOR ALL MARINE MAMMAL HEARING GROUPS AS A FUNCTION OF ANIMAL MASS

Bin	Effect	10 kg	250 kg	1,000 kg	5,000 kg	25,000 kg	72,000 kg
E1	Non-auditory injury	22 m (0 m)	22 m (1 m)	22 m (1 m)	22 m (1 m)	22 m (0 m)	22 m (0 m).
E1	Mortality	4 m (0 m)	1 m (1 m)	0 m (0 m)	0 m (0 m)	0 m (0 m)	0 m (0 m).
E2	Non-auditory injury	26 m (1 m)	25 m (1 m)	26 m (2 m)	26 m (0 m)	26 m (1 m)	26 m (0 m).
E2	Mortality	4 m (0 m)	2 m (1 m)	1 m (0 m)	0 m (0 m)	0 m (0 m)	0 m (0 m).
E3	Non-auditory injury	47 m (1 m)	47 m (3 m)	46 m (5 m)	46 m (2 m)	46 m (2 m)	46 m (2 m).
E3	Mortality	10 m (1 m)	5 m (2 m)	2 m (1 m)	1 m (0 m)	0 m (0 m)	0 m (0 m).
E4	Non-auditory injury	58 m (6 m)	58 m (6 m)	60 m (7 m)	64 m (6 m)	62 m (8 m)	64 m (5 m).
E4	Mortality	23 m (3 m)	12 m (4 m)	5 m (1 m)	3 m (1 m)	2 m (0 m)	1 m (0 m).
E5	Non-auditory injury	74 m (4 m)	73 m (7 m)	73 m (10 m)	75 m (4 m)	73 m (6 m)	75 m (4 m).
E5	Mortality	17 m (3 m)	9 m (3 m)	4 m (1 m)	3 m (1 m)	1 m (0 m)	1 m (0 m).
E6	Non-auditory injury	95 m (4 m)	95 m (7 m)	94 m (11 m)	97 m (5 m)	94 m (9 m)	97 m (4 m).
E6	Mortality	34 m (7 m)	16 m (6 m)	8 m (2 m)	5 m (1 m)	2 m (1 m)	1 m (0 m).
E7	Non-auditory injury	121 m (8 m)	122 m (9 m)	121 m (15 m)	125 m (7 m)	117 m (18 m)	125 m (7 m).
E7	Mortality	40 m (9 m)	19 m (7 m)	11 m (4 m)	7 m (2 m)	3 m (2 m)	2 m (1 m).
E8	Non-auditory injury	206 m (38 m)	159 m (19 m)	159 m (21 m)	162 m (18 m)	158 m (20 m)	165 m (19 m).
E8	Mortality	74 m (15 m)	34 m (13 m)	16 m (5 m)	11 m (2 m)	3 m (2 m)	3 m (1 m).
E9	Non-auditory injury	207 m (77 m)	184 m (13 m)	179 m (16 m)	189 m (11 m)	174 m (11 m)	196 m (11 m).
E9	Mortality	94 m (39 m)	22 m (19 m)	12 m (1 m)	8 m (1 m)	4 m (0 m)	3 m (0 m).
E10	Non-auditory injury	316 m (82 m)	219 m (13 m)	216 m (15 m)	224 m (13 m)	214 m (13 m)	231 m (12 m).
E10	Mortality	152 m (38 m)	54 m (39 m)	15 m (2 m)	10 m (1 m)	6 m (0 m)	4 m (0 m).
E11	Non-auditory injury	770 m (170 m)	421 m (154 m)	382 m (68 m)	433 m (72 m)	372 m (68 m)	452 m (63 m).
E11	Mortality	368 m (53 m)	197 m (66 m)	89 m (11 m)	55 m (8 m)	25 m (5 m)	21 m (3 m).
E12	Non-auditory injury	475 m (99 m)	277 m (16 m)	275 m (19 m)	277 m (19 m)	273 m (17 m)	298 m (16 m).
E12	Mortality	235 m (52 m)	118 m (53 m)	18 m (10 m)	13 m (1 m)	7 m (0 m)	5 m (0 m).
E16	Non-auditory injury	3,139 m (786 m)	1,451 m (505 m)	1,003 m (115 m)	1,097 m (119 m)	1,004 m (122 m)	1,155 m (132 m).
E16	Mortality	1,222 m (163 m)	850 m (167 m)	491 m (62 m)	350 m (34 m)	189 m (10 m)	134 m (18 m).

Note: Median ranges with standard deviation ranges in parentheses. For non-auditory injury ranges, the greater of the respective ranges for 1 percent chance of gastro-intestinal tract injury and 1 percent chance of injury. E1 (0.1–0.25 lbs), E2 (>0.25–0.5 lbs), E3 (>0.5–2.5 lbs), E4 (>2.5–5 lbs), E5 (>5–10 lbs), E6 (>10–20 lbs), E7 (>20–60 lbs), E8 (>60–100 lbs), E9 (>100–250 lbs), E10 (>250–500 lbs), E11 (>500–675 lbs), E12 (>675–1,000 lbs), E16 (10,000 lbs).

Marine Mammal Density

A quantitative analysis of impacts on a species or stock requires data on their abundance and distribution that may be affected by anthropogenic activities in the potentially impacted area. The most appropriate metric for this type of analysis is density, which is the number of animals present per unit area. Marine species density estimation requires a significant amount of effort to both collect and analyze data to produce a reasonable estimate. Unlike surveys for terrestrial wildlife, many marine species spend much of their time submerged and are not easily observed. In order to collect enough sighting data to make reasonable density estimates, multiple observations are required, often in areas that are not easily accessible (*e.g.*, far offshore). Ideally, marine mammal species sighting data would be collected for the specific area and time period (*e.g.*, season) of interest and density estimates derived accordingly. However, in many places, poor weather conditions and high sea states prohibit the completion of comprehensive visual surveys.

For most cetacean species, abundance is estimated using line-transect surveys or mark-recapture studies (*e.g.*, Barlow, 2010; Barlow and Forney, 2007; Calambokidis *et al.*, 2008). This is the general approach applied in estimating cetacean abundance in NMFS SARs. Although the single value provides a good average estimate of abundance

(total number of individuals) for a specified area, it does not provide information on the species distribution or concentrations within that area, and it does not estimate density for other timeframes or seasons that were not surveyed. More recently, spatial habitat modeling has been used to estimate cetacean densities (*e.g.*, Roberts *et al.* 2023). These models estimate cetacean density as a continuous function of habitat variables (*e.g.*, sea surface temperature, seafloor depth, *etc.*) and thus allow predictions of cetacean densities on finer spatial scales than traditional line-transect or mark-recapture analyses, and for areas that have not been surveyed. Within the geographic area that was modeled, densities can be predicted wherever these habitat variables can be measured or estimated.

Ideally, density data would be available for all species throughout the Study Area year-round, in order to best estimate the impacts of specified activities on marine species. However, in many places, vessel availability, lack of funding, inclement weather conditions, and high sea states prevent the completion of comprehensive year-round surveys. Even with surveys that are completed, poor conditions may result in lower sighting rates for species that would typically be sighted with greater frequency under favorable conditions. Lower sighting rates preclude having an acceptably low

uncertainty in the density estimates. A high level of uncertainty, indicating a low level of confidence in the density estimate, is typical for species that are rare or difficult to sight. In areas where survey data are limited or non-existent, known or inferred associations between marine habitat features and the likely presence of specific species are sometimes used to predict densities in the absence of actual animal sightings. Consequently, there is no single source of density data for every area, species, and season because of the fiscal costs, resources, and effort involved in providing enough survey coverage to sufficiently estimate density.

To characterize the marine species density for large oceanic regions, the Action Proponents review, critically assess, and prioritize existing density estimates from multiple sources, requiring the development of a systematic method for selecting the most appropriate density estimate for each combination of species/stock, area, and season. The selection and compilation of the best available marine species density data resulted in the NMSDD, which includes seasonal density values for every marine mammal species and stock present within the AFTT Study Area. This database is described in the “U.S. Navy Marine Species Density Database Phase IV for the Atlantic Fleet Training and Testing Study Area” technical report (U.S. Department of the Navy, 2024),

hereafter referred to as the Density Technical Report. NMFS reviewed all cetacean densities provided by the Action Proponents prior to use in their acoustic analysis for the current rulemaking process.

A variety of density data and density models are needed to develop a density database that encompasses the entirety of the AFTT Study Area. Because these data are collected using different methods with varying amounts of accuracy and uncertainty, the Action Proponents have developed a hierarchy to ensure the most accurate data is used when available. The Density Technical Report describes these models in detail and provides detailed explanations of the models applied to each species density estimate. The below list describes possible models in order of preference and use:

1. Density estimates from spatial models are preferred and used when available because they provide an estimate with the least amount of uncertainty by deriving estimates for divided segments of the sampling area. These models (see DiMatteo *et al.* (2024), Garrison *et al.* (2023a, 2023b), and Roberts *et al.* (2023)) predict spatial variability of animal presence based on habitat variables (*e.g.*, sea surface temperature, seafloor depth, *etc.*). Density spatial models are developed for areas, species, and, when available, specific timeframes (months or seasons) with sufficient survey data; therefore, this model cannot be used for species with low numbers of sightings. In the AFTT Study Area, density spatial models are available for certain species along the east coast to the offshore extent of available survey data and in the Gulf of America. For species not covered by the newer generation of models, the older Roberts *et al.* (2016) density estimates from Phase III could be used.

2. Design-based density models predict animal density based on survey data. Like spatial density models, they are applied to areas with survey data. Design-based density models may be stratified, in which a density is predicted for each sub-region of a survey area, allowing for better prediction of species distribution across the density model area. In the AFTT Study Area, stratified density models are used for certain species on both the east coast and the Gulf of America. In addition, a few species' stratified density models are applied to areas east of regions with available survey data and cover a substantial portion of the Atlantic Ocean portion of the AFTT Study Area.

3. Extrapolative models are used in areas where there is insufficient or no survey data. These models use a limited set of environmental variables to predict probable species densities based on environmental observations during actual marine mammal surveys (see Mannocci *et al.* (2017)). In the AFTT Study Area, extrapolative models are typically used east of regions with available survey data and cover a substantial portion of the Atlantic Ocean of the AFTT Study Area. Because some unsurveyed areas have oceanographic conditions that are very different from surveyed areas (*e.g.*, the Labrador Sea and North Atlantic gyre) and some species models rely on a very limited data set, the predictions of some species' extrapolative density models and some regions of certain species' extrapolative density models are considered highly speculative. Extrapolative models are not used in the Gulf of America.

4. Existing relative environmental suitability models include a high degree of uncertainty, but are applied when no other model is available.

When interpreting the results of the quantitative analysis, as described in the Density Technical Report for Phase III (U.S. Department of the Navy, 2017), "it is important to consider that even the best estimate of marine species density is really a model representation of the values of concentration where these animals might occur. Each model is limited to the variables and assumptions considered by the original data source provider. No mathematical model representation of any biological population is perfect and with regards to marine species biodiversity, any single model method will not completely explain the actual distribution and abundance of marine mammal species. It is expected that there would be anomalies in the results that need to be evaluated, with independent information for each case, to support if we might accept or reject a model or portions of the model."

The Action Proponents' estimates of abundance (based on density estimates used in the AFTT Study Area) utilize NMFS' SARs. For some species, the stock assessment for a given species may exceed the Navy's density prediction because those species' home range extends beyond the Study Area boundaries. For other species, the stock assessment abundance may be much less than the number of animals in the Navy's modeling given that the AFTT Study Area extends beyond the U.S. waters covered by the SAR abundance estimate. The primary source of density estimates are geographically specific

survey data and either peer-reviewed line-transect estimates or habitat-based density models that have been extensively validated to provide the most accurate estimates possible.

NMFS coordinated with the Navy in the development of its take estimates and concurs that the Navy's approach for density appropriately utilizes the best available science. Later, in the Preliminary Analysis and Negligible Impact Determination section, we assess how the estimated take numbers compare to stock abundance in order to better understand the potential number of individuals impacted, and the rationale for which abundance estimate is used is included there.

Estimated Take From Acoustic Stressors

The 2024 AFTT Draft Supplemental EIS/OEIS considered all military readiness activities proposed to occur in the AFTT Study Area that have the potential to result in the MMPA defined take of marine mammals. The Action Proponents determined that the three stressors below could result in the incidental taking of marine mammals. NMFS has reviewed the Action Proponents' data and analysis and determined that it is complete and accurate and agrees that the following stressors have the potential to result in takes by harassment of marine mammals from the specified activities:

- Acoustics (sonars and other transducers, air guns, pile driving/extraction);
- Explosives (explosive shock wave and sound, assumed to encompass the risk due to fragmentation); and
- Vessel strike.

Acoustic and explosive sources are likely to result in incidental takes of marine mammals by harassment. Explosive sources and vessel strikes have the potential to result in incidental take by injury, serious injury, and/or mortality.

The quantitative analysis process used for the 2024 AFTT Draft Supplemental EIS/OEIS and the application to estimate potential exposures to marine mammals resulting from acoustic and explosive stressors is detailed in the technical report titled "Quantifying Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase IV Training and Testing" (U.S. Department of the Navy, 2024).

Regarding how avoidance of loud sources is considered in the take estimation, NAEMO does not simulate horizontal animal movement during an event. However, NAEMO approximates marine mammal avoidance of high sound levels due to exposure to sonars

in a one-dimensional calculation that scales how far an animal would be from a sound source based on sensitivity to disturbance, swim speed, and avoidance duration. This process reduces the sound exposure level (SEL), defined as the accumulation for a given animal (*i.e.*, a virtual animal), by reducing the received sound pressure levels (SPL) of individual exposures based on a spherical spreading calculation from sources on each unique platform in an event. The onset of avoidance was based on the BRFs. Avoidance speeds and durations were informed by a review of available exposure and baseline data. This method captures a more accurate representation of avoidance by using the received sound levels, distance to platform, and species-specific criteria to calculate potential avoidance for each animal than the approach used in Phase III. However, this avoidance method may underestimate avoidance of long-duration sources with lower sound levels because it triggers avoidance calculations based on the highest modeled SPL received level exceeding $p(0.5)$ on the BRF, rather than on cumulative exposure. This is because initiation of the avoidance calculation is based on the highest modeled SPL received level over $p(0.5)$ on the BRF. Please see section 4.4.2.2 of the technical report titled “Quantifying Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase IV Training and Testing” (U.S. Department of the Navy, 2024).

Regarding the consideration of mitigation effectiveness in the take estimation, during military readiness activities, there is typically at least one, if not numerous, support personnel involved in the activity (*e.g.*, range support personnel aboard a torpedo retrieval boat or support aircraft). In addition to the Lookout posted for the purpose of mitigation, these additional personnel observe and disseminate marine species sighting information amongst the units participating in the activity whenever possible as they conduct their primary mission responsibilities. However, the quantitative analysis does not reduce model-estimated impacts to account for activity-based mitigation, as was done in previous phases of AFTT. While the activity-based mitigation is not quantitatively included in the take estimates, table 2.3–1 of appendix A of the application indicates the percentage of the instances of take where an animal’s closest point of approach was within a mitigation zone and, therefore, AUD INJ could potentially be mitigated.

Note that these percentages do not account for other factors, such as the sightability of a given species or viewing conditions.

Unlike activity-based mitigation, in some cases, implementation of the proposed geographic mitigation areas are incorporated into the quantitative analysis. The extent to which the mitigation areas reduce impacts on the affected species is addressed in the Preliminary Analysis and Negligible Impact Determination section.

For additional information on the quantitative analysis process, refer to the technical report titled “Quantifying Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase IV Training and Testing” (U.S. Department of the Navy, 2024) and sections 6 and 11 of the application.

As a general matter, NMFS does not prescribe the methods for estimating take for any applicant, but we review and ensure that applicants use the best available science, and methodologies that are logical and technically sound. Applicants may use different methods of calculating take (especially when using models) and still get to a result that is representative of the best available science and that allows for a rigorous and accurate evaluation of the effects on the affected populations. There are multiple pieces of the Navy’s take estimation methods—propagation models, animal movement models, and behavioral thresholds, for example. NMFS evaluates the acceptability of these pieces as they evolve and are used in different rules and impact analyses. Some of the pieces of the Action Proponents’ take estimation process have been used in Navy incidental take rules since 2009 and undergone multiple public comment processes; all of them have undergone extensive internal Navy review, and all of them have undergone comprehensive review by NMFS, which has sometimes resulted in modifications to methods or models.

The Navy uses rigorous review processes (verification, validation, and accreditation processes; peer and public review) to ensure the data and methodology it uses represent the best available science. For instance, NAEMO is the result of a NMFS-led Center for Independent Experts (CIE) review of the components used in earlier models. The acoustic propagation component of NAEMO (CASS/GRAB) is accredited by the Oceanographic and Atmospheric Master Library (OAML), and many of the environmental variables used in NAEMO come from approved OAML databases and are based on in-situ data

collection. The animal density components of NAEMO are base products of the NMSDD, which includes animal density components that have been validated and reviewed by a variety of scientists from NMFS Science Centers and academic institutions. Several components of the model, for example the Duke University habitat-based density models, have been published in peer reviewed literature. Additionally, NAEMO simulation components underwent quality assurance and quality control (QA/QC) review and validation for model parts such as the scenario builder, acoustic builder, scenario simulator, *etc.*, conducted by qualified statisticians and modelers to ensure accuracy. Other models and methodologies have gone through similar review processes.

In summary, we believe the Action Proponents’ methods, including the method for incorporating avoidance, are the most appropriate methods for predicting AUD INJ, non-auditory injury, TTS, and behavioral disturbance. But even with the consideration of avoidance, given some of the more conservative components of the methodology (*e.g.*, the thresholds do not consider ear recovery between pulses), we would describe the application of these methods as identifying the maximum number of instances in which marine mammals would be reasonably expected to be taken through AUD INJ, non-auditory injury, TTS, or behavioral disturbance.

Based on the methods discussed in the previous sections and NAEMO, the Action Proponents provided their take estimate and request for authorization of takes incidental to the use of acoustic and explosive sources for military readiness activities annually (based on the maximum number of activities that could occur per 12-month period) and over the 7-year period, as well as the Navy’s take request for ship shock trials, covered by the application. The following species/stocks present in the AFTT Study Area were modeled by the Navy and estimated to have 0 takes of any type from any activity source: Central Georgia Estuarine System stock of bottlenose dolphin, Northern South Carolina Estuarine System stock of bottlenose dolphin, and the Puerto Rico and U.S. Virgin Islands stock of sperm whale. NMFS has reviewed the Action Proponents’ data, methodology, and analysis and determined that it is complete and accurate. NMFS agrees that the estimates for incidental takes by harassment from all sources requested for authorization are the maximum number of instances in which marine mammals are reasonably expected to be

taken and that the takes by mortality requested for authorization are for the maximum number of instances mortality or serious injury could occur, as in the case of ship shock trials and vessel strikes.

Table 35, table 36, and table 37 summarize the maximum annual and 7-year total amount and type of Level A harassment and Level B harassment that NMFS concurs is reasonably expected to occur by species and stock for Navy

training activities, Navy testing activities, and Coast Guard training activities, respectively.

TABLE 35—INCIDENTAL TAKE ESTIMATE BY STOCK DUE TO ACOUSTIC AND EXPLOSIVE SOURCES DURING NAVY TRAINING ACTIVITIES

Species	Stock	Maximum annual Level B harassment	Maximum annual Level A harassment	Maximum annual mortality	7-Year total Level B harassment	7-Year total Level A harassment	7-Year total mortality
North Atlantic right whale	Western	97	1	0	642	2	0
Blue whale	Western North Atlantic	40	0	0	265	0	0
Bryde's whale	Primary	10	0	0	69	0	0
Fin whale	Western North Atlantic	1,089	6	0	7,585	38	0
Humpback whale	Gulf of Maine	341	7	0	2,351	41	0
Minke whale	Canadian East Coast	2,606	18	0	17,676	120	0
Rice's whale	Northern Gulf of America	8	1	0	49	1	0
Sei whale	Nova Scotia	356	3	0	2,430	17	0
Sperm whale	North Atlantic	7,189	3	0	50,266	5	0
Sperm whale	Northern Gulf of America	38	0	0	254	0	0
Dwarf sperm whale	Northern Gulf of America	14	1	0	87	1	0
Pygmy sperm whale	Northern Gulf of America	15	2	0	96	2	0
Dwarf sperm whale	Western North Atlantic	3,678	32	0	25,551	221	0
Pygmy sperm whale	Western North Atlantic	3,625	34	0	25,175	231	0
Blainville's beaked whale	Northern Gulf of America	12	0	0	79	0	0
Goose-beaked whale	Northern Gulf of America	41	0	0	281	0	0
Gervais' beaked whale	Northern Gulf of America	14	0	0	90	0	0
Blainville's beaked whale	Western North Atlantic	15,267	1	0	106,751	1	0
Goose-beaked whale	Western North Atlantic	66,011	1	0	461,356	3	0
Gervais' beaked whale	Western North Atlantic	15,761	0	0	110,198	0	0
Northern bottlenose whale	Western North Atlantic	828	0	0	5,789	0	0
Sowerby's beaked whale	Western North Atlantic	15,846	0	0	110,804	0	0
True's beaked whale	Western North Atlantic	15,892	0	0	111,111	0	0
Atlantic spotted dolphin	Northern Gulf of America	792	1	0	5,515	4	0
Bottlenose dolphin	Gulf of America Eastern Coastal	29	0	0	126	0	0
Bottlenose dolphin	Gulf of America Northern Coastal	2,094	1	0	14,645	2	0
Bottlenose dolphin	Gulf of America Oceanic	517	1	0	3,611	1	0
Bottlenose dolphin	Gulf of America Western Coastal	791	0	0	2,372	0	0
Bottlenose dolphin	Mississippi Sound, Lake Borgne, and Bay Boudreau	1,564	0	0	10,944	0	0
Bottlenose dolphin	Northern Gulf of America Continental Shelf	4,665	3	0	31,959	13	0
Bottlenose dolphin	Nueces and Corpus Christi Bays	4	0	0	11	0	0
Bottlenose dolphin	Sabine Lake	1	0	0	2	0	0
Bottlenose dolphin	St. Andrew Bay	14	0	0	92	0	0
Bottlenose dolphin	St. Joseph Bay	7	0	0	47	0	0
Bottlenose dolphin	Tampa Bay	350	0	0	1,050	0	0
Clymene dolphin	Northern Gulf of America	66	0	0	459	0	0
False killer whale	Northern Gulf of America	24	0	0	160	0	0
Fraser's dolphin	Northern Gulf of America	25	0	0	159	0	0
Killer whale	Northern Gulf of America	13	0	0	82	0	0
Melon-headed whale	Northern Gulf of America	81	0	0	561	0	0
Pygmy killer whale	Northern Gulf of America	29	0	0	198	0	0
Risso's dolphin	Northern Gulf of America	23	0	0	155	0	0
Rough-toothed dolphin	Northern Gulf of America	128	0	0	866	0	0
Short-finned pilot whale	Northern Gulf of America	88	0	0	611	0	0
Striped dolphin	Northern Gulf of America	244	1	0	1,696	1	0
Pantropical spotted dolphin	Northern Gulf of America	720	3	0	5,036	5	0
Spinner dolphin	Northern Gulf of America	20	0	0	135	0	0
Atlantic white-sided dolphin	Western North Atlantic	3,233	4	0	22,590	18	0
Common dolphin	Western North Atlantic	165,863	39	0	1,160,553	261	0
Atlantic spotted dolphin	Western North Atlantic	74,649	27	0	508,116	179	0
Bottlenose dolphin	Indian River Lagoon Estuarine System	1,422	0	0	9,601	0	0
Bottlenose dolphin	Jacksonville Estuarine System	348	0	0	2,408	0	0
Bottlenose dolphin	Northern Georgia/Southern South Carolina Estuarine System	2	0	0	6	0	0
Bottlenose dolphin	Northern North Carolina Estuarine System	9,181	3	0	63,391	20	0
Bottlenose dolphin	Southern Georgia Estuarine System	122	1	0	710	1	0
Bottlenose dolphin	Southern North Carolina Estuarine System	162	0	0	535	0	0
Tamanend's bottlenose dolphin	Western North Atlantic Central Florida Coastal	7,692	2	0	49,736	6	0
Tamanend's bottlenose dolphin	Western North Atlantic Northern Florida Coastal	17,003	2	0	116,702	4	0
Bottlenose dolphin	Western North Atlantic Northern Migratory Coastal	64,712	34	0	450,293	227	0
Bottlenose dolphin	Western North Atlantic Offshore	120,151	27	1	818,458	173	1
Tamanend's bottlenose dolphin	Western North Atlantic South Carolina/Georgia Coastal	3,867	3	1	24,408	11	1

TABLE 35—INCIDENTAL TAKE ESTIMATE BY STOCK DUE TO ACOUSTIC AND EXPLOSIVE SOURCES DURING NAVY TRAINING ACTIVITIES—Continued

Species	Stock	Maximum annual Level B harassment	Maximum annual Level A harassment	Maximum annual mortality	7-Year total Level B harassment	7-Year total Level A harassment	7-Year total mortality
Bottlenose dolphin	Western North Atlantic Southern Migratory Coastal.	8,868	7	0	56,933	44	0
Clymene dolphin	Western North Atlantic	69,460	15	1	486,205	94	3
False killer whale	Western North Atlantic	406	0	0	2,821	0	0
Fraser's dolphin	Western North Atlantic	1,904	2	0	12,826	8	0
Killer whale	Western North Atlantic	110	0	0	759	0	0
Long-finned pilot whale	Western North Atlantic	13,501	5	0	94,499	18	0
Melon-headed whale	Western North Atlantic	3,517	1	0	23,968	2	0
Pantropical spotted dolphin	Western North Atlantic	10,976	3	0	75,620	12	0
Pygmy killer whale	Western North Atlantic	368	1	0	2,512	1	0
Risso's dolphin	Western North Atlantic	22,128	5	0	150,830	24	0
Rough-toothed dolphin	Western North Atlantic	3,365	3	0	22,647	10	0
Short-finned pilot whale	Western North Atlantic	21,745	3	0	149,080	18	0
Spinner dolphin	Western North Atlantic	4,185	1	0	28,962	3	0
Striped dolphin	Western North Atlantic	121,279	26	0	848,940	178	0
White-beaked dolphin	Western North Atlantic	4	0	0	27	0	0
Harbor porpoise	Gulf of Maine/Bay of Fundy	36,396	73	0	253,899	505	0
Gray seal	Western North Atlantic	7,862	14	0	54,598	93	0
Harbor seal	Western North Atlantic	11,207	18	0	77,914	125	0
Harp seal	Western North Atlantic	14,632	2	0	102,365	12	0
Hooded seal	Western North Atlantic	460	1	0	3,205	1	0

TABLE 36—INCIDENTAL TAKE ESTIMATE BY STOCK DUE TO ACOUSTIC AND EXPLOSIVE SOURCE DURING NAVY TESTING ACTIVITIES

Species	Stock	Maximum annual Level B harassment	Maximum annual Level A harassment	Maximum annual mortality	7-Year total Level B harassment	7-Year total Level A harassment	7-Year total mortality
North Atlantic right whale	Western	316	1	0	2,036	6	0
Blue whale	Western North Atlantic	31	1	0	199	2	0
Bryde's whale	Primary	1	0	0	1	0	0
Fin whale	Western North Atlantic	1,524	15	0	9,710	93	0
Humpback whale	Gulf of Maine	500	5	0	3,186	33	0
Minke whale	Canadian East Coast	2,032	38	0	13,316	257	0
Rice's whale	Northern Gulf of America	294	2	0	1,997	5	0
Sei whale	Nova Scotia	389	4	0	2,549	27	0
Sperm whale	North Atlantic	5,395	4	0	34,373	16	0
Sperm whale	Northern Gulf of America	237	0	0	1,399	0	0
Dwarf sperm whale	Northern Gulf of America	173	21	0	1,023	72	0
Pygmy sperm whale	Northern Gulf of America	158	20	0	919	63	0
Dwarf sperm whale	Western North Atlantic	2,640	147	0	16,951	962	0
Pygmy sperm whale	Western North Atlantic	2,663	141	0	17,096	925	0
Blainville's beaked whale	Northern Gulf of America	114	0	0	733	0	0
Goose-beaked whale	Northern Gulf of America	419	0	0	2,681	0	0
Gervais' beaked whale	Northern Gulf of America	111	0	0	710	0	0
Blainville's beaked whale	Western North Atlantic	10,431	0	0	65,790	0	0
Goose-beaked whale	Western North Atlantic	46,017	1	0	290,954	2	0
Gervais' beaked whale	Western North Atlantic	9,678	1	0	62,096	1	0
Northern bottlenose whale	Western North Atlantic	823	1	0	5,090	1	0
Sowerby's beaked whale	Western North Atlantic	9,770	1	0	62,705	1	0
True's beaked whale	Western North Atlantic	9,684	0	0	62,151	0	0
Atlantic spotted dolphin	Northern Gulf of America	11,976	19	0	78,071	119	0
Bottlenose dolphin	Gulf of America Eastern Coastal	51	0	0	329	0	0
Bottlenose dolphin	Gulf of America Northern Coastal	5,052	16	0	35,305	112	0
Bottlenose dolphin	Gulf of America Oceanic	5,755	3	0	36,970	10	0
Bottlenose dolphin	Gulf of America Western Coastal	2,540	1	0	15,751	1	0
Bottlenose dolphin	Mississippi Sound, Lake Borgne, and Bay Boudreau.	194	1	0	1,070	1	0
Bottlenose dolphin	Northern Gulf of America Continental Shelf.	66,581	25	0	448,847	151	0
Bottlenose dolphin	St. Andrew Bay	32	0	0	211	0	0
Bottlenose dolphin	St. Joseph Bay	35	0	0	240	0	0
Clymene dolphin	Northern Gulf of America	533	3	0	3,118	4	0
False killer whale	Northern Gulf of America	206	0	0	1,263	0	0
Fraser's dolphin	Northern Gulf of America	216	0	0	1,328	0	0
Killer whale	Northern Gulf of America	97	0	0	598	0	0
Melon-headed whale	Northern Gulf of America	690	1	0	4,245	1	0
Pygmy killer whale	Northern Gulf of America	256	0	0	1,575	0	0
Risso's dolphin	Northern Gulf of America	180	0	0	1,097	0	0
Rough-toothed dolphin	Northern Gulf of America	1,510	3	0	9,920	5	0
Short-finned pilot whale	Northern Gulf of America	933	3	0	5,572	13	0
Striped dolphin	Northern Gulf of America	2,132	6	1	13,718	14	2
Pantropical spotted dolphin	Northern Gulf of America	5,596	6	2	34,923	23	5
Spinner dolphin	Northern Gulf of America	636	0	0	4,324	0	0

TABLE 36—INCIDENTAL TAKE ESTIMATE BY STOCK DUE TO ACOUSTIC AND EXPLOSIVE SOURCE DURING NAVY TESTING ACTIVITIES—Continued

Species	Stock	Maximum annual Level B harassment	Maximum annual Level A harassment	Maximum annual mortality	7-Year total Level B harassment	7-Year total Level A harassment	7-Year total mortality
Atlantic white-sided dolphin ...	Western North Atlantic	7,662	5	0	49,052	25	0
Common dolphin	Western North Atlantic	103,523	121	0	659,876	753	0
Atlantic spotted dolphin	Western North Atlantic	46,117	60	0	288,483	398	0
Bottlenose dolphin	Indian River Lagoon Estuarine System ...	154	0	0	1,074	0	0
Bottlenose dolphin	Jacksonville Estuarine System	12	0	0	69	0	0
Bottlenose dolphin	Northern North Carolina Estuarine System.	851	3	0	5,151	17	0
Bottlenose dolphin	Southern Georgia Estuarine System	1	0	0	1	0	0
Tamanend's bottlenose dolphin.	Western North Atlantic Central Florida Coastal.	2,797	1	0	16,626	4	0
Tamanend's bottlenose dolphin.	Western North Atlantic Northern Florida Coastal.	4,382	3	0	26,243	9	0
Bottlenose dolphin	Western North Atlantic Northern Migratory Coastal.	6,236	26	0	37,917	148	0
Bottlenose dolphin	Western North Atlantic Offshore	66,789	76	1	427,270	504	1
Tamanend's bottlenose dolphin.	Western North Atlantic South Carolina/Georgia Coastal.	1,092	3	0	6,372	11	0
Bottlenose dolphin	Western North Atlantic Southern Migratory Coastal.	1,015	2	0	5,874	8	0
Clymene dolphin	Western North Atlantic	63,262	89	0	416,118	604	0
False killer whale	Western North Atlantic	165	1	0	1,050	1	0
Fraser's dolphin	Western North Atlantic	1,000	1	0	6,602	6	0
Killer whale	Western North Atlantic	69	1	0	435	1	0
Long-finned pilot whale	Western North Atlantic	8,177	7	0	51,507	45	0
Melon-headed whale	Western North Atlantic	1,078	2	0	7,099	10	0
Pantropical spotted dolphin	Western North Atlantic	2,087	2	0	13,525	13	0
Pygmy killer whale	Western North Atlantic	108	0	0	712	0	0
Risso's dolphin	Western North Atlantic	15,103	20	0	95,004	119	0
Rough-toothed dolphin	Western North Atlantic	1,386	3	0	8,901	15	0
Short-finned pilot whale	Western North Atlantic	11,275	12	0	72,834	73	0
Spinner dolphin	Western North Atlantic	1,168	1	0	7,536	7	0
Striped dolphin	Western North Atlantic	87,521	137	0	548,894	931	0
White-beaked dolphin	Western North Atlantic	12	0	0	76	0	0
Harbor porpoise	Gulf of Maine/Bay of Fundy	50,625	70	0	332,156	421	0
Gray seal	Western North Atlantic	7,813	10	0	50,645	58	0
Harbor seal	Western North Atlantic	10,813	13	0	70,072	78	0
Harp seal	Western North Atlantic	11,156	3	0	72,257	15	0
Hooded seal	Western North Atlantic	1,264	1	0	7,777	4	0

Note: All Navy Testing estimated mortalities are due to ship shock trials without consideration of extensive mitigation measures

TABLE 37—INCIDENTAL TAKE ESTIMATE BY STOCK DUE TO ACOUSTIC AND EXPLOSIVE SOURCES DURING COAST GUARD TRAINING ACTIVITIES

Species	Stock	Maximum annual Level B harassment	Maximum annual Level A harassment	Maximum annual mortality	7-Year total Level B harassment	7-Year total Level A harassment	7-Year total mortality
North Atlantic right whale	Western	1	0	0	4	0	0
Fin whale	Western North Atlantic	3	0	0	3	0	0
Humpback whale	Gulf of Maine	3	0	0	7	0	0
Minke whale	Canadian East Coast	5	0	0	14	0	0
Rice's whale	Northern Gulf of America	1	0	0	1	0	0
Sei whale	Nova Scotia	2	0	0	2	0	0
Sperm whale	North Atlantic	6	0	0	36	0	0
Dwarf sperm whale	Northern Gulf of America	2	0	0	2	0	0
Pygmy sperm whale	Northern Gulf of America	2	0	0	2	0	0
Dwarf sperm whale	Western North Atlantic	8	1	0	45	1	0
Pygmy sperm whale	Western North Atlantic	6	1	0	31	1	0
Blainville's beaked whale	Western North Atlantic	7	0	0	46	0	0
Goose-beaked whale	Western North Atlantic	42	0	0	277	0	0
Gervais' beaked whale	Western North Atlantic	7	0	0	45	0	0
Sowerby's beaked whale	Western North Atlantic	6	0	0	37	0	0
True's beaked whale	Western North Atlantic	6	0	0	39	0	0
Atlantic spotted dolphin	Northern Gulf of America	36	0	0	241	0	0
Bottlenose dolphin	Gulf of America Oceanic	2	0	0	3	0	0
Bottlenose dolphin	Northern Gulf of America Continental Shelf.	85	1	0	585	1	0
Rough-toothed dolphin	Northern Gulf of America	4	0	0	22	0	0
Atlantic white-sided dolphin ...	Western North Atlantic	6	0	0	27	0	0
Common dolphin	Western North Atlantic	19	1	0	127	1	0
Atlantic spotted dolphin	Western North Atlantic	32	0	0	205	0	0
Bottlenose dolphin	Northern North Carolina Estuarine System.	500	0	0	3,494	0	0
Tamanend's bottlenose dolphin.	Western North Atlantic Central Florida Coastal.	5	0	0	30	0	0

TABLE 37—INCIDENTAL TAKE ESTIMATE BY STOCK DUE TO ACOUSTIC AND EXPLOSIVE SOURCES DURING COAST GUARD TRAINING ACTIVITIES—Continued

Species	Stock	Maximum annual Level B harassment	Maximum annual Level A harassment	Maximum annual mortality	7-Year total Level B harassment	7-Year total Level A harassment	7-Year total mortality
Bottlenose dolphin	Western North Atlantic Northern Migratory Coastal.	2,772	0	0	19,400	0	0
Bottlenose dolphin	Western North Atlantic Offshore	106	0	0	723	0	0
Tamanend's bottlenose dolphin.	Western North Atlantic South Carolina/Georgia Coastal.	1	0	0	1	0	0
Bottlenose dolphin	Western North Atlantic Southern Migratory Coastal.	297	0	0	2,076	0	0
Clymene dolphin	Western North Atlantic	1	0	0	1	0	0
False killer whale	Western North Atlantic	1	0	0	1	0	0
Fraser's dolphin	Western North Atlantic	1	0	0	7	0	0
Killer whale	Western North Atlantic	1	0	0	1	0	0
Long-finned pilot whale	Western North Atlantic	2	0	0	3	0	0
Melon-headed whale	Western North Atlantic	3	0	0	19	0	0
Pantropical spotted dolphin	Western North Atlantic	5	0	0	29	0	0
Pygmy killer whale	Western North Atlantic	1	0	0	2	0	0
Risso's dolphin	Western North Atlantic	8	0	0	43	0	0
Rough-toothed dolphin	Western North Atlantic	2	0	0	14	0	0
Short-finned pilot whale	Western North Atlantic	15	0	0	93	0	0
Spinner dolphin	Western North Atlantic	3	0	0	15	0	0
Striped dolphin	Western North Atlantic	2	0	0	4	0	0
Harbor porpoise	Gulf of Maine/Bay of Fundy	98	4	0	677	28	0
Gray seal	Western North Atlantic	49	0	0	342	0	0
Harbor seal	Western North Atlantic	74	1	0	500	1	0
Harp seal	Western North Atlantic	4	1	0	27	1	0
Hooded seal	Western North Atlantic	2	0	0	3	0	0

Estimated Take From Sonar and Other Transducers

Table 38, table 39, and table 40 provide estimated effects from sonar and other transducers, including the comparative amounts of TTS and behavioral disturbance for each species and stock annually, noting that if a modeled marine mammal was “taken” through exposure to both TTS and behavioral disturbance in the model, it was recorded as a TTS. Of note, a higher proportion of the takes by Level B harassment of mysticetes include the potential for TTS (as compared to other taxa and prior rules) due to a combination of the fact that mysticetes are relatively less sensitive to behavioral disturbance and the number of auditory

impacts from sonar (both TTS and AUD INJ) have increased for some species since the Phase III analysis (84 FR 70712, December 23, 2019) largely due to changes in how avoidance was modeled; for some stocks, changes in densities in areas that overlap activities have also contributed to increased or decreased impacts compared to those modeled in Phase III.

Additionally, although the Navy proposes to use substantially fewer hours of hull-mounted sonars in this action compared to the Phase III analysis, the updated HF cetacean criteria reflect greater susceptibility to auditory effects at low and mid-frequencies than previously analyzed. Consequently, the predicted auditory

effects due to sources under 10 kHz, including but not limited to MF1 hull-mounted sonar and other anti-submarine warfare sonars, are substantially higher for this auditory group than in prior analyses of the same activities. Thus, for activities with sonars, some modeled exposures that would previously have been categorized as significant behavioral responses may now instead be counted as auditory effects (TTS and AUD INJ). Similarly, the updated HF cetacean criteria reflect greater susceptibility to auditory effects at low and mid-frequencies in impulsive sounds. For VHF cetaceans, susceptibility to auditory effects has not changed substantially since the prior analysis.

TABLE 38—ANNUAL AND 7-YEAR ESTIMATED TAKE OF MARINE MAMMAL STOCKS FROM SONAR AND OTHER ACTIVE TRANSDUCERS DURING NAVY TRAINING ACTIVITIES

Species	Stock	Maximum annual behavioral	Maximum annual TTS	Maximum annual AUD INJ	Maximum 7-year behavioral	Maximum 7-year TTS	Maximum 7-year AUD INJ
North Atlantic right whale	Western	17	56	1	113	370	2
Blue whale	Western North Atlantic	6	32	0	42	220	0
Bryde's whale	Primary	1	9	-	6	63	-
Fin whale	Western North Atlantic	218	833	6	1,520	5,810	38
Humpback whale	Gulf of Maine	56	264	6	387	1,827	40
Minke whale	Canadian East Coast	239	2,332	17	1,665	15,771	113
Rice's whale	Northern Gulf of America	1	6	1	7	41	1
Sei whale	Nova Scotia	38	313	3	264	2,136	17
Sperm whale	North Atlantic	5,692	1,487	1	39,824	10,380	1
Sperm whale	Northern Gulf of America	32	4	-	224	28	-
Dwarf sperm whale	Northern Gulf of America	2	8	0	14	55	0
Pygmy sperm whale	Northern Gulf of America	2	9	1	14	61	1
Dwarf sperm whale	Western North Atlantic	743	2,875	25	5,191	19,945	174
Pygmy sperm whale	Western North Atlantic	774	2,792	25	5,409	19,359	171
Blainville's beaked whale	Northern Gulf of America	12	0	-	79	0	-
Goose-beaked whale	Northern Gulf of America	40	1	-	280	1	-
Gervais' beaked whale	Northern Gulf of America	13	1	-	89	1	-

TABLE 38—ANNUAL AND 7-YEAR ESTIMATED TAKE OF MARINE MAMMAL STOCKS FROM SONAR AND OTHER ACTIVE TRANSDUCERS DURING NAVY TRAINING ACTIVITIES—Continued

Species	Stock	Maximum annual behavioral	Maximum annual TTS	Maximum annual AUD INJ	Maximum 7-year behavioral	Maximum 7-year TTS	Maximum 7-year AUD INJ
Blainville's beaked whale	Western North Atlantic	15,211	53	-	106,367	371	-
Goose-beaked whale	Western North Atlantic	65,767	234	-	459,656	1,636	-
Gervais' beaked whale	Western North Atlantic	15,616	143	-	109,195	999	-
Northern bottlenose whale	Western North Atlantic	824	4	-	5,765	24	-
Sowerby's beaked whale	Western North Atlantic	15,679	165	-	109,639	1,153	-
True's beaked whale	Western North Atlantic	15,721	169	-	109,931	1,178	-
Atlantic spotted dolphin	Northern Gulf of America	508	280	0	3,544	1,948	0
Bottlenose dolphin	Gulf of America Eastern Coastal	27	-	-	115	-	-
Bottlenose dolphin	Gulf of America Northern Coastal	197	-	-	1,379	-	-
Bottlenose dolphin	Gulf of America Oceanic	432	83	1	3,024	580	1
Bottlenose dolphin	Gulf of America Western Coastal	359	432	-	1,076	1,296	-
Bottlenose dolphin	Northern Gulf of America Continental Shelf	4,268	364	0	29,367	2,365	0
Bottlenose dolphin	Nueces and Corpus Christi Bays	4	-	-	11	-	-
Bottlenose dolphin	Sabine Lake	1	-	-	2	-	-
Bottlenose dolphin	St. Andrew Bay	14	-	-	92	-	-
Bottlenose dolphin	St. Joseph Bay	7	-	-	47	-	-
Bottlenose dolphin	Tampa Bay	163	187	-	490	560	-
Clymene dolphin	Northern Gulf of America	35	31	0	242	217	0
False killer whale	Northern Gulf of America	15	9	-	99	61	-
Fraser's dolphin	Northern Gulf of America	17	6	-	119	38	-
Killer whale	Northern Gulf of America	8	5	-	51	31	-
Melon-headed whale	Northern Gulf of America	53	28	-	366	195	-
Pygmy killer whale	Northern Gulf of America	18	11	-	125	73	-
Risso's dolphin	Northern Gulf of America	16	7	0	109	46	0
Rough-toothed dolphin	Northern Gulf of America	89	37	-	617	245	-
Short-finned pilot whale	Northern Gulf of America	54	33	0	377	231	0
Striped dolphin	Northern Gulf of America	186	57	0	1,300	394	0
Pantropical spotted dolphin	Northern Gulf of America	498	220	1	3,486	1,538	1
Spinner dolphin	Northern Gulf of America	12	8	0	80	55	0
Atlantic white-sided dolphin	Western North Atlantic	2,051	1,172	2	14,333	8,190	8
Common dolphin	Western North Atlantic	83,926	81,845	33	587,262	572,658	228
Atlantic spotted dolphin	Western North Atlantic	34,866	39,711	22	241,359	266,255	151
Bottlenose dolphin	Indian River Lagoon Estuarine System	1,421	1	0	9,598	3	0
Bottlenose dolphin	Jacksonville Estuarine System	264	84	-	1,825	583	-
Bottlenose dolphin	Northern Georgia/Southern South Carolina Estuarine System	2	-	-	6	-	-
Bottlenose dolphin	Northern North Carolina Estuarine System	7,653	1,527	3	53,027	10,363	20
Bottlenose dolphin	Southern Georgia Estuarine System	84	38	1	498	212	1
Bottlenose dolphin	Southern North Carolina Estuarine System	81	80	-	255	279	-
Tamanend's bottlenose dolphin	Western North Atlantic Central Florida Coastal	6,517	1,157	0	44,348	5,270	0
Tamanend's bottlenose dolphin	Western North Atlantic Northern Florida Coastal	15,287	1,711	1	106,216	10,461	3
Bottlenose dolphin	Western North Atlantic Northern Migratory Coastal	52,040	12,610	28	363,648	86,215	196
Bottlenose dolphin	Western North Atlantic Offshore	62,316	57,732	20	431,069	386,677	131
Tamanend's bottlenose dolphin	Western North Atlantic South Carolina/Georgia Coastal	1,172	2,685	2	7,399	16,942	8
Bottlenose dolphin	Western North Atlantic Southern Migratory Coastal	2,345	6,475	2	15,085	41,513	14
Clymene dolphin	Western North Atlantic	39,694	29,729	8	277,855	208,097	54
False killer whale	Western North Atlantic	236	170	-	1,647	1,174	-
Fraser's dolphin	Western North Atlantic	1,000	902	1	6,872	5,948	6
Killer whale	Western North Atlantic	68	42	0	476	283	0
Long-finned pilot whale	Western North Atlantic	8,540	4,954	2	59,774	34,676	8
Melon-headed whale	Western North Atlantic	1,684	1,833	1	11,682	12,286	2
Pantropical spotted dolphin	Western North Atlantic	5,641	5,332	2	39,262	36,344	11
Pygmy killer whale	Western North Atlantic	185	183	0	1,283	1,229	0
Risso's dolphin	Western North Atlantic	12,425	9,694	3	86,042	64,728	21
Rough-toothed dolphin	Western North Atlantic	1,444	1,917	2	9,949	12,681	9
Short-finned pilot whale	Western North Atlantic	12,319	9,414	2	85,503	63,500	11
Spinner dolphin	Western North Atlantic	2,193	1,991	1	15,284	13,673	3
Striped dolphin	Western North Atlantic	69,973	51,282	22	489,808	358,968	153
White-beaked dolphin	Western North Atlantic	3	1	-	20	7	-
Harbor porpoise	Gulf of Maine/Bay of Fundy	34,065	2,022	6	237,737	14,003	41
Gray seal	Western North Atlantic	5,241	2,531	11	36,379	17,593	73
Harbor seal	Western North Atlantic	7,331	3,737	14	51,139	25,808	97
Harp seal	Western North Atlantic	7,813	6,819	2	54,673	47,692	12
Hooded seal	Western North Atlantic	343	117	1	2,397	808	1

Note: Zero (0) impacts indicate total less than 0.5 and a dash (-) is a true zero. In some cases where the estimated take within a cell is equal to 1, that value has been rounded up from a value that is less than 0.5 to avoid underestimating potential impacts to a species or stock based on the 7-year rounding rules discussed in Section 2.4 of Appendix E (Acoustic and Explosive Impacts Analysis) of the 2024 AFTT Draft Supplemental EIS/OEIS.

TABLE 39—ANNUAL AND 7-YEAR ESTIMATED TAKE OF MARINE MAMMAL STOCKS FROM SONAR AND OTHER ACTIVE TRANSDUCERS DURING NAVY TESTING ACTIVITIES

Species	Stock	Maximum annual behavioral	Maximum annual TTS	Maximum annual AUD INJ	Maximum 7-year behavioral	Maximum 7-year TTS	Maximum 7-year AUD INJ
North Atlantic right whale	Western	71	236	1	471	1,511	6
Blue whale	Western North Atlantic	4	25	1	27	167	2
Bryde's whale	Primary	1	-	-	1	-	-
Fin whale	Western North Atlantic	328	1,010	12	2,128	6,469	76
Humpback whale	Gulf of Maine	127	353	5	836	2,227	33
Minke whale	Canadian East Coast	401	1,575	37	2,631	10,399	253
Rice's whale	Northern Gulf of America	79	204	1	536	1,387	4
Sei whale	Nova Scotia	75	305	4	489	2,003	27
Sperm whale	North Atlantic	3,174	2,218	3	19,302	15,058	15
Sperm whale	Northern Gulf of America	214	21	-	1,281	116	-
Dwarf sperm whale	Northern Gulf of America	19	124	5	112	820	32
Pygmy sperm whale	Northern Gulf of America	20	106	4	122	693	23
Dwarf sperm whale	Western North Atlantic	521	2,076	139	3,205	13,540	937
Pygmy sperm whale	Western North Atlantic	525	2,095	132	3,226	13,665	892
Blainville's beaked whale	Northern Gulf of America	114	0	-	733	0	-
Goose-beaked whale	Northern Gulf of America	417	1	-	2,679	1	-
Gervais' beaked whale	Northern Gulf of America	110	0	-	709	0	-
Blainville's beaked whale	Western North Atlantic	10,331	98	0	65,116	672	0
Goose-beaked whale	Western North Atlantic	45,642	373	0	288,385	2,556	0
Gervais' beaked whale	Western North Atlantic	9,485	191	-	60,788	1,306	-
Northern bottlenose whale	Western North Atlantic	817	5	-	5,056	33	-
Sowerby's beaked whale	Western North Atlantic	9,570	198	-	61,349	1,351	-
True's beaked whale	Western North Atlantic	9,488	194	-	60,825	1,324	-
Atlantic spotted dolphin	Northern Gulf of America	6,523	5,425	18	42,782	35,096	113
Bottlenose dolphin	Gulf of America Eastern Coastal	47	3	-	314	14	-
Bottlenose dolphin	Gulf of America Northern Coastal	4,346	503	-	30,370	3,519	-
Bottlenose dolphin	Gulf of America Oceanic	4,326	1,425	2	27,878	9,070	8
Bottlenose dolphin	Gulf of America Western Coastal	1,412	1,125	-	8,760	6,977	-
Bottlenose dolphin	Mississippi Sound, Lake Borgne, and Bay Boudreau	151	43	1	832	238	1
Bottlenose dolphin	Northern Gulf of America Continental Shelf	42,067	23,967	21	288,739	156,296	132
Bottlenose dolphin	St. Andrew Bay	30	0	0	209	0	0
Bottlenose dolphin	St. Joseph Bay	35	-	-	240	-	-
Clymene dolphin	Northern Gulf of America	354	177	1	2,062	1,049	2
False killer whale	Northern Gulf of America	152	52	0	936	325	0
Fraser's dolphin	Northern Gulf of America	150	66	0	911	417	0
Killer whale	Northern Gulf of America	76	21	0	470	128	0
Melon-headed whale	Northern Gulf of America	525	163	1	3,233	1,008	1
Pygmy killer whale	Northern Gulf of America	185	69	0	1,137	436	0
Risso's dolphin	Northern Gulf of America	138	40	0	857	238	0
Rough-toothed dolphin	Northern Gulf of America	888	612	1	5,852	4,008	3
Short-finned pilot whale	Northern Gulf of America	574	357	2	3,391	2,176	12
Striped dolphin	Northern Gulf of America	1,541	580	0	9,961	3,725	0
Pantropical spotted dolphin	Northern Gulf of America	4,088	1,495	2	25,521	9,358	12
Spinner dolphin	Northern Gulf of America	466	169	-	3,161	1,162	-
Atlantic white-sided dolphin	Western North Atlantic	5,106	2,547	4	32,124	16,876	24
Common dolphin	Western North Atlantic	52,543	50,344	100	334,319	321,736	634
Atlantic spotted dolphin	Western North Atlantic	16,870	29,186	56	101,954	186,189	381
Bottlenose dolphin	Indian River Lagoon Estuarine System	17	137	0	119	955	0
Bottlenose dolphin	Jacksonville Estuarine System	5	7	0	30	39	0
Bottlenose dolphin	Northern North Carolina Estuarine System	436	415	3	2,607	2,544	17
Bottlenose dolphin	Southern Georgia Estuarine System	1	-	-	1	-	-
Tamanend's bottlenose dolphin	Western North Atlantic Central Florida Coastal	1,377	1,403	0	8,277	8,253	0
Tamanend's bottlenose dolphin	Western North Atlantic Northern Florida Coastal	1,761	2,616	2	10,598	15,617	8
Bottlenose dolphin	Western North Atlantic Northern Migratory Coastal	2,442	3,790	25	14,480	23,416	147
Bottlenose dolphin	Western North Atlantic Offshore	28,717	37,950	69	176,788	249,785	470
Tamanend's bottlenose dolphin	Western North Atlantic South Carolina/Georgia Coastal	239	841	2	1,483	4,817	8
Bottlenose dolphin	Western North Atlantic Southern Migratory Coastal	269	734	1	1,664	4,137	6
Clymene dolphin	Western North Atlantic	20,507	42,746	87	125,318	290,746	599
False killer whale	Western North Atlantic	80	84	1	495	554	1
Fraser's dolphin	Western North Atlantic	359	638	1	2,249	4,345	6
Killer whale	Western North Atlantic	30	37	1	180	252	1
Long-finned pilot whale	Western North Atlantic	4,220	3,929	6	25,633	25,706	41
Melon-headed whale	Western North Atlantic	305	772	2	1,841	5,257	10
Pantropical spotted dolphin	Western North Atlantic	788	1,299	2	4,970	8,555	13
Pygmy killer whale	Western North Atlantic	30	77	0	186	525	0
Risso's dolphin	Western North Atlantic	7,772	7,293	16	46,827	47,956	103
Rough-toothed dolphin	Western North Atlantic	425	959	3	2,546	6,351	15
Short-finned pilot whale	Western North Atlantic	4,625	6,626	10	28,176	44,522	64
Spinner dolphin	Western North Atlantic	410	757	1	2,487	5,047	7
Striped dolphin	Western North Atlantic	37,593	49,900	134	218,185	330,534	918
White-beaked dolphin	Western North Atlantic	7	5	-	44	32	-
Harbor porpoise	Gulf of Maine/Bay of Fundy	46,821	3,627	48	307,933	23,099	297
Gray seal	Western North Atlantic	4,438	3,318	8	29,334	20,924	48

TABLE 39—ANNUAL AND 7-YEAR ESTIMATED TAKE OF MARINE MAMMAL STOCKS FROM SONAR AND OTHER ACTIVE TRANSDUCERS DURING NAVY TESTING ACTIVITIES—Continued

Species	Stock	Maximum annual behavioral	Maximum annual TTS	Maximum annual AUD INJ	Maximum 7-year behavioral	Maximum 7-year TTS	Maximum 7-year AUD INJ
Harbor seal	Western North Atlantic	5,878	4,858	11	38,909	30,640	67
Harp seal	Western North Atlantic	8,808	2,327	2	56,816	15,303	11
Hooded seal	Western North Atlantic	735	527	1	4,337	3,432	4

Note: Zero (0) impacts indicate total less than 0.5 and a dash (-) is a true zero. In some cases where the estimated take within a cell is equal to 1, that value has been rounded up from a value that is less than 0.5 to avoid underestimating potential impacts to a species or stock based on the 7-year rounding rules discussed in Section 2.4 of Appendix E (Acoustic and Explosive Impacts Analysis) of the 2024 AFTT Draft Supplemental EIS/OEIS.

TABLE 40—ANNUAL AND 7-YEAR ESTIMATED TAKE OF MARINE MAMMAL STOCKS FROM SONAR AND OTHER ACTIVE TRANSDUCERS DURING COAST GUARD TRAINING ACTIVITIES

Species	Stock	Maximum annual behavioral	Maximum annual TTS	Maximum annual AUD INJ	Maximum 7-year behavioral	Maximum 7-year TTS	Maximum 7-year AUD INJ
North Atlantic right whale	Western	1	-	-	4	-	-
Fin whale	Western North Atlantic	1	-	-	1	-	-
Humpback whale	Gulf of Maine	1	-	-	4	-	-
Minke whale	Canadian East Coast	2	1	-	11	1	-
Rice's whale	Northern Gulf of America	1	-	-	1	-	-
Sei whale	Nova Scotia	1	-	-	1	-	-
Sperm whale	North Atlantic	5	-	-	35	-	-
Dwarf sperm whale	Western North Atlantic	2	4	-	10	23	-
Pygmy sperm whale	Western North Atlantic	2	2	-	10	11	-
Blainville's beaked whale	Western North Atlantic	7	-	-	46	-	-
Goose-beaked whale	Western North Atlantic	40	-	-	275	-	-
Gervais' beaked whale	Western North Atlantic	7	-	-	45	-	-
Sowerby's beaked whale	Western North Atlantic	6	-	-	37	-	-
True's beaked whale	Western North Atlantic	6	-	-	39	-	-
Atlantic spotted dolphin	Northern Gulf of America	35	-	-	239	-	-
Bottlenose dolphin	Gulf of America Oceanic	1	-	-	2	-	-
Bottlenose dolphin	Northern Gulf of America Continental Shelf	78	-	-	542	-	-
Rough-toothed dolphin	Northern Gulf of America	4	-	-	22	-	-
Atlantic white-sided dolphin	Western North Atlantic	3	-	-	16	-	-
Common dolphin	Western North Atlantic	13	-	-	91	-	-
Atlantic spotted dolphin	Western North Atlantic	29	1	-	200	2	-
Bottlenose dolphin	Northern North Carolina Estuarine System	489	11	-	3,423	71	-
Tamanend's bottlenose dolphin	Western North Atlantic Central Florida Coastal	5	-	-	30	-	-
Bottlenose dolphin	Western North Atlantic Northern Migratory Coastal	2,712	60	-	18,984	416	-
Bottlenose dolphin	Western North Atlantic Offshore	103	1	-	716	1	-
Tamanend's bottlenose dolphin	Western North Atlantic South Carolina/Georgia Coastal	1	-	-	1	-	-
Bottlenose dolphin	Western North Atlantic Southern Migratory Coastal	294	3	-	2,056	20	-
Clymene dolphin	Western North Atlantic	1	-	-	1	-	-
False killer whale	Western North Atlantic	1	-	-	1	-	-
Fraser's dolphin	Western North Atlantic	1	-	-	7	-	-
Killer whale	Western North Atlantic	1	-	-	1	-	-
Melon-headed whale	Western North Atlantic	3	-	-	19	-	-
Pantropical spotted dolphin	Western North Atlantic	5	-	-	29	-	-
Pygmy killer whale	Western North Atlantic	1	-	-	2	-	-
Risso's dolphin	Western North Atlantic	6	-	-	41	-	-
Rough-toothed dolphin	Western North Atlantic	2	-	-	14	-	-
Short-finned pilot whale	Western North Atlantic	13	0	-	91	0	-
Spinner dolphin	Western North Atlantic	3	-	-	15	-	-
Harbor porpoise	Gulf of Maine/Bay of Fundy	46	6	-	321	40	-
Gray seal	Western North Atlantic	46	1	-	322	7	-
Harbor seal	Western North Atlantic	68	2	-	474	8	-

Note: Zero (0) impacts indicate total less than 0.5 and a dash (-) is a true zero. In some cases where the estimated take within a cell is equal to 1, that value has been rounded up from a value that is less than 0.5 to avoid underestimating potential impacts to a species or stock based on the 7-year rounding rules discussed in Section 2.4 of Appendix E (Acoustic and Explosive Impacts Analysis) of the 2024 AFTT Draft Supplemental EIS/OEIS.

Estimated Take From Air Guns and Pile Driving

Table 41 provides estimated effects from air guns, including the

comparative amounts of TTS and behavioral disturbance for each species and stock annually, noting that if a modeled marine mammal was “taken”

through exposure to both TTS and behavioral disturbance in the model, it was recorded as a TTS.

TABLE 41—ANNUAL AND 7-YEAR ESTIMATED TAKE OF MARINE MAMMAL STOCKS FROM AIR GUNS DURING NAVY TESTING ACTIVITIES

Species	Stock	Maximum annual behavioral	Maximum annual TTS	Maximum annual AUD INJ	Maximum 7-year behavioral	Maximum 7-year TTS	Maximum 7-year AUD INJ
Fin whale	Western North Atlantic	1	-	-	1	-	-
Dwarf sperm whale	Northern Gulf of America	1	-	-	1	-	-
Dwarf sperm whale	Western North Atlantic	1	1	0	3	2	0
Pygmy sperm whale	Western North Atlantic	1	1	-	2	4	-
Bottlenose dolphin	Northern Gulf of America Continental Shelf	1	0	-	1	0	-
Common dolphin	Western North Atlantic	1	-	-	4	-	-
Bottlenose dolphin	Western North Atlantic Offshore	1	-	-	1	-	-
Striped dolphin	Western North Atlantic	1	-	-	2	-	-
Harbor porpoise	Gulf of Maine/Bay of Fundy	2	3	1	12	15	1
Gray seal	Western North Atlantic	1	0	-	7	0	-
Harbor seal	Western North Atlantic	1	0	-	5	0	-

Note: Zero (0) impacts indicate total less than 0.5 and a dash (-) is a true zero. In some cases where the estimated take within a cell is equal to 1, that value has been rounded up from a value that is less than 0.5 to avoid underestimating potential impacts to a species or stock based on the 7-year rounding rules discussed in Section 2.4 of Appendix E (Acoustic and Explosive Impacts Analysis) of the 2024 AFTT Draft Supplemental EIS/OEIS.

Table 42 provides the estimated effects from pile driving and extraction, including the comparative amounts of TTS and behavioral disturbance for each species and stock annually, noting that if a modeled marine mammal was “taken” through exposure to both TTS and behavioral disturbance in the model, it was recorded as a TTS.

TABLE 42—ANNUAL AND 7-YEAR ESTIMATED TAKE OF MARINE MAMMAL STOCKS FROM PILE DRIVING DURING NAVY TRAINING ACTIVITIES

Species	Stock	Maximum annual behavioral	Maximum annual TTS	Maximum annual AUD INJ	Maximum 7-year behavioral	Maximum 7-year TTS	Maximum 7-year AUD INJ
Bottlenose dolphin	Gulf of America Northern Coastal	1,894	0	-	13,255	0	-
Bottlenose dolphin	Mississippi Sound, Lake Borgne, and Bay Boudreau.	1,564	0	-	10,944	0	-

Note: Zero (0) impacts indicate total less than 0.5 and a dash (-) is a true zero.

Estimated Take From Explosives

Table 43 provides estimated effects from explosives during Navy training activities and table 44 provides estimated effects from explosives

including small ship shock trials from Navy testing activities. Table 45 provides estimated effects from small ship shock trials over a maximum year (two events) of Navy testing activities,

which is a subset of the information included in table 44. Table 46 provides estimated effects from explosives during Coast Guard training activities.

TABLE 43—ANNUAL AND 7-YEAR ESTIMATED TAKE OF MARINE MAMMAL STOCKS FROM EXPLOSIVES DURING NAVY TRAINING ACTIVITIES

Species	Stock	Maximum annual behavioral	Maximum annual TTS	Maximum annual AUD INJ	Maximum annual non-auditory injury	Maximum annual mortality	Maximum 7-year behavioral	Maximum 7-year TTS	Maximum 7-year AUD INJ	Maximum 7-year non-auditory injury	Maximum 7-year mortality
North Atlantic right whale	Western	14	10	0	-	-	93	66	0	-	-
Blue whale	Western North Atlantic	1	1	-	-	-	2	1	-	-	-
Fin whale	Western North Atlantic	30	8	0	-	-	205	50	0	-	-
Humpback whale	Gulf of Maine	14	7	1	-	-	94	43	1	-	-
Minke whale	Canadian East Coast	24	11	1	-	-	167	73	7	-	-
Rice's whale	Northern Gulf of America	0	1	-	-	-	0	1	-	-	-
Sei whale	Nova Scotia	4	1	0	-	-	27	3	0	-	-
Sperm whale	North Atlantic	4	6	1	1	-	26	36	3	1	-
Sperm whale	Northern Gulf of America	1	1	0	-	-	1	1	0	-	-
Dwarf sperm whale	Northern Gulf of America	2	2	1	0	-	8	10	1	0	-
Pygmy sperm whale	Northern Gulf of America	2	2	1	1	-	9	12	1	-	-
Dwarf sperm whale	Western North Atlantic	27	33	7	-	-	188	227	47	-	-
Pygmy sperm whale	Western North Atlantic	26	33	9	-	-	182	225	60	-	-
Blainville's beaked whale	Western North Atlantic	1	2	1	-	-	5	8	1	-	-
Goose-beaked whale	Western North Atlantic	6	4	1	-	-	36	28	3	-	-
Gervais' beaked whale	Western North Atlantic	1	1	-	-	-	1	3	-	-	-
Sowerby's beaked whale	Western North Atlantic	1	1	0	-	-	7	5	0	-	-
True's beaked whale	Western North Atlantic	1	1	0	-	-	1	1	0	-	-
Atlantic spotted dolphin	Northern Gulf of America	1	3	1	0	-	4	19	4	0	-
Bottlenose dolphin	Gulf of America Eastern Coastal	1	1	1	-	-	1	1	0	-	-
Bottlenose dolphin	Gulf of America Northern Coastal	1	2	1	-	-	3	8	2	-	-
Bottlenose dolphin	Gulf of America Oceanic	1	1	0	-	-	3	4	0	-	-
Bottlenose dolphin	Northern Gulf of America Continental Shelf	14	19	2	1	0	95	132	12	1	0
Fraser's dolphin	Northern Gulf of America	1	1	0	-	-	1	1	0	-	-
Rough-toothed dolphin	Northern Gulf of America	1	1	0	-	-	1	3	0	-	-
Short-finned pilot whale	Northern Gulf of America	0	1	-	-	-	0	3	-	-	-
Striped dolphin	Northern Gulf of America	0	1	1	0	-	0	2	1	0	-
Pantropical spotted dolphin	Northern Gulf of America	1	1	1	1	0	5	7	2	0	-
Atlantic white-sided dolphin	Western North Atlantic	4	6	1	1	-	26	41	7	3	-
Common dolphin	Western North Atlantic	50	42	5	1	-	345	288	29	4	-
Atlantic spotted dolphin	Western North Atlantic	35	37	4	1	0	245	257	23	5	0
Bottlenose dolphin	Northern North Carolina	1	-	-	-	-	1	-	-	-	-
Bottlenose dolphin	Northern North Carolina Estuarine System	1	-	-	-	-	1	-	-	-	-
Bottlenose dolphin	Southern North Carolina Estuarine System	1	-	-	-	-	1	-	-	-	-
Tamanend's bottlenose dolphin	Western North Atlantic Central Florida Coastal	10	8	1	1	-	65	53	4	2	-
Tamanend's bottlenose dolphin	Western North Atlantic Northern Florida Coastal	2	3	1	0	-	8	17	1	0	-
Bottlenose dolphin	Western North Atlantic Northern Migratory Coastal	21	41	5	1	0	147	283	30	1	0
Bottlenose dolphin	Western North Atlantic Offshore	50	53	6	1	1	347	365	39	3	1
Tamanend's bottlenose dolphin	Western North Atlantic South Carolina/Georgia Coastal	5	5	1	0	1	32	35	3	0	1
Bottlenose dolphin	Western North Atlantic Southern Migratory Coastal	19	29	4	1	0	133	202	26	4	0
Clymene dolphin	Western North Atlantic	16	21	6	1	1	112	141	37	3	3
Fraser's dolphin	Western North Atlantic	1	1	1	0	-	4	2	0	-	-
Long-finned pilot whale	Western North Atlantic	4	3	2	1	-	28	21	9	1	-
Pantropical spotted dolphin	Western North Atlantic	2	1	1	0	0	8	6	1	0	0
Pygmy killer whale	Western North Atlantic	0	-	1	0	-	0	-	1	0	-
Risso's dolphin	Western North Atlantic	4	5	1	1	0	28	32	2	1	0
Rough-toothed dolphin	Western North Atlantic	2	2	1	0	-	8	9	1	1	0
Short-finned pilot whale	Western North Atlantic	7	5	1	0	0	45	32	7	0	0
Spinner dolphin	Western North Atlantic	0	1	0	-	-	0	5	0	-	-
Striped dolphin	Western North Atlantic	11	13	3	1	0	77	87	20	5	0
Harbor porpoise	Gulf of Maine/Bay of Fundy	74	235	67	0	-	515	1,644	464	0	-
Gray seal	Western North Atlantic	46	44	3	0	-	322	304	20	0	-
Harbor seal	Western North Atlantic	72	67	4	0	-	499	468	28	0	-

Note: Zero (0) impacts indicate total less than 0.5 and a dash (-) is a true zero. In some cases where the estimated take within a cell is equal to 1, that value has been rounded up from a value that is less than 0.5 to avoid underestimating potential impacts to a species or stock based on the 7-year rounding rules discussed in Section 2.4 of Appendix E (Acoustic and Explosive Impacts Analysis) of the 2024 AFTT Draft Supplemental EIS/OEIS.

TABLE 44—ANNUAL AND 7-YEAR ESTIMATED TAKE OF MARINE MAMMAL STOCKS FROM EXPLOSIVES DURING NAVY TRAINING ACTIVITIES
[Includes small ship shock trials]

Species	Stock	Maximum annual behavioral	Maximum annual TTS	Maximum annual AUD INJ	Maximum annual non- auditory injury	Maximum annual mortality	Maximum 7-year behavioral	Maximum 7-year TTS	Maximum 7-year AUD INJ	Maximum 7-year non- auditory injury	Maximum 7-year mortality
North Atlantic right whale	Western	6	3	0	-	-	34	20	0	-	-
Blue whale	Western North Atlantic	1	1	-	-	-	2	3	-	-	-
Fin whale	Western North Atlantic	110	75	3	-	-	670	442	17	-	-
Humpback whale	Gulf of Maine	13	7	0	-	-	81	42	4	-	-
Minke whale	Canadian East Coast	26	30	1	-	-	162	124	4	-	-
Rice's whale	Northern Gulf of America	7	4	1	-	-	49	25	1	-	-
Sei whale	Nova Scotia	6	3	0	-	-	40	17	0	-	-
Sperm whale	North Atlantic	2	1	1	-	-	8	5	1	-	-
Sperm whale	Northern Gulf of America	1	1	0	0	0	1	1	0	0	0
Dwarf sperm whale	Northern Gulf of America	2	27	16	-	-	12	78	40	-	-
Dwarf sperm whale	Western North Atlantic	13	28	8	0	0	82	119	25	0	0
Pygmy sperm whale	Northern Gulf of America	3	29	16	-	-	17	87	40	-	-
Pygmy sperm whale	Western North Atlantic	12	29	9	0	-	73	126	33	0	-
Blainville's beaked whale	Western North Atlantic	1	1	0	0	-	1	1	0	0	-
Goose-beaked whale	Northern Gulf of America	0	1	0	-	-	0	1	0	-	-
Gervais' beaked whale	Northern Gulf of America	0	1	-	-	-	0	1	-	-	-
Gervais' beaked whale	Western North Atlantic	1	1	1	0	0	7	6	2	0	0
Gervais' beaked whale	Western North Atlantic	1	1	1	-	-	1	1	1	-	-
Northern bottlenose whale	Western North Atlantic	1	0	1	-	-	1	0	1	-	-
Sowerby's beaked whale	Western North Atlantic	1	1	1	-	-	1	4	1	-	-
True's beaked whale	Western North Atlantic	1	1	0	0	-	1	1	0	-	-
Atlantic spotted dolphin	Northern Gulf of America	17	11	1	0	0	119	74	6	0	0
Bottlenose dolphin	Gulf of America Eastern Coastal	-	1	0	-	-	-	1	0	-	-
Bottlenose dolphin	Gulf of America Northern Coastal	86	117	16	0	0	601	815	112	0	0
Bottlenose dolphin	Gulf of America Oceanic	3	1	1	0	0	15	7	2	0	0
Bottlenose dolphin	Gulf of America Western Coastal	2	1	1	0	-	10	4	1	0	-
Bottlenose dolphin	Northern Gulf of America Continental Shelf	369	177	3	1	0	2,577	1,234	18	1	0
Bottlenose dolphin	St. Andrew Bay	1	1	-	-	-	1	1	-	-	-
Clymene dolphin	Northern Gulf of America	1	1	1	1	0	4	3	1	1	0
False killer whale	Northern Gulf of America	1	1	0	0	-	1	1	0	-	-
Fraser's dolphin	Northern Gulf of America	0	0	0	0	-	0	0	0	0	-
Melon-headed whale	Northern Gulf of America	1	1	0	0	0	1	3	0	0	0
Pygmy killer whale	Northern Gulf of America	1	1	0	0	0	1	1	0	0	0
Risso's dolphin	Northern Gulf of America	1	1	0	0	0	1	1	0	0	0
Rough-toothed dolphin	Northern Gulf of America	6	4	1	1	0	39	21	1	1	0
Short-finned pilot whale	Northern Gulf of America	1	1	1	0	0	3	2	1	0	0
Striped dolphin	Northern Gulf of America	1	10	4	2	1	5	27	9	5	2
Pantropical spotted dolphin	Northern Gulf of America	2	11	2	2	2	13	31	5	6	5
Spinner dolphin	Northern Gulf of America	0	1	0	0	-	0	1	0	0	-
Atlantic white-sided dolphin	Western North Atlantic	6	3	1	0	0	37	15	1	0	0
Common dolphin	Western North Atlantic	384	251	20	1	0	2,320	1,497	118	1	0
Atlantic spotted dolphin	Western North Atlantic	39	22	3	0	0	221	119	16	1	0
Tamanend's bottlenose dolphin	Western North Atlantic Central Florida Coastal	12	5	1	0	0	67	29	4	0	0
Tamanend's bottlenose dolphin	Western North Atlantic Northern Florida Coastal	4	1	1	-	-	21	7	1	-	-
Bottlenose dolphin	Western North Atlantic Northern Migratory Coastal	2	2	1	-	-	10	11	1	-	-
Bottlenose dolphin	Western North Atlantic Offshore	67	54	6	1	1	396	300	31	3	1
Tamanend's bottlenose dolphin	Western North Atlantic South Carolina/Georgia Coastal	9	3	1	0	0	55	17	3	0	0
Bottlenose dolphin	Western North Atlantic Southern Migratory Coastal	9	3	1	0	-	55	18	2	0	-
Clymene dolphin	Western North Atlantic	5	4	1	1	0	30	24	4	1	0
False killer whale	Western North Atlantic	-	1	-	-	-	-	1	-	-	-
Fraser's dolphin	Western North Atlantic	1	2	0	0	-	3	5	0	0	-
Killer whale	Western North Atlantic	1	1	0	-	0	2	1	0	-	0
Long-finned pilot whale	Western North Atlantic	18	10	1	0	0	108	60	4	0	0
Melon-headed whale	Western North Atlantic	1	0	0	0	0	1	0	0	0	0

Note: Zero (0) impacts indicate total less than 0.5 and a dash (-) is a true zero. In some cases where the estimated take within a cell is equal to 1, that value has been rounded up from a value that is less than 0.5 to avoid underestimating potential impacts to a species or stock based on the 7-year rounding rules discussed in Section 2.4 of Appendix E (Acoustic and Explosive Impacts Analysis) of the 2024 AFTT Draft Supplemental EIS/OEIS.

TABLE 45—ANNUAL ESTIMATED EFFECTS TO MARINE MAMMAL STOCKS FROM SMALL SHIP SHOCK TRIALS OVER A
MAXIMUM YEAR OF NAVY TESTING
[Two events]

Species	Stock	Maximum annual TTS	Maximum annual AUD INJ	Maximum annual non-auditory injury	Maximum annual mortality
North Atlantic right whale	Western	1	-	-	-
Blue whale	Western North Atlantic	1	-	-	-
Fin whale	Western North Atlantic	2	0	-	-
Humpback whale	Gulf of Maine	1	-	-	-
Minke whale	Canadian East Coast	17	1	-	-
Sei whale	Nova Scotia	1	0	-	-
Dwarf sperm whale	Northern Gulf of America	24	15	-	-
Pygmy sperm whale	Northern Gulf of America	26	15	-	-
Dwarf sperm whale	Western North Atlantic	14	5	-	-
Pygmy sperm whale	Western North Atlantic	14	6	-	-
Goose-beaked whale	Northern Gulf of America	1	0	-	-
Gervais' beaked whale	Northern Gulf of America	1	-	-	-
Melon-headed whale	Northern Gulf of America	1	0	0	0
Pantropical spotted dolphin	Northern Gulf of America	9	1	2	2
Rough-toothed dolphin	Northern Gulf of America	1	0	1	0
Short-finned pilot whale	Northern Gulf of America	1	1	0	0
Striped dolphin	Northern Gulf of America	10	3	2	1
Atlantic spotted dolphin	Western North Atlantic	1	-	1	-
Bottlenose dolphin	Western North Atlantic Offshore	5	1	1	1
Fraser's dolphin	Western North Atlantic	2	0	0	-
Pygmy killer whale	Western North Atlantic	1	-	-	-
Risso's dolphin	Western North Atlantic	4	1	1	0
Rough-toothed dolphin	Western North Atlantic	1	-	0	-
Short-finned pilot whale	Western North Atlantic	1	1	0	0

Note: Zero (0) impacts indicate total less than 0.5 and a dash (-) is a true zero. In some cases where the estimated take within a cell is equal to 1, that value has been rounded up from a value that is less than 0.5 to avoid underestimating potential impacts to a species or stock based on the 7-year rounding rules discussed in Section 2.4 of Appendix E (Acoustic and Explosive Impacts Analysis) of the 2024 AFTT Draft Supplemental EIS/OEIS.

TABLE 46—ANNUAL AND 7-YEAR ESTIMATED TAKE OF MARINE MAMMAL STOCKS FROM EXPLOSIVES DURING COAST GUARD TRAINING ACTIVITIES

Species	Stock	Maximum annual behavioral	Maximum annual TTS	Maximum annual AUD INJ	Maximum annual non-auditory injury	Maximum annual mortality	Maximum 7-year behavioral	Maximum 7-year TTS	Maximum 7-year AUD INJ	Maximum 7-year non-auditory injury	Maximum 7-year mortality
Fin whale	Western North Atlantic	1	1	0	-	-	1	1	0	-	-
Humpback whale	Gulf of Maine	1	1	0	-	-	2	1	0	-	-
Minke whale	Canadian East Coast	1	1	0	-	-	1	1	0	-	-
Sei whale	Nova Scotia	1	0	-	-	-	1	0	-	-	-
Sperm whale	North Atlantic	1	0	-	-	-	1	0	-	-	-
Dwarf sperm whale	Northern Gulf of America	1	1	-	-	-	1	1	-	-	-
Pygmy sperm whale	Northern Gulf of America	1	1	-	-	-	1	1	-	-	-
Dwarf sperm whale	Western North Atlantic	1	1	1	-	-	7	5	1	-	-
Pygmy sperm whale	Western North Atlantic	1	1	1	-	-	5	5	1	-	-
Goose-beaked whale	Western North Atlantic	1	1	-	-	-	1	1	-	-	-
Atlantic spotted dolphin	Northern Gulf of America	1	0	-	-	-	2	0	-	-	-
Bottlenose dolphin	Gulf of America Oceanic	1	0	-	-	-	1	0	-	-	-
Bottlenose dolphin	Northern Gulf of America Continental Shelf	4	3	1	-	-	25	18	1	-	-
Atlantic white-sided dolphin	Western North Atlantic	2	1	0	-	-	8	3	0	-	-
Common dolphin	Western North Atlantic	3	3	1	-	-	21	15	1	-	-
Atlantic spotted dolphin	Western North Atlantic	1	1	-	-	-	2	1	-	-	-
Bottlenose dolphin	Western North Atlantic Offshore	1	1	-	-	0	4	2	-	0	-
Long-finned pilot whale	Western North Atlantic	1	1	0	-	-	2	1	0	-	-
Risso's dolphin	Western North Atlantic	1	1	0	-	-	1	1	0	-	-
Short-finned pilot whale	Western North Atlantic	1	1	0	-	-	1	1	0	-	-
Striped dolphin	Western North Atlantic	1	1	0	-	-	3	1	0	-	-
Harbor porpoise	Gulf of Maine/Bay of Fundy	22	24	4	-	-	150	166	28	-	-
Gray seal	Western North Atlantic	1	1	0	-	-	7	6	0	-	-
Harbor seal	Western North Atlantic	2	2	1	-	-	10	8	1	-	-
Harp seal	Western North Atlantic	2	2	1	-	-	14	13	1	-	-
Hooded seal	Western North Atlantic	1	1	0	-	-	2	1	0	-	-

Note: Zero (0) impacts indicate total less than 0.5 and a dash (-) is a true zero. In some cases where the estimated take within a cell is equal to 1, that value has been rounded up from a value that is less than 0.5 to avoid underestimating potential impacts to a species or stock based on the 7-year rounding rules discussed in Section 2.4 of Appendix E (Acoustic and Explosive Impacts Analysis) of the 2024 AFTT Draft Supplemental EIS/OEIS.

Estimated Take From Vessel Strike by Serious Injury or Mortality

Vessel strikes from commercial, recreational, and military vessels are known to affect large whales and have resulted in serious injury and fatalities to cetaceans (Abramson *et al.*, 2011; Berman-Kowalewski *et al.*, 2010a; Calambokidis, 2012; Douglas *et al.*, 2008; Laggner, 2009; Lammers *et al.*, 2003; Van der Hoop *et al.*, 2013; Van der Hoop *et al.*, 2012). Records of vessel strikes of large whales date back to the early 17th century, and the worldwide number of vessel strikes of large whales appears to have increased steadily during recent decades (Laist *et al.*, 2001; Ritter 2012).

Numerous studies of interactions between surface vessels and marine mammals have demonstrated that free-ranging marine mammals often, but not always (*e.g.*, McKenna *et al.*, 2015), engage in avoidance behavior when surface vessels move toward them. It is not clear whether these responses are caused by the physical presence of a surface vessel, the underwater noise generated by the vessel, or an interaction between the two (Amaral and Carlson, 2005; Au and Green, 2000; Bain *et al.*, 2006; Bauer 1986; Bejder *et al.*, 1999; Bejder and Lusseau, 2008; Bejder *et al.*, 2009; Bryant *et al.*, 1984; Corkeron, 1995; Erbe, 2002; Félix, 2001; Goodwin and Cotton, 2004; Greig *et al.*, 2020; Guilpin *et al.*, 2020; Keen *et al.*, 2019; Lemon *et al.*, 2006; Lusseau, 2003; Lusseau, 2006; Magalhaes *et al.*, 2002; Nowacek *et al.*, 2001; Redfern *et al.*, 2020; Richter *et al.*, 2003; Scheidat *et al.*, 2004; Simmonds, 2005; Szesciorka *et al.*, 2019; Watkins, 1986; Williams *et al.*, 2002; Wursig *et al.*, 1998). Several authors suggest that the noise generated during motion is probably an important factor (Blane and Jaakson, 1994; Evans *et al.*, 1992; Evans *et al.*, 1994). These studies suggest that the behavioral responses of marine mammals to surface vessels are similar to their behavioral responses to predators. Avoidance behavior is expected to be even stronger in the subset of instances during which the Action Proponents are conducting military readiness activities using active sonar or explosives.

The marine mammals most vulnerable to vessel strikes are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (*e.g.*, sperm whales). In addition, some baleen whales seem generally unresponsive to vessel sound, making them more susceptible to vessel strikes (Nowacek *et al.*, 2004). These species are primarily large, slow moving whales. There are

nine species (15 stocks) of large whales that are known to occur within the AFTT Study Area (table 14): blue whale, Bryde's whale, fin whale, humpback whale, minke whale, NARW, Rice's whale, sei whale, and sperm whale.

Some researchers have suggested the relative risk of a vessel strike can be assessed as a function of animal density and the magnitude of vessel traffic (*e.g.*, Fonnesbeck *et al.*, 2008; Vanderlaan *et al.*, 2008). Differences among vessel types also influence the probability of a vessel strike. The ability of any vessel to detect a marine mammal and avoid a collision depends on a variety of factors, including environmental conditions, vessel design, size, speed, and ability and number of personnel observing, as well as the behavior of the animal. Vessel speed, size, and mass are all important factors in determining if injury or death of a marine mammal is likely due to a vessel strike. For large vessels, speed and angle of approach can influence the severity of a strike. Large whales also do not have to be at the water's surface to be struck. Silber *et al.* (2010) found that when a whale is below the surface (about one to two times the vessel draft), under certain circumstances (vessel speed and location of the whale relative to the ship's centerline), there is likely to be a pronounced propeller suction effect. This suction effect may draw the whale into the hull of the ship, increasing the probability of propeller strikes.

There are some key differences between the operation of military and non-military vessels which make the likelihood of a military vessel striking a whale lower than some other vessels (*e.g.*, commercial merchant vessels). Key differences include:

- Military vessels have personnel assigned to stand watch at all times, day and night, when moving through the water (*i.e.*, when the vessel is underway). Watch personnel undertake extensive training and are certified to stand watch only after demonstrating competency in all necessary skills. While on watch, personnel employ visual search and reporting procedures in accordance with the U.S. Navy Lookout Training Handbook, the Coast Guard's Shipboard Lookout Manual, or civilian equivalent.

- The bridges of many military vessels are positioned closer to the bow, offering better visibility ahead of the vessel (compared to a commercial merchant vessel);

- Military readiness activities often involve aircraft (which can serve as part of the Lookout team), that can more readily detect cetaceans in the vicinity of a vessel or ahead of a vessel's present

course, often before crew on the vessel would be able to detect them;

- Military vessels are generally more maneuverable than commercial merchant vessels, and are therefore capable of changing course more quickly in the event cetaceans are spotted in the vessel's path;

- Military vessels operate at the slowest speed practical consistent with operational requirements. While minimum speed is intended as a fuel conservation measure particular to a certain ship class, secondary benefits include a better ability to detect and avoid objects in the water, including marine mammals;

- Military ships often operate within a defined area for a period of time, in contrast to point-to-point commercial shipping over greater distances;

- The crew size on military vessels is generally larger than merchant vessels, allowing for stationing more trained Lookouts on the bridge. At all times when the Action Proponents' vessels are underway, trained Lookouts and bridge navigation teams are used to detect objects on the surface of the water ahead of the ship, including cetaceans. Some events may have additional personnel (beyond the minimum number of required Lookouts) who are already standing watch in or on the platform conducting the event or additional participating platforms and would have eyes on the water for all or part of an event. These additional personnel serve as members of the Lookout team; and

- When submerged, submarines are generally slow moving (to avoid detection); as a result, marine mammals at depth with a submarine are likely able to avoid collision with the submarine. When a submarine is transiting on the surface, the Navy posts Lookouts serving the same function as they do on surface vessels.

Vessel strike to marine mammals is not associated with any specific military readiness activity. Rather, vessel strike is a limited and sporadic, but possible, accidental result of military vessel movement within the AFTT Study Area or while in transit.

Prior to 2009, there is limited information on vessel strikes from military readiness activities in the AFTT Study Area. One known incident of vessel strike in the AFTT Study Area occurred in 2001, when a 505 ft (154 m) Navy vessel struck and killed a sperm whale 20 mi (32.2 km) south of Puerto Rico (Jensen and Silber, 2004). (Of note, at the time of the strike, the Navy still used the Vieques Naval Training Range; activities in this area ceased in 2003, and since then, vessel traffic has significantly decreased, and there are

currently no plans to increase activity in that area.) A second known incident of vessel strike occurred in VACAPES on May 15, 2005, when a Navy vessel was involved in a strike with “reasonable potential” to have been a sperm whale.

Since 2009, there have been six recorded vessel strikes of large whales by the Action Proponents in the AFTT Study Area: three by the Navy and three by the Coast Guard. The Navy struck one whale in 2011 (species unknown), two whales in 2012 (species unknown), and has not struck a large whale in the AFTT Study Area since 2012. All strikes during this timeframe occurred in the VACAPES OPAREA: one strike in the VACAPES Range Complex in 2011, one strike in the VACAPES Range Complex in 2012, and one strike in the Lower Chesapeake Bay in 2012. The Coast Guard struck two whales in 2009 (both reported as NARW), and one whale in May 2024 (species unknown). On December 14, 2009, an 87 ft (26.5 m) Coast Guard patrol boat traveling at a speed of 9.2 kn (17 km/hr) struck two whales (reported as NARW) at the same time near Cape Henry, Virginia, and observed the animals swimming away without apparent injuries, though it is important to note that not all injuries are evident when a whale is struck and the fate of these two NARW is unknown. It is also important to note that not all whale strikes result in mortality, however, given the potential for non-visible injuries, NMFS conservatively assumes that these strikes resulted in mortality of both whales.

In light of the key differences between the operation of military and non-military vessels discussed above, it is highly unlikely that a military vessel would strike any type of marine mammal without detecting it. Specifically, Lookouts posted on or near the ship’s bow can visually detect a strike in the absence of other indications that a strike has occurred. The Action Proponents’ internal procedures and mitigation requirements include reporting of any vessel strikes of marine mammals, and the Action Proponents’ discipline, extensive training (not only for detecting marine mammals, but for detecting and reporting any potential navigational obstruction), and strict chain of command give NMFS a high level of confidence that all strikes are reported. Accordingly, NMFS is confident that the Navy and Coast Guard’s reported strikes are accurate and appropriate for use in the analysis.

When generally compared to mysticetes, odontocetes are more capable of physically avoiding a vessel strike and since some species occur in

large groups, they are more easily seen when they are closer to the water surface. The smaller size and maneuverability of dolphins, small whales (not including large whale calves), porpoises, and pinnipeds generally make vessel strike very unlikely. For as long as records have been kept, neither the Navy nor the Coast Guard have any record of any small whales or pinnipeds being struck by a vessel as a result of military readiness activities. Over the same time period, NMFS, the Navy, and the Coast Guard have only one record of a dolphin being struck by a vessel as a result of Navy or Coast Guard activities. The dolphin was accidentally struck by a Navy small boat in fall 2021 in Saint Andrew’s Pass, Florida. Other than this one reported strike of a dolphin in 2021, NMFS has never received any reports from other LOA or Incidental Harassment Authorization holders indicating that these species have been struck by vessels. Worldwide vessel strike records show little evidence of strikes of these groups or marine mammals from the shipping sector and larger vessels (though for many species, records do exist, *e.g.*, West *et al.* 2024, Waerebeek *et al.*, 2007, Van Waerebeek *et al.*, 2007), and the majority of the Action Proponents’ activities involving faster-moving vessels (that could be considered more likely to hit a marine mammal) are located in offshore areas where smaller delphinid, porpoise, and pinniped densities are lower.

In order to account for the accidental nature of vessel strike to large whales in general, and the potential risk from vessel movement within the AFTT Study Area within the 7-year period of this proposed authorization, the Action Proponents requested incidental takes based on probabilities derived from a Poisson distribution. A Poisson distribution is often used to describe random occurrences when the probability of an occurrence is small. Count data, such as cetacean sighting data, or in this case strike data, are often described as a Poisson or over-dispersed Poisson distribution. The Poisson distribution was calculated using vessel strike data between 2009–2024 in the AFTT Study Area, historical at-sea days in the AFTT Study Area for the Navy and the Coast Guard (described in detail in section 6 of the application), and estimated potential at-sea days for both Action Proponents during the 7-year period from 2025–2032 covered by the requested regulations. The Navy evaluated data beginning in 2009 as that was the start of the Navy’s Marine Species Awareness Training and

adoption of additional mitigation measures to address vessel strike, which will remain in place along with additional and modified mitigation measures during the 7 years of this rulemaking. Navy vessel strike data only accounts for vessels larger than 65 ft (19.8 m) and does not include USVs/UUVs as the Navy does not yet have data on their use in the AFTT Study Area. The Poisson vessel strike calculations do not include any specific number of at-sea days for USVs. Historically, the USVs used in the AFTT Study Area were equivalent to small boats. While it is anticipated that larger USVs will begin testing in the AFTT Study Area during the 7-year period, it was assessed that the addition of any at-sea days associated with the limited number of medium or large USVs being tested in AFTT would not be large enough to change the results of the analysis. In addition, there is no historical strike data for USVs. The analysis for the period of 2025 to 2032 is described in detail below and in section 6.3.2 (Probability of Vessel Strike of Large Whale Species) of the application.

Between 2009 and early 2024, there were a total of 42,748 Navy at-sea days and 26,756 Coast Guard at-sea days in the AFTT Study Area. During that same time, there were three Navy vessel strikes of large whales and three Coast Guard vessel strikes of large whales. From 2025 through 2032, the Navy anticipates 18,702 at-sea days, and the Coast Guard anticipates 11,706 at-sea days.

To calculate a vessel strike rate for each Action Proponent for the period of 2009 through 2024, the Action Proponents used the respective number of past vessel strikes of large whales and the respective number of at-sea days. Navy at-sea days (for vessels greater than 65 ft (19.8 m)) from 2009 through 2024 was estimated to be 42,748 days. Dividing the three known Navy strikes during that period by the at-sea days (*i.e.*, 3 strikes/42,748 at-sea days) results in a strike rate of 0.000070 strikes per at-sea day. Coast Guard at-sea days (for vessels greater than 65 ft (19.8 m)) from 2009 through 2024 was estimated to be 26,756 days. Dividing the three known Coast Guard strikes during that period by the at-sea days (*i.e.*, 3 strikes/26,756 at-sea days) results in a strike rate of 0.000112 strikes per day.

Based on the average annual at-sea days from 2009 to early 2024, the Action Proponents estimated that 18,702 Navy and 11,706 Coast Guard at-sea days would occur over the 7-year period associated with the requested authorization. Given a strike rate of

0.000070 Navy strikes per at-sea day, and 0.000112 Coast Guard strikes per at-sea day, the predicted number of vessel strikes over a 7-year period would be 1.31 strikes by the Navy and 1.31 strikes by the Coast Guard.

Using this predicted number of strikes, the Poisson distribution predicted the probabilities of a specific number of strikes ($n = 0, 1, 2, \text{etc.}$) from 2025 through 2032. The probability analysis concluded that, for each Action Proponent, there is a 27 percent chance that zero whales would be struck by the Action Proponents' vessels over the 7-year period, and a 35, 23, 10, and 4 percent chance that one, two, three, or four whales, respectively, would be struck by each Action Proponent over the 7-year period (with a 73 percent chance that at least one whale would be struck by each Action Proponent over the entire 7-year period). Based on this analysis, the Navy is requesting authorization to take three large whales by serious injury or mortality by vessel strike incidental to Navy training and testing activities, and the Coast Guard is requesting authorization to take three large whales by serious injury or mortality by vessel strike incidental to Coast Guard training activities. NMFS concurs that take by serious injury or mortality by vessel strike of up to three large whales by each action proponent (six whales total) could occur over the 7-year regulations and, based on the information provided earlier in this section, NMFS concurs with the Action Proponents' assessment and recognizes the potential for incidental take by vessel strike of large whales only (*i.e.*, no dolphins, small whales (not including large whale calves), porpoises, or pinnipeds) over the course of the 7-year regulations from military readiness activities.

While the Poisson distribution allows the Action Proponents and NMFS to determine the likelihood of vessel strike of all large whales, it does not indicate the likelihood of each strike occurring to a particular species or stock. As described above, the Action Proponents have not always been able to identify the species of large whale struck during previous known vessel strikes. Therefore, the Action Proponents requested authorization for take by serious injury or mortality by vessel strike of any combination of the following stocks in the AFTT Study Area, with no more than two takes total from any single stock: humpback whale (Gulf of Maine stock), fin whale (Western North Atlantic stock), sei whale (Nova Scotia stock), minke whale (Canadian East Coast stock), blue whale (Western North Atlantic stock), and sperm whale (North Atlantic stock).

After concurring that take of up to six large whales could occur (three takes by each Action Proponent), and in consideration of the Navy's request, NMFS considered which species could be among the six large whales struck. NMFS conducted an analysis that considered several factors: (1) The relative likelihood of striking one stock versus another based on available strike data from all vessel types as denoted in the SARs, (2) whether each Action Proponent has ever struck an individual from a particular species or stock in the AFTT Study Area, and if so, how many times, and (3) whether implementation of the proposed mitigation measures (*i.e.*, specific measures to reduce the potential for vessel strike) would be expected to successfully prevent vessel strikes of certain species or stocks (noting that, for all stocks, activity-based mitigation would reduce the potential of vessel strike).

To address number (1) above, NMFS compiled information from the SARs (Hayes *et al.*, 2024) on detected annual rates of large whale M/SI from vessel strike (table 47). The annual rates of large whale serious injury or mortality from vessel strike reported in the SARs help inform the relative susceptibility of large whale species to vessel strike in AFTT Study Area as recorded systematically over the five-year period used for the SARs. We summed the annual rates of serious injury or mortality from vessel strikes as reported in the SARs and then divided each species' annual rate by this sum to get the percentage of total annual strikes for each species/stock (table 47).

To inform the likelihood of a single action proponent striking a particular species of large whale, we multiplied the percent of total annual strikes for a given species in table 47 by the total percent likelihood of a single action proponent striking at least one whale (*i.e.*, 73 percent, as described by the probability analysis above). We also calculated the percent likelihood of a single action proponent striking a particular species of large whale two or three times by squaring or cubing, respectively, the value estimated for the probability of striking a particular species of whale once (*i.e.*, to calculate the probability of an event occurring twice, multiply the probability of the first event by the second). The results of these calculations are reflected in the last two columns of table 47. We note that these probabilities vary from year to year as the average annual mortality changes depending on the specific range of time considered; however, over the years and through updated data in the SARs, stocks tend to consistently maintain a relatively higher or relatively lower likelihood of being struck.

TABLE 47—ANNUAL RATES OF MORTALITY AND SERIOUS INJURY FROM VESSEL COLLISIONS AND PERCENT LIKELIHOOD OF EACH ACTION PROPONENT STRIKING A LARGE WHALE SPECIES IN THE AFTT STUDY AREA OVER A 7-YEAR PERIOD

Species	Stock	Annual rate of M/SI from vessel strike ^a	Percentage of total annual strikes	Percent likelihood of 1 strike over 7 years	Percent likelihood of 2 strikes over 7 years	Percent likelihood of 3 strikes over 7 years
Blue whale	Western North Atlantic	0	0	0	0	0
Fin whale	Western North Atlantic	0.6	8.2	6	0.36	0.02
Humpback whale	Gulf of Maine	4.4	60.3	44	19.36	8.52
Minke whale	Canadian East Coast	0.8	11	8	0.64	0.05
North Atlantic right whale ^b	Western	1.5	20.5	15	2.25	0.34
Rice's whale	Northern Gulf of America	0	0	0	0	0
Sei whale	Nova Scotia	0	0	0	0	0
Sperm whale	North Atlantic	0	0	0	0	0
Sperm whale	Northern Gulf of America	0	0	0	0	0

^a Values are from the most recent stock assessment report (Hayes *et al.*, 2024).

^b While these percentages suggest that NARW has a quantitatively higher likelihood of vessel strike in comparison with other stocks, this proposed rulemaking includes extensive mitigation measures for NARW that would minimize the risk of vessel strike such that vessel strike of this stock is not anticipated to occur. Please see the discussion in this section and the Proposed Mitigation Measures section for additional detail.

The percent likelihood calculated (as described above) are then considered in combination with the information indicating the known species that the Navy or Coast Guard has struck in the

AFTT Study Area since 2000 (table 48). We note that for the lethal take of species specifically denoted in table 48 below, most of those struck by the Navy or Coast Guard remained unidentified.

However, given the information on known stocks struck, the analysis below remains appropriate.

TABLE 48—NUMBER OF KNOWN VESSEL STRIKES BY EACH ACTION PROPONENT IN THE AFTT STUDY AREA BY YEAR

Year	U.S. Navy strikes (species/stock)	Coast Guard strikes (species/stock)
2000	1 (unknown)	0.
2001	4 (3 unknown, one probable Puerto Rico/U.S. Virgin Islands stock sperm whale).	
2004	3 (unknown).	2 (NARW).
2005	2 (1 unknown, 1 probable sperm whale).	
2009 .....	.....	
2011	1 (unknown, probable humpback whale).	
2012	2 (1 unknown, 1 probable humpback).	1 (unknown, probable humpback whale).
2021	1 (dolphin).	
2024 .....	.....	

Accordingly, stocks that have no record of ever having been struck by any vessel are considered to have a zero percent likelihood of being struck by the Navy in the 7-year period of the rule. While the Western North Atlantic stock of blue whales, Northern Gulf of America stock of Rice's whale, Nova Scotia stock of sei whales, and North Atlantic stock of sperm whales have a reported annual rate of M/SI from vessel strike of 0, each of these stocks have records of strikes prior to the period reported in the SAR (Hayes *et al.* 2024). There is record of a vessel strike in 1996 of a Western North Atlantic blue whale (Hayes *et al.* 2024), two records of vessel strike of Rice's whale (one in 2009 and one in 2019), several records of vessel strikes in the 1990s and early 2000s of North Atlantic sperm whales, and a record of a probable sperm whale (Northern Gulf of America stock) strike in 1990. For the Nova Scotia stock of sei whale, several sei whale strandings during the time period analyzed for the SAR (*i.e.*, 2017–2021) had an undetermined cause of death (Garron, 2022), and M/SI by vessel strike for sei whales along the U.S. East Coast were a more common occurrence in previous SAR 5-year periods (*i.e.*, four from 2012–2016, three from 2007–2011, and two from 2002–2006). Therefore, NMFS included each of these stocks for further analysis, and considered the historical strikes, but lack of recent strikes to inform the relative likelihood that the Navy or Coast Guard would strike these stocks.

While Bryde's whales in the Atlantic are not a NMFS-managed stock, the low number of estimated takes by harassment (11 takes by Level B harassment) indicate very low overlap of this stock with the Action

Proponents' activities. As such, and given that there are no records of either action proponent having struck Bryde's whale in the Atlantic in the past, NMFS neither anticipates, nor proposes to authorize, serious injury or mortality by vessel strike of Bryde's whale.

To address number (2) above, the percent likelihoods of a certain number of strikes of each stock are then considered in combination with the information indicating the species that the Action Proponents have definitively struck in the AFTT Study Area since 2009. As noted above, since 2009, the U.S. Navy and Coast Guard have each struck three whales in the AFTT Study Area. The Navy struck one unidentified species in June 2011, one unidentified species (thought to likely be a humpback) in February 2012, and one unidentified species in October 2012. The Coast Guard struck two whales (reported as NARW) in December 2009, and one unidentified large whale (thought to likely be a humpback) in 2024.

Stocks that have never been struck by the Navy, have rarely been struck by other vessels, and have a low percent likelihood based on the historical vessel strike calculation are also considered to have a zero percent likelihood to be struck by the Navy during the 7-year rule. As noted in table 48, in 2001, the Navy struck an unidentified whale in the Gulf of America, and given the stocks that occur there, that this strike was of either a sperm whale or Rice's whale. Given the relative abundance of these two stocks, NMFS expects that this strike was likely of a sperm whale (Northern Gulf of America stock). Therefore, this step in the analysis rules out take by vessel strike of blue whale and Rice's whale. Even if the 2001 strike

had been of a Rice's whale, consideration of the proposed geographic mitigation for Rice's whale (see Proposed Mitigation Measures section below) and the low stock abundance further supports the conclusion that vessel strike of Rice's whale is unlikely. This leaves the following stocks for further analysis: fin whale (Western North Atlantic stock), humpback whale (Gulf of Maine stock), minke whale (Canadian Eastern Coastal stock), NARW (Western stock), sei whale (Nova Scotia stock), and sperm whale (North Atlantic and Northern Gulf of America stocks).

Based on the information summarized in table 47, and the fact that there is potential for up to six large whales to be struck over the 7-year duration of this rulemaking, NMFS anticipates that each action proponent could strike one of each of the following stocks (two total per stock across both action proponents): fin whales (Western North Atlantic stock), minke whales (Canadian Eastern Coastal stock), sei whales (Nova Scotia stock), and sperm whales (North Atlantic stock). NMFS also anticipates that the Navy may strike up to one sperm whale (Northern Gulf of America stock) given the 2001 likely sperm whale strike. Given the already lower likelihood of striking this stock given the relatively lower vessel activity in the Gulf of America portion of the AFTT Study Area, and the relatively lower Coast Guard vessel traffic compared to Navy vessel traffic, NMFS neither anticipates, nor proposes to authorize, a Coast Guard strike of this stock. NMFS anticipates that each Action Proponent could strike up to two humpback whales (Gulf of Maine stock) given the higher relative strike likelihood indicated in table 47, and the Action

Proponents' conclusion that several previous Navy and Coast Guard strikes of unidentified species were likely humpback whales.

Following the conclusion for the stocks above, NARW is the only remaining stock. NARW are known to be particularly susceptible to vessel strike, and vessel strike is one of the greatest threats to this stock. NMFS' quantitative analysis (table 47) indicates a 15 percent likelihood of one strike of NARW over the 7-year duration of this proposed rulemaking. However, for the reasons described below, NMFS does not anticipate vessel strike of NARW by either action proponent. As stated previously, in 2009, the Coast Guard struck two whales (reported as NARW). Since 2009, the Navy has had no known strikes of NARW, and it has been implementing extensive mitigation measures to avoid vessel strike of NARW. The lack of known strikes of NARWs indicates that the mitigation used by the Navy since 2009 and

included here for the Action Proponents has likely been successful. Given that the Navy will continue to implement this mitigation for NARW, and the Coast Guard will begin implementing it also, (e.g., funding of and communication with sightings systems, awareness of slow zones and dynamic management areas for NARW) we neither anticipate nor propose to authorize take by serious injury or mortality by vessel strike of NARW. Please see the Proposed Mitigation Measures section of this proposed rulemaking and section 11 of the application for additional detail.

In conclusion, although it is generally unlikely that any whales will be struck in a year, based on the information and analysis above, NMFS anticipates that no more than six takes of large whales by serious injury or mortality could occur over the 7-year period of the rule, with no more than three by each Action Proponent. Of those six whales over the 7 years, no more than four may come from the Gulf of Maine stock of

humpback whale; no more than two may come from the Western North Atlantic stock of fin whale, the Canadian East Coast stock of minke whale, the Nova Scotia stock of sei whale, and the North Atlantic stock of sperm whale; no more than one strike by the Navy may come from the Northern Gulf of America stock of sperm whale. Accordingly, NMFS has evaluated under the negligible impact standard the M/SI of 0.14, 0.29 or 0.57 whales annually from each of these species or stocks (*i.e.*, 1, 2 or 4 takes, respectively, divided by 7 years to get the annual value), along with the expected incidental takes by harassment.

Summary of Requested Take From Military Readiness Activities

Table 49 and table 50 summarize the Action Proponents' take proposed by harassment type and effect type, respectively.

TABLE 49—TOTAL ANNUAL AND 7-YEAR INCIDENTAL TAKE PROPOSED BY STOCK DURING ALL ACTIVITIES BY HARASSMENT TYPE

Species	Stock	Maximum annual Level B harassment	Maximum annual Level A harassment	Maximum annual mortality	7-Year total Level B harassment	7-Year total Level A harassment	7-Year total mortality
North Atlantic right whale	Western	414	2	0	2,682	8	0
Blue whale	Western North Atlantic	71	1	0	464	2	0
Bryde's whale	Primary	11	0	0	70	0	0
Fin whale	Western North Atlantic	2,616	21	0.29	17,298	131	2
Humpback whale	Gulf of Maine	844	12	0.57	5,544	74	4
Minke whale	Canadian East Coast	4,643	56	0.29	31,006	377	2
Rice's whale	Northern Gulf of America	303	3	0	2,047	6	0
Sei whale	Nova Scotia	747	7	0.29	4,981	44	2
Sperm whale	North Atlantic	12,590	7	0.29	84,675	21	2
Sperm whale	Northern Gulf of America	275	0	0.29	1,653	0	1
Dwarf sperm whale	Northern Gulf of America	189	22	0	1,112	73	0
Pygmy sperm whale	Northern Gulf of America	175	22	0	1,017	65	0
Dwarf sperm whale	Western North Atlantic	6,326	180	0	42,547	1,184	0
Pygmy sperm whale	Western North Atlantic	6,294	176	0	42,302	1,157	0
Blainville's beaked whale	Northern Gulf of America	126	0	0	812	0	0
Goose-beaked whale	Northern Gulf of America	460	0	0	2,962	0	0
Gervais' beaked whale	Northern Gulf of America	125	0	0	800	0	0
Blainville's beaked whale	Western North Atlantic	25,705	1	0	172,587	1	0
Goose-beaked whale	Western North Atlantic	112,070	2	0	752,587	5	0
Gervais' beaked whale	Western North Atlantic	25,446	1	0	172,339	1	0
Northern bottlenose whale	Western North Atlantic	1651	1	0	10,879	1	0
Sowerby's beaked whale	Western North Atlantic	25,622	1	0	173,546	1	0
True's beaked whale	Western North Atlantic	25,582	0	0	173,301	0	0
Atlantic spotted dolphin	Northern Gulf of America	12,804	20	0	83,827	123	0
Bottlenose dolphin	Gulf of America Eastern Coastal	80	0	0	455	0	0
Bottlenose dolphin	Gulf of America Northern Coastal	7,146	17	0	49,950	114	0
Bottlenose dolphin	Gulf of America, Oceanic	6,274	4	0	40,584	11	0
Bottlenose dolphin	Gulf of America Western Coastal	3,331	1	0	18,123	1	0
Bottlenose dolphin	Mississippi Sound, Lake Borgne, and Bay Boudreau	1,758	1	0	12,014	1	0
Bottlenose dolphin	Northern Gulf of America Continental Shelf	71,331	29	0	481,391	165	0
Bottlenose dolphin	Nueces and Corpus Christi Bays	4	0	0	11	0	0
Bottlenose dolphin	Sabine Lake	1	0	0	2	0	0
Bottlenose dolphin	St. Andrew Bay	46	0	0	303	0	0
Bottlenose dolphin	St. Joseph Bay	42	0	0	287	0	0
Bottlenose dolphin	Tampa Bay	350	0	0	1,050	0	0
Clymene dolphin	Northern Gulf of America	599	3	0	3,577	4	0
False killer whale	Northern Gulf of America	230	0	0	1,423	0	0
Fraser's dolphin	Northern Gulf of America	241	0	0	1,487	0	0
Killer whale	Northern Gulf of America	110	0	0	680	0	0
Melon-headed whale	Northern Gulf of America	771	1	0	4,806	1	0
Pygmy killer whale	Northern Gulf of America	285	0	0	1,773	0	0
Risso's dolphin	Northern Gulf of America	203	0	0	1,252	0	0

TABLE 49—TOTAL ANNUAL AND 7-YEAR INCIDENTAL TAKE PROPOSED BY STOCK DURING ALL ACTIVITIES BY HARASSMENT TYPE—Continued

Species	Stock	Maximum annual Level B harassment	Maximum annual Level A harassment	Maximum annual mortality	7-Year total Level B harassment	7-Year total Level A harassment	7-Year total mortality
Rough-toothed dolphin	Northern Gulf of America	1,642	3	0	10,808	5	0
Short-finned pilot whale	Northern Gulf of America	1,021	3	0	6,183	13	0
Striped dolphin	Northern Gulf of America	2,376	7	0.29	15,414	15	2
Pantropical spotted dolphin	Northern Gulf of America	6,316	9	0.71	39,959	28	5
Spinner dolphin	Northern Gulf of America	656	0	0	4,459	0	0
Atlantic white-sided dolphin ...	Western North Atlantic	10,901	9	0	71,669	43	0
Common dolphin	Western North Atlantic	269,405	161	0	1,820,556	1,015	0
Atlantic spotted dolphin	Western North Atlantic	120,798	87	0	796,804	577	0
Bottlenose dolphin	Indian River Lagoon Estuarine System ...	1,576	0	0	10,675	0	0
Bottlenose dolphin	Jacksonville Estuarine System	360	0	0	2,477	0	0
Bottlenose dolphin	Northern Georgia/Southern South Carolina Estuarine System.	2	0	0	6	0	0
Bottlenose dolphin	Northern North Carolina Estuarine System.	10,532	6	0	72,036	37	0
Bottlenose dolphin	Southern Georgia Estuarine System	123	1	0	711	1	0
Bottlenose dolphin	Southern North Carolina Estuarine System.	162	0	0	535	0	0
Tamanend's bottlenose dolphin.	Western North Atlantic Central Florida Coastal.	10,494	3	0	66,392	10	0
Tamanend's bottlenose dolphin.	Western North Atlantic Northern Florida Coastal.	21,385	5	0	142,945	13	0
Bottlenose dolphin	Western North Atlantic Northern Migratory Coastal.	73,720	60	0	507,610	375	0
Bottlenose dolphin	Western North Atlantic Offshore	187,046	103	0.29	1,246,451	677	2
Tamanend's Bottlenose dolphin.	Western North Atlantic South Carolina/Georgia Coastal.	4,960	6	0.14	30,781	22	1
Bottlenose dolphin	Western North Atlantic Southern Migratory Coastal.	10,180	9	0	64,883	52	0
Clymene dolphin	Western North Atlantic	132,723	104	0.43	902,324	698	3
False killer whale	Western North Atlantic	572	1	0	3,872	1	0
Fraser's dolphin	Western North Atlantic	2,905	3	0	19,435	14	0
Killer whale	Western North Atlantic	180	1	0	1,195	1	0
Long-finned pilot whale	Western North Atlantic	21,680	12	0	146,009	63	0
Melon-headed whale	Western North Atlantic	4,598	3	0	31,086	12	0
Pantropical spotted dolphin	Western North Atlantic	13,068	5	0	89,174	25	0
Pygmy killer whale	Western North Atlantic	477	1	0	3,226	1	0
Risso's dolphin	Western North Atlantic	37,239	25	0	245,877	143	0
Rough-toothed dolphin	Western North Atlantic	4,753	6	0	31,562	25	0
Short-finned pilot whale	Western North Atlantic	33,035	15	0	222,007	91	0
Spinner dolphin	Western North Atlantic	5,356	2	0	36,513	10	0
Striped dolphin	Western North Atlantic	208,802	163	0	1,397,838	1,109	0
White-beaked dolphin	Western North Atlantic	16	0	0	103	0	0
Harbor porpoise	Gulf of Maine/Bay of Fundy	87,119	147	0	586,732	954	0
Gray seal	Western North Atlantic	15,724	24	0	105,585	151	0
Harbor seal	Western North Atlantic	22,094	32	0	148,486	204	0
Harp seal	Western North Atlantic	25,792	6	0	174,649	28	0
Hooded seal	Western North Atlantic	1,726	2	0	10,985	5	0

TABLE 50—TOTAL ANNUAL AND 7-YEAR INCIDENTAL TAKE PROPOSED BY STOCK DURING ALL ACTIVITIES BY EFFECT TYPE

Species	Stock	Maximum annual behavioral	Maximum annual TTS	Maximum annual AUD INJ	Maximum annual non-auditory injury	Maximum annual mortality	Maximum 7-year behavioral	Maximum 7-year TTS	Maximum 7-year AUD INJ	Maximum 7-year non-auditory injury	Maximum 7-year mortality
North Atlantic right whale	Western	109	305	2	0	0	715	1,967	8	0	0
Blue whale	Western North Atlantic	12	59	1	0	0	73	391	2	0	0
Bryde's whale	Primary	2	9	0	0	0	7	63	0	0	0
Fin whale	Western North Atlantic	689	1,927	21	0	0.29	4,526	12,772	131	0	2
Humpback whale	Gulf of Maine	212	632	12	0	0.57	1,404	4,140	74	0	4
Mink whale	Canadian East Coast	693	3,950	56	0	0.29	4,637	26,369	377	0	2
Rice's whale	Northern Gulf of America	88	215	3	0	0	593	1,454	6	0	0
Sei whale	Nova Scotia	125	622	7	0	0.29	822	4,159	44	0	2
Sperm whale	North Atlantic	8,878	3,712	6	1	0.29	59,196	25,479	20	1	2
Sperm whale	Northern Gulf of America	248	27	0	0	0.29	1,507	146	0	0	1
Dwarf sperm whale	Northern Gulf of America	27	162	22	0	0	148	964	73	0	0
Pygmy sperm whale	Northern Gulf of America	28	147	22	0	0	163	854	65	0	0
Dwarf sperm whale	Western North Atlantic	1,308	5,018	180	0	0	8,686	33,861	1,184	0	0
Pygmy sperm whale	Western North Atlantic	1,341	4,953	176	0	0	8,907	33,395	1,157	0	0
Blainville's beaked whale	Northern Gulf of America	126	0	0	0	0	812	0	0	0	0
Blainville's beaked whale	Western North Atlantic	25,551	154	1	0	0	171,535	1,052	1	0	0
Goose-beaked whale	Northern Gulf of America	457	3	0	0	0	2,959	3	0	0	0
Goose-beaked whale	Western North Atlantic	111,457	613	2	0	0	748,360	4,227	5	0	0
Gervais' beaked whale	Northern Gulf of America	123	2	0	0	0	798	2	0	0	0
Gervais' beaked whale	Western North Atlantic	25,110	336	1	0	0	170,030	2,309	1	0	0
Northern bottlenose whale	Western North Atlantic	1,642	9	1	0	0	10,822	57	1	0	0
Sowerby's beaked whale	Western North Atlantic	25,257	365	1	0	0	171,033	2,513	1	0	0
True's beaked whale	Western North Atlantic	25,217	365	0	0	0	170,797	2,504	0	0	0
Atlantic spotted dolphin	Northern Gulf of America	7,085	5,719	20	0	0	46,690	37,137	123	0	0
Bottlenose dolphin	Gulf of America Eastern Coastal	75	5	0	0	0	433	22	0	0	0
Bottlenose dolphin	Gulf of America Northern Coastal	6,524	622	17	0	0	45,608	4,342	114	0	0
Bottlenose dolphin	Gulf of America Oceanic	4,764	1,510	4	0	0	30,923	9,661	11	0	0
Bottlenose dolphin	Gulf of America Western Coastal	1,773	1,558	1	0	0	9,846	8,277	1	0	0
Bottlenose dolphin	Mississippi Sound, Lake Borgne, and Bay Boudreau	1,715	43	1	0	0	11,776	238	1	0	0
Bottlenose dolphin	Northern Gulf of America Continental Shelf	46,801	24,530	27	2	0	321,346	160,045	163	2	0
Bottlenose dolphin	Nueces and Corpus Christi Bays	4	0	0	0	0	11	0	0	0	0
Bottlenose dolphin	Sabine Lake	1	0	0	0	0	2	1	0	0	0
Bottlenose dolphin	St. Andrew Bay	45	1	0	0	0	302	0	0	0	0
Bottlenose dolphin	St. Joseph Bay	42	0	0	0	0	287	0	0	0	0
Bottlenose dolphin	Tampa Bay	163	187	0	0	0	490	560	0	0	0
Clymene dolphin	Northern Gulf of America	390	209	2	1	0	2,308	1,269	3	1	0
False killer whale	Northern Gulf of America	168	62	0	0	0	1,036	387	0	0	0
Fraser's dolphin	Northern Gulf of America	168	73	0	0	0	1,031	456	0	0	0
Killer whale	Northern Gulf of America	84	26	0	0	0	521	159	0	0	0
Melon-headed whale	Northern Gulf of America	579	192	1	0	0	3,600	1,206	1	0	0
Pygmy killer whale	Northern Gulf of America	204	81	0	0	0	1,263	510	0	0	0
Risso's dolphin	Northern Gulf of America	155	48	0	0	0	967	285	0	0	0
Rough-toothed dolphin	Northern Gulf of America	988	654	2	1	0	6,531	4,277	4	1	0
Short-finned pilot whale	Northern Gulf of America	629	392	3	0	0	3,771	2,412	13	0	0
Striped dolphin	Northern Gulf of America	1,728	648	5	2	0.29	11,266	4,148	10	5	2
Pantropical spotted dolphin	Northern Gulf of America	4,589	1,727	6	3	0.71	29,025	10,934	20	8	5
Spinner dolphin	Northern Gulf of America	478	178	0	0	0	3,241	1,218	0	0	0
Atlantic white-sided dolphin	Western North Atlantic	7,172	3,729	8	1	0	46,544	25,125	40	3	0
Common dolphin	Western North Atlantic	136,920	132,485	159	2	0	924,362	896,194	1,010	5	0
Atlantic spotted dolphin	Western North Atlantic	51,840	68,958	85	2	0	343,981	452,823	571	6	0
Bottlenose dolphin	Indian River Lagoon Estuarine System	1,438	138	0	0	0	9,717	958	0	0	0
Bottlenose dolphin	Jacksonville Estuarine System	269	91	0	0	0	1,855	622	0	0	0
Bottlenose dolphin	Northern Georgia/Southern South Carolina Estuarine System	2	0	0	0	0	6	0	0	0	0
Bottlenose dolphin	Northern North Carolina Estuarine System	8,579	1,953	6	0	0	59,058	12,978	37	0	0
Bottlenose dolphin	Southern Georgia Estuarine System	85	38	1	0	0	499	212	1	0	0
Bottlenose dolphin	Southern North Carolina Estuarine System	82	80	0	0	0	256	279	0	0	0

Tamanend's bottlenose dolphin	7,921	2,573	2	1	0	0	52,787	13,605	8	2	0
Tamanend's bottlenose dolphin	17,054	4,331	5	0	0	0	116,843	26,102	13	0	0
Bottlenose dolphin	57,217	16,503	59	1	0	0	397,269	110,341	374	1	0
Bottlenose dolphin	91,255	95,791	101	2	0.29	0.29	609,321	637,130	671	6	2
Tamanend's bottlenose dolphin	1,426	3,534	6	0	0.14	0.14	8,970	21,811	22	0	1
Bottlenose dolphin	2,936	7,244	8	1	0	0	18,993	45,890	48	4	0
Clymene dolphin	60,223	72,500	102	2	0.43	0.43	403,316	499,008	694	4	3
False killer whale	317	255	1	0	0	0	2,143	1,729	1	0	0
Fraser's dolphin	1,362	1,543	3	0	0	0	9,135	10,300	14	0	0
Killer whale	100	80	1	0	0	0	659	536	1	0	0
Long-finned pilot whale	12,783	8,897	11	1	0	0	85,545	60,464	62	1	0
Melon-headed whale	1,993	2,605	3	0	0	0	13,543	17,543	12	0	0
Pantropical spotted dolphin	6,436	6,632	5	0	0	0	44,269	44,905	25	0	0
Pygmy killer whale	216	261	1	0	0	0	1,471	1,755	1	0	0
Risso's dolphin	20,226	17,013	23	2	0	0	133,055	112,822	141	2	0
Rough-toothed dolphin	1,874	2,879	6	0	0	0	12,519	19,043	25	0	0
Short-finned pilot whale	16,978	16,057	15	0	0	0	113,894	108,113	91	0	0
Spinner dolphin	2,607	2,749	2	0	0	0	17,788	18,725	10	0	0
Striped dolphin	107,596	101,206	161	2	0	0	708,184	689,654	1,103	6	0
White-beaked dolphin	10	6	0	0	0	0	64	39	0	0	0
Harbor porpoise	81,105	6,014	147	0	0	0	547,161	39,571	954	0	0
Gray seal	9,811	5,913	24	0	0	0	66,633	38,952	151	0	0
Harbor seal	13,406	8,688	32	0	0	0	91,406	57,080	204	0	0
Harp seal	16,636	9,156	6	0	0	0	111,591	63,058	28	0	0
Hooded seal	1,080	646	2	0	0	0	6,740	4,245	5	0	0

Note: This includes effects from sonar and other transducers, air guns, pile driving, explosives (including small ship shock trials), and vessel strike.

Proposed Mitigation Measures

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 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 subsistence uses (“least practicable adverse impact”). NMFS does not have a regulatory definition for least practicable adverse impact. The 2004 NDAA amended the MMPA as it relates to military readiness activities and the incidental take authorization process such that a determination of “least practicable adverse impact” shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. For additional discussion of NMFS’ interpretation of the least practicable adverse impact standard, see the Mitigation Measures section of the Gulf of Alaska Study Area final rule (88 FR 604, January 4, 2023).

Implementation of Least Practicable Adverse Impact Standard

Here, we discuss how we determine whether a measure or set of measures meets the “least practicable adverse impact” standard. Our separate analysis of whether the take anticipated to result from the Action Proponents’ activities meets the “negligible impact” standard appears in the Preliminary Analysis and Negligible Impact Determination section below.

Our evaluation of potential mitigation measures includes consideration of two primary factors: (1) The manner in which, and the degree to which, implementation of the potential measure(s) is expected to reduce adverse impacts to marine mammal species or stocks, their habitat, or their availability for subsistence uses (where relevant). This analysis considers such things as the nature of the potential adverse impact (such as likelihood, scope, and range), the likelihood that the measure will be effective if implemented, and the likelihood of successful implementation; and (2) The practicability of the measure(s) for applicant implementation. Practicability of implementation may consider such things as cost, impact on activities, and, in the case of a military readiness activity, specifically considers personnel safety, practicality of implementation, and impact on the

effectiveness of the military readiness activity.

While the language of the least practicable adverse impact standard calls for minimizing impacts to affected species or stocks, we recognize that the reduction of impacts to those species or stocks accrues through the application of mitigation measures that limit impacts to individual animals. Accordingly, NMFS’ analysis focuses on measures that are designed to avoid or minimize impacts on individual marine mammals that are more likely to increase the probability or severity of population-level effects.

While direct evidence of impacts to species or stocks from a specified activity is rarely available, and additional study is still needed to understand how specific disturbance events affect the fitness of individuals of certain species, there have been improvements in understanding the process by which disturbance effects are translated to the population. With recent scientific advancements (both marine mammal energetic research and the development of energetic frameworks), the relative likelihood or degree of impacts on species or stocks may often be inferred given a detailed understanding of the activity, the environment, and the affected species or stocks—and the best available science has been used here. This same information is used in the development of mitigation measures and helps us understand how mitigation measures contribute to lessening effects (or the risk thereof) to species or stocks. We also acknowledge that there is always the potential that new information, or a new recommendation, could become available in the future and necessitate reevaluation of mitigation measures (which may be addressed through adaptive management) to see if further reductions of population impacts are possible and practicable.

In the evaluation of specific measures, the details of the specified activity will necessarily inform each of the two primary factors discussed above (expected reduction of impacts and practicability), and are carefully considered to determine the types of mitigation that are appropriate under the least practicable adverse impact standard. Analysis of how a potential mitigation measure may reduce adverse impacts on a marine mammal stock or species, consideration of personnel safety, practicality of implementation, and consideration of the impact on effectiveness of military readiness activities are not issues that can be meaningfully evaluated through a yes/no lens. The manner in which, and the

degree to which, implementation of a measure is expected to reduce impacts, as well as its practicability in terms of these considerations, can vary widely. For example, a time/area restriction could be of very high value for decreasing population-level impacts (e.g., avoiding disturbance of feeding females in an area of established biological importance) or it could be of lower value (e.g., decreased disturbance in an area of high productivity but of less biological importance). Regarding practicability, a measure might involve restrictions in an area or time that impede the Navy’s ability to certify a strike group (higher impact on mission effectiveness), or it could mean delaying a small in-port training event by 30 minutes to avoid exposure of a marine mammal to injurious levels of sound (lower impact). A responsible evaluation of “least practicable adverse impact” will consider the factors along these realistic scales. Accordingly, the greater the likelihood that a measure will contribute to reducing the probability or severity of adverse impacts to the species or stock or its habitat, the greater the weight that measure is given when considered in combination with practicability to determine the appropriateness of the mitigation measure, and vice versa. We discuss consideration of these factors in greater detail below.

1. *Reduction of adverse impacts to marine mammal species or stocks and their habitat.* The emphasis given to a measure’s ability to reduce the impacts on a species or stock considers the degree, likelihood, and context of the anticipated reduction of impacts to individuals (and how many individuals) as well as the status of the species or stock.

The ultimate impact on any individual from a disturbance event (which informs the likelihood of adverse species- or stock-level effects) is dependent on the circumstances and associated contextual factors, such as duration of exposure to stressors. Though any proposed mitigation needs to be evaluated in the context of the specific activity and the species or stocks affected, measures with the following types of effects have greater value in reducing the likelihood or severity of adverse species- or stock-level impacts: avoiding or minimizing injury or mortality; limiting interruption of known feeding, breeding, mother/young, or resting behaviors; minimizing the abandonment of important habitat (temporally and spatially); minimizing the number of individuals subjected to these types of disruptions; and limiting degradation of habitat. Mitigating these

types of effects is intended to reduce the likelihood that the activity will result in energetic or other types of impacts that are more likely to result in reduced reproductive success or survivorship. It is also important to consider the degree of impacts that are expected in the absence of mitigation in order to assess the added value of any potential measures. Finally, because the least practicable adverse impact standard gives NMFS discretion to weigh a variety of factors when determining appropriate mitigation measures and because the focus of the standard is on reducing impacts at the species or stock level, the least practicable adverse impact standard does not compel mitigation for every kind of take, or every individual taken, if that mitigation is unlikely to meaningfully contribute to the reduction of adverse impacts on the species or stock and its habitat, even when practicable for implementation by the applicant.

The status of the species or stock is also relevant in evaluating the appropriateness of potential mitigation measures in the context of least practicable adverse impact. The following are examples of factors that may (either alone, or in combination) result in greater emphasis on the importance of a mitigation measure in reducing impacts on a species or stock: the stock is known to be decreasing or status is unknown, but believed to be declining; the known annual mortality (from any source) is approaching or exceeding the potential biological removal (PBR) level (as defined in MMPA section 3(20)); the affected species or stock is a small, resident population; or the stock is involved in a UME or has other known vulnerabilities, such as recovering from an oil spill.

Habitat mitigation, particularly as it relates to rookeries, mating grounds, and areas of similar significance, is also relevant to achieving the standard and can include measures such as reducing impacts of the activity on known prey utilized in the activity area or reducing impacts on physical habitat. As with species- or stock-related mitigation, the emphasis given to a measure's ability to reduce impacts on a species or stock's habitat considers the degree, likelihood, and context of the anticipated reduction of impacts to habitat. Because habitat value is informed by marine mammal presence and use, in some cases there may be overlap in measures for the species or stock and for use of habitat. We consider available information indicating the likelihood of any measure to accomplish its objective. If evidence shows that a measure has not typically

been effective nor successful, then either that measure should be modified or the potential value of the measure to reduce effects should be lowered.

2. *Practicability.* Factors considered may include cost, impact on activities, and, in the case of a military readiness activity, will include personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity (see MMPA section 101(a)(5)(A)(ii)).

Assessment of Mitigation Measures for the AFTT Study Area

NMFS has fully reviewed the specified activities and the mitigation measures included in the application and the 2024 AFTT Draft Supplemental EIS/OEIS to determine if the mitigation measures would result in the least practicable adverse impact on marine mammals and their habitat. NMFS worked with the Action Proponents in the development of their initially proposed measures, which are informed by years of implementation and monitoring. A complete discussion of the Action Proponents' evaluation process used to develop, assess, and select mitigation measures, which was informed by input from NMFS, can be found in chapter 5 (Mitigation) of the 2024 AFTT Draft Supplemental EIS/OEIS. The process described in chapter 5 (Mitigation) and appendix A (Activity Descriptions) of the 2024 AFTT Draft Supplemental EIS/OEIS robustly supported NMFS' independent evaluation of whether the mitigation measures would meet the least practicable adverse impact standard. The Action Proponents would be required to implement the mitigation measures identified in this rule for the full 7 years to avoid or reduce potential impacts from acoustic, explosive, and physical disturbance and strike stressors.

As a general matter, where an applicant proposes measures that are likely to reduce impacts to marine mammals, the fact that they are included in the application indicates that the measures are practicable, and it is not necessary for NMFS to conduct a detailed analysis of the measures the applicant proposed (rather, they are simply included). However, it is still necessary for NMFS to consider whether there are additional practicable measures that would meaningfully reduce the probability or severity of impacts that could affect reproductive success or survivorship.

Overall the Action Proponents have agreed to mitigation measures that would reduce the probability and/or severity of impacts expected to result

from acute exposure to acoustic sources or explosives, vessel strike, and impacts to marine mammal habitat. Specifically, the Action Proponents would use a combination of delayed starts, powerdowns, and shutdowns to avoid mortality or serious injury, minimize the likelihood or severity of AUD INJ or non-auditory injury, and reduce instances of TTS or more severe behavioral disturbance caused by acoustic sources or explosives. The Action Proponents would also implement multiple time/area restrictions that would reduce take of marine mammals in areas or at times where they are known to engage in important behaviors, such as calving, where the disruption of those behaviors would have a higher probability of resulting in impacts on reproduction or survival of individuals that could lead to population-level impacts.

The Action Proponents assessed the practicability of the proposed measures in the context of personnel safety, practicality of implementation, and their impacts on the Action Proponents' ability to meet their Congressionally mandated requirements and found that the measures are supportable. As described in more detail below, NMFS has independently evaluated the measures the Action Proponents proposed in the manner described earlier in this section (*i.e.*, in consideration of their ability to reduce adverse impacts on marine mammal species and their habitat and their practicability for implementation). We have determined that the measures would significantly reduce impacts on the affected marine mammal species and stocks and their habitat and, further, be practicable for implementation by the Action Proponents. We have preliminarily determined that the mitigation measures assure that the Action Proponents' activities would have the least practicable adverse impact on the species or stocks and their habitat.

The Action Proponents also evaluated numerous measures in the 2024 AFTT Draft Supplemental EIS/OEIS that were not included in the application, and NMFS independently reviewed and preliminarily concurs with the Action Proponents' analysis that their inclusion was not appropriate under the least practicable adverse impact standard based on our assessment. The Action Proponents considered these additional potential mitigation measures in the context of the potential benefits to marine mammals and whether they are practical or impractical.

Section 5.9 (Measures Considered but Eliminated) of chapter 5 (Mitigation) of

the 2024 AFTT Draft Supplemental EIS/OEIS, includes an analysis of an array of different types of mitigation that have been recommended over the years by non-governmental organizations or the public, through scoping or public comment on environmental compliance documents. These recommendations generally fall into three categories, discussed below: reduction of activity, activity-based operational measures, and time/area limitations.

As described in section 5.9 (Measures Considered but Eliminated) of the 2024 AFTT Draft Supplemental EIS/OEIS, the Action Proponents considered reducing the overall amount of training, reducing explosive use, modifying sound sources, completely replacing live training with computer simulation, and including time of day restrictions. Many of these mitigation measures could potentially reduce the number of marine mammals taken via direct reduction of the activities or amount of sound energy put in the water. However, as described in chapter 5 (Mitigation) of the 2024 AFTT Draft Supplemental EIS/OEIS, the Action Proponents need to train in the conditions in which they fight—and these types of modifications fundamentally change the activity in a manner that would not support the purpose and need for the training (*i.e.*, are entirely impracticable) and therefore are not considered further. NMFS finds the Action Proponents' explanation of why adoption of these recommendations would unacceptably undermine the purpose of the training persuasive. After independent review, NMFS finds the Action Proponents' judgment on the impacts of these potential mitigation measures to personnel safety, practicality of implementation, and the effectiveness of training persuasive, and for these reasons, NMFS finds that these measures do not meet the least practicable adverse impact standard because they are not practicable.

Also in chapter 5 (Mitigation) of the 2024 AFTT Draft Supplemental EIS/

OEIS, the Action Proponents evaluated additional potential activity-based mitigation measures, including increased mitigation zones, ramp-up measures, additional passive acoustic and visual monitoring, and decreased vessel speeds. Some of these measures have the potential to incrementally reduce take to some degree in certain circumstances, though the degree to which this would occur is typically low or uncertain. However, as described in the Action Proponents' analysis, the measures would have significant direct negative effects on mission effectiveness and are considered impracticable (see chapter 5 of the 2024 AFTT Draft Supplemental EIS/OEIS). NMFS independently reviewed the Action Proponents' evaluation and concurs with this assessment, which supports NMFS' preliminary findings that the impracticability of this additional mitigation would greatly outweigh any potential minor reduction in marine mammal impacts that might result; therefore, these additional mitigation measures are not warranted.

Last, chapter 5 (Mitigation) of the 2024 AFTT Draft Supplemental EIS/OEIS also describes a comprehensive analysis of potential geographic mitigation that includes consideration of both a biological assessment of how the potential time/area limitation would benefit the species and its habitat (*e.g.*, is a key area of biological importance or would result in avoidance or reduction of impacts) in the context of the stressors of concern in the specific area and an operational assessment of the practicability of implementation (*e.g.*, including an assessment of the specific importance of an area for training, considering proximity to training ranges and emergency landing fields and other issues). In some cases potential benefits to marine mammals were non-existent, while in others the consequences on mission effectiveness were too great.

NMFS has reviewed the Action Proponents' analysis in chapter 5 (Mitigation) and appendix A (Activity

Descriptions) of the 2024 AFTT Draft Supplemental EIS/OEIS, which consider the same factors that NMFS considers to satisfy the least practicable adverse impact standard, and concurs with the analysis and conclusions. Therefore, NMFS is not proposing to include any of the measures that the Action Proponents ruled out in the 2024 AFTT Draft Supplemental EIS/OEIS. Below are the mitigation measures that NMFS has preliminarily determined would ensure the least practicable adverse impact on all affected species and their habitat, including the specific considerations for military readiness activities. Table 51 describes the information designed to aid Lookouts and other applicable personnel with their observation, environmental compliance, and reporting responsibilities. The following sections describe the mitigation measures that would be implemented in association with the activities analyzed in this document. The mitigation measures are organized into two categories: activity-based mitigation and geographic mitigation areas.

Of note, according to the U.S. Navy, consistent with customary international law, when a foreign military vessel participates in a U.S. Navy exercise within the U.S. territorial sea (*i.e.*, 0 to 12 nmi (0 to 22.2 km) from shore), the U.S. Navy will request that the foreign vessel follow the U.S. Navy's mitigation measures for that particular event. When a foreign military vessel participates in a U.S. Navy exercise beyond the U.S. territorial sea but within the U.S. Exclusive Economic Zone, the U.S. Navy will encourage the foreign vessel to follow the U.S. Navy's mitigation measures for that particular event (Navy 2022a; Navy 2022b). In either scenario (*i.e.*, both within and beyond the territorial sea), U.S. Navy personnel will provide the foreign vessels participating with a description of the mitigation measures to follow.

TABLE 51—ENVIRONMENTAL AWARENESS AND EDUCATION

Stressor or Activity: All training and testing activities, as applicable.

Requirements: Navy personnel (including civilian personnel) involved in mitigation and training or testing activity reporting under the specified activities must complete one or more modules of the U.S. Navy Afloat Environmental Compliance Training Series, as identified in their career path training plan. Modules include:

- Introduction to Afloat Environmental Compliance Training Series. The introductory module provides information on environmental laws (*e.g.*, ESA, MMPA) and the corresponding responsibilities that are relevant to military readiness activities. The material explains why environmental compliance is important in supporting the Action Proponents' commitment to environmental stewardship.
- Marine Species Awareness Training. All bridge watch personnel, Commanding Officers, Executive Officers, maritime patrol aircraft aircrews, anti-submarine warfare and mine warfare rotary-wing aircrews, Lookouts, and equivalent civilian personnel must successfully complete the Marine Species Awareness Training prior to standing watch or serving as a Lookout. The Marine Species Awareness Training provides information on sighting cues, visual observation tools and techniques, and sighting notification procedures. Navy biologists developed Marine Species Awareness Training to improve the effectiveness of visual observations for biological resources, focusing on marine mammals and sea turtles, and including floating vegetation, jellyfish aggregations, and flocks of seabirds.

TABLE 51—ENVIRONMENTAL AWARENESS AND EDUCATION—Continued

- Protective Measures Assessment Protocol. This module provides the necessary instruction for accessing mitigation requirements during the event planning phase using the Protective Measures Assessment Protocol (PMAP) software tool.
- Sonar Positional Reporting System and Marine Mammal Incident Reporting. This module provides instruction on the procedures and activity reporting requirements for the Sonar Positional Reporting System and marine mammal incident reporting.

Activity-Based Mitigation

Activity-based mitigation is mitigation that the Action Proponents would implement whenever and wherever an applicable military readiness activity takes place within the AFTT Study Area. Previously referred to as “Procedural Mitigation,” the primary objective of activity-based mitigation is to reduce overlap of marine mammals with stressors that have the potential to cause injury or mortality in real time. Activity-based mitigations are fundamentally consistent across stressor activity, although specific variations account for differences in platform configuration, event characteristics, and stressor types. The Action Proponents customize mitigation for each applicable activity category or stressor. Activity-based mitigation generally involves: (1) The use of one or more trained Lookouts to diligently observe for marine mammals and other specific biological resources (*e.g.*, indicator species like floating vegetation, jelly aggregations, large schools of fish, and flocks of seabirds) within a mitigation zone, (2) requirements for Lookouts to immediately communicate sightings of marine mammals and other specific biological resources to the appropriate watch station for information dissemination, and (3) requirements for the watch station to implement mitigation (*e.g.*, halt an activity) until certain recommencement conditions have been met. The remainder of the mitigation measures are activity-based mitigation measures (table 52 through table 70) organized by stressor type and activity category and include acoustic stressors (*i.e.*, active sonar, air guns, pile driving, weapons firing noise), explosive stressors (*i.e.*, sonobuoys, torpedoes, medium-caliber and large-caliber projectiles, missiles and rockets, bombs, SINKEX, mine counter-measure and neutralization activities, mine neutralization involving Navy divers, line charge testing, ship shock trials), and physical disturbance and strike stressors (*i.e.*, vessel movement, towed in-water devices, small-, medium-, and large-caliber non-explosive practice munitions, non-explosive missiles and rockets, non-explosive bombs, mine shapes).

The Action Proponents must implement the proposed mitigation measures described in table 52 through table 70, as appropriate, in response to an applicable sighting within, or entering into, the relevant mitigation zone for acoustic stressors, explosives, and non-explosive munitions. Each table describes the activities that the requirements apply to, the required mitigation zones in which the action proponents must take a mitigation action, the required number of Lookouts and observation platform, the required mitigation actions that the action proponents must take before, during, and/or after an activity, and a required wait period prior to commencing or recommencing an activity after a delay, power down, or shutdown of an activity.

The Action Proponents proposed wait periods because events cannot be delayed or ceased indefinitely for the purpose of mitigation due to impacts on safety, sustainability, and the ability to meet mission requirements. Wait periods are designed to allow animals the maximum amount of time practical to resurface (*i.e.*, become available to be observed) before activities resume. The action proponents factored in an assumption that mitigation may need to be implemented more than once when developing wait period durations. Wait periods are 10 minutes, 15 minutes, or 30 minutes depending on the fuel constraints of the platform and feasibility of implementation. NMFS concurs with these proposed wait periods.

If an applicable species (identified in relevant mitigation table) is observed within a required mitigation zone prior to the initial start of the activity, the Action Proponents must: (1) relocate the event to a location where applicable species are not observed, or (2) delay the initial start of the event (or stressor use) until one of the “Mitigation Zone All-Clear Conditions” (defined below) has been met. If an applicable stressor is observed within a required mitigation zone during the event (*i.e.*, during use of the indicated source) the Action Proponents must take the action described in the “Mitigation Zones” section of the table until one of the

Mitigation Zone All-Clear Conditions has been met.

For all activities, an activity may not commence or recommence until one of the following “Mitigation Zone All-Clear Conditions” have been met: (1) a Lookout observes the applicable species exiting the mitigation zone, (2) a Lookout determines the applicable species has exited the mitigation zone based on its observed course and speed relative to the mitigation zone, (3) a Lookout affirms the mitigation zone has been clear from additional sightings for a designated “wait period,” or (4) for mobile events, the stressor has transited a distance equal to double the mitigation zone size beyond the location of the last sighting.

Activity-Based Mitigation for Active Acoustic Stressors

Mitigation measures for acoustic stressors are provided below and include active acoustic sources (table 52), pile driving and extraction (table 53), and weapons firing noise (table 54). Activity-based mitigation for acoustic stressors does not apply to:

- sources not operated under positive control (*i.e.*, sources not actively controlled by a crewmember, *e.g.*, unmanned platforms performing predetermined operations);
- sources used for safety of navigation;
- sources used or deployed by aircraft operating at high altitudes;
- sources used, deployed, or towed by unmanned platforms except when escort vessels are already participating in the event and have positive control over the source;
- sources used by submerged submarines;
- de minimis* sources;
- long-duration sources, including those used for acoustic and oceanographic research; and
- vessel-based, unmanned vehicle-based, or towed in-water sources when marine mammals (*e.g.*, dolphins) are determined to be intentionally swimming at the bow or alongside or directly behind the vessel, vehicle, or device (*e.g.*, to bow-ride or wake-ride).

TABLE 52—MITIGATION FOR ACTIVE ACOUSTIC SOURCES

Stressor or Activity: Active acoustic sources with power down and shut down capabilities:

- Low-frequency active sonar ≥ 200 dB.
 - Mid-frequency active sonar sources that are hull mounted on a surface ship (including surfaced submarines).
 - Broadband and other active acoustic sources > 200 dB.
-
- Mitigation Zones:
 - 1,000 yd (914.4 m) from active acoustic sources (power down of 6 dB total).
 - 500 yd (457.2 m) from active acoustic sources (power down of 10 dB total).
 - 200 yd (182.9 m) from active acoustic sources (shut down).
 - Mitigation Requirements:
 - One Lookout in/on one of the following:
 - Aircraft.
 - Pierside, moored, or anchored vessel.
 - Underway vessel with space/crew restrictions (including small boats).
 - Underway vessel already participating in the event that is escorting (and has positive control over sources used, deployed, or towed by) an unmanned platform.
 - Two Lookouts on an underway vessel without space/crew restrictions.
 - Lookouts would use information from passive acoustic detections to inform visual observations when passive acoustic devices are already being used in the event.
 - Mitigation Requirement Timing:
 - Action Proponent personnel must observe the applicable mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of using active acoustic sources (e.g., while maneuvering on station).
 - Action Proponent personnel must observe the applicable mitigation zone for marine mammals during use of active acoustic sources.
 - Wait Period:
 - 10 or 30 minutes (depending on fuel constraints of the platform).
-

Stressor or Activity: Active acoustic sources with shut down (but not power down) capabilities:

- Low-frequency active sonar < 200 dB.
 - Mid-frequency active sonar sources that are not hull mounted on a surface ship (e.g., dipping sonar, towed arrays).
 - High-frequency active sonar.
 - Air guns.
 - Broadband and other active acoustic sources < 200 dB.
-
- Mitigation Zone:
 - 200 yd (182.9 m) from active acoustic sources (shut down).
 - Mitigation Requirements:
 - One Lookout in/on one of the following:
 - Aircraft.
 - Pierside, moored, or anchored vessel.
 - Underway vessel with space/crew restrictions (including small boats).
 - Underway vessel already participating in the event that is escorting (and has positive control over sources used, deployed, or towed by) an unmanned platform.
 - Two Lookouts on an underway vessel without space/crew restrictions.
 - Lookouts would use information from passive acoustic detections to inform visual observations when passive acoustic devices are already being used in the event.
 - Mitigation Requirement Timing:
 - Action Proponent personnel must observe the mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of using active acoustic sources (e.g., while maneuvering on station).
 - Action Proponent personnel must observe the mitigation zone for marine mammals during use of active acoustic sources.
 - Wait Period:
 - 10 or 30 minutes (depending on fuel constraints of the platform).
-

TABLE 53—MITIGATION FOR PILE DRIVING AND EXTRACTION

Stressor or Activity: Vibratory and impact pile driving and extraction.

- Mitigation Zone:
 - 100 yd (91.4 m) from piles being driven or extracted (cease pile driving or extraction).
 - Mitigation Requirements
 - One Lookout on one of the following:
 - Shore.
 - Pier.
 - Small boat.
 - Mitigation Requirement Timing:
 - Action Proponent personnel must observe the mitigation zone for marine mammals and floating vegetation for 15 minutes prior to the initial start of pile driving or pile extraction.
 - Action Proponent personnel must observe the mitigation zone for marine mammals during pile driving or extraction.
 - Wait Period:
 - 15 minutes.
-

TABLE 54—MITIGATION FOR WEAPONS FIRING NOISE

Stressor or Activity: Explosive and non-explosive large-caliber gunnery firing noise (surface-to-surface and surface-to-air).

- Mitigation Zone:
 - 30 degrees on either side of the firing line out to 70 yd (64 m) from the gun muzzle (cease fire).
- Mitigation Requirements:
 - One Lookout on a vessel.
- Mitigation Requirement Timing:
 - Action Proponent personnel must observe the mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of large-caliber gun firing (*e.g.*, during target deployment).
 - Action Proponent personnel must observe the mitigation zone for marine mammals during large-caliber gun firing.
- Wait Period:
 - 30 minutes.

Activity-Based Mitigation for Explosive Stressors

Mitigation measures for explosive stressors are provided below and include explosive bombs (table 55), explosive gunnery (table 56), explosive line charges (table 57), explosive mine countermeasure and neutralization without divers (table 58), explosive mine neutralization with divers (table 59), explosive missiles and rockets (table 60), explosive sonobuoys and research-based sub-surface explosives (table 61), explosive torpedoes (table 62), ship shock trials (table 63), and

SINKEX (table 64). After the event, the Action Proponents must observe the area for marine mammals. Post-event observations are intended to aid incident reporting requirements for marine mammals. Practicality and the duration of post-event observations will be determined on site by fuel restrictions and mission-essential follow-on commitments. For example, it is more challenging to remain on-site for extended periods of time for some activities due to factors such as range from the target or altitude of an aircraft. Activity-based mitigation for explosive stressors does not apply to explosives:

- (i) deployed by aircraft operating at high altitudes;
- (ii) deployed by submerged submarines, except for explosive torpedoes;
- (iii) deployed against aerial targets;
- (iv) during vessel-launched missile or rocket events;
- (v) used at or below the *de minimis* threshold; and
- (vi) deployed by unmanned platforms except when escort vessels are already participating in the event and have positive control over the explosive.

TABLE 55—MITIGATION FOR EXPLOSIVE BOMBS

Stressor or Activity: Any NEW.

- Mitigation Zone:
 - 2,500 yd (2,286 m) from the intended target (cease fire).
- Mitigation Requirements:
 - One Lookout in an aircraft.
- Mitigation Requirement Timing:
 - Action Proponent personnel must observe the applicable mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of bomb delivery (*e.g.*, when arriving on station).
 - Action Proponent personnel must observe the applicable mitigation zone for marine mammals during bomb delivery.
 - After the event, when practical, Action Proponent personnel must observe the detonation vicinity for injured or dead marine mammals. If any injured or dead marine mammals are observed, Action Proponent personnel must follow established incident reporting procedures.
- Wait Period:
 - 10 minutes.

TABLE 56—MITIGATION FOR EXPLOSIVE GUNNERY

Stressor or Activity: Air-to-surface medium-caliber, surface-to-surface medium-caliber, surface-to-surface large-caliber.

- Mitigation Zones:
 - Air-to-surface medium-caliber:
 - 200 yd (182.9 m) from the intended impact location (cease fire).
 - Surface-to-surface medium-caliber:
 - 600 yd (548.6 m) from the intended impact location (cease fire).
 - Surface-to-surface large-caliber:
 - 1,000 yd (914.4 m) from the intended impact location (cease fire).
- Mitigation Requirements:
 - One Lookout on a vessel or in an aircraft.
- Mitigation Requirement Timing:
 - Action Proponent personnel must observe the applicable mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of gun firing (*e.g.*, while maneuvering on station).
 - Action Proponent personnel must observe the applicable mitigation zone for marine mammals during gunnery fire.
 - After the event, when practical, Action Proponent personnel must observe the detonation vicinity for injured or dead marine mammals. If any injured or dead marine mammals are observed, Action Proponent personnel must follow established incident reporting procedures.
- Wait Period:

TABLE 56—MITIGATION FOR EXPLOSIVE GUNNERY—Continued

- 10 or 30 minutes (depending on fuel constraints of the platform).

TABLE 57—MITIGATION FOR EXPLOSIVE LINE CHARGES

Stressor or Activity: Any NEW.

- Mitigation Zone:
 - 900 yd (823 m) from the detonation site (cease fire).
- Mitigation Requirements:
 - One Lookout on a vessel.
- Mitigation Requirement Timing:
 - Action Proponent personnel must observe the mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of detonations (*e.g.*, while maneuvering on station).
 - Action Proponent personnel must observe the mitigation zone for marine mammals during detonations.
 - After the event, when practical, Action Proponent personnel must observe the detonation vicinity for injured or dead marine mammals. If any injured or dead marine mammals are observed, Action Proponent personnel must follow established incident reporting procedures.
- Wait Period:
 - 30 minutes.

TABLE 58—MITIGATION FOR EXPLOSIVE MINE COUNTERMEASURE AND NEUTRALIZATION (NO DIVERS)

Stressor or Activity: 0.1–5 lb (0.05–2.3 kg) NEW, >5 lb (2.3 kg) NEW.

- Mitigation Zones:
 - 0.1–5 lb (0.05–2.3 kg) NEW:
 - 600 yd (548.6 m) from the detonation site (cease fire).
 - >5 lb (2.3 kg) NEW:
 - 2,100 yd (1,920.2 m) from the detonation site (cease fire).
- Mitigation Requirements:
 - 0.1–5 lb (0.05–2.3 kg) NEW:
 - One Lookout on a vessel or in an aircraft.
 - >5 lb (2.3 kg) NEW:
 - Two Lookouts: one on a small boat and one in an aircraft.
- Mitigation Requirement Timing:
 - Action Proponent personnel must observe the applicable mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of detonations (*e.g.*, while maneuvering on station; typically, 10 or 30 minutes depending on fuel constraints).
 - Action Proponent personnel must observe the applicable mitigation zone for marine mammals during detonations or fuse initiation.
 - After the event, when practical, Action Proponent personnel must observe the detonation vicinity for 10 or 30 minutes (depending on fuel constraints) for injured or dead marine mammals. If any injured or dead marine mammals are observed, Action Proponent personnel must follow established incident reporting procedures.
- Wait Period:
 - 10 or 30 minutes (depending on fuel constraints of the platform).

TABLE 59—MITIGATION FOR EXPLOSIVE MINE NEUTRALIZATION (WITH DIVERS)

Stressor or Activity: 0.1–20 lb (0.05–9.1 kg) NEW (positive control), 0.1–20 lb (0.05–9.1 kg) NEW (time-delay), >20–60 lb (9.1–27.2 kg) NEW (positive control).

- Mitigation Zones:
 - 0.1–20 lb (0.05–9.1 kg) NEW (positive control):
 - 500 yd (457.2 m) from the detonation site (cease fire).
 - 0.1–20 lb (0.05–9.1 kg) NEW (time-delay), >20–60 lb (9.1–27.2 kg) NEW (positive control):
 - 1,000 yd (914.4 m) from the detonation site (cease fire).
- Mitigation Requirements:
 - 0.1–20 lb (0.05–9.1 kg) NEW (positive control):
 - Two Lookouts in two small boats (one Lookout per boat) or one small boat and one rotary-wing aircraft (with one Lookout each).
 - 0.1–20 lb (0.05–9.1 kg) NEW (time-delay), >20–60 lb (9.1–27.2 kg) NEW (positive control):
 - Four Lookouts in two small boats (two Lookouts per boat), and one additional Lookout in an aircraft if used in the event.
- Mitigation Requirement Timing:
 - Time-delay devices must be set not to exceed 10 minutes.
 - Action Proponent personnel must observe the applicable mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of detonations or fuse initiation for positive control events (*e.g.*, while maneuvering on station) or for 30 minutes prior for time-delay events.
 - Action Proponent personnel must observe the applicable mitigation zone for marine mammals during detonations or fuse initiation.
 - When practical based on mission, safety, and environmental conditions:
 - Boats must observe from the mitigation zone radius mid-point.
 - When two boats are used, boats must observe from opposite sides of the mine location.
 - Platforms must travel a circular pattern around the mine location.
 - Boats must have one Lookout observe inward toward the mine location and one Lookout observe outward toward the mitigation zone perimeter.

TABLE 59—MITIGATION FOR EXPLOSIVE MINE NEUTRALIZATION (WITH DIVERS)—Continued

- Divers must be part of the Lookout Team.
- After the event, when practical, Action Proponent personnel must observe the detonation vicinity for 30 minutes for injured or dead marine mammals. If any injured or dead marine mammals are observed, Action Proponent personnel must follow established incident reporting procedures.
- Wait Period:
 - 10 or 30 minutes (depending on fuel constraints of the platform).

TABLE 60—MITIGATION FOR EXPLOSIVE MISSILES AND ROCKETS

Stressor or Activity: 0.6–20 lb (0.3–9.1 kg) NEW (air-to-surface), >20–500 lb (9.1–226.8 kg) NEW (air-to-surface).

- Mitigation Zones:
 - 0.6–20 lb (0.3–9.1 kg) NEW (air-to-surface):
 - 900 yd (823 m) from the intended impact location (cease fire).
 - >20–500 lb (9.1–226.8 kg) NEW (air-to-surface):
 - 2,000 yd (1,828.8 m) from the intended impact location (cease fire).
- Mitigation Requirements:
 - One Lookout in an aircraft.
- Mitigation Requirement Timing:
 - Action Proponent personnel must observe the applicable mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of missile or rocket delivery (e.g., during a fly-over of the mitigation zone).
 - Action Proponent personnel must observe the applicable mitigation zone for marine mammals during missile or rocket delivery.
 - After the event, when practical, Action Proponent personnel must observe the detonation vicinity for injured or dead marine mammals. If any injured or dead marine mammals are observed, Action Proponent personnel must follow established incident reporting procedures.
- Wait Period:
 - 10 or 30 minutes (depending on fuel constraints of the platform).

TABLE 61—MITIGATION FOR EXPLOSIVE SONOBUOYS AND RESEARCH-BASED SUB-SURFACE EXPLOSIVES

Stressor or Activity: Any NEW of sonobuoys, 0.1–5 lb (0.05–2.3 kg) NEW for other types of sub-surface explosives used in research applications.

- Mitigation Zones:
 - 600 yd (548.6 m) from the device or detonation sites (cease fire).
- Mitigation Requirements:
 - One Lookout on a small boat or in an aircraft.
 - Conduct passive acoustic monitoring for marine mammals; use information from detections to assist visual observations.
- Mitigation Requirement Timing:
 - Action Proponent personnel must observe the mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of detonations (e.g., during sonobuoy deployment, which typically lasts 20–30 minutes).
 - Action Proponent personnel must observe the mitigation zone for marine mammals during detonations.
 - After the event, when practical, Action Proponent personnel must observe the detonation vicinity for injured or dead marine mammals. If any injured or dead marine mammals are observed, Action Proponent personnel must follow established incident reporting procedures.
- Wait Period:
 - 10 or 30 minutes (depending on fuel constraints of the platform).

TABLE 62—MITIGATION FOR EXPLOSIVE TORPEDOES

Stressor or Activity: Any NEW.

- Mitigation Zone:
 - 2,100 yd (1,920.2 m) from the intended impact location (cease fire).
- Mitigation Requirements:
 - One Lookout in an aircraft.
 - Conduct passive acoustic monitoring for marine mammals; use information from detections to assist visual observations.
- Mitigation Requirement Timing:
 - Action Proponent personnel must observe the mitigation zone for marine mammals, floating vegetation, and jellyfish aggregations immediately prior to the initial start of detonations (e.g., during target deployment).
 - Action Proponent personnel must observe the mitigation zone for marine mammals and jellyfish aggregations during torpedo launches.
 - After the event, when practical, Action Proponent personnel must observe the detonation vicinity for injured or dead marine mammals. If any injured or dead marine mammals are observed, Action Proponent personnel must follow established incident reporting procedures.
- Wait Period:
 - 10 or 30 minutes (depending on fuel constraints of the platform).

TABLE 63—MITIGATION FOR SHIP SHOCK TRIALS

Stressor or Activity: Any NEW.

- Mitigation Zone:
 - 3.5 nmi (6.5 km) from the target ship hull (cease fire).
- Mitigation Requirements:
 - On the day of the event, 10 observers (Lookouts and third-party observers combined), spread between aircraft or multiple vessels as specified in the event-specific mitigation plan.
- Mitigation Requirement Timing:
 - Action Proponent personnel must develop a detailed, event-specific monitoring and mitigation plan in the year prior to the event and provide it to NMFS for review.
 - Beginning at first light on days of detonation, until the moment of detonation (as allowed by safety measures) Action Proponent personnel must observe the mitigation zone for marine mammals, floating vegetation, jellyfish aggregations, large schools of fish, and flocks of seabirds.
 - If any dead or injured marine mammals are observed after an individual detonation, Action Proponent personnel must follow established incident reporting procedures and halt any remaining detonations until Action Proponent personnel or third-party observers can consult with NMFS and review or adapt the event-specific mitigation plan, if necessary.
 - During the 2 days following the event (minimum) and up to 7 days following the event (maximum), and as specified in the event-specific mitigation plan, Action Proponent personnel must observe the detonation vicinity for injured or dead marine mammals.
- Wait Period:
 - 30 minutes.

TABLE 64—MITIGATION FOR SINKING EXERCISES (SINKEX)

Stressor or Activity: Any NEW.

- Mitigation Zone:
 - 2.5 nmi (4.6 km) from the target ship hull (cease fire).
- Mitigation Requirements:
 - Two Lookouts: one on a vessel and one in an aircraft.
 - Conduct passive acoustic monitoring for marine mammals; use information from detections to assist visual observations.
- Mitigation Requirement Timing:
 - During aerial observations for 90 minutes prior to the initial start of weapon firing, Action Proponent personnel must observe the mitigation zone for marine mammals, floating vegetation, and jellyfish aggregations.
 - From the vessel during weapon firing, and from the aircraft and vessel immediately after planned or unplanned breaks in weapon firing of more than 2 hours, Action Proponent personnel must observe the mitigation zone for marine mammals.
 - Action Proponent personnel must observe the detonation vicinity for injured or dead marine mammals for 2 hours after sinking the vessel or until sunset, whichever comes first. If any injured or dead marine mammals are observed, Action Proponent personnel must follow established incident reporting procedures.
- Wait Period:
 - 30 minutes.

Activity-Based Mitigation for Non-Explosive Ordnance

Mitigation measures for non-explosive ordnance are provided below and include non-explosive aerial-deployed mines and bombs (table 65), non-explosive gunnery (table 66), and non-explosive missiles and rockets (table 67). Explosive aerial-deployed mines do

not detonate upon contact with the water surface and are therefore considered non-explosive when mitigating the potential for a mine shape to strike a marine mammal at the water surface. Activity-based mitigation for non-explosive ordnance does not apply to non-explosive ordnance deployed:

- (i) by aircraft operating at high altitudes;

- (ii) against aerial targets;
- (iii) during vessel-launched missile or rocket events; and
- (iv) by unmanned platforms except when escort vessels are already participating in the event and have positive control over ordnance deployment.

TABLE 65—MITIGATION FOR NON-EXPLOSIVE AERIAL-DEPLOYED MINES AND BOMBS

Stressor or Activity: Non-explosive aerial-deployed mines and non-explosive bombs.

- Mitigation Zone:
 - 1,000 yd (914.4 m) from the intended target (cease fire).
- Mitigation Requirements:
 - One Lookout in an aircraft.
- Mitigation Requirement Timing:
 - Action Proponent personnel must observe the mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of mine or bomb delivery (e.g., when arriving on station).
 - Action Proponent personnel must observe the mitigation zone for marine mammals during mine or bomb delivery.
- Wait Period:
 - 10 minutes.

TABLE 66—MITIGATION FOR NON-EXPLOSIVE GUNNERY

Stressor or Activity: Non-explosive surface-to-surface large-caliber ordnance, non-explosive surface-to-surface and air-to-surface medium-caliber ordnance, non-explosive surface-to-surface and air-to-surface small-caliber ordnance.

- Mitigation Zone:
 - 200 yd (182.9 m) from the intended impact location (cease fire).
- Mitigation Requirements:
 - One Lookout on a vessel or in an aircraft.
- Mitigation Requirement Timing:
 - Action Proponent personnel must observe the mitigation zone for marine mammals and floating vegetation immediately prior to the start of gun firing (*e.g.*, while maneuvering on station).
 - Action Proponent personnel must observe the mitigation zone for marine mammals during gunnery firing.
- Wait Period:
 - 10 or 30 minutes (depending on fuel constraints of the platform).

TABLE 67—MITIGATION FOR NON-EXPLOSIVE MISSILES AND ROCKETS

Stressor or Activity: Non-explosives (air-to-surface).

- Mitigation Zone:
 - 900 yd (823 m) from the intended impact location (cease fire).
- Mitigation Requirements:
 - One Lookout in an aircraft.
- Mitigation Requirement Timing:
 - Action Proponent personnel must observe the mitigation zone for marine mammals and floating vegetation immediately prior to the start of missile or rocket delivery (*e.g.*, during a fly-over of the mitigation zone).
 - Action Proponent personnel must observe the mitigation zone for marine mammals during missile or rocket delivery.
- Wait Period:
 - 10 or 30 minutes (depending on fuel constraints of the platform).

Activity-Based Mitigation for Physical Disturbance and Strike Stressors

Mitigation measures for physical disturbance and strike stressors are

provided below and include manned surface vessels (table 68), unmanned vehicles (table 69), and towed in-water devices (table 70).

TABLE 68—MITIGATION FOR MANNED SURFACE VESSELS

Stressor or Activity: Manned surface vessels, including surfaced submarines.

- Mitigation Zones:
 - Underway manned surface vessels must maneuver themselves (which may include reducing speed) to maintain the following distances as mission and circumstances allow:
 - 500 yd (457.2 m) from whales.
 - 200 yd (182.9 m) from other marine mammals.
- Mitigation Requirements:
 - One or more Lookouts on manned underway surface vessels in accordance with the most recent navigation safety instruction.
- Mitigation Requirement Timing:
 - Action Proponent personnel must observe the mitigation zone for marine mammals immediately prior to manned surface vessels getting underway and while underway.

TABLE 69—MITIGATION FOR UNMANNED VEHICLES

Stressor or Activity: Unmanned Surface Vehicles and Unmanned Underwater Vehicles already being escorted (and operated under positive control) by a manned surface support vessel.

- Mitigation Zones:
 - A surface support vessel that is already participating in the event, and has positive control over the unmanned vehicle, must maneuver the unmanned vehicle (which may include reducing its speed) to ensure it maintains the following distances as mission and circumstances allow:
 - 500 yd (457.2 m) from whales.
 - 200 yd (182.9 m) from other marine mammals.
- Mitigation Requirements:
 - One Lookout on a surface support vessel that is already participating in the event, and has positive control over the unmanned vehicle.
- Mitigation Requirement Timing:
 - Action Proponent personnel must observe the mitigation zone for marine mammals immediately prior to unmanned vehicles getting underway and while underway, the Lookout must observe.

TABLE 70—MITIGATION FOR TOWED IN-WATER DEVICES

Stressor or Activity: In-water devices towed by an aircraft, a manned surface vessel, or an Unmanned Surface Vehicle or Unmanned Underwater Vehicle already being escorted (and operated under positive control) by a manned surface vessel.

- Mitigation Zone:
 - Manned towing platforms, or surface support vessels already participating in the event that have positive control over an unmanned vehicle that is towing an in-water device, must maneuver itself or the unmanned vehicle (which may include reducing speed) to ensure towed in-water devices maintain the following distances as mission and circumstances allow:
 - 250 yd (228.6 m) from marine mammals.
- Mitigation Requirements:
 - One Lookout on the manned towing vessel, or on a surface support vessel that is already participating in the event and has positive control over an unmanned vehicle that is towing an in-water device.
- Mitigation Requirement Timing:
 - Action Proponent personnel must observe the mitigation zone for marine mammals immediately prior to and while in-water devices are being towed.

Geographic Mitigation Areas

In addition to activity-based mitigation, the Action Proponents would implement mitigation measures within mitigation areas to avoid or minimize potential impacts on marine mammals (see figure 11.6–1 of the application). A full technical analysis of the mitigation areas that the Action Proponents considered for marine mammals is provided in section 5.7 (Geographic Mitigation) of the 2024 AFTT Draft Supplemental EIS/OEIS. The Action Proponents took into account public comments received on the 2018 AFTT Draft EIS/OEIS, the best available science, and the practicability of implementing additional mitigation measures and has enhanced its mitigation areas and mitigation measures beyond those that were included in the 2018–2025 regulations to further reduce impacts to marine mammals.

Information on the mitigation measures that the Action Proponents

propose to implement within mitigation areas are provided in table 71 through table 78. The mitigation applies year-round unless specified otherwise in the tables.

NMFS conducted an independent analysis of the mitigation areas that the Action Proponent proposed, which are described below. NMFS preliminarily concurs with the Action Proponents' analysis, which indicates that the measures in these mitigation areas are both practicable and will reduce the likelihood, magnitude, or severity of adverse impacts to marine mammals or their habitat in the manner described in the Action Proponents' analysis and this rule. NMFS is heavily reliant on the Action Proponents' description of operational practicability, since the Action Proponents are best equipped to describe the degree to which a given mitigation measure affects personnel safety or mission effectiveness, and is practical to implement. The Action Proponents consider the measures in

this proposed rule to be practicable, and NMFS concurs. We further discuss the manner in which the Geographic Mitigation Areas in the proposed rule will reduce the likelihood, magnitude, or severity of adverse impacts to marine mammal species or their habitat in the Preliminary Analysis and Negligible Impact Determination section.

Table 71 details geographic mitigation related to ship shock trials, which involve the use of explosives. Ship shock trials are conducted only within established ship shock trial boxes within the Gulf of America and overlapping the Jacksonville OPAREA. The boundaries of the mitigation areas match the boundaries of each ship shock trial box. Mitigation is a continuation of existing measures, except for new mitigation related to the location of the northern Gulf of America ship shock trial box as described in table 71.

TABLE 71—SHIP SHOCK TRIAL MITIGATION AREA

Category	Mitigation requirements	Mitigation benefits
Explosives	Navy personnel must not conduct ship shock trials within the portion of the ship shock trial box that overlaps the Jacksonville OPAREA from November 15 through April 15. Pre-event planning for ship shock trials must include the selection of one primary and two secondary sites (within one of the ship shock trial boxes) where marine mammal abundance is expected to be the lowest during an event, with the primary and secondary locations located more than 2 nmi (3.7 km) from the western boundary of the Gulf Stream for events planned within the portion of the ship shock trial box that overlaps the Jacksonville OPAREA. If Navy personnel determine during pre-event visual observations that the primary site is environmentally unsuitable (e.g., continuous observations of marine mammals), they would evaluate the potential to move the event to one of the secondary sites in accordance with the event-specific mitigation and monitoring plan (see table 11.5–2 of the application for additional information).	Prior to being repositioned, the northern Gulf of America ship shock trial box overlapped the Rice's whale core distribution area. Preliminary Navy Acoustic Effects Model data indicated that Rice's whales would have potentially been exposed to AUD INJ, TTS, and behavioral impacts from explosives if events were to occur at that location. Navy personnel determined it would be practicable to reposition the ship shock trial box outside of the Rice's whale core distribution area, and into a new location that would avoid potential exposure of Rice's whales to injurious levels of sound. The repositioned ship shock trial box is now located off the Naval Surface Warfare Center, Panama City Division Testing Range's southern boundary. Mitigation to not conduct ship shock trials in the Jacksonville OPAREA from November 15 through April 15 is designed to avoid potential injurious and behavioral impacts on NARW during calving season. Mitigation to consider marine mammal abundance during pre-event planning, to prioritize locations that are more than 2 nmi (3.7 km) from the western boundary of the Gulf Stream (where marine mammals would be expected in greater concentrations for foraging and migration) when conducting ship shock trials in the boxes that overlap the Jacksonville OPAREA, and to evaluate the environmental suitability of the selected site based on pre-event observations, are collectively designed to reduce the number of individual marine mammals exposed, as well as the level of impact that could potentially be received by each animal.

TABLE 71—SHIP SHOCK TRIAL MITIGATION AREA—Continued

Category	Mitigation requirements	Mitigation benefits
		The benefits of the mitigation for Rice's whales, NARW, and other marine mammal species would be substantial because ship shock trials use the largest NEW of any explosive activity conducted under the Proposed Action.

Table 72 details geographic mitigation related to MTEs (*i.e.*, Composite Training Unit Exercises and Sustainment Exercises). Mitigation is a continuation of existing measures.

TABLE 72—MAJOR TRAINING EXERCISE PLANNING AWARENESS MITIGATION AREA

Category	Mitigation requirements	Mitigation benefits
Acoustic, Explosives, Physical disturbance and strike.	Northeast: Within Major Training Exercise Planning Awareness Mitigation Areas located in the Northeast (<i>i.e.</i>, the combined areas within the Gulf of Maine, over the continental shelves off Long Island, Rhode Island, Massachusetts, and Maine), the Action Proponents must not conduct any full or partial MTEs. Mid-Atlantic: Within Major Training Exercise Planning Awareness Mitigation Areas located in the Mid-Atlantic (<i>i.e.</i>, the combined areas off Maryland, Delaware, and North Carolina), the Action Proponents must avoid conducting any full or partial MTEs to the maximum extent practical, and must not conduct more than four full or partial MTEs per year.	Mitigation to prohibit or limit MTEs within regional planning mitigation areas is collectively designed to reduce the number of marine mammal species, and individuals within each species, that are exposed to potential impacts from active sonar during MTEs. The mitigation areas are situated among highly productive environments and persistent oceanographic features associated with upwelling, steep bathymetric contours, and canyons. The areas have high marine mammal densities, abundance, or concentrated use for feeding, reproduction, or migration. Mitigation benefits would be substantial because MTEs are conducted on a larger scale and with more hours of active sonar use than other types of active sonar events. Mitigation for the Northeast planning areas (including in the Gulf of Maine) is designed to prevent MTEs from occurring within NARW foraging critical habitat, across the shelf break in the northeast, on Georges Bank, and in areas that contain underwater canyons (<i>e.g.</i>, Hydrographer Canyon). These locations (including within a portion of the Northeast Canyons and Seamounts National Marine Monument) have been associated with high occurrences of marine mammal feeding, abundance, or mating for harbor porpoises and humpback, minke, sei, fin, and NARW. Mitigation for the Mid-Atlantic planning areas is designed to limit the number of MTEs that could occur within large swaths of shelf break that contain underwater canyons or other habitats (<i>e.g.</i>, Norfolk Canyon, part of the Cape Hatteras Special Research Area) associated with high marine mammal diversity in this region, including blue, fin, minke, sei, sperm, beaked, dwarf sperm, pygmy sperm, and humpback whales, as well as Risso's dolphins and other delphinid species. The planning areas also overlap NARW migration habitats.

Table 73 details geographic mitigation related to active sonar and explosives (and special reporting for their use), and physical disturbance and strike stressors off the northeastern United States. The mitigation area extent matches that of the NARW foraging critical habitat designated in 2016 (81 FR 4838, February 26, 2016). Mitigation is a

continuation of existing measures, with clarification that requirements pertain to in-water stressors (*i.e.*, not activities with no potential marine mammal impacts, such as air-to-air activities). Mitigation is designed to protect individual NARW within their foraging critical habitat. Mitigation will also protect individuals of other species

whose biologically significant habitats overlap the mitigation area, including harbor porpoises and humpback, minke, sei, and fin whales. Special reporting for the use of acoustics and explosives is also required for this area (see Proposed Reporting section for details).

TABLE 73—NORTHEAST NORTH ATLANTIC RIGHT WHALE MITIGATION AREA

Category	Mitigation requirements	Mitigation benefits
Acoustic	The Action Proponents must minimize the use of low-frequency active sonar, mid-frequency active sonar, and high-frequency active sonar in the mitigation area to the maximum extent practical.	Mitigation is designed to minimize exposure of NARW to sounds with potential for injury or behavioral impacts.
Explosives	The Action Proponents must not detonate in-water explosives (including underwater explosives and explosives deployed against surface targets) within the mitigation area. The Action Proponents must not detonate explosive sonobuoys within 3 nmi (5.6 km) of the mitigation area.	Mitigation is designed to prevent exposure of NARW to explosives with potential for injury, mortality, or behavioral impacts. Mitigation to prohibit explosive sonobuoys within 3 nmi (5.6 km) is designed to further prevent exposure to large and dispersed explosive sonobuoy fields.

TABLE 73—NORTHEAST NORTH ATLANTIC RIGHT WHALE MITIGATION AREA—Continued

Category	Mitigation requirements	Mitigation benefits
Physical disturbance and strike.	The Action Proponents must not use non-explosive bombs within the mitigation area. During non-explosive torpedo events within the mitigation area: —The Action Proponents must conduct activities during daylight hours in Beaufort sea state 3 or less. —In addition to Lookouts required as described in section 11.5 of the application, the Action Proponents must post two Lookouts in an aircraft during dedicated aerial surveys, and one Lookout on the submarine participating in the event (when surfaced). Lookouts must begin conducting visual observations immediately prior to the start of an event. If floating vegetation or marine mammals are observed in the event vicinity, the event must not commence until the vicinity is clear or the event is relocated to an area where the vicinity is clear. Lookouts must continue to conduct visual observations during the event. If marine mammals are observed in the vicinity, the event must cease until one of the Mitigation Zone All-Clear Conditions has been met as described in section 11.5 of the application. —During transits and normal firing, surface ships must maintain a speed of no more than 10 kn (18.5 km/hr); during submarine target firing, surface ships must maintain speeds of no more than 18 kn (33.3 km/hr); and during vessel target firing, surface ship speeds may exceed 18 kn (33.3 km/hr) for brief periods of time (<i>e.g.</i>, 10–15 minutes). For vessel transits within the mitigation area: —The Action Proponents must conduct a web query or e-mail inquiry to the North Atlantic Right Whale Sighting Advisory System or WhaleMap (https://whalemap.org/) to obtain the latest NARW sightings data prior to transiting the mitigation area. The Action Proponents must provide Lookouts the sightings data prior to standing watch. Lookouts must use that data to help inform visual observations during vessel transits. Surface ships must implement speed reductions after observing a NARW, if transiting within 5 nmi (9.3 km) of a sighting reported to the North Atlantic Right Whale Sighting Advisory System within the past week, and when transiting at night or during periods of reduced visibility.	Mitigation to prohibit use of non-explosive bombs is designed to reduce the potential for NARW to be struck by non-explosive ordnance. Mitigation to conduct non-explosive torpedo activities during daylight hours in Beaufort sea state 3 or less, and to post additional Lookouts from aircraft (and submarines, when surfaced), is designed to improve marine mammal sightability during visual observations. Mitigation for vessels to obtain sightings information from the North Atlantic Right Whale Sighting Advisory System and implement speed reductions in certain circumstances is designed to reduce the potential for vessels to encounter NARW. The North Atlantic Right Whale Sighting Advisory System is a NOAA Northeast Fisheries Science Center program that collects sightings information off the northeastern United States from aerial surveys, shipboard surveys, whale watching vessels, and opportunistic sources, such as the Coast Guard, commercial ships, fishing vessels, and the public.

Table 74 details geographic mitigation related to active sonar and special reporting for the use of active sonar and in-water explosives within the Gulf of Maine. Mitigation is a continuation of existing measures. Special reporting for the use of acoustics and explosives is also required for this area (see Proposed Reporting section for details).

TABLE 74—GULF OF MAINE MARINE MAMMAL MITIGATION AREA

Category	Mitigation requirements	Mitigation benefits
Acoustic	The Action Proponents must not use more than 200 hours of surface ship hull-mounted mid-frequency active sonar annually within the mitigation area.	Mitigation is designed to reduce exposure of NARW to potentially injurious levels of sound from the type of active sonar with the highest source power used in the Study Area within foraging critical habitat designated by NMFS in 2016 (81 FR 4838, February 26, 2016) and additional sea space southward over Georges Bank.

Table 75 details geographic mitigation related to active sonar and explosives (and special reporting for their use), and physical disturbance and strike stressors in the Jacksonville OPAREA. Mitigation is a continuation of existing measures, with clarification that requirements pertain to in-water stressors (*i.e.*, not activities with no potential marine mammal impacts, such as air-to-air activities).

TABLE 75—JACKSONVILLE OPERATING AREA NORTH ATLANTIC RIGHT WHALE MITIGATION AREA

Category	Mitigation requirements	Mitigation benefits
Acoustic, explosives, and physical disturbance and vessel strike.	From November 15 to April 15 within the mitigation area, prior to vessel transits or military readiness activities involving active sonar, in-water explosives (including underwater explosives and explosives deployed against surface targets), or non-explosive ordnance deployed against surface targets (including aerial-deployed mines), the Action Proponents must initiate communication with Fleet Area Control and Surveillance Facility, Jacksonville to obtain Early Warning System data. The facility must advise of all reported NARW sightings in the vicinity of planned vessel transits and military readiness activities. —Sightings data must be used when planning event details (<i>e.g.</i>, timing, location, duration) to minimize interactions with NARW to the maximum extent practical.	Mitigation is designed to minimize potential NARW-vessel interactions and exposure to stressors with the potential for mortality, injury, or behavioral disturbance within the portions of the reproduction (calving) critical habitat designated by NMFS in 2016 (81 FR 4838) and important migration habitat that overlaps the Jacksonville OPAREA. The benefits of the mitigation would be substantial because the Jacksonville OPAREA is an Action Proponent concentration area within the southeastern region.

TABLE 75—JACKSONVILLE OPERATING AREA NORTH ATLANTIC RIGHT WHALE MITIGATION AREA—Continued

Category	Mitigation requirements	Mitigation benefits
	The Action Proponents must provide Lookouts the sightings data prior to standing watch to help inform visual observations.	

Table 76 details geographic mitigation related to active sonar and explosives (and special reporting for their use), and physical disturbance and strike stressors off the Southeastern U.S. Mitigation is a continuation of existing measures, with clarification that requirements pertain to the use of in-water stressors (*i.e.*, not activities with no potential marine mammal impacts, such as air-to-air

activities). The mitigation area is the largest area practical to implement within the NARW reproduction critical habitat designated by NMFS in 2016 (81 FR 4838). Mitigation is designed to protect reproductive mothers, calves, and mother-calf pairs within the only known NARW calving habitat. Mitigation benefits would be substantial because the mitigation area

encompasses the Georgia and northeastern Florida coastlines (where the highest seasonal concentrations occur) and coastal extent of the Jacksonville OPAREA (an Action Proponent concentration area). Special reporting for the use of acoustics and explosives is also required for this area (see Proposed Reporting section for details).

TABLE 76—SOUTHEAST NORTH ATLANTIC RIGHT WHALE MITIGATION AREA

Category	Mitigation requirements	Mitigation benefits
Acoustic	From November 15 to April 15 within the mitigation area, the Action Proponents must not use high-frequency active sonar; or low-frequency or mid-frequency active sonar except: —To the maximum extent practical, the Action Proponents must minimize use of (1) helicopter dipping sonar (a mid-frequency active sonar source) and (2) low-frequency or surface ship hull-mounted mid-frequency active sonar during navigation training or object detection.	Mitigation is designed to minimize exposure to levels of sound that have the potential to cause injurious or behavioral impacts.
Explosives	From November 15 to April 15 within the mitigation area, the Action Proponents must not detonate in-water explosives (including underwater explosives and explosives deployed against surface targets).	Mitigation is designed to prevent exposure to explosives with the potential for injury, mortality, or behavioral disturbance.
Physical disturbance and vessel strike.	From November 15 to April 15 within the mitigation area, the Action Proponents must not deploy non-explosive ordnance against surface targets (including aerial-deployed mines). From November 15 to April 15 within the mitigation area, surface ships must minimize north-south transits to the maximum extent practical, and must implement speed reductions after they observe a NARW, if they are within 5 nmi (9.3 km) of an Early Warning System sighting reported within the past 12 hours, and at night and in poor visibility.	Mitigation is designed to prevent strikes by non-explosive ordnance, and to decrease the potential for vessel strikes. North-south transit restrictions are designed to reduce the time ships spend in the highest seasonal occurrence areas to further decrease vessel strike risk.
Acoustic, explosives, and physical disturbance and vessel strike.	From November 15 to April 15 within the mitigation area, prior to vessel transits or military readiness activities involving active sonar, in-water explosives (including underwater explosives and explosives deployed against surface targets), or non-explosive ordnance deployed against surface targets (including aerial-deployed mines), the Action Proponents must initiate communication with Fleet Area Control and Surveillance Facility, Jacksonville to obtain Early Warning System sightings data. The facility must advise of all reported NARW sightings in the vicinity of planned vessel transits and military readiness activities. The Action Proponents must provide Lookouts the sightings data prior to standing watch to help inform visual observations.	Mitigation is designed to minimize potential vessel interactions and exposure to stressors with the potential for mortality, injury, or behavioral disturbance.

Table 77 details geographic mitigation related to active sonar, explosives, and physical disturbance and strike stressors off the U.S. east coast to the boundary

of the U.S. EEZ. Mitigation is a continuation of existing measures, with clarification that requirements pertain to the use of in-water stressors (*i.e.*, not

activities with no potential marine mammal impacts, such as air-to-air activities).

TABLE 77—DYNAMIC NORTH ATLANTIC RIGHT WHALE MITIGATION AREAS

Category	Mitigation requirements	Mitigation benefits
Acoustic, explosives, and physical disturbance and vessel strike.	The applicable dates and locations of this mitigation area must correspond with NMFS' Dynamic Management Areas, which fluctuate throughout the year based on the locations and timing of confirmed NARW detections. The Action Proponents must provide NARW Dynamic Management Area information (<i>e.g.</i> , location and dates) to applicable assets transiting and training or testing in the vicinity of the Dynamic Management Area. —The broadcast awareness notification messages must alert assets (and their Lookouts) to the possible presence of NARW in their vicinity.	The mitigation area extent matches the boundary of the U.S. EEZ on the East Coast, which is the full extent of where Dynamic Management Areas could potentially be established year-round. NMFS manages the Dynamic Management Areas program off the U.S. East Coast with the primary goal of reducing the likelihood of NARW vessel strikes from all mariners. Mitigation is designed to minimize potential NARW vessel interactions and exposure to acoustic stressors, explosives, and physical disturbance and strike stressors that have the potential to cause mortality, injury, or behavioral disturbance.

TABLE 77—DYNAMIC NORTH ATLANTIC RIGHT WHALE MITIGATION AREAS—Continued

Category	Mitigation requirements	Mitigation benefits
	Lookouts must use the information to help inform visual observations during military readiness activities that involve vessel movements, active sonar, in-water explosives (including underwater explosives and explosives deployed against surface targets), or non-explosive ordnance deployed against surface targets in the mitigation area.	

Table 78 details geographic mitigation related to active sonar and explosives (and special reporting for their use) in the northeastern Gulf of America. Mitigation is a continuation of existing

measures. The mitigation area extent aligns with this species' small and resident population area identified by NMFS in its 2016 status review (Rosel *et al.*, 2016). Special reporting for the

use of acoustics and explosives is also required for this area (see Proposed Reporting section for details).

TABLE 78—RICE'S WHALE MITIGATION AREA

Category	Mitigation requirements	Mitigation benefits
Acoustic	The Action Proponents must not use more than 200 hours of surface ship hull-mounted mid-frequency active sonar annually within the mitigation area.	Mitigation is designed to reduce exposure of individuals within the small and resident population of Rice's whales to potentially injurious levels of sound by the type of active sonar with the highest source power used in the Study Area.
Explosives	Except during mine warfare activities, the Action Proponents must not detonate in-water explosives (including underwater explosives and explosives deployed against surface targets) within the mitigation area.	Mitigation is designed to reduce exposure of individuals within the small and resident population of Rice's whales to explosives that have the potential to cause injury, mortality, or behavioral disturbance.

Mitigation Conclusions

NMFS has carefully evaluated the Action Proponents' proposed mitigation measures—many of which were developed with NMFS' input during the previous phases of AFTT authorizations but several of which are new since implementation of the 2018 to 2025 regulations—and considered a broad range of other measures (*i.e.*, the measures considered but eliminated in the 2018 AFTT Final EIS/OEIS, which reflect many of the comments that have arisen from public input or through discussion with NMFS in past years) in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: the manner in which, and the degree to which, the successful implementation of the mitigation measures is expected to reduce the likelihood and/or magnitude of adverse impacts to marine mammal species and their habitat; the proven or likely efficacy of the measures; and the practicability of the measures for applicant implementation, including consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Based on our evaluation of the Action Proponents' proposed measures, as well as other measures considered by the Action Proponents and NMFS (see

section 5.9 (Measures Considered but Eliminated) of chapter 5 (Mitigation) of the 2024 AFTT Draft Supplemental EIS/OEIS), NMFS has preliminarily determined that these proposed mitigation measures are appropriate means of effecting the least practicable adverse impact on marine mammal species and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and considering specifically personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. Additionally, an adaptive management component helps further ensure that mitigation is regularly assessed and provides a mechanism to improve the mitigation, based on the factors above, through modification as appropriate.

The proposed rule comment period provides the public an opportunity to submit recommendations, views, and/or concerns regarding the Action Proponents' activities and the proposed mitigation measures. While NMFS has preliminarily determined that the Action Proponents' proposed mitigation measures would effect the least practicable adverse impact on the affected species and their habitat, NMFS will consider all public comments to help inform our final determination. Consequently, proposed mitigation measures may be refined, modified, removed, or added prior to the issuance of the final rule based on public comments received and, as appropriate,

analysis of additional potential mitigation measures.

Proposed Monitoring

Section 101(a)(5)(A) of the MMPA states that in order to authorize incidental take for an activity, 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 incidental take 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.

Although the Navy has been conducting research and monitoring for over 20 years in areas where it has been training, it developed a formal marine species monitoring program in support of the AFTT Study Area MMPA and ESA processes in 2009. Across all Navy training and testing study areas, the robust marine species monitoring program has resulted in hundreds of technical reports and publications on marine mammals that have informed Navy and NMFS analyses in environmental planning documents, rules, and Biological Opinions. The reports are made available to the public on the Navy's marine species monitoring website (www.navy.mil/marinespeciesmonitoring.us) and the data on the Ocean Biogeographic Information System

Spatial Ecological Analysis of Megavertebrate Populations (OBIS-SEAMAP) (<https://seamap.env.duke.edu/>).

The Navy would continue collecting monitoring data to inform our understanding of the occurrence of marine mammals in the AFTT Study Area; the likely exposure of marine mammals to stressors of concern in the AFTT Study Area; the response of marine mammals to exposures to stressors; the consequences of a particular marine mammal response to their individual fitness and, ultimately, populations; and the effectiveness of implemented mitigation measures. Taken together, mitigation and monitoring comprise the Navy's integrated approach for reducing environmental impacts from the specified activities. The Navy's overall monitoring approach seeks to leverage and build on existing research efforts whenever possible.

As agreed upon between the Action Proponents and NMFS, the monitoring measures presented here, as well as the mitigation measures described above, focus on the protection and management of potentially affected marine mammals. A well-designed monitoring program can provide important feedback for validating assumptions made in analyses and allow for adaptive management of marine mammals and their habitat, and other marine resources. Monitoring is required under the MMPA, and details of the monitoring program for the specified activities have been developed through coordination between NMFS and the Action Proponents through the regulatory process for previous Navy at-sea training and testing activities.

Navy Marine Species Research and Monitoring Strategic Framework

The initial structure for the U.S. Navy's marine species monitoring efforts was developed in 2009 with the Integrated Comprehensive Monitoring Program (ICMP). The intent of the ICMP was to provide an overarching framework for coordination of the Navy's monitoring efforts during the early years of the program's establishment. A Strategic Planning Process (U.S. Department of the Navy, 2013) was subsequently developed and together with the ICMP framework serves as a planning tool to focus marine species monitoring priorities defined by ESA and MMPA requirements, and to coordinate monitoring efforts across regions based on a set of common objectives. Using an underlying conceptual framework incorporating a progression of knowledge from

occurrence to exposure/response, and ultimately consequences, the Strategic Planning Process was developed as a tool to help guide the investment of resources to address top level objectives and goals of the monitoring program most efficiently. The Strategic Planning Process identifies Intermediate Scientific Objectives, which form the basis of evaluating, prioritizing, and selecting new monitoring projects or investment topics and serve as the basis for developing and executing new monitoring projects across the Navy's training and testing ranges (both Atlantic and Pacific).

Monitoring activities relating to the effects of military readiness activities on marine species are generally designed address one or more of the following top-level goals:

(i) An increase in the understanding of the likely occurrence of marine mammals and ESA-listed marine species in the vicinity of the action (*i.e.*, presence, abundance, distribution, and density);

(ii) An increase in the understanding of the nature, scope, or context of the likely exposure of marine mammals and ESA-listed species to any of the potential stressors associated with the action (*e.g.*, sound, explosive detonation, or military expended materials), through better understanding of one or more of the following:

A. The nature of the action and its surrounding environment (*e.g.*, sound-source characterization, propagation, and ambient noise levels),

B. The affected species (*e.g.*, life history or dive patterns),

C. The likely co-occurrence of marine mammals and ESA-listed marine species with the action (in whole or part), or

D. The likely biological or behavioral context of exposure to the stressor for the marine mammal and ESA-listed marine species (*e.g.*, age class of exposed animals or known pupping, calving, or feeding areas).

(iii) An increase in the understanding of how individual marine mammals or ESA-listed marine species respond (behaviorally or physiologically) to the specific stressors associated with the action (in specific contexts, where possible (*e.g.*, at what distance or received level)).

(iv) An increase in the understanding of how anticipated individual responses, to individual stressors or anticipated combinations of stressors, may impact either:

A. The long-term fitness and survival of an individual; or

B. The population, species, or stock (*e.g.*, through impacts on annual rates of recruitment or survival).

(v) An increase in the understanding of the effectiveness of mitigation and monitoring measures.

(vi) A better understanding and record of the manner in which the authorized entity complies with the Incidental Take Authorization and Incidental Take Statement.

(vii) An increase in the probability of detecting marine mammals (through improved technology or methods), both specifically within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general, to better achieve the above goals; and

(viii) Ensuring that adverse impact of activities remains at the least practicable level.

The Navy's Marine Species Monitoring Program investments are evaluated through the Adaptive Management Review process to (1) assess overall progress, (2) review goals and objectives, and (3) make recommendations for refinement and evolution of the monitoring program's focus and direction. The Marine Species Monitoring Program has developed and matured significantly since its inception and now supports a portfolio of several dozen active projects across a range of geographic areas and protected species taxa addressing both regional priorities (*i.e.*, particular species of concern), and Navy-wide needs such as the behavioral response of beaked whales to training and testing activities.

A Research and Monitoring Summit was held in early 2023 to evaluate the current state of the Marine Species Monitoring Program in terms of progress, objectives, priorities, and needs, and to solicit valuable input from meeting participants including NMFS, Marine Mammal Commission, Navy, and scientific experts. The overarching goal of the summit was to facilitate updating the ICMP framework for guiding marine species research and monitoring investments, and to identify data gaps and priorities to be addressed over the next 5–10 years across a range of basic research through applied monitoring. One of the outcomes of this summit meeting is a refreshed strategic framework effectively replacing the ICMP which will provide increased coordination and synergy across the Navy's protected marine species investment programs (see section 13.1 of the application). This will contribute to the collective goal of supporting improved assessment of effects from training and testing activities through

development of first in class science and data.

Past and Current Action Proponent Monitoring in the AFTT Study Area

The Navy's monitoring program has undergone significant changes since the first rule was issued for the AFTT Study Area in 2008 through the process of adaptive management. The monitoring program developed for the first cycle of environmental compliance documents (e.g., U.S. Department of the Navy, 2008a, 2008b) utilized effort-based compliance metrics that were somewhat limiting. Through adaptive management discussions, the Navy designed and conducted monitoring studies according to scientific objectives and eliminated specific effort requirements.

Progress has also been made on the conceptual framework categories from the Scientific Advisory Group for Navy Marine Species Monitoring (U.S. Department of the Navy, 2011), ranging from occurrence of animals, to their exposure, response, and population consequences. The Navy continues to manage the Atlantic and Pacific program as a whole, with monitoring in each range complex taking a slightly different but complementary approach. The Navy has continued to use the approach of layering multiple simultaneous components in many of the range complexes to leverage an increase in return of the progress toward answering scientific monitoring questions. This includes in the AFTT Study Area, for example, (a) Analysis of Acoustic Ecology of North Atlantic Shelf Break Cetaceans and Effects of Anthropogenic Noise Impacts; (b) Mid-Atlantic Nearshore and Mid-shelf Baleen Whale Monitoring; (c) Atlantic Behavioral Response Study; and (d) Occurrence of Rice's Whale in the Northeastern Gulf of America.

Numerous publications, dissertations, and conference presentations have resulted from research conducted under the marine species monitoring program (<https://www.navymarine-speciesmonitoring.us/reading-room/>), leading to a significant contribution to the body of marine mammal science. Publications on occurrence, distribution, and density have fed the modeling input, and publications on exposure and response have informed Navy and NMFS analysis of behavioral response and consideration of mitigation measures.

Furthermore, collaboration between the monitoring program and the Navy's research and development (e.g., the ONR) and demonstration-validation (e.g., Living Marine Resources (LMR)) programs has been strengthened,

leading to research tools and products that have already transitioned to the monitoring program. These include Marine Mammal Monitoring on Ranges, controlled exposure experiment behavioral response studies, acoustic sea glider surveys, and global positioning system-enabled satellite tags. Recent progress has been made with better integration with monitoring across all Navy at-sea study areas, including the AFTT Study Area and various other ranges. Publications from the LMR and ONR programs have also resulted in significant contributions to hearing, acoustic criteria used in effects modeling, exposure, and response, as well as in developing tools to assess biological significance (e.g., consequences).

NMFS and the Navy also consider data collected during mitigations as monitoring. Data are collected by shipboard personnel on hours spent training, hours of observation, hours of sonar, and marine mammals observed within the mitigation zones when mitigations are implemented. These data are provided to NMFS in both classified and unclassified annual exercise reports, which would continue under this proposed rule.

NMFS has received multiple years' worth of annual exercise and monitoring reports addressing active sonar use and explosive detonations within the AFTT Study Area and other Navy range complexes. The data and information contained in these reports have been considered in developing mitigation and monitoring measures for the proposed military readiness activities within the AFTT Study Area. The Navy's annual exercise and monitoring reports may be viewed at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities> and <https://www.navymarinespeciesmonitoring.us/reporting/>.

The Navy's marine species monitoring program supports several monitoring projects in the AFTT Study Area at any given time. Additional details on the scientific objectives for each project can be found at: <https://www.navymarine-speciesmonitoring.us/regions/atlantic/current-projects/>. Projects can be either major multi-year efforts, or 1 to 2-year special studies. The emphasis on monitoring in the AFTT Study Area is to improve understanding of the occurrence and distribution of protected marine species within the AFTT Study Area, improve understanding of their exposure and response to sonar and explosives training and testing activities, and ultimately inform

decision makers of the consequences of that exposure.

Specific monitoring under the 2018–2025 regulations included the following projects:

- (i) Atlantic Behavioral Response Study;
- (ii) Behavioral Response Analysis of Two Populations of Short-Finned Pilot Whales to Mid-Frequency Active Sonar;
- (iii) Behavioral Response of Humpback Whales to Vessel Traffic;
- (iv) Analysis of Acoustic Ecology of North Atlantic Shelf Break Cetaceans and Effects of Anthropogenic Noise Impacts;
- (v) North Atlantic Right Whale Monitoring, Conservation, and Protection;
- (vi) Atlantic Marine Assessment Program for Protected Species (AMAPPS);
- (vii) Haul-Out Counts and Photo-Identification of Pinnipeds in Virginia;
- (viii) Time-lapse Camera Surveys of Pinnipeds in Southeastern Virginia;
- (ix) Pinniped Monitoring in the Northeast;
- (x) Jacksonville Shallow Water Training Range Vessel Surveys;
- (xi) Mid-Atlantic Autonomous Passive Acoustic Monitoring;
- (xii) Mid-Atlantic Nearshore & Mid-shelf Baleen Whale Monitoring;
- (xiii) Mid-Atlantic Offshore Cetacean Study; and
- (xiv) Occurrence of Rice's Whale in the Northeastern Gulf of America.

Future monitoring efforts by the Action Proponents in the AFTT Study Area are anticipated to continue along the same objectives: establish the baseline habitat uses and movement patterns; establish the baseline behavior (foraging, dive patterns, *etc.*); evaluate potential exposure and behavioral responses of marine mammals exposed to training and testing activities, and support conservation and management of NARWs.

Currently planned monitoring projects and their Intermediate Scientific Objective for the 2025–2032 rule are listed below, many of which are continuations of projects currently underway. Other than those ongoing projects, monitoring projects are typically planned one year in advance; therefore, this list does not include all projects that will occur over the entire period of the rule.

(i) Atlantic Behavioral Response Study (ongoing)—The objective is to evaluate behavioral responses of marine mammals exposed to Navy training and testing activities.

(ii) Behavioral Response Analysis of Two Populations of Short-Finned Pilot Whales to Mid-Frequency Active Sonar

(ongoing)—The objective is to evaluate behavioral responses of marine mammals exposed to Navy training and testing activities.

(iii) Analysis of Acoustic Ecology of North Atlantic Shelf Break Cetaceans and Effects of Anthropogenic Noise Impacts (ongoing)—The objectives are to (1) establish the baseline vocalization behavior of marine mammals where Navy training and testing activities occur; and (2) evaluate trends in distribution and abundance of populations that are regularly exposed to sonar and underwater explosives.

(iv) North Atlantic Right Whale Monitoring, Conservation, and Protection (ongoing)—The objectives are to (1) Establish the baseline habitat uses and movement patterns of marine mammals where Navy training and testing activities occur; and (2) establish the baseline behavior (foraging, dive patterns, *etc.*) of marine mammals where Navy training and testing activities occur.

(v) Haul-Out Counts and Photo-Identification of Pinnipeds in Virginia (ongoing)—The objectives are to (1) estimate the density of marine mammals and sea turtles in Navy range complexes and in specific training areas; (2) establish the baseline habitat uses and movement patterns of marine mammals and sea turtles where Navy training and testing activities occur; and (3) evaluate trends in distribution and abundance of populations that are regularly exposed to sonar and underwater explosives.

(vi) Time-lapse Camera Surveys of Pinnipeds in Southeastern Virginia (ongoing)—The objectives are to (1) estimate the density of marine mammals and sea turtles in Navy range complexes and in specific training areas; (2) establish the baseline habitat uses and movement patterns of marine mammals and sea turtles where Navy training and testing activities occur; and (3) evaluate trends in distribution and abundance of populations that are regularly exposed to sonar and underwater explosives.

(vii) Jacksonville Shallow Water Training Range Vessel Surveys (ongoing)—The objectives are to (1) establish the baseline habitat uses and movement patterns of marine mammals and sea turtles where Navy training and testing activities occur; (2) determine what populations of marine mammals are exposed to Navy training and testing activities; and (3) evaluate trends in distribution and abundance of populations that are regularly exposed to Navy training and testing activities.

(viii) Mid-Atlantic Autonomous Passive Acoustic Monitoring (ongoing)—The objectives are to (1) establish the baseline habitat uses and

movement patterns of marine mammals where Navy training and testing activities occur; and (2) establish the baseline behavior (foraging, dive patterns, *etc.*) of marine mammals where Navy training and testing activities occur.

(ix) Mid-Atlantic Nearshore & Mid-shelf Baleen Whale Monitoring (ongoing)—The objectives are to (1) establish the baseline habitat uses and movement patterns of marine mammals where Navy training and testing activities occur; (2) establish the baseline behavior (foraging, dive patterns, *etc.*) of marine mammals where Navy training and testing activities occur; and (3) support conservation and management of North Atlantic right whales.

(x) Mid-Atlantic Offshore Cetacean Study (ongoing)—The objectives are to (1) establish the baseline habitat uses and movement patterns of marine mammals where Navy training and testing activities occur; and (2) establish the baseline behavior (foraging, dive patterns, *etc.*) of marine mammals where Navy training and testing activities occur.

Adaptive Management

The proposed regulations governing the take of marine mammals incidental to military readiness activities in the AFTT Study Area contain an adaptive management component. Our understanding of the effects of military readiness activities (*e.g.*, acoustic and explosive stressors) on marine mammals continues to evolve, which makes the inclusion of an adaptive management component both valuable and necessary within the context of 7-year regulations.

The reporting requirements associated with this rule are designed to provide NMFS with monitoring data from the previous year to allow NMFS to consider whether any changes to existing mitigation and monitoring requirements are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from the Action Proponents regarding practicability) on an annual or biennial basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring and if the measures are practicable. If the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS would publish a notice of the planned LOAs in the

Federal Register and solicit public comment.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) Results from monitoring and exercise reports, as required by MMPA authorizations; (2) compiled results of Navy-funded research and development studies; (3) results from specific stranding investigations; (4) results from general marine mammal and sound research; and (5) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOAs. The results from monitoring reports and other studies may be viewed at <https://www.navy.marin-speciesmonitoring.us>.

Proposed Reporting

In order to issue incidental take authorization 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. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring. Reports from individual monitoring events, results of analyses, publications, and periodic progress reports for specific monitoring projects will be posted to the Navy's Marine Species Monitoring web portal: <https://www.navy.marin-speciesmonitoring.us>.

There are several different reporting requirements for the Navy pursuant to the current regulations. All of these reporting requirements would be continued for the Navy under this proposed rule for the 7-year period.

Special Reporting for Geographic Mitigation Areas

The following sections describe special reporting for geographic mitigation areas that the Action Proponents must include in the Annual AFTT Training and Testing Reports. Special reporting for these areas is designed to aid the Action Proponents and NMFS in continuing to analyze potential impacts of training and testing in the mitigation areas. In addition to the mitigation area-specific requirements described below, for all mitigation areas, should national security require the Action Proponents to exceed the activity restrictions in a given mitigation area, Action Proponent personnel must provide NMFS with advance notification and include the information (*e.g.*, sonar hours, explosives usage, or restricted area use)

in its annual activity reports submitted to NMFS.

Northeast North Atlantic Right Whale Mitigation Area

The Action Proponents must report the total annual hours and counts of active sonar and in-water explosives (including underwater explosives and explosives deployed against surface targets) used in the mitigation area.

Gulf of Maine Marine Mammal Mitigation Area

The Action Proponents must report the total annual hours and counts of active sonar and in-water explosives (including underwater explosives and explosives deployed against surface targets) used in the mitigation area.

Southeast North Atlantic Right Whale Mitigation Area

The Action Proponents must report the total annual hours and counts of active sonar and in-water explosives (including underwater explosives and explosives deployed against surface targets) used in the mitigation area from November 15 to April 15.

Southeast North Atlantic Right Whale Special Reporting Mitigation Area

The Action Proponents must report the total annual hours and counts of active sonar and in-water explosives (including underwater explosives and explosives deployed against surface targets) used within the mitigation area from November 15 to April 15. The mitigation area extent aligns with the boundaries of the North Atlantic right whale critical habitat for reproduction designated by NMFS in 2016 (81 FR 4838, January 27, 2016).

Rice's Whale Mitigation Area

The Action Proponents must report the total annual hours and counts of active sonar and in-water explosives (including underwater explosives and explosives deployed against surface targets) used in the mitigation area.

Notification of Injured, Live Stranded, or Dead Marine Mammals

The Action Proponents would consult the Notification and Reporting Plan, which sets out notification, reporting, and other requirements when injured, live stranded, or dead marine mammals are detected. The Notification and Reporting Plan is available for review at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities>.

Annual AFTT Study Area Marine Species Monitoring Report

The Action Proponents would submit an annual AFTT Study Area marine species monitoring report describing the implementation and results from the previous calendar year. Data collection methods will be standardized across range complexes and the AFTT Study Area to allow for comparison in different geographic locations. The draft report must be submitted to the Director of the Office of Protected Resources of NMFS annually as specified in the LOAs. NMFS will submit comments or questions on the report, if any, within 3 months of receipt. The report will be considered final after the Action Proponents have addressed NMFS' comments, or 3 months after submittal of the draft if NMFS does not provide comments on the draft report. The report would describe progress of knowledge made with respect to intermediate scientific objectives within the AFTT Study Area associated with the ICMF. Similar study questions would be treated together so that progress on each topic can be summarized across all Navy ranges. The report need not include analyses and content that do not provide direct assessment of cumulative progress on the monitoring plan study questions.

Annual AFTT Training and Testing Reports

In the event that the analyzed sound levels were exceeded, the Action Proponents would submit a preliminary report(s) detailing the exceedance within 21 days after the anniversary date of issuance of the LOAs. Regardless of whether analyzed sound levels were exceeded, the Navy would submit a detailed report (AFTT Annual Training Exercise Report and Testing Activity Report) and Coast Guard would submit a detailed report (AFTT Annual Training Exercise Report) to NMFS annually as specified in the LOAs. NMFS will submit comments or questions on the reports, if any, within 1 month of receipt. The reports will be considered final after the Action Proponents have addressed NMFS' comments, or 1 month after submittal of the drafts if NMFS does not provide comments on the draft reports. The annual report shall contain information on MTEs, ship shock trials, SINKEX events, and a summary of all sound sources used (total hours or quantity (per the LOA)) of each bin of sonar or other non-impulsive source; total annual number of each type of explosive exercises; and total annual expended/detonated rounds (missiles, bombs,

sonobuoys, etc.) for each explosive bin). The annual reports will also contain cumulative sonar and explosive use quantity from previous years' reports through the current year. Additionally, if there were any changes to the sound source allowance in the reporting year, or cumulatively, the reports would include a discussion of why the change was made and include analysis to support how the change did or did not affect the analysis in the 2024 AFTT Draft Supplemental EIS/OEIS and MMPA final rule. The annual reports would also include the details regarding specific requirements associated with specific mitigation areas. The analysis in the detailed report would be based on the accumulation of data from the current year's report and data collected from previous annual reports. The detailed reports shall also contain special reporting for the Northeast North Atlantic Right Whale Mitigation Area, Gulf of Maine Marine Mammal Mitigation Area, Southeast North Atlantic Right Whale Mitigation Area, and Rice's Whale Mitigation Area, as described in the LOAs.

Other Reporting and Coordination

The Action Proponents would continue to report and coordinate with NMFS for the following:

- (i) Annual marine species monitoring technical review meetings that also include researchers and the Marine Mammal Commission; and
- (ii) Annual Adaptive Management meetings that also include the Marine Mammal Commission (and could occur in conjunction with the annual marine species monitoring technical review meetings).

Preliminary Analysis and Negligible Impact Determination

General Negligible Impact Analysis

Introduction

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 Level A harassment or Level B harassment (as presented in table 35,

table 36, and table 37), NMFS considers other factors, such as the likely nature of any responses (*e.g.*, intensity, duration) and the context of any responses (*e.g.*, critical reproductive time or location, migration), as well as effects on habitat and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' 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, other ongoing sources of human-caused mortality, and ambient noise levels).

In the Estimated Take of Marine Mammals section, we identified the subset of potential effects that would be expected to rise to the level of takes both annually and over the 7-year period covered by this proposed rule, and then identified the maximum number of takes we believe could occur (mortality) or are reasonably expected to occur (harassment) based on the methods described. The impact that any given take will 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.*). For this proposed rule we evaluated the likely impacts of the enumerated maximum number of harassment takes that are proposed for authorization and reasonably expected to occur, in the context of the specific circumstances surrounding these predicted takes. We also include a specific assessment of serious injury or mortality (hereafter referred to as M/SI) takes that could occur, as well as consideration of the traits and statuses of the affected species and stocks. Last, we collectively evaluated this information, as well as other more tax-specific information and mitigation measure effectiveness, in group-specific assessments that support our negligible impact conclusions for each stock or species. Because all of the Action Proponents' specified activities would occur within the ranges of the marine mammal stocks identified in the rule, all negligible impact analyses and determinations are at the stock level

(*i.e.*, additional species-level determinations are not needed).

Harassment

The specified activities reflect representative levels of military readiness activities. The Description of the Proposed Activity section describes annual activities. There may be some flexibility in the exact number of hours, items, or detonations that may vary from year to year, but take totals would not exceed the maximum annual totals and 7-year totals indicated in table 35, table 36, and table 37. We base our analysis and negligible impact determination on the maximum number of takes that would be reasonably expected to occur annually and are proposed to be authorized, although, as stated before, the number of takes are only one part of the analysis, which includes extensive qualitative consideration of other contextual factors that influence the degree of impact of the takes on the affected individuals. To avoid repetition, we provide some general analysis immediately below that applies to all the species listed in table 35, table 36, and table 37, given that some of the anticipated effects of the Action Proponents' military readiness activities on marine mammals are expected to be relatively similar in nature. Below that, we provide additional information specific to Mysticetes, Odontocetes, and Pinnipeds and, finally, break our analysis into species (and/or stocks), or groups of species (and the associated stocks) where relevant similarities exist, to provide more specific information related to the anticipated effects on individuals of a specific stock or where there is information about the status or structure of any species that would lead to a differing assessment of the effects on the species or stock. Organizing our analysis by grouping species or stocks that share common traits or that will respond similarly to effects of the Action Proponents' activities and then providing species- or stock-specific information allows us to avoid duplication while assuring that we have analyzed the effects of the specified activities on each affected species or stock.

The Action Proponents' harassment take request is based on one model for pile driving, and a second model (NAEMO) for all other acoustic stressors, which NMFS reviewed and concurs appropriately estimate the maximum amount of harassment that is reasonably likely to occur. As described in more detail above, NAEMO calculates sound energy propagation from sonar and other transducers, air guns, and explosives during military readiness

activities; the sound or impulse received by animal dosimeters representing marine mammals distributed in the area around the modeled activity; and whether the sound or impulse energy received by a marine mammal exceeds the thresholds for effects. Assumptions in the Navy models intentionally err on the side of overestimation when there are unknowns. The effects of the specified activities are modeled as though they would occur regardless of proximity to marine mammals, meaning that no activity-based mitigation is considered (*e.g.*, no power down or shut down). However, the modeling does quantitatively consider the possibility that marine mammals would avoid continued or repeated sound exposures to some degree, based on a species' sensitivity to behavioral disturbance. Additionally, the sonar modeling reflects some, but not all, of the geographic mitigation measures. NMFS provided input to, independently reviewed, and concurred with the Action Proponents on this process and the Action Proponents' analysis, which is described in detail in section 6 of the application, was used to quantify harassment takes for this rule.

The Action Proponents and NMFS anticipate more severe effects from takes resulting from exposure to higher received levels (though this is in no way a strictly linear relationship for behavioral effects throughout species, individuals, or circumstances) and less severe effects from takes resulting from exposure to lower received levels. However, there is also growing evidence of the importance of distance 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 elicit a response of equal magnitude (DeRuiter 2012). The estimated number of takes by Level A harassment and Level B harassment does not equate to the number of individual animals the Action Proponents expect to harass (which is lower), but rather to the instances of take (*i.e.*, exposures above the Level A harassment and Level B harassment threshold) that are anticipated to occur over the 7-year period. These instances may represent either brief exposures (seconds or minutes) or, in some cases, longer durations of exposure within a day. In some cases, an animal that incurs a single take by AUD INJ or TTS may also experience a direct behavioral harassment from the same exposure. Some individuals may experience multiple instances of take (meaning over multiple days) over the course of the

year, which means that the number of individuals taken is smaller than the total estimated takes. Generally speaking, the higher the number of takes as compared to the population abundance, the more repeated takes of individuals are likely, and the higher the actual percentage of individuals in the population that are likely taken at least once in a year. We look at this comparative metric (number of takes to population abundance) to give us a relative sense of where a larger portion of a species is being taken by the specified activities, where there is a likelihood that the same individuals are being taken across multiple days, and whether the number of days might be higher or more likely sequential. Where the number of instances of take is less than 100 percent of the abundance, and there is no information to specifically suggest that some subset of animals is known to congregate in an area in which activities are regularly occurring (e.g., a small resident population, takes occurring in a known important area such as a BIA, or a large portion of the takes occurring in a certain region and season), the overall likelihood and number of repeated takes is generally considered low, as it could, on one extreme, mean that every take represents a separate individual in the population being taken on one day (a minimal impact to an individual) or, more likely, that some smaller number of individuals are taken on one day annually and some are taken on a few, not likely sequential, days annually, and of course some are not taken at all.

In the ocean, the use of sonar and other active acoustic sources is often transient and is unlikely to repeatedly expose the same individual animals within a short period, for example within one specific exercise. However, for some individuals of some species, repeated exposures across different activities could occur over the year, especially where events occur in generally the same area with more resident species. In short, for some species, we expect that the total anticipated takes represent exposures of a smaller number of individuals of which some would be exposed multiple times, but based on the nature of the specified activities and the movement patterns of marine mammals, it is unlikely that individuals from most stocks would be taken over more than a few days within a given year. This means that even where repeated takes of individuals are likely to occur, they are more likely to result from non-sequential exposures from different activities, and, even if sequential,

individual animals are not predicted to be taken for more than several days in a row, at most. As described elsewhere, the nature of the majority of the exposures would be expected to be of a less severe nature, and based on the numbers, it is likely that any individual exposed multiple times is still only taken on a small percentage of the days of the year. The greater likelihood is that not every individual is taken, or perhaps a smaller subset is taken with a slightly higher average and larger variability of highs and lows, but still with no reason to think that, for most species or stocks, any individuals would be taken a significant portion of the days of the year.

Physiological Stress Response

Some of the lower level physiological stress responses (e.g., orientation or startle response, change in respiration, change in heart rate) discussed earlier would likely co-occur with the predicted harassments, although these responses are more difficult to detect and fewer data exist relating these responses to specific received levels of sound. Level B harassment takes, then, may have a stress-related physiological component as well; however, we would not expect the Action Proponents' generally short-term, intermittent, and (typically in the case of sonar) transitory activities to create conditions of long-term continuous noise leading to long-term physiological stress responses in marine mammals that could affect reproduction or survival.

Behavioral Response

The estimates calculated using the BRF do not differentiate between the different types of behavioral responses that rise to the level of Level B harassment. As described in the application, the Action Proponents identified (with NMFS' input) that moderate behavioral responses, as characterized in Southall *et al.* (2021), would be considered a take. The behavioral responses predicted by the BRFs are assumed to be moderate severity exposures (e.g., altered migration paths or dive profiles, interrupted nursing, breeding or feeding, or avoidance) that may last for the duration of an exposure. The Action Proponents then compiled the available data indicating at what received levels and distances those responses have occurred, and used the indicated literature to build biphasic behavioral response curves and cut-off conditions that are used to predict how many instances of Level B behavioral harassment occur in a day (see the "Criteria and Thresholds for U.S. Navy

Acoustic and Explosive Effects Analysis (Phase 4)" technical report (U.S. Department of the Navy, 2024)). Take estimates alone do not provide information regarding the potential fitness or other biological consequences of the responses on the affected individuals. We therefore consider the available activity-specific, environmental, and species-specific information to determine the likely nature of the modeled behavioral responses and the potential fitness consequences for affected individuals.

Use of sonar and other transducers would typically be transient and temporary. The majority of acoustic effects to individual animals from sonar and other active sound sources during military readiness activities would be primarily from anti-submarine warfare events. It is important to note although anti-submarine warfare is one of the warfare areas of focus during MTEs, there are significant periods when active anti-submarine warfare sonars are not in use. Nevertheless, behavioral responses are assumed more likely to be significant during MTEs than during other anti-submarine warfare activities due to the duration (*i.e.*, multiple days), scale (*i.e.*, multiple sonar platforms), and use of high-power hull-mounted sonar in the MTEs. In other words, in the range of potential behavioral effects that might be expected as part of a response that qualifies as an instance of Level B behavioral harassment (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 detectably greater distance from the animal, for a few or several minutes, and that 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 when the 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 effects 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. However, such severe behavioral effects are expected to occur infrequently.

To help assess this, for sonar (LFAS/MFAS/HFAS) used in the AFTT Study Area, the Action Proponents provided information estimating the instances of take by Level B harassment by behavioral disturbance under each BRF

that would occur within 6-dB increments (discussed below in the *Group and Species-Specific Analyses* section), and by distance in 5-km bins in section 2.3.3 of appendix A to the application. As mentioned above, all else being equal, an animal's exposure to a higher received level is more likely to result in a behavioral response that is more likely to lead to adverse effects, which could more likely accumulate to impacts on reproductive success or survivorship of the animal, but other contextual factors (e.g., distance, duration of exposure, and behavioral state of the animals) are also important (Di Clemente *et al.*, 2018; Ellison *et al.*, 2012; Moore and Barlow, 2013, Southall *et al.*, 2019, Wensveen *et al.*, 2017, *etc.*). The majority of takes by Level B harassment are expected to be in the form of comparatively milder responses (*i.e.*, lower-level exposures that still rise to the level of take, but would likely be less severe along the continuum of responses that qualify as take) of a generally shorter duration. We anticipate more severe effects from takes when animals are exposed to higher received levels of sound or at closer proximity to the source. Because species belonging to taxa that share common characteristics are likely to respond and be affected in similar ways, these discussions are presented within each species group below in the *Group and Species-Specific Analyses* section. As noted previously in this proposed rule, behavioral response is likely highly variable between species, individuals within a species, and context of the exposure. Specifically, given a range of behavioral responses that may be classified as Level B harassment, to the degree that higher received levels of sound are expected to result in more severe behavioral responses, only a smaller percentage of the anticipated Level B harassment from the specified activities might result in more severe responses (see the *Group and Species-Specific Analyses* section below for more detailed information).

Diel Cycle

Many animals perform vital functions, such as feeding, resting, traveling, and socializing on a diel cycle (24-hour cycle). Behavioral responses 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 one diel cycle or recur on subsequent days (Southall *et al.*, 2007). Henderson *et al.* (2016) found that ongoing smaller scale events had little to no impact on foraging dives for

Blainville's beaked whale, while multi-day training events may decrease foraging behavior for Blainville's beaked whale (Manzano-Roth *et al.*, 2016). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered severe unless it could directly affect reproduction or survival (Southall *et al.*, 2007). Note that there is a difference between multiple-day substantive behavioral responses and multiple-day anthropogenic activities. For example, just because an at-sea exercise lasts for multiple days does not necessarily mean that individual animals are either exposed to those exercises for multiple days or, further, exposed in a manner resulting in a sustained multiple day substantive behavioral response. Large multi-day Navy exercises, such as anti-submarine warfare activities, typically include vessels moving faster than while in transit (typically 10–15 kn (18.5–27.8 km/hr) or higher) and generally cover large areas that are relatively far from shore (typically more than 3 nmi (5.6 km) from shore) and in waters greater than 600 ft (182.9 m) deep. Marine mammals are moving as well, which would make it unlikely that the same animal could remain in the immediate vicinity of the ship for the entire duration of the exercise. Further, the Action Proponents do not necessarily operate active sonar the entire time during an exercise. While it is certainly possible that these sorts of exercises could overlap with individual marine mammals multiple days in a row at levels above those anticipated to result in a take, because of the factors mentioned above, it is considered unlikely for the majority of takes. However, it is also worth noting that the Action Proponents conduct many different types of noise-producing activities over the course of the year and it is likely that some marine mammals will be exposed to more than one activity and taken on multiple days, even if they are not sequential.

Durations of Navy activities utilizing tactical sonar sources and explosives vary and are fully described in chapter 2 of the 2024 AFTT Draft Supplemental EIS/OEIS. Sonar used during anti-submarine warfare would impart the greatest amount of acoustic energy of any category of sonar and other transducers analyzed in the application and include hull-mounted, towed, line array, sonobuoy, helicopter dipping, and torpedo sonars. Most anti-submarine warfare sonars are MFAS (1–10 kHz); however, some sources may use higher or lower frequencies. Anti-

submarine warfare training activities using hull-mounted sonar proposed for the AFTT Study Area generally last for only a few hours. However, anti-submarine warfare testing activities range from several hours, to days, to more than 10 days for large integrated anti-submarine warfare MTEs (see table 4 and table 5). For these multi-day exercises there will typically be extended intervals of non-activity in between active sonar periods. Because of the need to train in a large variety of situations, the Navy conducts anti-submarine warfare training exercises in varying locations. Given the average length and dynamic nature of anti-submarine warfare exercises (times of sonar use) and typical vessel speed, combined with the fact that the majority of the cetaceans would not likely remain in proximity to the sound source, it is unlikely that an animal would be exposed to LFAS/MFAS/HFAS at levels or durations likely to result in a substantive response that would then be carried on for more than one day or on successive days.

Most planned explosive events are instantaneous or scheduled to occur over a short duration (less than 2 hours) and the explosive component of these activities only lasts for minutes. Although explosive exercises may sometimes be conducted in the same general areas repeatedly, because of their short duration and the fact that they are in the open ocean and animals can easily move away, it is similarly unlikely that animals would be exposed for long, continuous amounts of time, or demonstrate sustained behavioral responses. Although SINKEXs may last for up to 48 hours (4–8 hours typically, possibly 1–2 days), they are almost always completed in a single day and only one event is planned annually for the AFTT Study Area (see table 6). They are stationary and conducted in deep, open water (where fewer marine mammals would typically be expected to be randomly encountered), and they have rigorous monitoring (see table 64) and shutdown procedures all of which make it unlikely that individuals would be exposed to the exercise for extended periods or on consecutive days, though some individuals may be exposed on multiple days.

Assessing the Number of Individuals Taken and the Likelihood of Repeated Takes

As described previously, Navy modeling uses the best available science to predict the instances of exposure above certain acoustic thresholds, which are equated, as appropriate, to harassment takes. As further noted, for

active acoustics it is more challenging to parse out the number of individuals taken by Level B harassment and the number of times those individuals are taken from this larger number of instances, though factors such as movement ecology (*e.g.*, is the species resident and more likely to remain in closer proximity to ongoing activities, versus nomadic or migratory; Keen *et al.* 2021) or whether there are known BIAs where animals are known to congregate can help inform this. One method that NMFS uses to help better understand the overall scope of the impacts is to compare these total instances of take against the abundance of that species (or stock if applicable). For example, if there are 100 harassment takes in a population of 100, one can assume either that every individual was exposed above acoustic thresholds once per year, or that some smaller number were exposed a few times per year, and a few were not exposed at all. Where the instances of take exceed 100 percent of the population, multiple takes of some individuals are predicted and expected to occur within a year. Generally speaking, the higher the number of takes as compared to the population abundance, the more multiple takes of individuals are likely, and the higher the actual percentage of individuals in the population that are likely taken at least once in a year. We look at this comparative metric to give us a relative sense of where larger portions of the species are being taken by the Action Proponents' activities and where there is a higher likelihood that the same individuals are being taken across multiple days and where that number of days might be higher. It also provides a relative picture of the scale of impacts to each species.

In the ocean, unlike a modeling simulation with static animals, the transient nature of sonar use makes it unlikely to repeatedly expose the same individual animals within a short period, for example, within one specific exercise. However, some repeated exposures across different activities could occur over the year with more resident species. In short, we expect the total anticipated takes represent exposures of a smaller number of individuals of which some could be exposed multiple times, but based on the nature of the Action Proponents' activities and the movement patterns of marine mammals, it is unlikely that any particular subset would be taken over more than several sequential days (with a few possible exceptions discussed in the species-specific conclusions). In other cases, such as during pierside

sonar testing at Naval Station Norfolk, repeated exposures of the same individuals may be more likely given the concentrated area within which the operations occur and the likelihood that a smaller number of animals would routinely use the affected habitat.

When calculating the proportion of a population taken (*e.g.*, the number of takes divided by population abundance), which can also be helpful in estimating the number of days over which some individuals may be taken, it is important to choose an appropriate population estimate against which to make the comparison. Herein, NMFS considers two potential abundance estimates, the SARs and the NMSDD abundance estimates. The SARs, where available, provide the official population estimate for a given species or stock in U.S. waters in a given year. These estimates are typically generated from the most recent shipboard and/or aerial surveys conducted, and in some cases, the estimates show substantial year-to-year variability. When the stock is known to range well outside of U.S. EEZ boundaries, population estimates based on surveys conducted only within the U.S. EEZ are known to be underestimates. The NMSDD-derived abundance estimates are abundances for within the U.S. EEZ boundaries only and, therefore, differ from some SAR abundance estimates.

The SAR and NMSDD abundance estimates can differ substantially because these estimates may be based on different methods and data sources. For example, the SARs only consider data from the past 8 year period, whereas the NMSDD considers a longer data history. Further, the SARs estimate the number of animals in a population but not spatial densities. NMSDD uses predictive density models to estimate species presence, even where sighting data is limited or lacking altogether. Thus, NMSDD density models beyond the U.S. EEZ have greater uncertainty than those within the U.S. EEZ, where most proposed activities would occur. Each density model is limited to the variables and assumptions considered by the original data source provider. NMFS considered these factors and others described in the Density Technical Report (U.S. Department of the Navy, 2024) when comparing the estimated takes to current population abundances for each species or stock.

In consideration of the factors described above, to estimate repeated impacts across large areas relative to species geographic distributions, comparing the impacts predicted in NAEMO to abundances predicted using the NMSDD models is usually

preferable. By comparing estimated take to the NMSDD abundance estimates, impacts and abundance estimates are based on the same underlying assumptions about a species' presence. NMFS has compared the estimated take to the NMSDD abundance estimates herein for all stocks, with the exception of stocks where the abundance information fits into one of the following scenarios, in which case NMFS concluded that comparison to the SAR abundance estimate is more appropriate: (1) a species' or stocks' range extends beyond the U.S. EEZ and the SAR abundance estimate is greater than the NMSDD abundance. For highly migratory species (*e.g.*, large whales) or those whose geographic distribution extends beyond the boundaries of the AFTT Study Area (*e.g.*, populations with distribution along the entire western Atlantic Ocean rather than just the AFTT Study Area), comparisons to the SAR are appropriate. Many of the stocks present in the AFTT Study Area have ranges significantly larger than the AFTT Study Area, and that abundance is captured by the SAR. A good descriptive example is migrating large whales, which occur seasonally in the AFTT Study Area. Therefore, at any one time there may be a stable number of animals, but over the course of the entire year the entire population may pass through the AFTT Study Area. Therefore, comparing the estimated takes to an abundance, in this case the SAR abundance, which represents the total population, may be more appropriate than modeled abundances for only the AFTT Study Area; and (2) when the current minimum population estimate in the SAR is greater than the NMSDD abundance, regardless of whether the stock range extends beyond the EEZ. The NMSDD and SAR abundance estimates are both included in table 81 (mysticetes), table 83 (sperm whales, dwarf sperm whales, and pygmy sperm whales), table 85 (beaked whales), table 87 (dolphins and small whales), table 89 (porpoises), and table 91 (pinnipeds), and each table indicates which stock abundance estimate was selected for comparison to the take estimate for each species or stock.

Temporary Threshold Shift

NMFS and the Navy have estimated that all species of marine mammals may incur some level of TTS from active sonar. As mentioned previously, in general, TTS can last from a few minutes to days, be of varying degree, and occur across various frequency bandwidths, all of which determine the severity of the impacts on the affected individual, which can range from minor

to more severe. Table 38 through table 46 indicate the number of takes by TTS that may be incurred by different species from exposure to active sonar, air guns, pile driving, and explosives. The TTS incurred by an animal is primarily characterized by three characteristics:

(i) Frequency—Available data suggest that most TTS occurs in the frequency range of the source up to one octave higher than the source (with the maximum TTS at $\frac{1}{2}$ octave above) (Finneran 2015, Southall *et al.* 2019). The Navy's MF anti-submarine warfare sources, which are the highest power and most numerous sources and the ones that cause the most take by TTS, utilize the 1–10 kHz frequency band, which suggests that if TTS were to be induced by any of these MF sources it would be in a frequency band somewhere between approximately 1 and 20 kHz, which is in the range of communication calls for many odontocetes, but below the range of the echolocation signals used for foraging. There are fewer hours of HF source use and the sounds would attenuate more quickly, plus they have lower source levels, but if an animal were to incur TTS from these sources, it would cover a higher frequency range (sources are between 10 and 100 kHz, which means that TTS could range up to the highest frequencies audible to VHF cetaceans, approaching 200 kHz), which could overlap with the range in which some odontocetes communicate or echolocate. However, HF systems are typically used less frequently and for shorter time periods than surface ship and aircraft MF systems, so TTS from HF sources is less likely than from MF sources. There are fewer LF sources and the majority are used in the more readily mitigated testing environment, and TTS from LF sources would most likely occur below 2 kHz, which is in the range where many mysticetes communicate and also where other auditory cues are located (waves, snapping shrimp, fish prey). Also of note, the majority of sonar sources from which TTS may be incurred occupy a narrow frequency band, which means that the TTS incurred would also be across a narrower band (*i.e.*, not affecting the majority of an animal's hearing range).

(ii) Degree of the shift (*i.e.*, by how many dB the sensitivity of the hearing is reduced)—Generally, both the degree of TTS and the duration of TTS will be greater if the marine mammal is exposed to a higher level of energy (which would occur when the peak SPL is higher or the duration is longer). The threshold for the onset of TTS was discussed previously in this rule. 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 difficult considering the Lookouts and the nominal speed of an active sonar vessel (10–15 kn (18.5–27.8 km/hr)) and the relative motion between the sonar vessel and the animal. In the TTS studies discussed in the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section, some using exposures of almost an hour in duration or up to 217 SEL, most of the TTS induced was 15 dB or less, though Finneran *et al.* (2007) induced 43 dB of TTS with a 64-second exposure to a 20 kHz source. The SQS–53 (MFAS) hull-mounted sonar (MF1) nominally emits a short (1-second) ping typically every 50 seconds, incurring those levels of TTS due to this source is highly unlikely. Sources with higher duty cycles produce longer ranges to effects and contribute to auditory effects from this action. Since any hull-mounted sonar, such as the SQS–53, engaged in anti-submarine warfare training would be moving at between 10 and 15 kn (18.5 to 27.8 km/hr) and nominally pinging every 50 seconds, the vessel will have traveled a minimum distance of approximately 843.2 ft (257 m) during the time between those pings. For a Navy vessel moving at a nominal 10 kn (18.5 km/hr), it is unlikely a marine mammal would track with the ship and could maintain speed parallel to the ship to receive adequate energy over successive pings to suffer TTS. In short, given the anticipated duration and levels of sound exposure, we would not expect marine mammals to incur more than relatively low levels of TTS in most cases for sonar exposure. To add context to this degree of TTS, individual marine mammals may regularly experience variations of 6 dB differences in hearing sensitivity in their lifetime (Finneran *et al.*, 2000, Finneran *et al.*, 2002, Schlundt *et al.*, 2000).

(iii) Duration of TTS (recovery time)—In the TTS laboratory studies (as discussed in the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section), some using exposures of almost an hour in duration or up to 217 dB SEL, almost all individuals recovered within 1 day (or less, often in minutes), although in one study (Finneran *et al.*, 2015; Southall *et al.* 2019), recovery took 4 days.

Compared to laboratory studies, marine mammals are likely to experience lower SELs from sonar used in the AFTT Study Area due to movement of the source and animals,

and because of the lower duty cycles typical of higher power sources (though some of the Navy MF1C sources have higher duty cycles). Therefore, TTS resulting from MFAS would likely be of lesser magnitude and duration compared to laboratory studies. Also, for the same reasons discussed in the Preliminary Analysis and Negligible Impact Determination—Diel Cycle section, and because of the short distance between the source and animals needed to reach high SELs, it is unlikely that animals would be exposed to the levels necessary to induce TTS in subsequent time periods such that hearing recovery is impeded. Additionally, though the frequency range of TTS that marine mammals might incur would overlap with some of the frequency ranges of their vocalization types, the frequency range of TTS from MFAS would not usually span the entire frequency range of one vocalization type, much less span all types of vocalizations or other critical auditory cues.

As a general point, the majority of the TTS takes are the result of exposure to hull-mounted MFAS (MF narrower band sources), with fewer from explosives (broad-band lower frequency sources), and even fewer from LFAS or HFAS sources (narrower band). As described above, we expect the majority of these takes to be in the form of mild, short-term (minutes to hours), narrower band (only affecting a portion of the animal's hearing range) TTS. This means that for one to several times per year, for several minutes, maybe a few hours, or at most in limited circumstances a few days, a taken individual will have diminished hearing sensitivity (more than natural variation, but nowhere near total deafness). More often than not, such an exposure would occur within a narrower mid- to higher frequency band that may overlap part (but not all) of a communication, echolocation, or predator range, but sometimes across a lower or broader bandwidth. The significance of TTS is also related to the auditory cues that are germane within the time period that the animal incurs the TTS. For example, if an odontocete has TTS at echolocation frequencies, but incurs it at night when it is resting and not feeding, it is not impactful. In short, the expected results of any one of these small number of mild TTS occurrences could be that (1) it does not overlap signals that are pertinent to that animal in the given time period, (2) it overlaps parts of signals that are important to the animal, but not in a manner that impairs interpretation, or (3) it reduces

detectability of an important signal to a small degree for a short amount of time—in which case the animal may be aware and be able to compensate (but there may be slight energetic cost), or the animal may have some reduced opportunities (e.g., to detect prey) or reduced capabilities to react with maximum effectiveness (e.g., to detect a predator or navigate optimally). However, it is unlikely that individuals would experience repeated or high degree TTS overlapping in frequency and time with signals critical for behaviors that would impact overall fitness.

Auditory Masking or Communication Impairment

The ultimate potential impacts of masking on an individual (if it were to occur) are similar to those discussed for TTS, 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. Fundamentally, masking is referred to as a chronic effect because one of the key 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. Also 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 has indicated, because of the relative movement of vessels and the sound sources primarily involved in this rule, we do not expect the exposures with the potential for masking to be of a long duration.

Masking is fundamentally more of a concern at lower frequencies, because low frequency signals propagate significantly farther than higher frequencies and because they are more likely to overlap both the narrower LF calls of mysticetes, as well as many non-communication cues such as fish and invertebrate prey, and geologic sounds that inform navigation. Masking is also more of a concern from continuous sources (versus intermittent sonar signals) where there is no quiet time between pulses and detection and interpretation of auditory signals is likely more challenging. For these reasons, dense aggregations of, and long exposure to, continuous LF activity are much more of a concern for masking, whereas comparatively short-term

exposure to the predominantly intermittent pulses of often narrow frequency range MFAS or HFAS, or explosions are not expected to result in a meaningful amount of masking. While the Action Proponents occasionally use LF and more continuous sources, it is not in the contemporaneous aggregate amounts that would be expected to accrue to degrees that would have the potential to affect reproductive success or survival. Additional detail is provided below.

Standard hull-mounted MFAS typically pings every 50 seconds. Some hull-mounted anti-submarine sonars can also be used in an object detection mode known as “Kingfisher” mode (e.g., used on vessels when transiting to and from port) where pulse length is shorter but pings are much closer together in both time and space since the vessel goes slower when operating in this mode, and during which an increased likelihood of masking in the vicinity of vessel could be expected. For the majority of other sources, however, the pulse length is significantly shorter than hull-mounted active sonar, on the order of several microseconds to tens of milliseconds. Some of the vocalizations that many marine mammals make are less than 1 second long, so, for example with hull-mounted sonar, there would be a 1 in 50 chance (only if the source was in close enough proximity for the sound to exceed the signal that is being detected) that a single vocalization might be masked by a ping. However, when vocalizations (or series of vocalizations) are longer than the 1 second pulse of hull-mounted sonar, or when the pulses are only several microseconds long, the majority of most animals’ vocalizations would not be masked.

Most anti-submarine warfare sonars and countermeasures use MF frequencies and a few use LF and HF frequencies. Most of these sonar signals are limited in the temporal, frequency, and spatial domains. The duration of most individual sounds is short, lasting up to a few seconds each. A few systems operate with higher duty cycles or nearly continuously, but they typically use lower power, which means that an animal would have to be closer, or in the vicinity for a longer time, to be masked to the same degree as by a higher level source. Nevertheless, masking could occasionally occur at closer ranges to these high-duty cycle and continuous active sonar systems, but as described previously, it would be expected to be of a short duration. While data are lacking on behavioral responses of marine mammals to continuously active sonars, mysticete

species are known to habituate to novel and continuous sounds (Nowacek *et al.*, 2004), suggesting that they are likely to have similar responses to high-duty cycle sonars. Furthermore, most of these systems are hull-mounted on surface ships with the ships moving at least 10 kn (18.5 km/hr), and it is unlikely that the ship and the marine mammal would continue to move in the same direction and the marine mammal subjected to the same exposure due to that movement. Most anti-submarine warfare activities are geographically dispersed and last for only a few hours, often with intermittent sonar use even within this period. Most anti-submarine warfare sonars also have a narrow frequency band (typically less than one-third octave). These factors reduce the likelihood of sources causing significant masking. HF signals (above 10 kHz) attenuate more rapidly in the water due to absorption than do lower frequency signals, thus producing only a very small zone of potential masking. If masking or communication impairment were to occur briefly, it would more likely be in the frequency range of MFAS (the more powerful source), which overlaps with some odontocete vocalizations (but few mysticete vocalizations); however, it would likely not mask the entirety of any particular vocalization, communication series, or other critical auditory cue, because the signal length, frequency, and duty cycle of the MFAS/HFAS signal does not perfectly resemble the characteristics of any single marine mammal species’ vocalizations.

Other sources used in the Action Proponents’ training and testing that are not explicitly addressed above, many of either higher frequencies (meaning that the sounds generated attenuate even closer to the source) or used less frequently, would be expected to contribute to masking over far smaller areas and/or times. For the reasons described here, any limited masking that could potentially occur would be minor and short-term.

In conclusion, masking is more likely to occur in the presence of broadband, relatively continuous noise sources such as from vessels, however, the duration of temporal and spatial overlap with any individual animal and the spatially separated sources that the Action Proponents use would not be expected to result in more than short-term, low impact masking that would not affect reproduction or survival.

Auditory Injury From Sonar Acoustic Sources and Explosives and Non-Auditory Injury From Explosives

Table 38 through table 46 indicate the number of takes of each species by Level A harassment in the form of auditory injury resulting from exposure to active sonar and/or explosives is estimated to occur, and table 50 indicates the totals across all activities. The number of takes estimated to result from auditory injury annually from sonar, air guns, and explosives for each species/stock from all activities combined ranges from 0 to 180 (the 180 is for the Western North Atlantic stock of dwarf sperm whale). Nineteen stocks (all odontocetes) have the potential to incur non-auditory injury from explosives, and the number of individuals from any given stock from all activities combined ranges from 1 to 3 (the 3 is for the Northern Gulf of America stock of pantropical spotted dolphin). As described previously, the Navy's model likely overestimates the number of injurious takes to some degree. Nonetheless, these Level A harassment take numbers represent the maximum number of instances in which marine mammals would be reasonably expected to incur auditory and/or non-auditory injury, and we have analyzed them accordingly.

If a marine mammal is able to approach a surface vessel within the distance necessary to incur auditory injury in spite of the mitigation measures, the likely speed of the vessel (nominally 10–15 kn (18.5–27.8 km/hr)) and relative motion of the vessel would make it very difficult for the animal to remain in range long enough to accumulate enough energy to result in more than a mild case of auditory injury. As discussed previously in relation to TTS, the likely consequences to the health of an individual that incurs auditory injury can range from mild to more serious, and is dependent upon the degree of auditory injury and the frequency band associated with auditory injury. The majority of any auditory injury incurred as a result of exposure to Navy sources would be expected to be in the 2–20 kHz range (resulting from the most powerful hull-mounted sonar) and could overlap a small portion of the communication frequency range of many odontocetes, whereas other marine mammal groups have communication calls at lower frequencies. Because of the broadband nature of explosives, auditory injury incurred from exposure to explosives would occur over a lower, but wider, frequency range. Regardless of the frequency band, the more important point in this case is that any auditory

injury accrued as a result of exposure to Navy activities would be expected to be of a small amount (single digits). Permanent loss of some degree of hearing is a normal occurrence for older animals, and many animals are able to compensate for the shift, both in old age or at younger ages as the result of stressor exposure. While a small loss of hearing sensitivity may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, at the expected scale it would be unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival.

The Action Proponents implement mitigation measures (described in the Proposed Mitigation Measures section) during explosive activities, including delaying detonations when a marine mammal is observed in the mitigation zone. Nearly all explosive events would occur during daylight hours thereby improving the sightability of marine mammals and mitigation effectiveness. Observing for marine mammals during the explosive activities would include visual and passive acoustic detection methods (the latter when they are available and part of the activity) before the activity begins, in order to cover the mitigation zones that can range from 200 yd (183 m) to 2,500 yd (2,286 m) depending on the source (*e.g.*, explosive sonobuoy, explosive torpedo, explosive bombs), and 2.5 nmi (4.6 km) for sinking exercises (see table 55 through table 64).

The type and amount of take by Level A harassment are indicated for all species and species groups in table 81, table 83, table 85, table 87, table 89, and table 91. Generally speaking, non-auditory injuries from explosives could range from minor lung injuries (the most sensitive organ and first to be affected) that consist of some short-term reduction of health and fitness immediately following the injury that heals quickly and will not have any discernible long-term effects, up to more impactful permanent injuries across multiple organs that may cause health problems and negatively impact reproductive success (*i.e.*, increase the time between pregnancies or even render reproduction unlikely) but fall just short of a “serious injury” by virtue of the fact that the animal is not expected to die. Nonetheless, due to the Navy's mitigation and detection capabilities, we would not expect marine mammals to typically be exposed to a more severe blast located closer to the source—so the impacts likely would be less severe. In addition, most non-auditory injuries and

mortalities or serious injuries are predicted for stocks with medium to large group sizes, mostly delphinids, which increases sightability. It is still difficult to evaluate how these injuries may or may not impact an animal's fitness, however, these effects are only seen in very small numbers (single digits for all stocks) and mostly in species of moderate, high, and very high abundances. In short, it is unlikely that any, much less all, of the small number of injuries accrued to any one stock would result in reduced reproductive success of any individuals; even if a few injuries did result in reduced reproductive success of individuals, the status of the affected stocks are such that it would not be expected to adversely impact rates of reproduction (and auditory injury of the low severity anticipated here is not expected to affect the survival of any individual marine mammals).

Serious Injury and Mortality

NMFS is authorizing a very small number of serious injuries or mortalities that could occur in the event of a vessel strike or as a result of marine mammal exposure to explosive detonations (mostly during ship shock trials). We note here that the takes from potential vessel strikes or explosive exposures enumerated below could result in non-serious injury, but their worst potential outcome (mortality) is analyzed for the purposes of the negligible impact determination.

The MMPA requires that PBR be estimated in SARs and that it be used in applications related to the management of take incidental to commercial fisheries (*i.e.*, the take reduction planning process described in section 118 of the MMPA and the determination of whether a stock is “strategic” as defined in section 3). While nothing in the statute requires the application of PBR outside the management of commercial fisheries interactions with marine mammals, NMFS recognizes that as a quantitative metric, PBR may be useful as a consideration when evaluating the impacts of other human-caused activities on marine mammal stocks. Outside the commercial fishing context, and in consideration of all known human-caused mortality, PBR can help inform the potential effects of M/SI requested to be authorized under section 101(a)(5)(A). As noted by NMFS and the U.S. FWS in our implementing regulations for the 1986 amendments to the MMPA (54 FR 40341, September 29, 1989), the Services consider many factors, when available, in making a negligible impact determination,

including, but not limited to, the status of the species or stock relative to OSP (if known); whether the recruitment rate for the species or stock is increasing, decreasing, stable, or unknown; the size and distribution of the population; and existing impacts and environmental conditions. In this multi-factor analysis, PBR can be a useful indicator for when, and to what extent, the agency should take an especially close look at the circumstances associated with the potential mortality, along with any other factors that could influence annual rates of recruitment or survival.

Below we describe how PBR is considered in NMFS M/SI analysis. Please see the 2020 Northwest Training and Testing Final Rule (85 FR 72312, November 12, 2020) for a background discussion of PBR and how it was adopted for use authorizing incidental take under section 101(a)(5)(A) for specified activities such as the Action Proponent's training and testing in the AFTT Study Area.

When considering PBR during evaluation of effects of M/SI under section 101(a)(5)(A), we utilize a two-tiered analysis for each stock for which M/SI is proposed for authorization:

(i) *Tier 1*: Compare the total human-caused average annual M/SI estimate from all sources, including the M/SI proposed for authorization from the specific activity, to PBR. If the total M/SI estimate is less than or equal to PBR, then the specific activity is considered to have a negligible impact on that stock. If the total M/SI estimate (including from the specific activity) exceeds PBR, conduct the Tier 2 analysis.

(ii) *Tier 2*: Evaluate the estimated M/SI from the specified activity relative to the stock's PBR. If the M/SI from the specified activity is less than or equal to 10 percent of PBR and other major sources of human-caused mortality have mitigation in place, then the individual specified activity is considered to have a negligible impact on that stock. If the estimate exceeds 10 percent of PBR, then, absent other mitigating factors, the specified activity is considered likely to have a non-negligible impact on that stock.

Additional detail regarding the two tiers of the evaluation are provided below.

As indicated above, the goal of the Tier 1 assessment is to determine whether total annual human-caused mortality, including from the specified activity, would exceed PBR. To aid in the Tier 1 evaluation and get a clearer picture of the amount of annual M/SI that remains without exceeding PBR, for each species or stock, we first calculate

a "residual PBR," which equals PBR minus the ongoing annual human-caused M/SI (*i.e.*, $\text{Residual PBR} = \text{PBR} - (\text{annual M/SI estimate from the SAR} + \text{other M/SI authorized under } 101(a)(5)(A))$). If the ongoing human-caused M/SI from other sources does not exceed PBR, then residual PBR is a positive number, and we consider how the proposed authorized incidental M/SI from the specified activities being evaluated compares to residual PBR using the Tier 1 framework in the following paragraph. If the ongoing anthropogenic mortality from other sources already exceeds PBR, then residual PBR is a negative number and we move to the Tier 2 discussion further below to consider the M/SI from the specific activities.

To reiterate the Tier 1 analysis overview in the context of residual PBR, if the M/SI from the specified activity does not exceed PBR, the impacts of the authorized M/SI on the species or stock are generally considered to be negligible. As a simplifying analytical tool in the Tier 1 evaluation, we first consider whether the M/SI from the specified activities could cause incidental M/SI that is less than 10 percent of residual PBR, which we consider an "insignificance threshold." If so, we consider M/SI from the specified activities to represent an insignificant incremental increase in ongoing anthropogenic M/SI for the marine mammal stock in question that alone will clearly not adversely affect annual rates of recruitment and survival and for which additional analysis or discussion of the anticipated M/SI is not required because the negligible impact standard clearly will not be exceeded on that basis alone.

When the M/SI from the specified activity is above the insignificance threshold in the Tier 1 evaluation, it does not indicate that the M/SI associated with the specified activities is necessarily approaching a level that would exceed negligible impact. Rather, it is used as a cue to look more closely if and when the M/SI for the specified activity approaches residual PBR, as it becomes increasingly necessary (the closer the M/SI from the specified activity is to 100 percent residual PBR) to carefully consider whether there are other factors that could affect reproduction or survival, such as take by Level A and/or Level B harassment that has been predicted to impact reproduction or survival of individuals, or other considerations such as information that illustrates high uncertainty involved in the calculation of PBR for some stocks. Recognizing that the impacts of harassment of any

authorized incidental take (by Level A or Level B harassment from the specified activities) would not combine with the effects of the authorized M/SI to adversely affect the stock through effects on recruitment or survival, if the proposed authorized M/SI for the specified activity is less than residual PBR, the M/SI, alone, would be considered to have a negligible impact on the species or stock. If the proposed authorized M/SI is greater than residual PBR, then the assessment should proceed to Tier 2.

For the Tier 2 evaluation, recognizing that the total annual human-caused M/SI exceeds PBR, we consider whether the incremental effects of the proposed authorized M/SI for the specified activity, specifically, would be expected to result in a negligible impact on the affected species or stocks. For the Tier 2 assessment, consideration of other factors (positive or negative), including those described above (*e.g.*, the certainty in the data underlying PBR and the impacts of any harassment authorized for the specified activity), as well as the mitigation in place to reduce M/SI from other activities is especially important to assessing the impacts of the M/SI from the specified activity on the species or stock. PBR is a conservative metric and not sufficiently precise to serve as an absolute predictor of population effects upon which mortality caps would appropriately be based. For example, in some cases stock abundance (which is one of three key inputs into the PBR calculation) is underestimated because marine mammal survey data within the U.S. EEZ are used to calculate the abundance even when the stock range extends well beyond the U.S. EEZ. An underestimate of abundance could result in an underestimate of PBR. Alternatively, we sometimes may not have complete M/SI data beyond the U.S. EEZ to compare to PBR, which could result in an overestimate of residual PBR. The accuracy and certainty around the data that feed any PBR calculation, such as the abundance estimates, must be carefully considered to evaluate whether the calculated PBR accurately reflects the circumstances of the particular stock.

Also, as referenced above, in some cases the ongoing human-caused mortality from activities other than those being evaluated already exceeds PBR and, therefore, residual PBR is negative. In these cases, any additional mortality, no matter how small, and no matter how small relative to the mortality caused by other human activities, would result in greater exceedance of PBR. PBR is helpful in

informing the analysis of the effects of mortality on a species or stock because it is important from a biological perspective to be able to consider how the total mortality in a given year may affect the population. However, section 101(a)(5)(A) of the MMPA indicates that NMFS shall authorize the requested incidental take from a specified activity if we find that “the total of such taking [*i.e.*, from the specified activity] will have a negligible impact on such species or stock.” In other words, the task under the statute is to evaluate the applicant’s anticipated take in relation to their take’s impact on the species or stock, not other entities’ impacts on the species or stock. Neither the MMPA nor NMFS’ implementing regulations call for consideration of other unrelated activities and their impacts on the species or stock.

Accordingly, we may find that the impacts of the taking from the specified activity may (alone) be negligible even when total human-caused mortality from all activities exceeds PBR if (in the context of a particular species or stock). Specifically, where the authorized M/SI would be less than or equal to 10 percent of PBR and management measures are being taken to address M/SI from the other contributing activities (*i.e.*, other than the specified activities covered by the incidental take authorization under consideration), the impacts of the authorized M/SI would be considered negligible. In addition, we must also still determine that any impacts on the species or stock from other types of take (*i.e.*, harassment) caused by the applicant do not combine with the impacts from mortality or serious injury addressed here to result in adverse effects on the species or stock through effects on annual rates of recruitment or survival.

As noted above, while PBR is useful in informing the evaluation of the effects of M/SI in section 101(a)(5)(A) determinations, it is one consideration to be assessed in combination with

other factors and is not determinative. For example, as explained above, the accuracy and certainty of the data used to calculate PBR for the species or stock must be considered. And we reiterate the considerations discussed above for why it is not appropriate to consider PBR an absolute cap in the application of this guidance. Accordingly, we use PBR as a trigger for concern while also considering other relevant factors to provide a reasonable and appropriate means of evaluating the effects of potential mortality on rates of recruitment and survival, while acknowledging that it is possible for total human-caused M/SI to exceed PBR (or for the M/SI from the specified activity to exceed 10 percent of PBR in the case where other human-caused mortality is exceeding PBR, as described in the last paragraph) by some small amount and still make a negligible impact determination under section 101(a)(5)(A).

We note that on June 17, 2020, NMFS finalized new Criteria for Determining Negligible Impact under MMPA section 101(a)(5)(E). The guidance explicitly notes the differences in the negligible impact determinations required under section 101(a)(5)(E), as compared to sections 101(a)(5)(A) and 101(a)(5)(D), and specifies that the procedure in that document is limited to how the agency conducts negligible impact analyses for commercial fisheries under section 101(a)(5)(E). In this proposed rule, NMFS has described its method for considering PBR to evaluate the effects of potential mortality in the negligible impact analysis. NMFS has reviewed the 2020 guidance and determined that our consideration of PBR in the evaluation of mortality as described above and in the proposed rule remains appropriate for use in the negligible impact analysis for the Action proponent’s activities under section 101(a)(5)(A).

Our evaluation of the M/SI for each of the species and stocks for which

mortality or serious injury could occur follows.

We first consider maximum potential incidental M/SI from the Action Proponents’ vessel strike analysis for the affected large whales (table 79) and from the Action Proponents’ explosive detonations for the affected small cetaceans (table 80) in consideration of NMFS’ threshold for identifying insignificant M/SI take. By considering the maximum potential incidental M/SI in relation to PBR and ongoing sources of anthropogenic mortality, as described above, we begin our evaluation of whether the potential incremental addition of M/SI through vessel strikes and explosive detonations may affect the species’ or stocks’ annual rates of recruitment or survival. We also consider the interaction of those mortalities with incidental taking of that species or stock by harassment pursuant to the specified activity.

Based on the methods discussed previously, NMFS is proposing to authorize six mortalities of large whales due to vessel strike over the course of the 7-year rule, three by each Action Proponent. Across the 7-year duration of the rule, two takes by mortality (annual average of 0.29 takes) of fin whale (Western North Atlantic stock), minke whale (Canadian East Coast stock), sei whale (Nova Scotia stock), and sperm whale (North Atlantic stock) could occur and are proposed for authorization (table 79); one take by mortality (annual average of 0.14 takes) of the Northern Gulf of America stock of sperm whale could occur and is proposed for authorization; four takes by mortality (annual average of 0.57 takes) of humpback whale (Gulf of Maine stock) could occur and are proposed for authorization (table 79). To calculate the annual average of M/SI by vessel strike, we divided the 7-year proposed take by serious injury or mortality by seven.

TABLE 79—SUMMARY INFORMATION RELATED TO MORTALITIES REQUESTED FOR VESSEL STRIKE
[2025–2032]

Common name	Stock	Stock abundance	Total annual M/SI ^a	Fisheries interactions (Y/N); annual rate of M/SI from fisheries interactions	Annual M/SI due to vessel collision	NEFSC authorized take (annual) ^b	PBR	Residual PBR (PBR minus annual M/SI) ^c	Recent UME (Y/N); number of strandings, year declared	Annual proposed take by serious injury or mortality (all action proponents) ^d	7-Year proposed take by serious injury or mortality (all action proponents)
Fin Whale	Western North Atlantic	6,802	2.05	Y; 1.45	0.6	0	11	8.95	N	0.29	2
Humpback Whale	Gulf of Maine	1,396	12.15	Y; 7.75	4.4	0	22	9.85	Y; 244, 2017	0.57	4
Minke Whale	Canadian Eastern Coastal	21,968	9.40	Y; 8.6	0.8	1	170	159.6	Y; 198, 2018	0.29	2
Sei Whale	Nova Scotia	6,292	0.60	Y; 0.4	0	0	6.2	5.6	N	0.29	2
Sperm Whale	North Atlantic	5,895	0.20	N	0	0	9.28	9.08	N	0.29	2
Sperm Whale *	Northern Gulf of America	1,614	9.60	Y; 0.2	0	0	2	–7.6	N	0.14	e 1

Note: Unk = Unknown; N/A = Not Applicable.

* Stock abundance from NMSDD (see table 2.4–1 in appendix A of the application).

^a This column represents the total number of incidents of M/SI that could potentially accrue to the specified species or stock.

^b This column represents the annual authorized take by mortality in the 2021 LOA for Northeast Fisheries Science Center Fisheries Research Activities. No take of large whales was authorized in the 2020 LOA for Southeast Fisheries Science Center Fisheries Research Activities.

^c This value represents the calculated PBR less the average annual estimate of ongoing anthropogenic mortalities (i.e., total annual human-caused M/SI, which is presented in the SARs).

^d This column represents the annual take by serious injury or mortality during Navy training and testing activities and was calculated by the number of mortalities proposed for authorization divided by 7 years.

^e Authorized for U.S. Navy only.

The Action Proponents also requested a small number of takes by M/SI from explosives. Across the 7-year duration of the rule, NMFS is proposing to authorize five takes by M/SI (annual average of 0.71 takes) of pantropical spotted dolphin (Northern Gulf of America stock), two takes by M/SI (annual average of 0.29 takes) of striped

dolphin (Northern Gulf of America stock), two takes by M/SI (annual average of 0.29 takes) of bottlenose dolphin (Western North Atlantic Offshore stock), one take by M/SI (annual average of 0.14 takes) of Tamanend's bottlenose dolphin (Western North Atlantic South Carolina/Georgia Coastal), and three takes by M/

SI (annual average of 0.43 takes) of Clymene dolphin (Western North Atlantic stock) (table 80). To calculate the annual average of M/SI from explosives, we divided the 7-year proposed take by serious injury or mortality by seven (table 80), the same method described for vessel strikes.

TABLE 80—SUMMARY INFORMATION RELATED TO AFTT SERIOUS INJURY OR MORTALITY FROM EXPLOSIVES
[2025–2032]

Species	Stock	Stock abundance	Total annual M/SI ^a	Fisheries interactions (Y/N); annual rate of M/SI from fisheries interactions	SEFSC authorized take (annual) ^b	NEFSC authorized take (annual) ^b	PBR	Residual PBR (PBR minus annual M/SI) ^c	Recent UME (Y/N); number of strandings, year declared	Annual proposed take by serious injury or mortality (all action proponents) ^d	7-Year proposed take by serious injury or mortality (all action proponents)	Population trend
Pantropical spotted dolphin	Northern Gulf of America ...	37,195	241	N	0.8	0	304	62.2	N	0.71	5	Potentially increasing.
Striped dolphin *	Northern Gulf of America ...	7,782	13	N	0.6	0	12	–1.6	N	0.29	2	Unk.
Bottlenose dolphin *	Western North Atlantic Off-shore.	150,704	28	Y; 28	0.8	1.6	507	476.6	N	0.29	2	Stable, potentially decreasing.
Tamanend's bottlenose dolphin.	Western North Atlantic, South/Carolina Georgia Coastal.	9,121	0.2–0.6	Y; 0.2–0.6	0.6	0	73	71.8	N	0.14	1	Unk (insufficient data).
Clymene dolphin	Western North Atlantic	21,778	0	N	0	0	126	126	N	0.43	3	Unk.

Note: Unk = Unknown, SEFSC = Southeast Fisheries Science Center, NEFSC = Northeast Fisheries Science Center.

* Stock abundance from NMSDD (see table 2.4–1 in appendix A of the application).

^a This column represents the total number of incidents of M/SI that could potentially accrue to the specified species or stock.

^b These columns represent the annual authorized take by mortality in the 2020 LOA for Southeast Fisheries Science Center Fisheries Research Activities and the 2021 LOA for Northeast Fisheries Science Center Fisheries Research Activities.

^c This value represents the calculated PBR less the average annual estimate of ongoing anthropogenic mortalities (i.e., total annual human-caused M/SI, which is presented in the SARs).

^d This column represents the annual take by serious injury or mortality during training and testing activities and was calculated by the number of mortalities proposed for authorization divided by 7 years.

Stocks With M/SI From the Specified Activity Below the Insignificance Threshold—

As noted above, for a species or stock with M/SI proposed for authorization less than 10 percent of residual PBR, we consider M/SI from the specified activities to represent an insignificant incremental increase in ongoing anthropogenic M/SI that alone (*i.e.*, in the absence of any other take and barring any other unusual circumstances) will clearly not adversely affect annual rates of recruitment and survival. In this case, as shown in table 79 and table 80, the following species or stocks have potential or estimated take by M/SI from vessel strike and explosives, respectively, and proposed for authorization below their insignificance threshold: fin whale (Western North Atlantic stock), humpback whale (Gulf of Maine stock), minke whale (Canadian East Coast stock), sei whale (Nova Scotia stock), sperm whale (North Atlantic stock), pantropical spotted dolphin (Northern Gulf of America Stock), bottlenose dolphin (Western North Atlantic Offshore), Tamanend's bottlenose dolphin (Western North Atlantic South Carolina/Georgia Coastal Stock), Clymene dolphin (Western North Atlantic Stock). While the authorized M/SI of humpback whales (Gulf of Maine stock) and minke whales (Canadian East Coast stock) are each below the insignificance threshold, because of the current UMEs, we further address how the authorized M/SI and the UMEs inform the negligible impact determinations immediately below. For the other seven stocks with authorized M/SI below the insignificance threshold, there are no other known factors, information, or unusual circumstances that indicate anticipated M/SI below the insignificance threshold could have adverse effects on annual rates of recruitment or survival and they are not discussed further. For the remaining stocks with potential M/SI above the insignificance threshold, how that M/SI compares to residual PBR, as well as additional factors, are discussed below as well.

Humpback Whale (Gulf of Maine Stock)

For this stock, PBR is currently set at 22. The total annual M/SI from other sources of anthropogenic mortality is estimated to be 12.15. This yields a residual PBR of 9.85. The additional 0.57 annual mortalities that are authorized in this rule are below the insignificance threshold (10 percent of residual PBR, in this case 0.985). Nonetheless, since January 2016,

elevated humpback whale mortalities have occurred along the Atlantic coast from Maine to Florida. As of February 6, 2025, there have been 244 known strandings, and of the whales examined, about 40 percent had evidence of human interaction either from vessel strike or entanglement. 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. However, even in consideration of the UME, the incremental increase in annual mortality from the Action Proponents' specified activities is not expected to adversely affect annual rates of recruitment or survival.

Minke Whale (Canadian East Coast Stock)

For this stock, PBR is currently set at 170. The total annual M/SI from other sources of anthropogenic mortality is estimated to be 9.4. In addition, 1 annual mortality has been authorized for this same stock in the current incidental take regulations for NMFS' Northeast Fisheries Science Center (86 FR 58434, October 21, 2021). This yields a residual PBR of 159.6. The additional 0.29 annual mortalities that are authorized in this rule are well below the insignificance threshold (10 percent of residual PBR, in this case 16.0). Nonetheless, minke whale mortalities detected along the Atlantic coast from Maine through South Carolina resulted in the declaration of an on-going UME in 2017. Preliminary findings show evidence of human interactions or infectious disease, but these findings are not consistent across all of the minke whales examined, so more research is needed. As of February 10, 2025, a total of 198 minke whales have stranded during this UME, averaging about 25 animals per year. However, even in consideration of the UME, the incremental increase in annual mortality from the Action Proponents' activities is not expected to adversely affect annual rates of recruitment or survival.

Stocks With M/SI From the Specified Activity Above the Insignificance Threshold (and, in This Case, Also Above Residual PBR)—

Sperm Whale (Northern Gulf of America Stock)

For the Northern Gulf of America stock of sperm whale, PBR is currently set at 2 and the total annual M/SI is estimated at 9.6, yielding a residual PBR

of – 7.6. NMFS is proposing to authorize one M/SI (U.S. Navy only) over the 7-year duration of the rule (indicated as 0.14 annually for the purposes of comparing to PBR and evaluating overall effects on annual rates of recruitment and survival), which means that residual PBR is exceeded by 7.74. However, as described above, given that the negligible impact determination is based on the assessment of take of the activity being analyzed, when total annual mortality from human activities is higher, but the impacts from the specific activity being analyzed are very small, NMFS may still find the impact of the authorized take from a specified activity to be negligible even if total human-caused mortality exceeds PBR—specifically if the authorized mortality is less than 10 percent of PBR and management measures are being taken to address serious injuries and mortalities from the other activities causing mortality (*i.e.*, other than the specified activities covered by the incidental take authorization in consideration). When those considerations are applied here, the authorized lethal take (0.14 annually) of Northern Gulf of America stock of sperm whale is less than 10 percent of PBR (PBR is 2). Additionally, there are management measures in place to address M/SI from activities other than those the Action Proponents are conducting (as discussed below). Immediately below, we explain the information that supports our finding that the M/SI proposed for authorization herein is not expected to result in more than a negligible impact on this stock. As described previously, NMFS must also ensure that impacts by the applicant on the species or stock from other types of take (*i.e.*, harassment) do not combine with the impacts from mortality to adversely affect the species or stock via impacts on annual rates of recruitment or survival, which we have done further below in the stock-specific conclusion sections.

As discussed, we also take into consideration management measures in place to address M/SI caused by other activities. As reported in the SAR, of the total annual M/SI of this stock (9.6), 9.4 of those M/SI are from the DWH oil spill. (The remaining 0.2 are fishery-related M/SI.) Since the DWH spill, there have been numerous recovery efforts for marine mammals. The DWH oil spill NRDA settlement allocated \$144,000,000 to marine mammal restoration, and as of 2021, \$30,968,016 has been allocated (DWH NRDA Trustees, 2021). Projects have focused

on understanding and assessing Gulf cetacean populations, enhancing the capacity of stranding and response programs, enhancing our understanding of, and reducing, stressors on cetaceans, and developing and implementing decision support tools for cetaceans. Recovery efforts have included some efforts to minimize impacts to marine mammals from ocean noise. Proposals and planning for additional pilot projects, including projects to test existing alternatives to traditional airgun seismic surveys, engineering solutions for vessel quieting, and operational approaches for quieting commercial vessels while underway (Southall *et al.* 2024).

In this case, 0.14 M/SI means one mortality in 1 of the 7 years and zero mortalities in 6 of those 7 years. Therefore, the Action Proponents would not be contributing to the total human-caused mortality at all in 6 of the 7, or 85.7 percent, of the years covered by this rulemaking. That means that even if a Northern Gulf of America stock of sperm whale were to be taken by mortality from vessel strike, in 6 of the 7 years there could be no effect on annual rates of recruitment or survival from Action Proponent-caused M/SI. Additionally, the loss of a male would have far less, if any, effect on population rates and absent any information suggesting that one sex is more likely to be struck than another, we can reasonably assume that there is a 50 percent chance that the single strike authorized by this rulemaking would be a male, thereby further decreasing the likelihood of impacts on the population rate. In situations like this where potential M/SI is fractional, consideration must be given to the lessened impacts anticipated due to the absence of M/SI in 6 of the 7 years and the fact that the single strike could be a male. Lastly, we reiterate that PBR is a conservative metric and also not sufficiently precise to serve as an absolute predictor of population effects upon which mortality caps would appropriately be based. This is especially important given the minor difference between zero and one across the 7-year period covered by this rulemaking, which is the smallest distinction possible when considering mortality. As noted above, Wade *et al.* (1998) (authors of the paper from which the current PBR equation is derived) note, “Estimating incidental mortality in 1 year to be greater than the PBR calculated from a single abundance survey does not prove the mortality will lead to depletion; it identifies a population worthy of careful future

monitoring and possibly indicates that mortality-mitigation efforts should be initiated.” Importantly, M/SI proposed for authorization is below 10 percent of PBR, and management actions are in place to support recovery of the stock following the DWH oil spill impacts. Based on the presence of the factors described above, we do not expect lethal take from Navy activities, alone, to adversely affect Northern Gulf of America stock of sperm whales through effects on annual rates of recruitment or survival. Nonetheless, the fact that total human-caused mortality exceeds PBR necessitates close attention to the remainder of the impacts (*i.e.*, harassment) on the Northern Gulf of America stock of sperm whale from the Action Proponents’ activities to ensure that the total authorized takes have a negligible impact on the species or stock. Therefore, this information will be considered in combination with our assessment of the impacts of authorized harassment takes in the *Group and Species-Specific Analyses* section that follows.

Striped Dolphin (Northern Gulf of America Stock)

For striped dolphin (Northern Gulf of America stock), PBR is currently set at 12 and the total annual M/SI is estimated at greater than or equal to 13. As described in the SAR, these 13 M/SI are predicted M/SI from the DWH oil spill. In addition, 0.6 annual mortalities have been authorized for this same stock in the current incidental take regulations for NMFS’ Southeast Fisheries Science Center (85 FR 27028, May 6, 2020). This yields a residual PBR of -1.6 . NMFS is proposing to authorize two M/SI for the Navy over the 7-year duration of the rule (indicated as 0.29 annually for the purposes of comparing to PBR and evaluating overall effects on annual rates of recruitment and survival), which means that residual PBR is exceeded by 1.74. However, as described above, given that the negligible impact determination is based on the assessment of take of the activity being analyzed, when total annual mortality from human activities is higher, but the impacts from the specific activity being analyzed are very small, NMFS may still find the impact of the authorized take from a specified activity to be negligible even if total human-caused mortality exceeds PBR—specifically if the authorized mortality is less than 10 percent of PBR and management measures are being taken to address serious injuries and mortalities from the other activities causing mortality (*i.e.*, other than the

specified activities covered by the incidental take authorization in consideration). When those considerations are applied here, the authorized lethal take (0.29 annually) of Northern Gulf of America stock of striped dolphin is less than 10 percent of PBR (PBR is 12). Additionally, there are management measures in place to address M/SI from activities other than those the Action Proponents are conducting (as discussed below). Immediately below, we explain the information that supports our finding that the M/SI proposed for authorization herein is not expected to result in more than a negligible impact on this stock. As described previously, NMFS must also ensure that impacts by the applicant on the species or stock from other types of take (*i.e.*, harassment) do not combine with the impacts from mortality to adversely affect the species or stock via impacts on annual rates of recruitment or survival, which we have done further below in the stock-specific conclusion sections.

As discussed, we also take into consideration management measures in place to address M/SI caused by other activities. As reported in the SAR, all 13 of the total annual M/SI of this stock are from the DWH oil spill. As described in the previous section in more detail, since the DWH spill, there have been numerous recovery efforts for marine mammals, including some efforts to minimize impacts to marine mammals from ocean noise, such as pilot projects to test existing alternatives to traditional airgun seismic surveys, engineering solutions for vessel quieting, and operational approaches for quieting commercial vessels while underway (Southall *et al.* 2024).

Additionally of note, in this case, 0.29 M/SI means one mortality in 1 of the 7 years and zero mortalities in 6 of those 7 years. Therefore, the Action Proponents would not be contributing to the total human-caused mortality at all in 6 of the 7, or 85.7 percent, of the years covered by this rulemaking. That means that even if a striped dolphin were to be taken by mortality from explosives, in 6 of the 7 years there could be no effect on annual rates of recruitment or survival from Action Proponent-caused M/SI. Additionally, the loss of a male would have far less, if any, effect on population rates and absent any information suggesting that one sex is more likely to be injured than another, we can reasonably assume that there is a 50 percent chance that the two mortalities authorized by this rulemaking would be a male, thereby further decreasing the likelihood of impacts on the population rate. In

situations like this where potential M/SI is fractional, consideration must be given to the lessened impacts anticipated due to the absence of M/SI in 6 of the 7 years and the fact that the single strike could be a male. Lastly, we reiterate that PBR is a conservative metric and also not sufficiently precise to serve as an absolute predictor of population effects upon which mortality caps would appropriately be based. This is especially important given the minor difference between zero and one across the 7-year period covered by this rulemaking, which is the smallest distinction possible when considering mortality. As noted previously, Wade *et al.* (1998) state, “Estimating incidental mortality in 1 year to be greater than the PBR calculated from a single abundance survey does not prove the mortality will lead to depletion; it identifies a population worthy of careful future monitoring and possibly indicates that mortality-mitigation efforts should be initiated.” Further, M/SI proposed for authorization is below 10 percent of PBR, and management actions are in place to support recovery of the stock following the DWH oil spill impacts. Based on the presence of the factors described above, we do not expect lethal take from Navy activities, alone, to adversely affect Northern Gulf of America stock of striped dolphins through effects on annual rates of recruitment or survival. Nonetheless, the fact that total human-caused mortality exceeds PBR necessitates close attention to the remainder of the impacts (*i.e.*, harassment) on the Northern Gulf of America stock of striped dolphins from the Action Proponents’ activities to ensure that the total authorized takes have a negligible impact on the species or stock. Therefore, this information will be considered in combination with our assessment of the impacts of authorized harassment takes in the *Group and Species-Specific Analyses* section that follows.

Deepwater Horizon Oil Spill

As discussed in the earlier *Deepwater Horizon Oil Spill* section, the DWH oil spill caused a suite of adverse health effects to marine mammals in the GOM. Coastal and estuarine bottlenose dolphin populations were some of the most severely injured (Hohn *et al.*, 2017; Rosel *et al.*, 2017; Thomas *et al.*, 2017), but oceanic species were also exposed and experienced increased mortality, increased reproductive failure, and a higher likelihood of other adverse health effects.

Due to the scope of the spill, the magnitude of potentially injured

populations, and the difficulties and limitations of working with marine mammals, it is impossible to quantify injury without uncertainty. Wherever possible, the quantification results represent ranges of values that encapsulate the uncertainty inherent in the underlying datasets. The population model outputs shown in table 15 best represent the temporal magnitude of the injury and the potential recovery time from the injury (DWH NRDA Trustees, 2016). The values in the table inform the baseline levels of both individual health and susceptibility to additional stressors, as well as stock status, with which the effects of the Action Proponents’ takes are considered in the negligible impact analysis. Additionally, estimates of annual mortality for many stocks now include mortality attributed to the effects of the DWH oil spill (see table 15) (Hayes *et al.*, 2024), and these mortality estimates are considered as part of the environmental baseline.

Group and Species-Specific Analyses

In this section, we build on the general analysis that applies to all marine mammals in the AFTT Study Area from the previous sections. We first include information and analysis that applies to mysticetes or, separately, odontocetes, or pinnipeds, and then within those three sections, more specific information that applies to smaller groups, where applicable, and the affected species or stocks. The specific authorized take numbers are also included in the analyses below, and so here we provide some additional context and discussion regarding how we consider the authorized take numbers in those analyses.

The maximum amount and type of incidental take of marine mammals reasonably likely to occur and therefore proposed to be authorized from exposures to sonar and other active acoustic sources and explosions during the 7-year activity period are shown in table 35, table 36, and table 37, and the subset attributable to ship shock trials is included in table 45.

In the discussions below, the estimated takes by Level B harassment represent instances of take, not the number of individuals taken (the much lower and less frequent Level A harassment takes are far more likely to be associated with separate individuals), and in some cases individuals may be taken more than one time. As part of our evaluation of the magnitude and severity of impacts to marine mammal individuals and the species, and specifically in an effort to better understand the degree to which the modeled and estimated takes likely

represent repeated takes of the individuals of a given species/stock, we consider the total annual numbers of take by harassment (auditory injury, non-auditory injury, TTS, and behavioral disturbance) for species or stocks as compared to their associated abundance estimates—specifically, take numbers higher than the stock abundance clearly indicate that some number of individuals are being taken on more than one day in the year, and broadly higher or lower ratios of take to abundance may reasonably be considered to equate to higher or lower likelihood of repeated takes, respectively, other potentially influencing factors being equal. In addition to the mathematical consideration of estimated take compared to abundance, we also consider other factors or circumstances that may influence the likelihood of repeated takes, where known, such as circumstances where activities resulting in take are focused in an area and time (*e.g.*, instrumented ranges or a homeport, or long-duration activities such as manor training exercises) and/or where the same individual marine mammals are known to congregate over longer periods of time (*e.g.*, pinnipeds at a haulout, mysticetes in a known foraging area, or resident odontocetes with smaller home ranges). Similarly, and all else being equal, estimated takes that are largely focused in one region and/or season (see table 81, table 83, table 85, table 87, table 89, and table 91) may indicate a higher likelihood of repeated takes of the same individuals.

Occasional, milder behavioral responses 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 a comparatively longer duration of sequential days, impacts to individual fitness are not anticipated. 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; NAS 2017; New *et al.*, 2014; Southall *et al.*, 2007; Villegas-Amtmann *et al.*, 2015; Hoekendijk *et al.*, 2018; Wisniewska *et al.*, 2018; Czapanskiy *et al.*, 2021; Pirotta, 2022). Generally speaking, and in the case of most species impacted by the proposed activities, in the cases where some number of individuals may reasonably be expected to be taken on more than one day within a year, that number of

days would be comparatively small and also with no reason to expect that those takes would occur on sequential days. In the rarer cases of species where individuals might be expected to be taken on a comparatively higher number of days of the year and there are reasons to think that these days might be sequential or clumped together, the likely impacts of this situation are discussed explicitly in the species discussions.

To assist in understanding what this analysis means, we clarify a few issues related to estimated takes and the analysis here. An individual that incurs AUD INJ or TTS may sometimes, for example, also be subject to behavioral disturbance at the same time. As described above in this section, the degree of auditory injury, and the degree and duration of TTS, expected to be incurred from the Navy's activities are not expected to impact marine mammals such that their reproduction or survival could be affected. Similarly, data do not suggest that a single instance in which an animal accrues auditory injury or TTS and is also subjected to behavioral disturbance would result in impacts to reproduction or survival. Alternately, we recognize that if an individual is subjected to behavioral disturbance repeatedly for a longer duration and on consecutive days, effects could accrue to the point that reproductive success is impacted. Accordingly, in analyzing the number of takes and the likelihood of repeated and sequential takes, we consider the total takes, not just the takes by Level B harassment by behavioral disturbance, so that individuals potentially exposed to both threshold shift and behavioral disturbance are appropriately considered. The number of takes by Level A harassment by auditory injury are so low (and zero in some cases) compared to abundance numbers that it is considered highly unlikely that any individual would be taken at those levels more than once.

Use of sonar and other transducers would typically be transient and temporary. The majority of acoustic effects to most marine mammal stocks from sonar and other active sound sources during the specified military readiness activities would be primarily from anti-submarine warfare events. On the less severe end, exposure to comparatively lower levels of sound at a detectably greater distance from the animal, for a few or several minutes, could result in a behavioral response such as avoiding an area that an animal would otherwise have moved through or fed in, or breaking off one or a few feeding bouts. More severe behavioral

effects could occur when an animal gets close enough to the source to receive a comparatively higher level of sound, is exposed continuously to one source for a longer time, or is exposed intermittently to different sources throughout a day. Such effects 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. However, such severe behavioral effects are expected to occur infrequently. In addition to the proximity to the source, the type of activity and the season and location during which an animal is exposed, can inform the impacts. These factors, including the numbers and types of effects that are estimated in areas known to be biologically important for certain species are discussed in the group and species-specific sections, below.

Further, as described in the Proposed Mitigation Measures section, this proposed rule includes mitigation measures that would reduce the probability and/or severity of impacts expected to result from acute exposure to acoustic sources or explosives, vessel strike, and impacts to marine mammal habitat. Specifically, the Action Proponents would use a combination of delayed starts, powerdowns, and shutdowns to avoid mortality or serious injury, minimize the likelihood or severity of AUD INJ or non-auditory injury, and reduce instances of TTS or more severe behavioral disturbance caused by acoustic sources or explosives. The Action Proponents would also implement multiple time/area restrictions that would reduce take of marine mammals in areas or at times where they are known to engage in important behaviors, such as calving, where the disruption of those behaviors would have a higher probability of resulting in impacts on reproduction or survival of individuals that could lead to population-level impacts.

These time/area restrictions include ship shock trial mitigation areas throughout the Study Area, MTE Planning Awareness Mitigation Areas in the Northeast and Mid-Atlantic, a Gulf of Maine Marine Mammal Mitigation Area, several mitigation areas specific to NARW, and a Rice's Whale Mitigation Area. Mitigation areas for NARW and Rice's whale specifically are discussed in those species-specific sections below. However, it is important to note that measures in those areas, while developed to protect those species, would also benefit other marine mammals in those areas. Therefore, they are discussed here also.

Regarding ship shock trials, the Action Proponents will not conduct ship shock trials within the Rice's whale core distribution area in the northern Gulf of America or within the portion of the ship shock trial box that overlaps the Jacksonville OPAREA from November 15 through April 15. These mitigation measures would avoid potential exposure of Rice's whales to injurious levels of sound and avoid potential injurious and behavioral impacts to NARW during calving season. Additionally, pre-event planning for ship shock trials will include the selection of sites where marine mammal abundance is expected to be the lowest during the planned event and prioritize sites more than 2 nmi (3.7 km) from the western boundary of the Gulf Stream where marine mammals would be expected in greater concentrations for foraging and migration. Overall, the benefits of Ship Shock Trial Mitigation Areas would be substantial for all marine mammal taxa because ship shock trials use the largest NEW of any explosive activity conducted in the AFTT Study Area.

Regarding MTEs, the Action Proponents will not conduct any MTEs or any portion of any MTE in the Major Training Exercise Planning Awareness Mitigation Areas in the northeast. This would restrict MTEs from occurring within NARW foraging critical habitat, on Georges Bank, and in areas that contain underwater canyons (e.g., Hydrographer Canyon, and a portion of the Northeast Canyons and Seamounts National Marine Monument), as these locations have been associated with high marine mammal abundance, feeding, and mating. In the Major Training Exercise Planning Awareness Mitigation Areas in the mid-Atlantic, the Action Proponents will not conduct any MTEs or any portion of any MTE to the maximum extent practicable, and would conduct no more than four (or a portion of more than four) MTEs per year. This would restrict the number of MTEs that could occur within large swaths of shelf break that contain underwater canyons or other habitats (e.g., Norfolk Canyon, part of the Cape Hatteras Special Research Area) associated with high marine mammal diversity in this region.

In the Gulf of Maine Marine Mammal Mitigation Area, the Action Proponents would use no more than 200 hours of surface ship hull-mounted MFAS annually. This measure is designed to reduce exposure of marine mammals to potentially injurious levels of sound from surface ship hull-mounted MFAS, the type of active sonar with the highest power source used in the Study Area.

Additionally, the action proponents would implement four mitigation areas specifically designed to protect NARW. These include the Northeast North Atlantic Right Whale Mitigation Area, Jacksonville Operating Area North Atlantic Right Whale Mitigation Area, Southeast North Atlantic Right Whale Mitigation Area, and the Dynamic North Atlantic Right Whale Mitigation Areas. These areas are designed to reduce exposure of NARWs to acoustic and explosive stressors as well as vessel strike risk in foraging critical habitat, reproduction critical habitat, and in areas and times when the species has a higher occurrence in these areas. The Northeast North Atlantic Right Whale Mitigation Area would also protect other marine mammal species, including those with BIAs that overlap the mitigation area, including fin whale, humpback whale, minke whale, sei whale, and harbor porpoise (LaBrecque *et al.*, 2015).

In addition to the nature and context of the disturbance, including whether take occurs in a known BIA, species-specific factors affect the severity of impacts to individual animals and population consequences of disturbance. Keen *et al.* (2021) identifies three population consequences of disturbance themes: life history traits, environmental conditions, and disturbance source characteristics. Life history traits considered in Keen *et al.* (2021) include movement ecology (whether animals are resident, nomadic, or migratory), reproductive strategy (capital breeders, income breeders, or mixed), body size (based on size and life stage), and pace of life (slow or fast).

Regarding movement ecology, resident animals that have small home ranges relative to the size and duration of an impact zone would have a higher risk of repeated exposures to an ongoing activity. Animals that are nomadic over a larger range may have less predictable risk of repeated exposure. For resident and nomadic populations, overlap of a stressor with feeding or reproduction depends more on time of year rather than location in their habitat range. In contrast, migratory animals may have higher or reduced potential for exposure during feeding and reproduction based on both location, time of the year, and duration of an activity. The risk of repeated exposure during individual events may be lower during migration as animals maintain directed transit through an area.

Reproduction is energetically expensive for female marine mammals, and reproductive strategy can influence an animal's sensitivity to disturbance. Mysticetes and phocids are capital

breeders. Capital breeders rely on their capital, or energy stores, to migrate, maintain pregnancy, and nurse a calf. Capital breeders would be more resilient to short-term foraging disruption due to their reliance on built-up energy reserves, but are vulnerable to prolonged foraging impacts during gestation. Otariids and most odontocetes are income breeders, which rely on some level of income, or regular foraging, to give birth and nurse a calf. Income breeders would be more sensitive to the consequences of disturbances that impact foraging during lactation. Some species exhibit traits of both, such as beaked whales.

Smaller animals require more food intake per unit body mass than large animals. They must consume food on a regular basis and are likely to be non-migratory and income breeders. The smallest odontocetes, the porpoises, must maintain high metabolisms to maintain thermoregulation and cannot rely on blubber stores for long periods of time, whereas larger odontocetes can more easily thermoregulate. The larger size of other odontocetes is an adaptation for deep diving that allows them to access high quality mesopelagic and bathypelagic prey. Both small and large odontocetes have lower foraging efficiency than the large whales. The filter-feeding large whales (mysticetes) consume most of their food within several months of the year and rely on extensive lipid reserves for the remainder of the year. The metabolism of mysticetes allows for fasting while seeking prey patches during foraging season and prolonged periods of fasting outside of foraging season (Goldbogen *et al.*, 2023). Their energy stores support capital breeding and long migrations. The effect of a temporary feeding disturbance is likely to have inconsequential impacts to a mysticete but may be consequential for small cetaceans. Despite their relatively smaller size, amphibious pinnipeds have lower thermoregulatory requirements because they spend a portion of time on land. For purposes of this assessment, marine mammals were generally categorized as small (less than 10 ft (3.05 m)), medium (10–30 ft (3.05–9.1 m)), or large (more than 30 ft (9.1 m)) based on length.

Populations with a fast pace of life are characterized by early age of maturity, high birth rates, and short life spans, whereas populations with a slow pace of life are characterized by later age of maturity, low birth rates, and long life spans. The consequences of disturbance in these populations differ. Although reproduction in populations with a fast pace of life are more sensitive to

foraging disruption, these populations are quick to recover. Reproduction in populations with a slow pace of life is resilient to foraging disruption, but late maturity and low birth rates mean that long-term impacts to breeding adults have a longer-term effect on population growth rates. Pace of life was categorized for each species in this analysis by comparing age at sexual maturity, birth rate interval, life span, body size, and feeding and reproductive strategy.

Southall *et al.* (2023) also identified factors that inform a population's vulnerability. The authors describe a framework to assess risk to populations from specific industry impact scenarios at different locations or times of year. While this approach may not be suitable for many military readiness activities, for which alternate spatial or seasonal scenarios are not usually feasible, the concepts considered in that framework's population vulnerability assessment are useful in this analysis, including population status (endangered or threatened), population trend (decreasing, stable, or increasing), population size, and chronic exposure to other anthropogenic or environmental stressors (*e.g.*, fisheries interactions, pollution, climate change, *etc.*). These factors are also considered when assessing the overall vulnerability of a stock to repeated effects from acoustic and explosive stressors.

In consideration of the factors outlined above, if impacts to individuals increase in magnitude or severity such that repeated and sequential higher severity impacts occur (the probability of this goes up for an individual the higher total number of takes it has) or the total number of moderate to more severe impacts increases substantially, especially if occurring across sequential days, then it becomes more likely that the aggregate effects could potentially interfere with feeding enough to reduce energy budgets in a manner that could impact reproductive success via longer cow-calf intervals, terminated pregnancies, or calf mortality. It is important to note that these impacts only accrue to females, which only comprise approximately 50 percent of the population. Based on energetic models, it takes energetic impacts of a significantly greater magnitude to cause the death of an adult marine mammal, and females will always terminate a pregnancy or stop lactating before allowing their health to deteriorate. Also, the death of an adult female has significantly more impact on population growth rates than reductions in reproductive success, while the death of an adult male has very little effect on

population growth rates. However, as explained earlier, such severe impacts from the specified activities would be very infrequent and not considered likely to occur at all for most species and stocks. We note that the negligible impact analysis is inherently a two-tiered assessment that first evaluates the anticipated impacts of the activities on marine mammals individuals, and then if impacts are expected to reproduction or survival of any individuals further evaluates the effects of those individual impacts on rates of reproduction and survival of the species or stock, in the context of the status of the species or stock. The analyses below in some cases address species collectively if they occupy the same functional hearing group (*i.e.*, very-low, low, high, and very high-frequency cetaceans), share similar life history strategies, and/or are known to behaviorally respond similarly to acoustic stressors. Because some of these groups or species share characteristics that inform the impact analysis similarly, it would be duplicative to repeat the same analysis for each species. In addition, similar species typically have the same hearing capabilities and behaviorally respond in the same manner.

Thus, our analysis below considers the effects of the specified activities on each affected species or stock even where discussion is organized by

functional hearing group and/or information is evaluated at the group level. Where there are meaningful differences between a species or stock that would further differentiate the analysis, they are either described within the section or the discussion for those species or stocks is included as a separate subsection. Specifically below, we first give broad descriptions of the mysticete, odontocete, and pinniped groups and then differentiate into further groups as appropriate.

Mysticetes

This section builds on the broader discussion above and brings together the discussion of the different types and amounts of take that different stocks will incur, the applicable mitigation for each stock, and the status and life history of the stocks to support the negligible impact determinations for each stock. We have already described above why we believe the incremental addition of the small number of low-level auditory injury takes will not have any meaningful effect towards inhibiting reproduction or survival. We have also described above in this section the unlikelihood of any masking or habitat impacts having effects that would impact the reproduction or survival of any of the individual marine mammals affected by the Action Proponents' activities. For mysticetes, there is no predicted non-auditory

injury from explosives for any stock. Regarding the severity of individual takes by Level B harassment by behavioral disturbance for mysticetes, the majority of these responses are anticipated to occur at received levels below 172 dB, and last from a few minutes to a few hours, at most, with associated responses most likely in the form of moving away from the source, foraging interruptions, vocalization changes, or disruption of other social behaviors, lasting from a few minutes to several hours. Much of the discussion below focuses on the behavioral effects and the mitigation measures that reduce the probability or severity of effects in biologically important areas or other habitat. Because there are multiple stock-specific factors in relation to the status of the species, as well as mortality take for several stocks, at the end of the section we break out stock-specific findings.

In table 81 below for mysticetes, we indicate the total annual mortality, Level A harassment, and Level B harassment, and a number indicating the instances of total take as a percentage of abundance.

In table 82 below, we indicate the status, life history traits, important habitats, and threats that inform our analysis of the potential impacts of the estimated take on the affected mysticete stocks.

TABLE 81—ANNUAL ESTIMATED TAKE BY LEVEL B HARASSMENT, LEVEL A HARASSMENT, AND MORTALITY AND RELATED INFORMATION FOR MYSTICETES IN THE AFTT STUDY AREA

Marine mammal species	Stock	NMFS stock abundance	NMSDD abundance	Maximum annual Level B harassment	Maximum annual Level A harassment	Maximum annual mortality	Maximum annual take	Maximum annual harassment as percentage of stock abundance	Season(s) with 40 percent of take or greater	Region(s) with 40 percent of take or greater
North Atlantic right whale ...	Western	* 372	216	414	2	0	416	112	Spring (45 percent) Winter (40 percent).	Northeast (70 percent).
Blue whale	Western North Atlantic	* Unk	19	71	1	0	72	Und	N/A	Mid-Atlantic (48 percent).
Bryde's whale	Primary	* N/A	N/A	11	0	0	11	Und	Winter (48 percent)	High Seas (100 percent).
Fin whale	Western North Atlantic	* 6,802	1,075	2,616	21	0.29	2,637	39	N/A	Mid-Atlantic (62 percent).
Humpback whale	Gulf of Maine	* 1,396	690	844	12	0.57	856.57	61	Spring (50 percent)	Mid-Atlantic (48 percent).
Mink whale	Canadian East Coast	* 21,968	1,339	4,643	56	0.29	4,699	21	Winter (51 percent)	Northeast (43 percent).
Rice's whale	Northern Gulf of America ...	* 51	118	303	3	0	306	600	Winter (44 percent)	Southeast (47 percent).
Sei whale	Nova Scotia	* 6,292	316	747	7	0.29	754.29	12	Spring (41 percent)	Gulf of America (100 percent).

Note: N/A = Not Applicable. NMSDD abundances are averages only within the U.S. EEZ.

* Indicates which abundance estimate was used to calculate the maximum annual take as a percentage of abundance, either the NMFS SAR (Hayes *et al.*, 2024) or the NMSDD (table 2.4–1 in appendix A of the application). Please refer to the following section for details on which abundance estimate was selected.

TABLE 82—LIFE HISTORY TRAITS, IMPORTANT HABITAT, AND THREATS TO MYSTICETES IN THE AFTT STUDY AREA

Marine mammal species	Stock	ESA status	MMPA status	Move-ment ecology	Move-ment ecology	Body size	Repro-ductive strategy	Pace of life	Chronic risk factors	UME oil spill, other	ESA-designated critical habitat	BIAs (LaBrecque <i>et al.</i> 2015)	Other important habitat	Popu-lation trend	PBR	Annual mortality/serious injury (from other human activities)
North Atlantic right whale.	Western	Endan-gered.	Depleted Strategic	Migratory	Migratory	Large	Capital ...	Slow	Vessel strikes, entangle-ment, habi-tat degrada-tion, pollu-tion, vessel disturbance, ocean noise, climate change.	UME (de-clared 2017, active).	Critical Habitat: North-eastern US For-aging Area Unit 1, South-eastern US Calving Area Unit 2.	Yes: Feed-ing (n=3), Migration (n=1), Re-production (n=2).	Great South Channel/ Georges Bank Shelf Break, Gulf of ME Mating, Migratory Corridor Scotian Shelf, Southeast Atlantic Calving, Southern New Eng-land.	Decreas-ing.	0.73	14.8
Blue whale.	Western North Atlantic.	Endan-gered.	Depleted Strategic	Migratory	Migratory	Large	Capital ...	Slow	Vessel strikes, entangle-ment, habi-tat degrada-tion, pollu-tion, vessel disturbance, ocean noise, climate change.	No	No	No	None identi-fied.	Unk, but pos-sibly in-creas-ing.	0.8	0

TABLE 82—LIFE HISTORY TRAITS, IMPORTANT HABITAT, AND THREATS TO MYSTICETES IN THE AFTT STUDY AREA—Continued

Marine mammal species	Stock	ESA status	MMPA status	Move-ment ecology	Move-ment ecology	Body size	Repro-ductive strategy	Pace of life	Chronic risk factors	UME, oil spill, other	ESA-designated critical habitat	BIAs (LaBrecque <i>et al.</i> 2015)	Other important habitat	Popu-lation trend	PBR	Annual mortality/serious injury (from other human activities)
Bryde's whale.	Primary	Not List-ed.	.....	Un-known, likely migra-tory.	Un-known, likely migra-tory.	Large	Capital ...	Slow	Vessel strikes, entangle-ment, habi-tat degrada-tion, pollu-tion, vessel disturbance, ocean noise, climate change.	No	No	No	None identi-fied.	Unk	N/A	N/A
Fin whale.	Western North Atlantic.	Endan-gered.	Depleted Strategic	Migratory	Migratory	Large	Capital ...	Slow	Vessel strikes, entangle-ment, habi-tat degrada-tion, pollu-tion, vessel disturbance, ocean noise, climate change.	No	No	Yes: Feed-ing (n=3).	East of Montauk Point, Southern Gulf of ME.	Unk	11	2.05
Hump-back whale.	Gulf of Maine.	Not List-ed.	Not De-pleted. Not Stra-tegic.	Migratory	Migratory	Large	Capital ...	Slow	Vessel strikes, entangle-ment, habi-tat degrada-tion, pollu-tion, vessel disturbance, ocean noise, climate change.	UME (de-clared 2017, active).	No	Yes: Feed-ing (n=1).	Gulf of ME Child, Gulf of ME Par-ent, Mid-Atlantic Shelf, NY Bight Par-ent, South New Eng-land.	Increas-ing.	22	12.15
Minke whale.	Canadian East Coast.	Not List-ed.	Not De-pleted. Not Stra-tegic.	Migratory	Migratory	Med/ Large.	Capital ...	Slow	Vessel strikes, entangle-ment, habi-tat degrada-tion, pollu-tion, vessel disturbance, climate change, dis-ease.	UME (de-clared 2017, active).	No	Yes: Feed-ing (n=2).	Central Gulf of ME/ Parker Ridge/ Cashes Ledge, South-western Gulf of ME/ Georges Bank.	Unk	170	9.4

Rice's whale.	Northern Gulf of America.	Endangered.	Depleted Strategic	Nomadic	Nomadic	Large	Capital ...	Slow	Vessel strike, ocean noise, energy exploration and development, oil spills, fisheries and aquaculture interaction, ocean debris, small population size, limited distribution, climate change.	Small stock size, DWH.	Proposed Critical Habitat: Proposed Gulf of America 100–400 m isobath.	Yes: Small and resident population.	Expanded Range, Northeastern Gulf of America.	Decreasing.	0.1	0.5
Sei whale.	Nova Scotia.	Endangered.	Depleted Strategic	Migratory	Migratory	Large	Capital ...	Slow	Vessel strike, entanglement, ocean noise, climate change.	No	No	Yes: Feeding (n=1).	Gulf of ME ..	Unk	6.2	0.6

Note: Unk = Unknown; N/A = Not Applicable.

North Atlantic Right Whale (Western Stock)—

North Atlantic right whales are listed as endangered under the ESA and as both a depleted and strategic stock under the MMPA. The current stock abundance estimate is 372 animals. As described in the *Unusual Mortality Events* section, a UME has been designated for NARW. North Atlantic right whales are migratory, though they have been detected across their range year-round. Detections in the mid-Atlantic are occurring more frequently (Engelhaupt *et al.* 2023), and Navy's AFTT Phase IV Density Technical Report predicts a NARW density in the Mid-Atlantic Bight that is almost an order of magnitude higher from 2010–2019 compared to 2003–2009, which is consistent with visual and acoustic surveys showing an increase in the use of the region (Davis *et al.*, 2020; O'Brien *et al.*, 2022).

As described in the Description of Marine Mammals and Their Habitat in the Area of the Specified Activities section, the AFTT Study Area overlaps the NARW migratory corridor BIA, which represent areas and months within which a substantial portion of a species or population is known to migrate (LeBrecque *et al.* 2015). The Study Area also overlaps three seasonal feeding BIAs in the northeast Atlantic, a seasonal mating BIA in the central Gulf of Maine, and a seasonal calving BIA in the southeast Atlantic (LaBrecque *et al.* 2015), as well as important feeding habitat in southern New England, primarily along the western side of Nantucket Shoals (Estabrook *et al.*, 2022; Kraus *et al.*, 2016; Leiter *et al.*, 2017; O'Brien *et al.*, 2022; Quintano-Rizzo *et al.*, 2021). Additionally, the AFTT Study Area overlaps ESA-designated critical habitat for the NARW (Unit 1 and Unit 2) as described in the *Critical Habitat* section of this proposed rule.

NARW are threatened due to a low population abundance, compromised body condition, high mortality rates, and low reproductive rates. They face several chronic anthropogenic and non-anthropogenic risk factors, including vessel strike, entanglement, and climate change, among others. 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; Pirota *et al.* 2024). Given these factors, the status of the NARW population is of heightened concern

and, therefore, additional analysis is warranted.

As shown in table 81, the maximum annual allowable instances of take under this proposed rule by Level A Harassment and Level B harassment is 2 and 414, respectively. Given the current status of the NARW, the loss of even one individual could significantly impact the population. However, no mortality is anticipated or proposed for authorization, and nor is any non-auditory injury. The total take allowable across all 7 years of the rule is indicated in table 49.

Regarding the potential takes associated with auditory impairment, as described in the Auditory Injury from Sonar Acoustic Sources and Explosives and Non-Auditory Injury from Explosives section above, any takes in the form of TTS are expected to be lower-level, of short duration (from minutes to, at most, several hours or less than a day), and mostly not in a frequency band that would be expected to interfere with NARW communication or other important low-frequency cues. Any associated lost opportunities or capabilities individuals might experience as a result of TTS would not be at a level or duration that would be expected to impact reproductive success or survival. For similar reasons, while auditory injury impacts last longer, the low anticipated levels of AUD INJ that could be reasonably expected to result from these activities are unlikely to have any effect on fitness.

Regarding the likely severity of any single instance of take by behavioral disturbance, as described above, the majority of the predicted exposures are expected to be below 172 dB SPL and last from a few minutes to a few hours, at most, with associated responses most likely in the form of moving away from the source, foraging interruptions, vocalization changes, or disruption of other social behaviors, lasting from a few minutes to several hours. NARWs are large-bodied capital breeders with a slow pace of life, which would generally be less susceptible to impacts from shorter duration foraging disruptions.

Further, as described in the *Group and Species-Specific Analyses* section above and the Proposed Mitigation Measures section, mitigation measures, several of which are designed specifically to reduce impacts to North Atlantic right whale, are expected to further reduce the potential severity of impacts through real-time operational measures that minimize higher level/longer duration exposures and time/area measures that reduce impacts in high value habitat. Specifically, this proposed rule includes several proposed

geographic mitigation areas for NARW: Northeast North Atlantic Right Whale Mitigation Area, Gulf of Maine Mitigation Area, Jacksonville Operating Area North Atlantic Right Whale Mitigation Area, Southeast North Atlantic Right Whale Mitigation Area, Dynamic North Atlantic Right Whale Mitigation Areas, MTE Planning Awareness Mitigation Areas in the northeast and mid-Atlantic, and ship shock trial mitigation areas. The Northeast North Atlantic Right Whale Mitigation Area and Southeast North Atlantic Right Whale Mitigation Area in particular would reduce exposures in times and areas where impacts would be more likely to affect feeding and energetics (note that these mitigation areas are not quantitatively accounted for in the modeling, which means that the mitigation may prevent some of the takes predicted—though the analysis considers that they could all occur). Also, because of the proposed mitigation measures, the estimated takes would be less likely to occur in areas or at times where impacts would be likely to affect feeding and energetics or important cow/calf interactions that could lead to reduced reproductive success or survival, including those in areas known to be biologically important, and such impacts are not anticipated. Any impacts predicted in the east coast migratory corridor are less likely to impact individuals during feeding or breeding behaviors.

As described above, in addition to evaluating the anticipated impacts of the single instances of takes, it is important to understand the degree to which individual marine mammals may be disturbed repeatedly across multiple days of the year. In this case, given the number of takes by harassment as compared to the stock/species abundance (see table 81), it is likely that some portion of the individuals taken are taken repeatedly over a small number of days, particularly in the Northeast (70 percent of the takes predicted are in this region) during the winter and spring where and when a combined 58 percent of takes of this stock would occur and animals are likely feeding. This is when North Atlantic right whales have a higher density at feeding grounds located near and south of Cape Cod, including areas overlapped by the Narragansett Bay OPAREA in the Northeast Range Complexes, and in the migratory corridor through the northeast region. However, given the variety of activity types that contribute to take across separate exercises conducted at different times and in different areas, the fact that

many result from transient activities conducted at sea, and fact that the number of takes as compared to the abundance is just above 100 percent (112 percent), it is unlikely that takes would be in high enough numbers for any one individual or occur clumped across sequential days in a manner likely to impact foraging success and energetics, or that other behaviors such that reproduction or survival of any individuals is likely to be impacted.

Given the magnitude and severity of the impacts discussed above to NARW (considering annual take maxima and the total across 7 years) and their habitat, and in consideration of the required mitigation measures and other information presented, the Action Proponents' activities are unlikely to result in impacts on the reproduction or survival of any individuals and, thereby, unlikely to affect annual rates of recruitment or survival. Further, we have considered the UME for NARW species described above, and even in consideration of the fact that some of the affected individuals may have compromised health, given the anticipated impacts of the activity, the proposed take is not expected to exacerbate the effects of the UME or otherwise impact the population. For these reasons, we have determined that the take by harassment anticipated and proposed for authorization would have a negligible impact on the Western stock of NARW.

Blue Whale (Western North Atlantic Stock)—

Blue whales are listed as endangered under the ESA and as both depleted and strategic under the MMPA. The stock abundance is currently unknown, though NMFS' SAR reports an $N_{\min}$ (minimum abundance) of 402. The stock's primary range is outside of the AFTT Study Area. There are no UMEs or other factors that cause particular concern for this stock, and there are no known biologically important areas for blue whales in the AFTT Study Area. They are frequently located in continental shelf waters near eastern Canada but have also been sighted off the coast of Florida and along the mid-Atlantic ridge (likely the southern portion of their feeding range). Blue whales face several chronic anthropogenic and non-anthropogenic risk factors, including vessel strike, entanglement, and climate change, among others.

As shown in table 81, the maximum annual allowable instances of take under this proposed rule by Level A Harassment and Level B harassment is 1 and 71, respectively. No mortality is

anticipated or proposed for authorization, and nor is any non-auditory injury. The total take allowable across all 7 years of the rule is indicated in table 49.

Regarding the potential takes associated with auditory impairment, as described in the Auditory Injury from Sonar Acoustic Sources and Explosives and Non-Auditory Injury from Explosives section above, any takes in the form of TTS are expected to be lower-level, of short duration, and mostly not in a frequency band that would be expected to interfere with blue whale communication or other important low-frequency cues. Any associated lost opportunities or capabilities individuals might experience as a result of TTS would not be at a level or duration that would be expected to impact reproductive success or survival. For similar reasons, while auditory injury impacts last longer, the low anticipated levels of AUD INJ that could be reasonably expected to result from these activities are unlikely to have any effect on fitness.

Regarding the likely severity of any single instance of take by behavioral disturbance, as described above, the majority of the predicted exposures are expected to be below 172 dB SPL and last from a few minutes to a few hours, at most, with associated responses most likely in the form of moving away from the source, foraging interruptions, vocalization changes, or disruption of other social behaviors, lasting from a few minutes to several hours. Blue whales are large-bodied capital breeders with a slow pace of life, and are therefore generally less susceptible to impacts from shorter duration foraging disruptions. Further, as described in the *Group and Species-Specific Analyses* section above and the Proposed Mitigation Measures section, mitigation measures are expected to further reduce the potential severity of impacts through real-time operational measures that minimize higher level/longer duration exposures and time/area measures that reduce impacts in high value habitat.

As described above, in addition to evaluating the anticipated impacts of the single instances of takes, it is important to understand the degree to which individual marine mammals may be disturbed repeatedly across multiple days of the year. In this case, given the lower number of takes by harassment as compared to the stock/species abundance (see table 81), their migratory movement pattern, and the absence of take concentrated in areas in which animals are known to congregate, it is unlikely that any individual blue whales would be taken on more than a

small number of days within a year and, therefore, the anticipated behavioral disturbance is not expected to affect reproduction or survival.

Given the magnitude and severity of the impacts discussed above to blue whales (considering annual take maxima and the total across 7 years) and their habitat, and in consideration of the required mitigation measures and other information presented, the Action Proponents' 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 proposed for authorization would have a negligible impact on the Western North Atlantic stock of blue whales.

Bryde's Whale (Primary)—

This population of Bryde's whales spans the mid- and southern Atlantic. They have not been designated as a stock under the MMPA, are not ESA-listed, and there is no current reported population trend. There are no UMEs or other factors that cause particular concern for this stock and no known biologically important areas for Bryde's whale in the AFTT Study Area. Most Bryde's whales congregate in tropical waters south of the AFTT Study Area, and only occasionally travel as far north as Virginia. Bryde's whales generally face several chronic anthropogenic and non-anthropogenic risk factors, including vessel strike, entanglement, and climate change, among others.

As shown in table 81, the maximum annual allowable instances of take under this proposed rule by Level B harassment is 11. No mortality is anticipated or proposed for authorization, and nor is any auditory or non-auditory injury (Level A harassment). The total take allowable across all 7 years of the rule is indicated in table 49.

Regarding the potential takes associated with TTS, as described in the Temporary Threshold Shift section above, any takes in the form of TTS are expected to be lower-level, of short duration, and mostly not in a frequency band that would be expected to interfere with Bryde's whale communication or other important low-frequency cues. Any associated lost opportunities or capabilities individuals might experience as a result of TTS would not be at a level or duration that would be expected to impact reproductive success or survival.

Regarding the likely severity of any single instance of take by behavioral disturbance, as described above, the

majority of the predicted exposures are expected to be below 172 dB SPL and last from a few minutes to a few hours, at most, with associated responses most likely in the form of moving away from the source, foraging interruptions, vocalization changes, or disruption of other social behaviors, lasting from a few minutes to several hours. Bryde's whales are large-bodied capital breeders with a slow pace of life, and are therefore generally less susceptible to impacts from shorter duration foraging disruptions.

As described above, in addition to evaluating the anticipated impacts of the single instances of takes, it is important to understand the degree to which individual marine mammals may be disturbed repeatedly across multiple days of the year. In this case, given the low number of takes by harassment (see table 81), their migratory movement pattern, and the absence of take concentrated in areas in which animals are known to congregate, it is unlikely that any individual Bryde's whales would be taken on more than a small number of days within a year and, therefore, the anticipated behavioral disturbance is not expected to affect reproduction or survival.

Given the magnitude and severity of the impacts discussed above to this population of Bryde's whales (considering annual take maxima and the total across 7 years) and their habitat, and in consideration of the required mitigation measures and other information presented, the Action Proponents' 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 proposed for authorization would have a negligible impact on Bryde's whales.

Fin Whale (Western North Atlantic Stock)—

Fin whales are listed as endangered under the ESA throughout the species' range and as both depleted and strategic under the MMPA. The Western North Atlantic stock abundance is 6,802 animals. There are no UMEs or other factors that cause particular concern for this stock. As described in the Description of Marine Mammals and Their Habitat in the Area of the Specified Activities section, the AFTT Study Area overlaps three fin whale feeding BIAs: (1) June to October in the northern Gulf of Maine; (2) year-round in the southern Gulf of Maine, and (3) March to October east of Montauk Point (LeBrecque *et al.* 2015), and more recent

data supports that these areas remain biologically important (King *et al.*, 2021; Lomac-MacNair *et al.*, 2022). There is no ESA-designated critical habitat for fin whales in the AFTT Study Area. The Western North Atlantic stock of fin whales may be present year-round in the Atlantic with higher densities near the shelf break in the Northeast and mid-Atlantic. Densities near feeding areas on the shelf in the Northeast are higher in the summer. Fin whales face several chronic anthropogenic and non-anthropogenic risk factors, including vessel strike, entanglement, and climate change, among others.

As shown in table 81, the maximum annual allowable instances of take under this proposed rule by Level A Harassment and Level B harassment is 21 and 2,616, respectively. As indicated, the rule also allows for up to 2 takes by serious injury or mortality over the course of the 7-year rule, the impacts of which are discussed above in the Serious Injury and Mortality section. No non-auditory injury is anticipated or proposed for authorization. The total take allowable across all 7 years of the rule is indicated in table 49.

Regarding the potential takes associated with auditory impairment, as described in the Auditory Injury from Sonar Acoustic Sources and Explosives and Non-Auditory Injury from Explosives section above, any takes in the form of TTS are expected to be lower-level, of short duration (even the longest recovering in less than a day), and mostly not in a frequency band that would be expected to interfere with fin whale communication or other important low-frequency cues. Any associated lost opportunities or capabilities individuals might experience as a result of TTS would not be at a level or duration that would be expected to impact reproductive success or survival. For similar reasons, while auditory injury impacts last longer, the low anticipated levels of AUD INJ that could be reasonably expected to result from these activities are unlikely to have any effect on fitness.

Regarding the likely severity of any single instance of take by behavioral disturbance, as described above, the majority of the predicted exposures are expected to be below 172 dB SPL and last from a few minutes to a few hours, at most, with associated responses most likely in the form of moving away from the source, foraging interruptions, vocalization changes, or disruption of other social behaviors, lasting from a few minutes to several hours. Of the takes by Level B harassment, 5 would occur east of Montauk Point between March and October, and 52 would occur

in the southern Gulf of Maine, both areas known to be biologically important for fin whale foraging. None of the takes by Level A harassment would occur in areas known to be biologically important. However, given that fin whales are large-bodied capital breeders with a slow pace of life, and are therefore generally less susceptible to impacts from shorter duration foraging disruptions, as well as the small number of takes anticipated to occur in the BIA, we do not anticipate that takes in this BIA would occur to any individual fin whale on more than a small number of days within a year, as described further below. Further, as described in the *Group and Species-Specific Analyses* section above and the Proposed Mitigation Measures section, mitigation measures are expected to further reduce the potential severity of impacts through real-time operational measures that minimize higher level/longer duration exposures and time/area measures that reduce impacts in high value habitat.

As described above, in addition to evaluating the anticipated impacts of the single instances of takes, it is important to understand the degree to which individual marine mammals may be disturbed repeatedly across multiple days of the year. In this case, given the number of takes by harassment as compared to the stock/species abundance (see table 81), it is likely that some portion of the individuals taken are taken repeatedly over a small number of days. However, given the variety of activity types that contribute to take across separate exercises conducted at different times and in different areas, and the fact that many result from transient activities conducted at sea, it is unlikely that repeated takes would occur either in numbers or clumped across sequential days in a manner likely to impact foraging success and energetics or other behaviors such that reproduction or survival of any individuals is are likely to be impacted. Further, this stock is migratory, and the takes are not concentrated within a specific season.

As analyzed and described in the Mortality section above, given the status of the stock and in consideration of other ongoing human-caused mortality, the M/SI proposed for authorization for the Western North Atlantic stock of fin whales (2 over the course of the 7-year rule, or 0.29 annually) would not, alone, be expected to adversely affect the stock through rates of recruitment or survival. Given the magnitude and severity of the take by harassment discussed above and any anticipated habitat impacts, and in consideration of the required mitigation

measures and other information presented, the take by harassment proposed for authorization is unlikely to result in impacts on the reproduction or survival of any individuals and, thereby, unlikely to affect annual rates of recruitment or survival either alone or in combination with the M/SI proposed for authorization. For these reasons, we have determined that the take anticipated and proposed for authorization would have a negligible impact on the Western North Atlantic stock of fin whales.

Humpback Whale (Gulf of Maine Stock)—

The West Indies DPS of humpback whales is not listed as threatened or endangered under the ESA, and the Gulf of Maine stock, which includes individuals from the West Indies DPS, is not considered depleted or strategic under the MMPA. The stock abundance is 1,396 animals. As described in the Description of Marine Mammals and Their Habitat in the Area of the Specified Activities section, 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 (vessel strike or entanglement). As also described in the Description of Marine Mammals and Their Habitat in the Area of the Specified Activities section, the AFTT Study Area overlaps a humpback whale feeding BIA (LeBrecque *et al.* 2015). This BIA is further supported by more recent information that suggests that the Gulf of Maine, Mid-Atlantic Shelf, New York Bight, and south New England are all important for humpback whale feeding (Brown *et al.*, 2019; Hayes *et al.*, 2019; Aschettino *et al.*, 2020; Davis *et al.*, 2020; Zeh *et al.*, 2020; King *et al.*, 2021; Pershing *et al.*, 2021; Stepanuk *et al.*, 2021; Zoidis *et al.*, 2021; Lomac-MacNair *et al.*, 2022; Smith *et al.*, 2022). There is no ESA-designated critical habitat for the Gulf of Maine stock of humpback whales given that the associated DPS is not ESA-listed. The Gulf of Maine stock of humpback whales have particularly strong site fidelity in the Gulf of Maine feeding grounds March to December and in the Caribbean calving grounds from December to May. Humpback whales, however, may occur in the AFTT Study Area, particularly in the mid-Atlantic and Northeast, year-round. They occur near the Chesapeake Bay mouth except in the summer. Humpback whales face several chronic anthropogenic and non-

anthropogenic risk factors, including vessel strike, entanglement, and climate change, among others.

As shown in table 81, the maximum annual allowable instances of take under this proposed rule by Level A Harassment and Level B harassment is 12 and 844, respectively. As indicated, the rule also allows for up to 4 takes by serious injury or mortality over the course of the 7-year rule, the impacts of which are discussed above in the Serious Injury and Mortality section. No non-auditory injury is anticipated or proposed for authorization. The total take allowable across all 7 years of the rule is indicated in table 49.

Regarding the potential takes associated with auditory impairment, as described in the Auditory Injury from Sonar Acoustic Sources and Explosives and Non-Auditory Injury from Explosives section above, any takes in the form of TTS are expected to be lower-level, of short duration (even the longest recovering in several hours or less than a day), and mostly not in a frequency band that would be expected to interfere with humpback whale communication or other important low-frequency cues. Any associated lost opportunities or capabilities individuals might experience as a result of TTS would not be at a level or duration that would be expected to impact reproductive success or survival. For similar reasons, while auditory injury impacts last longer, the low anticipated levels of AUD INJ that could be reasonably expected to result from these activities are unlikely to have any effect on fitness.

Regarding the likely severity of any single instance of take by behavioral disturbance, as described above, the majority of the predicted exposures are expected to be below 172 dB SPL and last from a few minutes to a few hours, at most, with associated responses most likely in the form of moving away from the source, foraging interruptions, vocalization changes, or disruption of other social behaviors, lasting from a few minutes to several hours. Humpback whales are large-bodied capital breeders with a slow pace of life, and are therefore generally less susceptible to impacts from shorter duration foraging disruptions. Further, as described in the *Group and Species-Specific Analyses* section above and the Proposed Mitigation Measures section, mitigation measures are expected to further reduce the potential severity of impacts through real-time operational measures that minimize higher level/ longer duration exposures and time/area measures that reduce impacts in high value habitat.

As described above, in addition to evaluating the anticipated impacts of the single instances of takes, it is important to understand the degree to which individual marine mammals may be disturbed repeatedly across multiple days of the year. In this case, given the number of takes by harassment as compared to the stock/species abundance (see table 81) and the fact that a portion of the takes occur in BIAs, it is likely that some portion of the individuals taken are taken repeatedly over a small number of days. However, given the migratory nature of the stock, the variety of activity types that contribute to take across separate exercises conducted at different times and in different areas (*i.e.*, not concentrated within a specific region and season), and the fact that many result from transient activities conducted at sea, it is unlikely that repeated takes would occur either in numbers or clumped across sequential days in a manner likely to impact foraging success and energetics or other behaviors such that reproduction or survival of any individuals likely to be impacted. Further, as noted above, humpback whales are large-bodied capital breeders with a slow pace of life, and are therefore generally less susceptible to impacts from shorter duration foraging disruptions. As analyzed and described in the Mortality section above, given the status of the stock and in consideration of other ongoing human-caused mortality, the M/SI proposed for authorization for Gulf of Maine humpback whales (4 over the course of the 7-year rule, or 0.57 annually) would not, alone, be expected to adversely affect the stock through rates of recruitment or survival. Given the magnitude and severity of the take by harassment discussed above and any anticipated habitat impacts, and in consideration of the required mitigation measures and other information presented, the take by harassment proposed for authorization is unlikely to result in impacts on the reproduction or survival of any individuals and, thereby, unlikely to affect annual rates of recruitment or survival either alone or in combination with the M/SI proposed for authorization. Last, we have both considered the effects of the UME on this stock in our analysis and findings regarding the impact of the activity on the stock, and, also, determined that we do not expect the proposed take to exacerbate the effects of the UME or otherwise impact the population. For these reasons, we have determined that the take anticipated and proposed for authorization would have a negligible

impact on the Gulf of Maine stock of humpback whales.

Minke Whale (Canadian East Coast Stock)—

Minke whales are not listed as threatened or endangered under the ESA and are not considered depleted or strategic under the MMPA. The stock abundance is 21,968 animals (Hayes *et al.*, 2024). The stock's range extends beyond the AFTT Study Area. There is an ongoing UME for minke whales along the Atlantic Coast from Maine through South Carolina, with the highest number of deaths in Massachusetts, Maine, and New York. Preliminary findings in several of the whales have shown evidence of human interactions or infectious diseases. However, we note that the stock abundance is greater than 21,000 and the take proposed for authorization is not expected to exacerbate the UME in any way. As described in the Description of Marine Mammals and Their Habitat in the Area of the Specified Activities section, the AFTT Study Area overlaps two minke whale feeding BIAs (Labrecque *et al.*, 2015; CeTAP, 1982; Murphy, 1995). There is no ESA-designated critical habitat for minke whales, as the species is not ESA-listed. Minke whales face several chronic anthropogenic and non-anthropogenic risk factors, including vessel strike, entanglement, and climate change, among others.

As shown in table 81, the maximum annual allowable instances of take under this proposed rule by Level A Harassment and Level B harassment is 56 and 4,643, respectively. As indicated, the rule also allows for up to 2 takes by serious injury or mortality over the course of the 7-year rule, the impacts of which are discussed above in the Serious Injury and Mortality section. The total take allowable across all 7 years of the rule is indicated in table 49.

Regarding the potential takes associated with auditory impairment, as described in the Auditory Injury from Sonar Acoustic Sources and Explosives and Non-Auditory Injury from Explosives section above, any takes in the form of TTS are expected to be lower-level, of short duration, and mostly not in a frequency band that would be expected to interfere with minke whale communication or other important low-frequency cues. Any associated lost opportunities or capabilities individuals might experience as a result of TTS would not be at a level or duration that would be expected to impact reproductive success or survival. For similar reasons, while auditory injury impacts last longer, the low anticipated levels of AUD INJ that

could be reasonably expected to result from these activities are unlikely to have any effect on fitness.

Regarding the likely severity of any single instance of take by behavioral disturbance, as described above, the majority of the predicted exposures are expected to be below 172 dB SPL and last from a few minutes to a few hours, at most, with associated responses most likely in the form of moving away from the source, foraging interruptions, vocalization changes, or disruption of other social behaviors, lasting from a few minutes to several hours. Minke whales are medium-to-large-bodied capital breeders with a slow pace of life, and are therefore generally less susceptible to impacts from shorter duration foraging disruptions. Further, as described in the *Group and Species-Specific Analyses* section above and the Proposed Mitigation Measures section, mitigation measures are expected to further reduce the potential severity of impacts through real-time operational measures that minimize higher level/longer duration exposures and time/area measures that reduce impacts in high value habitat.

As described above, in addition to evaluating the anticipated impacts of the single instances of takes, it is important to understand the degree to which individual marine mammals may be disturbed repeatedly across multiple days of the year. In this case, given the lower number of takes by harassment as compared to the stock/species abundance (see table 81), their migratory movement pattern, and the absence of take concentrated in areas in which animals are known to congregate, it is unlikely that any individual minke whales would be taken on more than a small number of days within a year and, therefore, the anticipated behavioral disturbance is not expected to affect reproduction or survival.

As analyzed and described in the Mortality section above, given the status of the stock and in consideration of other ongoing human-caused mortality, the M/SI proposed for authorization for Canadian East Coast minke whales (2 over the course of the 7-year rule, or 0.29 annually) would not, alone, be expected to adversely affect the stock through rates of recruitment or survival. Given the magnitude and severity of the take by harassment discussed above and any anticipated habitat impacts, and in consideration of the required mitigation measures and other information presented, the take by harassment proposed for authorization is unlikely to result in impacts on the reproduction or survival of any individuals and, thereby, unlikely to affect annual rates of

recruitment or survival either alone or in combination with the M/SI proposed for authorization. Last, we have both considered the effects of the UME on this stock in our analysis and findings regarding the impact of the activity on the stock, and, also, determined that we do not expect the proposed take to exacerbate the effects of the UME or otherwise impact the population. For these reasons, we have determined that the take anticipated and proposed for authorization would have a negligible impact on the Canadian East Coast stock of minke whales.

Rice's Whale (Northern Gulf of America Stock)—

Rice's whales are listed as endangered under the ESA and as both depleted and strategic under the MMPA. The stock abundance is 51 animals (Hayes *et al.*, 2024). The AFTT Study Area overlaps the Rice's whale small and resident population BIA (LaBrecque *et al.* 2015, further supported by more recent information (*e.g.*, Rosel *et al.* 2021, Garrison *et al.* 2024)), as well as proposed ESA-designated critical habitat (88 FR 47453, July 24, 2023), as described in the Description of Marine Mammals in the Area of Specified Activities section. Rice's whales face several chronic anthropogenic and non-anthropogenic risk factors, including vessel strike, energy exploration and development, climate change, and a limited population size and distribution, among others. Although this stock is not experiencing a UME, given the stock's status, low abundance and vulnerability, constricted range, and lingering effects of exposure to oil from the DWH oil spill (which include adverse health effects on individuals, as well as population effects), additional analysis is warranted.

Although there is new evidence of Rice's whale occurrence in the central and western Gulf of America from passive acoustic detections (Soldevilla *et al.*, 2022; 2024), the highest densities of Rice's whales remain confined to the northeastern Gulf of America core habitat, where their occurrence would overlap activities conducted in the offshore portions of the Naval Surface Warfare Center, Panama City Division Testing Area. The number of individuals that occur in the central and western Gulf of America and nature of their use of this area is poorly understood. Soldevilla *et al.* (2022) suggest that more than one individual was present on at least one occasion, as overlapping calls of different call subtypes were recorded in that instance, but also state that call detection rates suggest that either multiple individuals

are typically calling or that individual whales are producing calls at higher rates in the central/western Gulf of America. Soldevilla *et al.* (2024) provide further evidence that Rice's whale habitat encompasses all 100–400 m depth waters encircling the entire Gulf of America (including Mexican waters), but they also note that further research is needed to understand the density of whales in these areas, seasonal changes in whale density, and other aspects of habitat usage.

As shown in table 81, the maximum annual allowable instances of take under this proposed rule by Level A Harassment and Level B harassment is 3 and 303, respectively. No mortality is anticipated or proposed for authorization, and nor is any non-auditory injury. The total take allowable across all 7 years of the rule is indicated in table 49. Most impacts to Rice's whale are due to unmanned underwater vehicle testing, which may use sonars at a variety of frequencies for multiple hours most days of the year on the testing range. 44 percent of takes of this stock would occur during the winter when Rice's whale densities are predicted to be highest in the northeastern Gulf of America.

Regarding the potential takes associated with auditory impairment, as described in the Auditory Injury from Sonar Acoustic Sources and Explosives and Non-Auditory Injury from Explosives section above, any takes in the form of TTS are expected to be lower-level, of short duration (from minutes to, at most, several hours or less than a day), and mostly not in a frequency band that would be expected to interfere with Rice's whale communication or other important low-frequency cues. Any associated lost opportunities or capabilities individuals might experience as a result of TTS would not be at a level or duration that would be expected to impact reproductive success or survival. For similar reasons, while auditory injury impacts last longer, the low anticipated levels of AUD INJ that could be reasonably expected to result from these activities are unlikely to have any effect on fitness.

Regarding the likely severity of any single instance of take by behavioral disturbance, as described above, the majority of the predicted exposures are expected to be below 172 dB SPL and last from a few minutes to a few hours, at most, with associated responses most likely in the form of moving away from the source, foraging interruptions, vocalization changes, or disruption of other social behaviors, lasting from a few minutes to several hours. Rice's

whales are large-bodied capital breeders with a slow pace of life, which would generally be expected to be less susceptible to impacts from shorter-term foraging disruption. Further, as described in the *Group and Species-Specific Analyses* section above and the Proposed Mitigation Measures section, mitigation measures are expected to further reduce the potential severity of impacts through real-time operational measures that minimize higher level/longer duration exposures and time/area measures that reduce impacts in high value habitat. In particular, this proposed rulemaking includes a Rice's Whale Mitigation Area that overlaps the Rice's whale small and resident population area identified by NMFS in its 2016 status review (Rosel *et al.*, 2016). This area encompasses the area where Rice's whales are most likely to occur as well as most of the eastern portion of proposed critical habitat. Within this area, the Action Proponents must not use more than 200 hours of surface ship hull-mounted mid-frequency active sonar annually and must not detonate in-water explosives (including underwater explosives and explosives deployed against surface targets) except during mine warfare activities. Additionally, the Ship Shock Trial Mitigation Area would ensure that the northern Gulf of America ship shock trial box is situated outside of the Rice's whale core distribution area. These restrictions would reduce the severity of impacts to Rice's whales by reducing their exposure to levels of sound from sonar or explosives that would have the potential to cause injury, or mortality, thereby reducing the likelihood of those effects and, further, minimizing the severity of behavioral disturbance.

As described above, in addition to evaluating the anticipated impacts of the single instances of takes, it is important to understand the degree to which individual marine mammals may be disturbed repeatedly across multiple days of the year. In this case, given the number of takes by harassment as compared to the stock/species abundance (see table 81), it is likely that some portion of the individuals taken are taken repeatedly over a moderate number of days. However, unlike most large whales, Rice's whales are not migratory but are nomadic, so the risk of repeated impacts on individuals is likely similar within the population as animals move throughout their range. Further, given the variety of activity types that contribute to take across separate exercises conducted at different times and in different areas, and the fact that many result from transient

activities conducted at sea, it is unlikely that takes would occur either in numbers or clumped across sequential days in a manner likely to impact foraging success and energetics or other behaviors such that reproduction or survival are likely to be impacted. While Rice's whale core habitat is in the northeastern portion of the Gulf of America which has been identified as biologically important (LaBrecque *et al.* 2015), and a majority of takes would occur in that area, additional important Rice's whale habitat occurs between the 100 m and 400 m (328 ft and 1,312 ft) isobath in the Gulf of America (Soldevilla *et al.*, 2024; 88 FR 47453, July 24, 2023).

Given the magnitude and severity of the impacts discussed above to Rice's whale (considering annual take maxima and the total across 7 years) and their habitat, and in consideration of the required mitigation measures and other information presented, the Action Proponents' activities are unlikely to result in impacts on the reproduction or survival of any individuals and, thereby, unlikely to affect annual rates of recruitment or survival. Last, we are aware that Rice's whales have experienced lower rates of reproduction and survival since the DWH oil spill, however, those effects are reflected in the SARs and other data considered in these analyses and do not change our findings. For these reasons, we have determined that the take by harassment anticipated and proposed for authorization would have a negligible impact on Rice's whale.

Sei Whale (Nova Scotia Stock)—

Sei whales are listed as endangered under the ESA throughout its range and are considered depleted and strategic under the MMPA. The Nova Scotia stock abundance is 6,292 animals. There are no UMEs or other factors that cause particular concern for this stock. As described in the Description of Marine Mammals and Their Habitat in the Area of the Specified Activities section, the AFTT Study Area overlaps a sei whale feeding BIA. There is no ESA-designated critical habitat for sei whales in the AFTT Study Area. The highest sei whale abundance in U.S. waters occurs during spring, with sightings concentrated along the eastern margin of Georges Bank, into the Northeast Channel area, south of Nantucket, and along the southwestern edge of Georges Bank (CETAP 1982; Hayes *et al.* 2024; Kraus *et al.* 2016; Roberts *et al.* 2016; Palka *et al.* 2017; Cholewiak *et al.* 2018). Sei whales face several chronic anthropogenic and non-anthropogenic risk factors, including vessel strike,

entanglement, and climate change, among others.

As shown in table 81, the maximum annual allowable instances of take under this proposed rule by Level A Harassment and Level B harassment is 7 and 747, respectively. As indicated, the rule also allows for up to 2 takes by serious injury or mortality over the course of the 7-year rule, the impacts of which are discussed above in the Serious Injury and Mortality section. The total take allowable across all 7 years of the rule is indicated in table 49.

Regarding the potential takes associated with auditory impairment, as described in the Auditory Injury from Sonar Acoustic Sources and Explosives and Non-Auditory Injury from Explosives section above, any takes in the form of TTS are expected to be lower-level, of short duration, and mostly not in a frequency band that would be expected to interfere with sei whale communication or other important low-frequency cues. Any associated lost opportunities or capabilities individuals might experience as a result of TTS would not be at a level or duration that would be expected to impact reproductive success or survival. For similar reasons, while auditory injury impacts last longer, the low anticipated levels of AUD INJ that could be reasonably expected to result from these activities are unlikely to have any effect on fitness.

Regarding the likely severity of any single instance of take by behavioral disturbance, as described above, the majority of the predicted exposures are expected to be below 172 dB SPL and last from a few minutes to a few hours, at most, with associated responses most likely in the form of moving away from the source, foraging interruptions, vocalization changes, or disruption of other social behaviors, lasting from a few minutes to several hours. Sei whales are large-bodied capital breeders with a slow pace of life, and are therefore generally less susceptible to impacts from shorter duration foraging disruptions. Further, as described in the *Group and Species-Specific Analyses* section above and the Proposed Mitigation Measures section, mitigation measures are expected to further reduce the potential severity of impacts through real-time operational measures that minimize higher level/longer duration

exposures and time/area measures that reduce impacts in high value habitat.

As described above, in addition to evaluating the anticipated impacts of the single instances of takes, it is important to understand the degree to which individual marine mammals may be disturbed repeatedly across multiple days of the year. In this case, given the lower number of takes by harassment as compared to the stock/species abundance (see table 81) and their migratory movement pattern, it is unlikely that any individual sei whales would be taken on more than a small number of days within a year and, therefore, the anticipated behavioral disturbance is not expected to affect reproduction or survival.

As analyzed and described in the Mortality section above, given the status of the stock and in consideration of other ongoing human-caused mortality, the M/SI proposed for authorization for the Nova Scotia stock of sei whales (2 over the course of the 7-year rule, or 0.29 annually) would not, alone, be expected to adversely affect the stock through rates of recruitment or survival. Given the magnitude and severity of the take by harassment discussed above and any anticipated habitat impacts, and in consideration of the required mitigation measures and other information presented, the take by harassment proposed for authorization is unlikely to result in impacts on the reproduction or survival of any individuals and, thereby, unlikely to affect annual rates of recruitment or survival either alone or in combination with the M/SI proposed for authorization. For these reasons, we have determined that the take anticipated and proposed for authorization would have a negligible impact on the Nova Scotia stock of sei whales.

Odontocetes

This section builds on the broader discussion above and brings together the discussion of the different types and amounts of take that different stocks will incur, the applicable mitigation for each stock, and the status and life history of the stocks to support the negligible impact determinations for each stock. We have already described above why we believe the incremental addition of the small number of low-level auditory injury takes will not have any meaningful effect towards

inhibiting reproduction or survival. We have also described above in this section the unlikelihood of any masking or habitat impacts having effects that would impact the reproduction or survival of any of the individual marine mammals affected by the Action Proponents' activities. Some odontocete stocks have predicted non-auditory injury from explosives, discussed further below. Regarding the severity of individual takes by Level B harassment by behavioral disturbance for odontocetes, the majority of these responses are anticipated to occur at received levels below 178 dB for most odontocete species and below 154 dB for sensitive species (*i.e.*, beaked whales and harbor porpoises, for which a lower behavioral disturbance threshold is applied), and last from a few minutes to a few hours, at most, with associated responses most likely in the form of moving away from the source, foraging interruptions, vocalization changes, or disruption of other social behaviors, lasting from a few minutes to several hours. Much of the discussion below focuses on the behavioral effects and the mitigation measures that reduce the probability or severity of effects in biologically important areas or other habitat. Because there are multiple stock-specific factors in relation to the status of the species, as well as mortality take for several stocks, at the end of the section we break out stock- or group-specific findings.

In table 83 (sperm whales, dwarf sperm whales, and pygmy sperm whales), table 85 (beaked whales), table 87 (dolphins and small whales), table 89 (porpoises), and table 91 (pinnipeds), we indicate the total annual mortality, Level A harassment, and Level B harassment, and a number indicating the instances of total take as a percentage of abundance.

In table 84 (sperm whales, dwarf sperm whales, and pygmy sperm whales), table 86 (beaked whales), table 88 (dolphins and small whales), table 90 (porpoises), and table 92 (pinnipeds), below, we indicate the status, life history traits, important habitats, and threats that inform our analysis of the potential impacts of the estimated take on the affected odontocete stocks.

Sperm Whales, Dwarf Sperm Whales, and Pygmy Sperm Whales—

TABLE 83—ANNUAL ESTIMATED TAKE BY LEVEL B HARASSMENT, LEVEL A HARASSMENT, AND MORTALITY AND RELATED INFORMATION FOR ATLANTIC STOCKS OF SPERM WHALE, DWARF SPERM WHALE, AND PYGMY SPERM WHALE IN THE AFTT STUDY AREA

Marine mammal species	Stock	NMFS stock abundance	NMSDD abundance	Maximum annual Level B harassment	Maximum annual Level A harassment	Maximum annual mortality	Maximum annual take	Maximum annual take as percentage of stock abundance	Season(s) with 40 percent of take or greater	Region(s) with 40 percent of take or greater
Sperm whale	Northern Gulf of America	1,180	* 1,614	275	0	0.14	275	17	N/A	Gulf of America (60 percent).
Dwarf sperm whales	Northern Gulf of America ^a	336	* 510	189	22	0	211	41	N/A	Gulf of America (96 percent).
Pygmy sperm whales	Northern Gulf of America ^a	336	* 510	175	22	0	197	39	N/A	Gulf of America (95 percent).
Sperm whale	North Atlantic	* 5,895	4,242	12,590	7	0.29	12,597	214	N/A	Mid-Atlantic (80 percent).
Dwarf sperm whale	Western North Atlantic ^a	* 9,474	2,426	6,326	180	0	6,506	69	N/A	Mid-Atlantic (73 percent).
Pygmy sperm whales	Western North Atlantic ^a	* 9,474	2,426	6,294	176	0	6,470	68	N/A	Mid-Atlantic (72 percent).

Note: N/A = Not Applicable. NMSDD abundances are averages only within the U.S. EEZ.

*Indicates which abundance estimate was used to calculate the maximum annual take as a percentage of abundance, either the NMFS SAR (Hayes *et al.*, 2024) or the NMSDD (table 2.4–1 in appendix A of the application). Please refer to the following section for details on which abundance estimate was selected.

^a Because Kogia sima and K. breviceps are difficult to differentiate at sea, the reported abundance estimates for the Western North Atlantic stock are for both species of Kogia combined.

TABLE 84—LIFE HISTORY TRAITS, IMPORTANT HABITAT, AND THREATS TO SPERM WHALE, DWARF SPERM WHALE, AND PYGMY SPERM WHALE IN THE AFTT STUDY AREA

Marine mammal species	Stock	ESA status	MMPA status	Movement ecology	Body size	Reproductive strategy	Pace of life	Chronic risk factors	UJME, oil spill, other	ESA-designated critical habitat	BIAS (Labrecque <i>et al.</i> 2015)	Other important habitat	Population trend	PBR	Annual mortality /serious injury
Sperm whale	Northern Gulf of America.	Endangered.	Depleted .. Strategic ..	Resident-migratory.	Large ..	Income	Slow ...	Vessel strike, entanglement, ocean noise, marine debris, oil spills and contaminants, energy exploration and development, climate change.	.....	No	No	None identified.	Unk, but possibly stable.	2	9.6
Dwarf sperm whales.	Northern Gulf of America.	Not Listed.	Not Depleted. Not Strategic.	Unknown	Small-Med.	Income	Fast ...	Entanglement, vessel strike, marine debris, ocean noise, energy exploration and development, oil spills, disease, climate change.	.....	No	No	None identified.	Unk	2.5	31
Pygmy sperm whales.	Northern Gulf of America.	Not Listed.	Not Depleted. Not Strategic.	Unknown	Small-Med.	Income	Fast ...	Entanglement, vessel strike, marine debris, ocean noise, energy exploration and development, oil spills, disease, climate change.	.....	No	No	None identified.	Unk	2.5	31
Sperm whale	North Atlantic.	Endangered.	Depleted .. Strategic ..	Nomadic ..	Large ..	Income	Slow ...	Vessel strike, entanglement, ocean noise, marine debris, oil spills and contaminants, climate change.	No	No	No	None identified.	Unk	9.28	0.2

TABLE 84—LIFE HISTORY TRAITS, IMPORTANT HABITAT, AND THREATS TO SPERM WHALE, DWARF SPERM WHALE, AND PYGMY SPERM WHALE IN THE AFTT STUDY AREA—Continued

Marine mammal species	Stock	ESA status	MMPA status	Movement ecology	Body size	Reproductive strategy	Pace of life	Chronic risk factors	UJME, oil spill, other	ESA-designated critical habitat	BIAS (Labrecque <i>et al.</i> 2015)	Other important habitat	Population trend	PBR	Annual mortality /serious injury
Dwarf sperm whale.	Western North Atlantic.	Not Listed.	Not Depleted. Not Strategic.	Unknown	Small-Med.	Income	Fast	Entanglement, vessel strike, marine debris, ocean noise, hunting (Lesser Antilles), disease, climate change.	No	No	No	None identified.	Increasing ...	57	Unk
Pygmy sperm whales.	Western North Atlantic.	Not Listed.	Not Depleted. Not Strategic.	Unknown	Small-Med.	Income	Fast	Entanglement, vessel strike, marine debris, ocean noise, hunting (Lesser Antilles), disease, climate change.	No	No	No	None identified.	Increasing ...	57	Unk

Note: Unk = Unknown.

Sperm Whale (North Atlantic Stock), Dwarf Sperm Whale (Western North Atlantic and Northern Gulf of America Stocks), Pygmy Sperm Whale (Western North Atlantic and Northern Gulf of America Stocks)

Sperm whales are listed as endangered under the ESA and the North Atlantic stock is considered depleted and strategic under the MMPA. Neither dwarf sperm whale nor pygmy sperm whale is listed under the ESA, and none of the stocks are considered depleted or strategic. The stock abundances range from 510 (combined estimate for the Northern Gulf of America stocks of dwarf and pygmy sperm whales from Navy's NMSDD) to 5,895 for the North Atlantic stock of sperm whale. There are no UMEs or other factors that cause particular concern for the stocks in the Atlantic Ocean, and there are no known biologically important areas for these stocks in the AFTT Study Area. These stocks face several chronic anthropogenic and non-anthropogenic risk factors, including entanglement and climate change, among others.

As shown in table 83, the maximum annual allowable instances of take under this proposed rule by Level A Harassment and Level B harassment range from 7 (North Atlantic stock of sperm whale) to 180 (Western North Atlantic stock of dwarf sperm whale) and 175 (Northern Gulf of America stock of pygmy sperm whale) to 12,590 (North Atlantic stock of sperm whale), respectively. As indicated, the rule also allows for up to 2 takes by serious injury or mortality of North Atlantic sperm whales over the course of the 7-year rule, the impacts of which are discussed above in the Serious Injury and Mortality section. The total take allowable for each stock across all 7 years of the rule is indicated in table 49.

Regarding the potential takes associated with auditory impairment, as described in the Auditory Injury from Sonar Acoustic Sources and Explosives and Non-Auditory Injury from Explosives section above, any takes in the form of TTS are expected to be lower-level, of short duration (even the longest recovering in several hours or less than a day), and mostly not in a frequency band that would be expected to interfere with odontocete echolocation, overlap more than a relatively narrow portion of the vocalization range of any single species or stock, or preclude detection or interpretation of important low-frequency cues. Any associated lost opportunities or capabilities individuals might experience as a result of TTS

would not be at a level or duration that would be expected to impact reproductive success or survival. For similar reasons, while auditory injury impacts last longer, the low anticipated levels of AUD INJ that could be reasonably expected to result from these activities are unlikely to have any effect on fitness. The rule also allows for one take of North Atlantic sperm whale by non-auditory injury (table 50). As described above, given the small number of potential exposures and the anticipated effectiveness of the mitigation measures in minimizing the pressure levels to which any individuals are exposed, these injuries are unlikely to impact reproduction or survival.

Regarding the likely severity of any single instance of take by behavioral disturbance, as described above, the majority of the predicted exposures are expected to be below 178 dB SPL and last from a few minutes to a few hours, at most, with associated responses most likely in the form of moving away from the source, foraging interruptions, vocalization changes, or disruption of other social behaviors, lasting from a few minutes to several hours. Pygmy and dwarf sperm whales are small-medium bodied income breeders with a fast pace of life. They are generally more sensitive to missed foraging opportunities, especially during lactation, but would be quick to recover given their fast pace of life. Sperm whales are large-bodied income breeders with a slow pace of life, and are likely more resilient to missed foraging opportunities due to acoustic disturbance than smaller odontocetes. However, they may be more susceptible to impacts due to lost foraging opportunities during reproduction, especially if they occur during lactation (Farmer *et al.*, 2018). Further, as described in the *Group and Species-Specific Analyses* section above and the Proposed Mitigation Measures section, mitigation measures are expected to further reduce the potential severity of impacts through real-time operational measures that minimize higher level/longer duration exposures and time/area measures that reduce impacts in high value habitat.

As described above, in addition to evaluating the anticipated impacts of the single instances of takes, it is important to understand the degree to which individual marine mammals may be disturbed repeatedly across multiple days of the year. In this case, given the number of takes by harassment as compared to the stock/species abundance (see table 83) and the fact that the majority of takes of the Northern Gulf of America stock of

pygmy and dwarf sperm whale occur in the Gulf of America (95 and 96 percent, respectively), and the majority of takes of the North Atlantic stock of sperm whale and Western North Atlantic stock of pygmy and dwarf sperm whale occur in the mid-Atlantic (80, 72, and 73 percent, respectively) it is likely that some portion of the individuals taken are taken repeatedly over a small number of days. However, given the variety of activity types that contribute to take across separate exercises conducted at different times and in different areas, and the fact that many result from transient activities conducted at sea, it is unlikely that repeated takes would occur either in numbers or clumped across sequential days in a manner likely to impact foraging success and energetics or other behaviors such that reproduction or survival are likely to be impacted. Further, sperm whales are nomadic, and there are no known foraging areas or other areas within which animals from any of these stocks are known to congregate.

As analyzed and described in the Mortality section above, given the status of the stock and in consideration of other ongoing human-caused mortality, the M/SI proposed for authorization for the North Atlantic stock of sperm whales (2 over the course of the 7-year rule, or 0.29 annually) would not, alone, be expected to adversely affect the stock through rates of recruitment or survival. Given the magnitude and severity of the take by harassment for each stock discussed above and any anticipated habitat impacts, and in consideration of the required mitigation measures and other information presented, the take by harassment proposed for authorization is unlikely to result in impacts on the reproduction or survival of any individuals and, thereby, unlikely to affect annual rates of recruitment or survival of any of these stocks either alone or, for the North Atlantic stock of sperm whale, in combination with the M/SI proposed for authorization. Last, we are aware that some Northern Gulf of America stocks have experienced lower rates of reproduction and survival since the DWH oil spill, however, those effects are reflected in the SARs and other data considered in these analyses and do not change our findings. For these reasons, we have determined that the take by harassment anticipated and proposed for authorization would have a negligible impact on the North Atlantic stock of sperm whale, Northern Gulf of America stocks of dwarf and pygmy sperm whales, and Western

North Atlantic stocks of dwarf and pygmy sperm whales.

Sperm Whale (Northern Gulf of America stock)

Sperm whales are listed as endangered under the ESA and the Northern Gulf of America stock is considered depleted and strategic under the MMPA. The Navy's NMSDD estimates the stock abundance as 1,614 animals. Sperm whales aggregate at the mouth of the Mississippi River and along the continental slope in or near cyclonic cold-core eddies (counterclockwise water movements in the northern hemisphere with a cold center) or anticyclone eddies (clockwise water movements in the northern hemisphere) (Davis *et al.*, 2007). Habitat models for sperm whale occurrence indicate a high probability of suitable habitat along the shelf break off the Mississippi delta, Desoto Canyon, and western Florida (Best *et al.*, 2012; Weller *et al.*, 2000), and this area may be important for feeding and reproduction (Baumgartner *et al.*, 2001; Jochens *et al.*, 2008; NMFS, 2010), although the seasonality of breeding in Northern Gulf of America stock of sperm whales is not known (Jochens *et al.*, 2008). This stock faces several chronic anthropogenic and non-anthropogenic risk factors, including vessel strike, entanglement, oil spills, and climate change, among others.

As shown in table 83, the maximum annual allowable instances of take under this proposed rule by Level B harassment is 275. As indicated, the rule also allows for up to 1 takes by serious injury or mortality over the course of the 7-year rule, the impacts of which are discussed above in the Serious Injury and Mortality section. No Level A harassment (auditory or non-auditory injury) is proposed for authorization. The total take allowable across all 7 years of the rule is indicated in table 49.

Regarding the potential takes associated with TTS, as described in the

Temporary Threshold Shift section above, any takes in the form of TTS are expected to be lower-level, of short duration (even the longest recovering in several hours or less than a day), and mostly not in a frequency band that would be expected to interfere with sperm whale communication or other important low-frequency cues. Any associated lost opportunities or capabilities individuals might experience as a result of TTS would not be at a level or duration that would be expected to impact reproductive success or survival.

Regarding the likely severity of any single instance of take by behavioral disturbance, as described above, the majority of the predicted exposures are expected to be below 178 dB SPL and last from a few minutes to a few hours, at most, with associated responses most likely in the form of moving away from the source, foraging interruptions, vocalization changes, or disruption of other social behaviors, lasting from a few minutes to several hours. Sperm whales are large-bodied income breeders with a slow pace of life, and are likely more resilient to missed foraging opportunities due to acoustic disturbance than smaller odontocetes. However, they may be more susceptible to impacts due to lost foraging opportunities during reproduction, especially if they occur during lactation (Farmer *et al.*, 2018).

As described above, in addition to evaluating the anticipated impacts of the single instances of takes, it is important to understand the degree to which individual marine mammals may be disturbed repeatedly across multiple days of the year. In this case, given the lower number of takes by harassment as compared to the stock/species abundance (see table 83), their migratory movement pattern, and the absence of take concentrated in areas in which animals are known to congregate, it is unlikely that any individual sperm whales would be taken on more than a small number of days within a year and,

therefore, the anticipated behavioral disturbance is not expected to affect reproduction or survival.

As analyzed and described in the Mortality section above, given the status of the stock and in consideration of other ongoing human-caused mortality, the M/SI proposed for authorization for the Northern Gulf of America stock of sperm whales (one over the course of the 7-year rule, or 0.14 annually) would not, alone, be expected to adversely affect the stock through rates of recruitment or survival. Given the magnitude and severity of the take by harassment discussed above and any anticipated habitat impacts, and in consideration of the required mitigation measures and other information presented, the take by harassment proposed for authorization is unlikely to result in impacts on the reproduction or survival of any individuals and, thereby, unlikely to affect annual rates of recruitment or survival either alone or in combination with the M/SI proposed for authorization. Last, we are aware that some Northern Gulf of America stocks have experienced lower rates of reproduction and survival since the DWH oil spill, however, those effects are reflected in the SARs and other data considered in these analyses and do not change our findings. For these reasons, we have determined that the take anticipated and proposed for authorization would have a negligible impact on the Northern Gulf of America stock of sperm whales.

Beaked Whales—

This section builds on the broader odontocete discussion above (*i.e.*, that information applies to beaked whales as well), and brings together the discussion of the different types and amounts of take that different beaked whale species and stocks will likely incur, any additional applicable mitigation, and the status of the species and stocks to support the negligible impact determinations for each species or stock.

TABLE 85—ANNUAL ESTIMATED TAKE BY LEVEL B HARASSMENT, LEVEL A HARASSMENT, AND MORTALITY AND RELATED INFORMATION FOR ATLANTIC STOCKS OF BEAKED WHALES IN THE AFTT STUDY AREA

Marine mammal species	Stock	NMFS stock abundance	NMSDD abundance	Maximum annual Level B harassment	Maximum annual Level A harassment	Maximum annual mortality	Maximum annual take	Maximum annual take as percentage of stock abundance	Season(s) with 40 percent of take or greater	Region(s) with 40 percent of take or greater
Blainville's beaked whale.	Northern Gulf of America.	98	* 99	126	0	0	126	127	N/A	Key West (64 percent).
Goose-beaked whale.	Northern Gulf of America.	18	* 368	460	0	0	460	125	N/A	Key West (62 percent).
Gervais' beaked whale.	Northern Gulf of America.	20	* 386	125	0	0	125	32	N/A	Key West (65 percent).
Blainville's beaked whale.	Western North Atlantic.	* 2,936	1,279	25,705	1	0	25,706	876	N/A	Mid-Atlantic (66 percent).

TABLE 85—ANNUAL ESTIMATED TAKE BY LEVEL B HARASSMENT, LEVEL A HARASSMENT, AND MORTALITY AND RELATED INFORMATION FOR ATLANTIC STOCKS OF BEAKED WHALES IN THE AFTT STUDY AREA—Continued

Marine mammal species	Stock	NMFS stock abundance	NMSDD abundance	Maximum annual Level B harassment	Maximum annual Level A harassment	Maximum annual mortality	Maximum annual take	Maximum annual take as percentage of stock abundance	Season(s) with 40 percent of take or greater	Region(s) with 40 percent of take or greater
Goose-beaked whale.	Western North Atlantic.	4,260	* 4,901	112,070	2	0	112,072	2,287	N/A	Mid-Atlantic (80 percent).
Gervais' beaked whale.	Western North Atlantic.	* 8,595	991	25,446	1	0	25,447	296	N/A	Mid-Atlantic (66 percent).
Northern bottlenose whale.	Western North Atlantic.	* Unk	82	1,651	1	0	1,652	Unk	N/A	Northeast (47 percent) Mid-Atlantic (52 percent).
Sowerby's beaked whale.	Western North Atlantic.	492	* 1,279	25,622	1	0	25,623	2,003	N/A	Mid-Atlantic (67 percent).
True's beaked whale.	Western North Atlantic.	* 4,480	1,279	25,582	0	0	25,582	571	N/A	Mid-Atlantic (68 percent).

Note: Unk = Unknown; N/A = Not Applicable. NMSDD abundances are averages only within the U.S. EEZ.

*Indicates which abundance estimate was used to calculate the maximum annual take as a percentage of abundance, either the NMFS SAR (Hayes *et al.*, 2024) or the NMSDD (table 2.4–1 in appendix A of the application). Please refer to the following section for details on which abundance estimate was selected.

TABLE 86—LIFE HISTORY TRAITS, IMPORTANT HABITAT, AND THREATS TO BEAKED WHALES IN THE AFTT STUDY AREA

Marine mammal species	Stock	ESA status	MMPA status	Move-ment ecology	Body size	Reproduc-tive strategy	Pace of life	Chronic risk factors	UME, oil spill, other	ESA-designated critical habitat	BIAs (Labrecque <i>et al.</i> 2015)	Other important habitat	Population trend	PBR	Annual mortality/serious injury
Blainville's beaked whale.	Northern Gulf of America.	Not Listed	Not Depleted. Not Strategic.	Nomadic-resident.	Med ..	Mixed	Med ...	Entanglement, marine debris, ocean noise, energy exploration and development, oil spills, climate change.	N/A	No	No	None identified	Unk	0.7	5.2
Goose-beaked whale.	Northern Gulf of America.	Not Listed	Not Depleted. Not Strategic.	Nomadic-resident.	Med ..	Mixed	Med ...	Ocean noise, energy exploration and development, oil spills, climate change.	N/A	No	No	None identified	Unk	0.1	5.2
Gervais' beaked whale.	Northern Gulf of America.	Not Listed	Not Depleted. Not Strategic.	Nomadic-resident.	Med ..	Mixed	Med ...	Entanglement, ocean noise, energy exploration and development, oil spills, climate change.	N/A	No	No	None identified	Unk	0.1	5.2
Blainville's beaked whale.	Western North Atlantic.	Not Listed	Not Depleted. Not Strategic.	Nomadic-resident.	Med ..	Mixed	Med ...	Entanglement, marine debris, ocean noise, climate change.	N/A	No	No	None identified	Unk	24	0.2
Goose-beaked whale.	Western North Atlantic.	Not Listed	Not Depleted. Not Strategic.	Nomadic-resident.	Med ..	Mixed	Med ...	Ocean noise, climate change.	N/A	No	No	Georges Bank and New England Seamounts, Canyons off New Jersey and Delaware, Cape Hatteras, Southeast U.S..	Unk, possibly increasing.	38	0.2
Gervais' beaked whale.	Western North Atlantic.	Not Listed	Not Depleted. Not Strategic.	Nomadic-resident.	Med ..	Mixed	Med ...	Entanglement, hunting, ocean noise, climate change.	N/A	No	No	None identified	Unk	70	0
Northern bottlenose whale.	Western North Atlantic.	Not Listed	Not Depleted. Not Strategic.	Nomadic-resident.	Large	Mixed	Med ...	Ocean noise, hunting, climate change.	N/A	No	No	None identified	Unk	Unk	0
Sowerby's beaked whale.	Western North Atlantic.	Not Listed	Not Depleted. Not Strategic.	Nomadic-resident.	Med ..	Mixed	Med ...	Ocean noise, PCBs, entanglement, climate change.	N/A	No	No	None identified	Unk	3.4	0
True's beaked whale.	Western North Atlantic.	Not Listed	Not Depleted. Not Strategic.	Nomadic-resident.	Med ..	Mixed	Med ...	Ocean noise, climate change.	N/A	No	No	None identified	Unk, possibly increasing.	34	0.2

Note: N/A = Not Applicable; Und = Undetermined; Unk = Unknown.

Beaked Whales (Western North Atlantic Stocks)

These stocks are not listed as endangered or threatened under the ESA, and they are not considered depleted or strategic under the MMPA. The stock abundance estimates generally range from 1,279 (Sowerby's beaked whale, NMSDD) to 8,595 (Gervais' beaked whale). The SAR states that the abundance of Western North Atlantic northern bottlenose whale is unknown, and the NMSDD estimates the stock abundance as 82 animals, but reports that the estimate is from within the EEZ and is lower than the overall population abundance given that the range of the stock exceeds the EEZ boundary. See the Density Technical Report (U.S. Department of the Navy, 2024) for additional information. There are no UMEs or other factors that cause particular concern for this stock, and there are no known biologically important areas for beaked whales in the AFTT Study Area, though of note, these stocks generally occur in higher densities year-round in deep waters over the Atlantic continental shelf margins. The Western North Atlantic stocks of goose-beaked whales and Blainville's beaked whales generally congregate over continental shelf margins from Canada to North Carolina, with goose-beaked whales reported as far south as the Caribbean and Blainville's beaked whales as far south as the Bahamas. The Western North Atlantic stock of Gervais' beaked whales generally congregate over continental shelf margins from New York to North Carolina. The Western North Atlantic stock of Sowerby's beaked whales is the most northerly distributed stock of deep-diving mesoplodonts, and they generally congregate over continental shelf margins from Labrador to Massachusetts. The Western North Atlantic stock of True's beaked whales generally congregate over continental shelf margins from Nova Scotia to Cape Hatteras, with northern occurrence likely relating to the Gulf Stream. The Western North Atlantic stock of Northern bottlenose whales is uncommon in U.S. waters and generally congregates in areas of high relief, including shelf breaks and submarine canyons from the Davis Strait to New England, although strandings have occurred as far south as North Carolina. Western North Atlantic beaked whales face several chronic anthropogenic and non-anthropogenic risk factors, including entanglement and climate change, among others.

As shown in table 85, the maximum annual allowable instances of take

under this proposed rule by Level A Harassment and Level B harassment range from 0 to 2 and 1,651 to 112,070, respectively. No mortality is anticipated or proposed for authorization, and nor is any non-auditory injury. The total take allowable across all 7 years of the rule is indicated in table 49.

Regarding the potential takes associated with auditory impairment (for True's beaked whale, TTS only), as described in the Auditory Injury from Sonar Acoustic Sources and Explosives and Non-Auditory Injury from Explosives section above, any takes in the form of TTS are expected to be lower-level, of short duration (from minutes to, at most, several hours or less than a day), and mostly not in a frequency band that would be expected to interfere with odontocete echolocation, overlap more than a relatively narrow portion of the vocalization range of any single species or stock, or preclude detection or interpretation of important low-frequency cues. Any associated lost opportunities or capabilities individuals might experience as a result of TTS would not be at a level or duration that would be expected to impact reproductive success or survival. For similar reasons, while auditory injury impacts last longer, the low anticipated levels of AUD INJ that could be reasonably expected to result from these activities (for all Western North Atlantic beaked whales except True's beaked whales) are unlikely to have any effect on fitness.

Regarding the likely severity of any single instance of take by behavioral disturbance, as described above, the majority of the predicted exposures are expected to be below 154 dB SPL and last from a few minutes to a few hours, at most, with associated responses most likely in the form of moving away from the source, foraging interruptions, vocalization changes, or disruption of other social behaviors, lasting from a few minutes to several hours. Beaked whales are medium-to-large-bodied odontocetes with a medium pace of life and likely moderately resilient to missed foraging opportunities due to acoustic disturbance. They are mixed breeders (*i.e.*, behaviorally income breeders), and they demonstrate capital breeding strategies during gestation and lactation (Keen *et al.*, 2021), so they may be more vulnerable to prolonged loss of foraging opportunities during gestation. Further, as described in the *Group and Species-Specific Analyses* section above and the Proposed Mitigation Measures section, mitigation measures are expected to further reduce the potential severity of impacts through real-time

operational measures that minimize higher level/longer duration exposures and time/area measures that reduce impacts in high value habitat.

As described above, in addition to evaluating the anticipated impacts of the single instances of takes, it is important to understand the degree to which individual marine mammals may be disturbed repeatedly across multiple days of the year. In this case, given the number of takes by harassment as compared to the stock/species abundance (see table 85), it is likely that some portion of the individuals taken are taken repeatedly over a small (Western North Atlantic northern bottlenose whale and Gervais' beaked whale) to moderate (all other stocks) number of days, with the exception of Sowerby's beaked whales (discussed below). However, given the variety of activity types that contribute to take across separate exercises conducted at different times and in different areas, and the fact that many result from transient activities conducted at sea, it is unlikely that takes would occur clumped across sequential days in a manner likely to impact foraging success and energetics or other behaviors such that reproduction or survival are likely to be impacted. Further, while there are several known high-density areas for goose-beaked whales, around canyons, seamounts, and Cape Hatteras, which is common for multiple species, there are no known foraging areas or other areas within which animals are known to congregate for reproductive or other important behaviors, and nor are the takes concentrated within a specific region and season.

Regarding the magnitude of repeated takes for the Sowerby's beaked whales, given the high number of takes by harassment as compared to the stock abundance, it is more likely that some number of individuals would experience a comparatively higher number of repeated takes over a potentially fair number of sequential days. Due to the higher number of repeated takes, it is more likely that a portion of the individuals taken by harassment (approximately 50 percent of which would be female) could be repeatedly interrupted during foraging in a manner and amount such that impacts to the energy budgets of a small number of females (from either losing feeding opportunities or expending considerable energy moving away from sound sources or finding alternative feeding options) could cause them to forego reproduction for a year (noting that beaked whale calving intervals may be about 2 years) (New *et al.*, 2013)).

Energetic impacts to males are generally meaningless to population rates unless they cause death, and it takes extreme energy deficits beyond what would ever be likely to result from these activities to cause the death of an adult marine mammal, male or female. While the population trend of this stock is not known, it is not considered depleted or strategic, and there are no known sources of human-caused mortality indicated in the SARs. Importantly, the increase in a calving interval by a year would have far less of an impact on a population rate than a mortality would and, accordingly, a small number of instances of foregone reproduction would not be expected to adversely affect this stock through effects on annual rates of recruitment or survival (noting also that no mortality is predicted or authorized for this stock). The population trend of the Western North Atlantic stock of goose-beaked whales is not known but possibly increasing, and, like the Sowerby's beaked whale stock, it is not considered depleted or strategic, and there are no known sources of human-caused mortality indicated in the SARs. Importantly, the increase in a calving interval by a year would have far less of an impact on a population rate than a mortality would and, accordingly, a limited number of instances of foregone reproduction would not be expected to adversely affect this stock through effects on annual rates of recruitment or survival (noting also that no mortality is predicted or authorized for this stock).

Given the magnitude and severity of the take by harassment discussed above and any anticipated habitat impacts, and in consideration of the required mitigation measures and other information presented, the Action Proponents' activities are unlikely to result in impacts on the reproduction or survival of any individuals of the Western North Atlantic stocks of beaked whales (Blainville's beaked whale, goose-beaked whale, Gervais' beaked whale, northern bottlenose dolphin, and True's beaked whale), with the exception of Sowerby's beaked whales, and thereby unlikely to affect annual rates of recruitment or survival. For Sowerby's beaked whales, as described above, we do not anticipate the relatively small number of individuals that might be taken over repeated days within the year in a manner that results in a year of foregone reproduction to adversely affect either stock through effects on rates of recruitment or survival, given the statuses of these stocks. For these reasons, we have determined that the total take

(considering annual maxima and across seven years) anticipated and proposed for authorization would have a negligible impact on all Western North Atlantic beaked whales.

Beaked Whales (Northern Gulf of America Stocks)

These stocks are not listed as endangered or threatened under the ESA, and they are not considered depleted or strategic under the MMPA. The estimated abundances of these Blainville's beaked whale, goose-beaked whale, and Gervais' beaked whale are 99, 368, and 386, respectively, as indicated in the Navy's NMSDD estimates. There are no known biologically important areas for beaked whales in the Gulf of America. These stocks all occur year-round in deep water areas in the Gulf of America and Key West. Beaked whales in the Gulf of America face several chronic anthropogenic and non-anthropogenic risk factors, including energy exploration and development, entanglement, and climate change, among others.

As shown in table 85, the maximum annual allowable instances of take under this proposed rule by Level B harassment is 126, 460, and 125 for Blainville's beaked whale, goose-beaked whale, and Gervais' beaked whale, respectively. No mortality is anticipated or proposed for authorization, and nor is any auditory or non-auditory injury (Level A harassment). The total take allowable across all 7 years of the rule is indicated in table 49.

Regarding the potential takes associated with TTS, as described in the Temporary Threshold Shift section above, any takes in the form of TTS are expected to be lower-level, of short duration (from minutes to, at most, several hours or less than a day), and mostly not in a frequency band that would be expected to interfere with odontocete echolocation, overlap more than a relatively narrow portion of the vocalization range of any single species or stock, or preclude detection or interpretation of important low-frequency cues. Any associated lost opportunities or capabilities individuals might experience as a result of TTS would not be at a level or duration that would be expected to impact reproductive success or survival.

Regarding the likely severity of any single instance of take by behavioral disturbance, as described above, the majority of the predicted exposures are expected to be below 154 dB SPL and last from a few minutes to a few hours, at most, with associated responses most likely in the form of moving away from

the source, foraging interruptions, vocalization changes, or disruption of other social behaviors, lasting from a few minutes to several hours. Beaked whales are medium-bodied odontocetes with a medium pace of life and likely moderately resilient to missed foraging opportunities due to acoustic disturbance. They are mixed breeders (*i.e.*, behaviorally income breeders) and they demonstrate capital breeding strategies during gestation and lactation (Keen *et al.*, 2021), so they may be more vulnerable to prolonged loss of foraging opportunities during gestation.

As described above, in addition to evaluating the anticipated impacts of the single instances of takes, it is important to understand the degree to which individual marine mammals may be disturbed repeatedly across multiple days of the year. In this case, given the number of takes by harassment as compared to the stock/species abundances (see table 85) and the fact that 60–65 percent of the takes occur around Key West, it is likely that some portion of the individuals taken are taken repeatedly over a small number of days. However, given the variety of activity types that contribute to take across separate exercises conducted at different times and in different areas, and the fact that many result from transient activities conducted at sea, it is unlikely that repeated takes would occur either in numbers or clumped across sequential days in a manner likely to impact foraging success and energetics or other behaviors such that reproduction or survival are likely to be impacted.

Given the magnitude and severity of the impacts discussed above to Northern Gulf of America stocks of beaked whales (considering annual take maxima and the total across 7 years) and their habitat, and in consideration of the other information presented, the Action Proponents' activities are unlikely to result in impacts on the reproduction or survival of any individuals and, thereby, unlikely to affect annual rates of recruitment or survival. Last, we are aware that some Northern Gulf of America stocks of beaked whales have experienced lower rates of reproduction and survival since the DWH oil spill, however, those effects are reflected in the SARs and other data considered in these analyses and do not change our findings. For these reasons, we have determined that the take by harassment anticipated and proposed for authorization would have a negligible impact on the Northern Gulf of America stocks of beaked whales.

Dolphins and Small Whales—

Of the 53 stocks of dolphins and small whales (Delphinidae) for which incidental take is proposed for authorization (see table 87), none are listed as endangered or threatened under the ESA. Only spinner dolphins are listed as depleted under the MMPA, however, about a third of the species are listed as strategic, including 14 stocks of bottlenose dolphins, Northern Gulf of America stocks of Clymene, striped, and spinner dolphins, and the Western Northern Atlantic stocks of spinner dolphins and short-finned pilot whales. As shown in table 87 and table 88, these Delphinids vary in stock abundance, body size, and movement ecology from,

for example, the small-bodied, nomadic/migratory Western North Atlantic white-beaked dolphins that range well beyond the U.S. EEZ and outside the AFTT Study Area and have a SAR abundance over 500,000, to the medium-sized resident Bay stocks of bottlenose dolphins with abundances under 200, to the large-bodied nomadic Western North Atlantic killer whale, for which the abundance is unknown. While there are several small and resident populations of bottlenose dolphins, there are no other known biologically important areas (*e.g.*, foraging, reproduction) for any of these Delphinid stocks. Delphinids face a number of chronic anthropogenic and non-anthropogenic risk factors including

biotoxins, chemical contaminants, fishery interaction, habitat alteration, illegal feeding/harassment, ocean noise, oil spills and energy exploration, vessel strikes, disease, climate change, the impacts of which vary depending whether the stock is more coastal (*e.g.*, biotoxins and some fishing interactions more seen in bottlenose dolphins), more or less deep-diving (*e.g.*, entanglement more common in deep divers like pygmy killer whales and pilot whales), in the Gulf of America (*e.g.*, lingering lower reproductive rates for some stocks affected by DWH oil spill impacts), and other behavioral differences (*e.g.*, vessels strikes more concern for killer whales).

TABLE 87—ANNUAL ESTIMATED TAKE BY LEVEL B HARASSMENT, LEVEL A HARASSMENT, AND MORTALITY AND RELATED INFORMATION FOR DOLPHINS IN THE AFTT STUDY AREA

Marine mammal species	Stock	NMFS stock abundance	NMSDD abundance	Maximum annual Level B harassment	Maximum annual Level A harassment	Maximum annual mortality	Maximum annual take	Maximum annual harassment as percentage of stock abundance	Season(s) with 40 percent of take or greater	Region(s) with 40 percent of take or greater	Greatest degree any individual expected to be taken repeatedly across multiple days
Atlantic spotted dolphin.	Northern Gulf of America.	*21,506	11,476	12,804	20	0	12,824	60	N/A	Gulf of America (100 percent).	Zero to small number of days.
Bottlenose dolphin	Gulf of America Eastern Coastal.	*16,407	13,382	80	0	0	80	0	N/A	Gulf of America (63 percent).	Zero to small number of days.
Bottlenose dolphin	Gulf of America Northern Coastal.	*11,543	7,031	7,146	17	0	7,163	62	N/A	Gulf of America (100 percent).	Zero to small number of days.
Bottlenose dolphin	Northern Gulf of America Oceanic.	7,462	*21,997	6,274	4	0	6,278	29	N/A	Gulf of America (70 percent).	Zero to small number of days.
Bottlenose dolphin	Gulf of America Western Coastal.	20,759	*26,100	3,331	1	0	3,332	13	N/A	Gulf of America (100 percent).	Zero to small number of days.
Bottlenose dolphin	Mississippi Sound, Lake Borgne, Bay Boudreau.	1,265	*1,057	1,758	1	0	1,759	166	N/A	Gulf of America (100 percent).	Small number of days.
Bottlenose dolphin	Northern Gulf of America Continental Shelf.	63,280	*109,059	71,331	29	0	71,360	65	N/A	Gulf of America (100 percent).	Zero to small number of days.
Bottlenose dolphin	Nueces Bay/Corpus Christi Bay.	58	*41	4	0	0	4	10	N/A	Gulf of America (100 percent).	Zero to small number of days.
Bottlenose dolphin	Sabine Lake	122	*148	1	0	0	1	1	N/A	Gulf of America (100 percent).	Zero to small number of days.
Bottlenose dolphin	St. Andrew Bay	*199	114	46	0	0	46	23	N/A	Gulf of America (100 percent).	Small number of days.
Bottlenose dolphin	St. Joseph Bay	*142	34	42	0	0	42	30	N/A	Gulf of America (100 percent).	Small number of days.
Bottlenose dolphin	Tampa Bay	Unk	*599	350	0	0	350	58	N/A	Gulf of America (100 percent).	Small number of days.
Clymene dolphin	Northern Gulf of America.	513	*3,126	599	3	0	602	19	N/A	Gulf of America (85 percent).	Zero to small number of days.
False killer whale	Northern Gulf of America.	494	*1,023	230	0	0	230	22	N/A	Gulf of America (84 percent).	Zero to small number of days.
Fraser's dolphin	Northern Gulf of America.	213	*1,081	241	0	0	241	22	N/A	Gulf of America (76 percent).	Zero to small number of days.
Killer whale	Northern Gulf of America.	267	*511	110	0	0	110	22	N/A	Gulf of America (85 percent).	Zero to small number of days.
Melon-headed whale.	Northern Gulf of America.	1,749	*3,579	771	1	0	772	22	N/A	Gulf of America (84 percent).	Zero to small number of days.
Pygmy killer whale	Northern Gulf of America.	613	*1,278	285	0	0	285	22	N/A	Gulf of America (85 percent).	Zero to small number of days.
Risso's dolphin	Northern Gulf of America.	*1,974	813	203	0	0	203	10	N/A	Gulf of America (72 percent).	Zero to small number of days.
Rough-toothed dolphin.	Northern Gulf of America.	Unk	*3,452	1,642	3	0	1,645	48	N/A	Gulf of America (92 percent).	Small number of days.
Short-finned pilot whale.	Northern Gulf of America.	1,321	*1,835	1,021	3	0	1,024	56	N/A	Gulf of America (90 percent).	Small number of days.
Striped dolphin	Northern Gulf of America.	1,817	*7,782	2,376	7	0.29	2,384	31	Winter (40 percent).	Gulf of America (70 percent).	Zero to small number of days.
Pantropical spotted dolphin.	Northern Gulf of America.	*37,195	35,057	6,316	9	0.71	6,327	17	N/A	Gulf of America (71 percent).	Zero to small number of days.
Spinner dolphin	Northern Gulf of America.	*2,991	1,422	656	0	0	656	22	N/A	Gulf of America (99 percent).	Zero to small number of days.
Atlantic white-sided dolphin.	Western North Atlantic	*93,233	14,869	22,094	32	0	22,126	36	N/A	Northeast (69 percent) Mid-Atlantic (31 percent).	Zero to small number of days.
Common dolphin	Western North Atlantic	*93,100	73,015	25,792	6	0	25,798	0	Winter (45 percent).	Mid-Atlantic (75 percent).	Small to moderate number of days.

Atlantic spotted dolphin.	Western North Atlantic	* 31,506	28,226	120,798	87	0	120,885	384	N/A	.....	Mid-Atlantic (59 percent).	Small to moderate number of days.
Bottlenose dolphin	Indian River Lagoon Estuarine System.	* 1,032	484	1,576	0	0	1,576	153	Fall (43 percent)	...	Southeast (100 percent).	Small number of days.
Bottlenose dolphin	Jacksonville Estuarine System.	Unk	19	360	0	0	360	Und	Fall (45 percent)	...	Southeast (100 percent).	Moderate number of days.
Bottlenose dolphin	Northern Georgia/Southern South Carolina Estuarine System.	Unk	19	2	0	0	2	Und	N/A	.....	Southeast (100 percent).	Zero to small number of days.
Bottlenose dolphin	Northern North Carolina Estuarine System.	823	* 1,227	10,532	6	0	10,538	859	Summer (98 percent).	.....	Mid-Atlantic (100 percent).	High number of days.
Bottlenose dolphin	Southern Georgia Estuarine System.	Unk	* 619	123	1	0	124	20	N/A	.....	Southeast (100 percent).	Small number of days.
Bottlenose dolphin	Southern North Carolina Estuarine System.	Unk	* 486	162	0	0	162	33	Fall (60 percent)	...	Mid-Atlantic (99 percent).	Small number of days.
Tamanend's Bottlenose Dolphin.	Western North Atlantic, Central Florida Coastal.	2,541	* 7,063	10,494	3	0	10,497	149	N/A	.....	Southeast (100 percent).	Small number of days.
Tamanend's Bottlenose Dolphin.	Western North Atlantic, Northern Florida Coastal.	* 3,619	2,598	21,385	5	0	21,390	591	N/A	.....	Southeast (100 percent).	Moderate number of days.
Bottlenose dolphin	Western North Atlantic Northern Migratory Coastal.	6,639	* 10,325	73,720	60	0	73,780	715	N/A	.....	Mid-Atlantic (100 percent).	Moderate number of days.
Bottlenose dolphin	Western North Atlantic Offshore.	64,587	* 150,704	187,046	103	0.29	187,151	124	N/A	.....	Mid-Atlantic (60 percent).	Small number of days.
Tamanend's Bottlenose Dolphin.	Western North Atlantic South Carolina/Georgia Coastal.	* 9,121	4,105	4,960	6	0.14	4,967	54	N/A	.....	Southeast (95 percent).	Zero to small number of days.
Bottlenose dolphin	Western North Atlantic Southern Migratory Coastal.	3,751	* 7,911	10,180	9	0	10,189	1,549	N/A	.....	Mid-Atlantic (60 percent) Southeast (40 percent).	Small number of days.
Clymene dolphin	Western North Atlantic	* 21,778	8,573	132,723	104	0.43	132,828	44	N/A	.....	Mid-Atlantic (98 percent).	Moderate number of days.
False killer whale	Western North Atlantic	* 1,298	97	572	1	0	573	Und	Winter (40 percent).	.....	Mid-Atlantic (48 percent).	Zero to small number of days.
Fraser's dolphin	Western North Atlantic	Unk	* 518	2,905	3	0	2,908	561	N/A	.....	Southeast (52 percent).	Moderate number of days.
Killer whale	Western North Atlantic	Unk	* 51	180	1	0	181	355	N/A	.....	Mid-Atlantic (61 percent).	Small to moderate number of days.
Long-finned pilot whale.	Western North Atlantic	* 39,215	5,392	21,680	12	0	21,692	55	N/A	.....	Mid-Atlantic (84 percent).	Zero to small number of days.
Melon-headed whale.	Western North Atlantic	Unk	* 495	4,598	3	0	4,601	929	N/A	.....	Southeast (43 percent).	Moderate number of days.
Pantropical spotted dolphin.	Western North Atlantic	* 2,757	1,147	13,068	5	0	13,073	474	N/A	.....	High Seas (54 percent).	Moderate number of days.
Pygmy killer whale	Western North Atlantic	Unk	* 54	477	1	0	478	885	N/A	.....	Southeast (45 percent).	Moderate number of days.
Risso's dolphin	Western North Atlantic	* 44,067	12,845	37,239	25	0	37,264	85	N/A	.....	Mid-Atlantic (40 percent).	Zero to small number of days.
Rough-toothed dolphin.	Western North Atlantic	Unk	* 824	4,753	6	0	4,759	578	N/A	.....	Southeast (55 percent).	Moderate number of days.
Short-finned pilot whale.	Western North Atlantic	* 18,726	6,235	33,035	15	0	33,050	176	N/A	.....	Mid-Atlantic (54 percent).	Small number of days.
Spinner dolphin	Western North Atlantic	* 3,181	646	5,356	2	0	5,358	168	Winter (40 percent).	.....	N/A	Small number of days.
Striped dolphin	Western North Atlantic	* 48,274	43,044	208,802	163	0	208,965	433	N/A	.....	Mid-Atlantic (89 percent).	Small to moderate number of days.
White-beaked dolphin.	Western North Atlantic	* 536,016	44	16	0	0	16	0	N/A	.....	Northeast (92 percent).	Zero to small number of days.

Note: Unk = Unknown; N/A = Not Applicable. NMSDD abundances are averages only within the U.S. EEZ.

* Indicates which abundance estimate was used to calculate the maximum annual take as a percentage of abundance, either the NMFS SAR (Hayes *et al.*, 2024) or the NMSDD (table 2.4–1 in appendix A of the application). Please refer to the following section for details on which abundance estimate was selected.

TABLE 88—LIFE HISTORY TRAITS, IMPORTANT HABITAT, AND THREATS TO DOLPHINS IN THE AFTT STUDY AREA

Marine mammal species	Stock	ESA status	MMPA status	Movement ecology	Body size	Reproductive strategy	Pace of life	Chronic risk factors	UME, oil spill, other	ESA-designated critical habitat	BIAs (Labrecque <i>et al.</i> 2015)	Other important habitat	Population trend	PBR	Annual mortality/serious injury
Atlantic spotted dolphin.	Northern Gulf of America.	Not Listed.	Not Depleted. Not Strategic.	Migratory	Small ..	Income	Med ...	Entanglement, fishery interaction, ocean noise, illegal feeding/harassment, energy exploration and development, oil spills, climate change.	No	No	No	None identified.	Unk	166	36
Bottlenose dolphin.	Gulf of America Eastern Coastal.	Not Listed.	Not Depleted. Not Strategic.	Nomadic-resident.	Small-Med.	Income	Med ...	Biotoxins, chemical contaminants, fishery interaction, habitat alteration, illegal feeding/harassment, ocean noise, oil spills and energy exploration, vessel strikes, disease, climate change.	No	No	No	None identified.	Unk, potentially increasing.	114	9.2
Bottlenose dolphin.	Gulf of America Northern Coastal.	Not Listed.	Not Depleted. Not Strategic.	Nomadic-resident.	Small-Med.	Income	Med ...	Biotoxins, chemical contaminants, fishery interaction, habitat alteration, illegal feeding/harassment, ocean noise, oil spills and energy exploration, vessel strikes, disease, climate change.	No	No	No	None identified.	Unk, potentially increasing.	89	28
Bottlenose dolphin.	Northern Gulf of America Oceanic.	Not Listed.	Not Depleted. Not Strategic.	Nomadic-resident.	Small-Med.	Income	Med ...	Biotoxins, chemical contaminants, fishery interaction, habitat alteration, illegal feeding/harassment, ocean noise, oil spills and energy exploration, vessel strikes, disease, climate change.	No	No	No	None identified.	Stable	58	32

Bottlenose dolphin.	Gulf of America Western Coastal.	Not Listed.	Not Depleted. Not Strategic.	Nomadic-resident.	Small-Med.	Income	Med	Biotoxins, chemical contaminants, fishery interaction, habitat alteration, illegal feeding/harassment, ocean noise, oil spills and energy exploration, vessel strikes, disease, climate change.	No	No	No	No	None identified.	Unk, potentially stable.	167	36
Bottlenose dolphin.	Mississippi Sound, Lake Borgne, Bay Boudreau.	Not Listed.	Not Depleted. Strategic	Resident	Small-Med.	Income	Med	Biotoxins, chemical contaminants, fishery interaction, habitat alteration, illegal feeding/harassment, ocean noise, oil spills and energy exploration, vessel strikes, disease, climate change.	No	No	No	No	Mississippi Sound and associated waters ^a .	Unk, potentially stable.	8.5	59
Bottlenose dolphin.	Northern Gulf of America Continental Shelf.	Not Listed.	Not Depleted. Not Strategic.	Nomadic-resident.	Small-Med.	Income	Med	Biotoxins, chemical contaminants, fishery interaction, habitat alteration, illegal feeding/harassment, ocean noise, oil spills and energy exploration, vessel strikes, disease, climate change.	No	No	No	No	None identified.	Unk, potentially increasing.	556	65
Bottlenose dolphin.	Nueces Bay/Corpus Christi Bay.	Not Listed.	Not Depleted. Strategic	Resident	Small-Med.	Income	Med	Biotoxins, chemical contaminants, fishery interaction, habitat alteration, illegal feeding/harassment, ocean noise, oil spills and energy exploration, vessel strikes, disease, climate change.	No	No	No	No	Nueces Bay/Corpus Christi Bay, Corpus Christi/Aransas Pass ^b .	Unk (insufficient data).	Und	0.2

TABLE 88—LIFE HISTORY TRAITS, IMPORTANT HABITAT, AND THREATS TO DOLPHINS IN THE AFTT STUDY AREA—Continued

Marine mammal species	Stock	ESA status	MMPA status	Movement ecology	Body size	Reproductive strategy	Pace of life	Chronic risk factors	UME, oil spill, other	ESA-designated critical habitat	BIAs (Labrecque <i>et al.</i> 2015)	Other important habitat	Population trend	PBR	Annual mortality/serious injury
Bottlenose dolphin.	Sabine Lake.	Not Listed.	Not Depleted. Not Strategic.	Resident	Small-Med.	Income	Med ...	Biotoxins, chemical contaminants, fishery interaction, habitat alteration, illegal feeding/harassment, ocean noise, oil spills and energy exploration, vessel strikes, disease, climate change.	No	No	No	Sabine Pass Channel, lower Sabine Lake south of Blue Buck Point, areal shipping channels ^c .	Unk (insufficient data).	0.9	0
Bottlenose dolphin.	St. Andrew Bay.	Not Listed.	Not Depleted. Not Strategic.	Resident	Small-Med.	Income	Med ...	Biotoxins, chemical contaminants, fishery interaction, habitat alteration, illegal feeding/harassment, ocean noise, oil spills and energy exploration, vessel strikes, disease, climate change.	No	No	No	St. Andrew Bay, West Bay, East Bay, and North Bay ^d .	Unk (insufficient data).	1.5	0.2
Bottlenose dolphin.	St. Joseph Bay.	Not Listed.	Not Depleted. Not Strategic.	Resident	Small-Med.	Income	Med ...	Biotoxins, chemical contaminants, fishery interaction, habitat alteration, illegal feeding/harassment, ocean noise, oil spills and energy exploration, vessel strikes, disease, climate change.	No	No	No	St. Joseph Bay, Crooked Island Sound ^e .	Stable	1	Unk

Bottlenose dolphin.	Tampa Bay	Not Listed.	Not Depleted. Strategic	Nomadic-resident.	Small-Med.	Income	Med	Biotoxins, chemical contaminants, fishery interaction, habitat alteration, illegal feeding/harassment, ocean noise, oil spills and energy exploration, vessel strikes, disease, climate change.	No	No	No	Tampa Bay ¹	Unk (Insufficient data).	Und	3
Clymene dolphin.	Northern Gulf of America.	Not Listed.	Not Depleted. Strategic	Nomadic	Small ..	Income	Fast	Fishery interaction, Deep water horizon, energy exploration and development, oil spills, climate change.	No	No	No	None identified.	Likely increasing.	2.5	8.4
False killer whale.	Northern Gulf of America.	Not Listed.	Not Depleted. Not Strategic.	Resident-no-nomadic.	Med	Income	Med	Fishery interaction, contaminants, hunting, Deep water Horizon and other oil spills, disease, climate change.	No	No	No	None identified.	Decreasing	2.8	2.2
Fraser's dolphin.	Northern Gulf of America.	Not Listed.	Not Depleted. Not Strategic.	Resident-no-nomadic.	Small ..	Income	Fast	Fishery interaction, energy exploration and development, oil spills, climate change.	No	No	No	None identified.	Unk	1	Unk
Killer whale	Northern Gulf of America.	Not Listed.	Not Depleted. Not Strategic.	Resident	Large ..	Income	Slow	Chemical contaminants, vessel traffic and noise, entanglement, oil spills, energy exploration and development, climate change.	No	No	No	None identified.	Unk	1.5	Unk
Melon-headed whale.	Northern Gulf of America.	Not Listed.	Not Depleted. Not Strategic.	Resident-no-nomadic.	Small ..	Income	Med	Fishery interaction, ocean noise, pollution, energy exploration and development, oil spills, climate change.	No	No	No	None identified.	Unk	10	9.5
Pygmy killer whale.	Northern Gulf of America.	Not Listed.	Not Depleted. Not Strategic.	Resident-no-nomadic.	Small ..	Income	Med	Entanglement, ocean noise, oil spill, oil and gas exploration, climate change.	No	No	No	None identified.	Unk	2.8	1.6

TABLE 88—LIFE HISTORY TRAITS, IMPORTANT HABITAT, AND THREATS TO DOLPHINS IN THE AFTT STUDY AREA—Continued

Marine mammal species	Stock	ESA status	MMPA status	Movement ecology	Body size	Reproductive strategy	Pace of life	Chronic risk factors	UME, oil spill, other	ESA-designated critical habitat	BIAs (Labrecque <i>et al.</i> 2015)	Other important habitat	Population trend	PBR	Annual mortality/serious injury
Risso's dolphin.	Northern Gulf of America.	Not Listed.	Not Depleted. Not Strategic.	Resident-nomadic.	Small-Med.	Income	Med ...	Entanglement, environmental contamination, hunting, ocean noise, energy exploration and development, oil spills, climate change.	No	No	No	None identified.	Unk (Insufficient data).	14	5.3
Rough-toothed dolphin.	Northern Gulf of America.	Not Listed.	Not Depleted. Not Strategic.	Resident-nomadic.	Small ..	Income	Med ...	Entanglement, ocean noise, energy exploration and development, oil spills, climate change.	No	No	No	None identified.	Unk	Und	39
Short-finned pilot whale.	Northern Gulf of America.	Not Listed.	Not Depleted. Not Strategic.	Resident	Med ...	Income	Slow ...	Entanglement, fishery interaction, vessel strikes, energy exploration and development, oil spills, climate change.	No	No	No	None identified.	Unk	7.5	3.9
Striped dolphin.	Northern Gulf of America.	Not Listed.	Not Depleted. Strategic ...	Nomadic	Small ..	Income	Med ...	Entanglement, energy exploration and development, oil spills, disease, climate change.	No	No	No	None identified.	Unk	12	13
Pantropical spotted dolphin.	Northern Gulf of America.	Not Listed.	Not Depleted. Not Strategic.	Nomadic	Small ..	Income	Med ...	Fishery interaction, ocean noise, pollution, climate change.	No	No	No	None identified.	Unk (Insufficient data).	Unk	0
Spinner dolphin.	Northern Gulf of America.	Not Listed.	Not Depleted. Strategic ...	Nomadic	Small ..	Income	Med ...	Entanglement, illegal feeding/harassment, climate change.	No	No	No	None identified.	Stable, potentially increasing.	19	0
Atlantic white-sided dolphin.	Western North Atlantic.	Not Listed.	Not Depleted. Not Strategic.	Nomadic	Small ..	Income	Fast ...	Entanglement, fishery interaction, hunting (Newfoundland, Canada, Greenland), climate change.	No	No	No	None identified.	Unk	544	28
Common dolphin.	Western North Atlantic.	Not Listed.	Not Depleted. Not Strategic.	Nomadic	Small ..	Income	Med ...	Entanglement, climate change.	No	No	No	None identified.	Unk	1,452	414
Atlantic spotted dolphin.	Western North Atlantic.	Not Listed.	Not Depleted. Not Strategic.	Unk, likely nomadic.	Small ..	Income	Med ...	Entanglement, ocean noise, illegal feeding/harassment, climate change.	No	No	No	None identified.	Decreasing	250	0

Bottlenose dolphin.	Indian River Lagoon Estuarine System.	Not Listed.	Not Depleted. Strategic	Resident	Small-Med.	Income	Med	Biotoxins, chemical contaminants, fishery interaction, habitat alteration, illegal feeding/harassment, ocean noise, oil spills and energy exploration, vessel strikes, disease, climate change.	No	No	No	No	Indian River Lagoon Estuarine System ^g .	Unk (insufficient data).	10	5.7
Bottlenose dolphin.	Jacksonville Estuarine System.	Not Listed.	Not Depleted. Strategic	Resident	Small-Med.	Income	Med	Biotoxins, chemical contaminants, fishery interaction, habitat alteration, illegal feeding/harassment, ocean noise, oil spills and energy exploration, vessel strikes, disease, climate change.	No	No	Yes: Small and resident population.	Unk (insufficient data).	Jacksonville Estuarine System ^h .	Unk (insufficient data).	Unk	2
Bottlenose dolphin.	Northern Georgia/Southern South Carolina Estuarine System.	Not Listed.	Not Depleted. Strategic	Resident	Small-Med.	Income	Med	Biotoxins, chemical contaminants, fishery interaction, habitat alteration, illegal feeding/harassment, ocean noise, oil spills and energy exploration, vessel strikes, disease, climate change.	No	No	No	No	St. Helena Sound, South Carolina to Ossabaw Sound, Georgia ⁱ .	Unk (insufficient data).	Unk	59
Bottlenose dolphin.	Northern North Carolina Estuarine System.	Not Listed.	Not Depleted. Strategic	Resident	Small-Med.	Income	Med	Biotoxins, chemical contaminants, fishery interaction, habitat alteration, illegal feeding/harassment, ocean noise, oil spills and energy exploration, vessel strikes, disease, climate change.	No	No	Yes: Small and resident population.	Unk (potentially stable).	Northern North Carolina Estuarine System ⁱ .	Unk (potentially stable).	7.8	7.2-30

TABLE 88—LIFE HISTORY TRAITS, IMPORTANT HABITAT, AND THREATS TO DOLPHINS IN THE AFTT STUDY AREA—Continued

Marine mammal species	Stock	ESA status	MMPA status	Movement ecology	Body size	Reproductive strategy	Pace of life	Chronic risk factors	UME, oil spill, other	ESA-designated critical habitat	BIAs (Labrecque <i>et al.</i> 2015)	Other important habitat	Population trend	PBR	Annual mortality/serious injury
Bottlenose dolphin.	Southern Georgia Estuarine System.	Not Listed.	Not Depleted. Not Strategic.	Resident	Small-Med.	Income	Med ...	Biotoxins, chemical contaminants, fishery interaction, habitat alteration, illegal feeding/harassment, ocean noise, oil spills and energy exploration, vessel strikes, disease, climate change.	No	No	Yes: Small and resident population.	Southern Georgia Estuarine System ^k .	Unk (insufficient data).	Und	0.1
Bottlenose dolphin.	Southern North Carolina Estuarine System.	Not Listed.	Not Depleted. Strategic ...	Resident	Small-Med.	Income	Med ...	Biotoxins, chemical contaminants, fishery interaction, habitat alteration, illegal feeding/harassment, ocean noise, oil spills and energy exploration, vessel strikes, disease, climate change.	No	No	Yes: Small and resident population.	Southern North Carolina Estuarine System ^l .	Unk	Und	0.4
Tamanend's Bottlenose Dolphin.	Western North Atlantic, Central Florida Coastal.	Not Listed.	Not Depleted. Strategic ...	Nomadic	Small-Med.	Income	Med ...	Biotoxins, chemical contaminants, fishery interaction, habitat alteration, illegal feeding/harassment, ocean noise, oil spills and energy exploration, vessel strikes, disease, climate change.	No	No	No	None identified.	Unk (insufficient data).	18	0.2

Tamanend's Bottlenose Dolphin.	Western North Atlantic, Northern Florida Coastal.	Not Listed.	Not Depleted. Strategic	Nomadic	Small-Med.	Income	Med	Biotoxins, chemical contaminants, fishery interaction, habitat alteration, illegal feeding/harassment, ocean noise, oil spills and energy exploration, vessel strikes, disease, climate change.	No	No	No	Unk (insufficient data).	27	0.2
Bottlenose dolphin.	Western North Atlantic Northern Migratory Coastal.	Not Listed.	Not Depleted. Strategic	Migratory	Small-Med.	Income	Med	Biotoxins, chemical contaminants, fishery interaction, habitat alteration, illegal feeding/harassment, ocean noise, oil spills and energy exploration, vessel strikes, disease, climate change.	No	No	No	Decreasing	48	12.2-21.5
Bottlenose dolphin.	Western North Atlantic Off-shore.	Not Listed.	Not Depleted. Not Strategic.	Migratory	Small-Med.	Income	Med	Biotoxins, chemical contaminants, fishery interaction, illegal feeding/harassment, ocean noise, oil spills and energy exploration, vessel strikes, disease, climate change.	No	No	No	Stable, potentially decreasing.	507	28
Tamanend's Bottlenose Dolphin.	Western North Atlantic South Carolina/Georgia Coastal.	Not Listed.	Not Depleted. Strategic	Migratory	Small-Med.	Income	Med	Biotoxins, chemical contaminants, fishery interaction, habitat alteration, illegal feeding/harassment, ocean noise, oil spills and energy exploration, vessel strikes, disease, climate change.	No	No	No	Unk (insufficient data).	73	0.2-0.6

TABLE 88—LIFE HISTORY TRAITS, IMPORTANT HABITAT, AND THREATS TO DOLPHINS IN THE AFTT STUDY AREA—Continued

Marine mammal species	Stock	ESA status	MMPA status	Movement ecology	Body size	Reproductive strategy	Pace of life	Chronic risk factors	UME, oil spill, other	ESA-designated critical habitat	BIAs (Labrecque <i>et al.</i> 2015)	Other important habitat	Population trend	PBR	Annual mortality/serious injury
Bottlenose dolphin.	Western North Atlantic Southern Migratory Coastal.	Not Listed.	Not Depleted. Strategic	Migratory	Small-Med.	Income	Med	Biotoxins, chemical contaminants, fishery interaction, habitat alteration, illegal feeding/harassment, ocean noise, oil spills and energy exploration, vessel strikes, disease, climate change.	No	No	No	None identified.	Decreasing	24	0–18.3
Clymene dolphin.	Western North Atlantic.	Not Listed.	Not Depleted. Not Strategic.	Nomadic	Small ..	Income	Fast	Entanglement, fishery interaction, ocean noise, PCBs, hunting (Caribbean), climate change.	No	No	No	None identified.	Unk	126	0
False killer whale.	Western North Atlantic.	Not Listed.	Not Depleted. Not Strategic.	Nomadic	Med	Income	Med	Fishery interaction, contaminants, hunting, disease, climate change.	No	No	No	None identified.	Unk (Insufficient data).	7.6	0
Fraser's dolphin.	Western North Atlantic.	Not Listed.	Not Depleted. Not Strategic.	Nomadic	Small ..	Income	Fast	Fishery interaction, climate change.	No	No	No	None identified.	Unk	Unk	0
Killer whale	Western North Atlantic.	Not Listed.	Not Depleted. Not Strategic.	Nomadic	Large ..	Income	Slow	Chemical contaminants, vessel traffic and noise, entanglement, oil spills, climate change.	No	No	No	None identified.	Unk	Unk	0
Long-finned pilot whale.	Western North Atlantic.	Not Listed.	Not Depleted. Not Strategic.	Nomadic	Med	Income	Slow	Entanglements, contaminants, ocean noise, disease, climate change.	No	No	No	None identified.	Unk	306	5.7
Melon-headed whale.	Western North Atlantic.	Not Listed.	Not Depleted. Not Strategic.	Nomadic	Small ..	Income	Med	Fishery interaction, ocean noise, pollution, climate change.	No	No	No	None identified.	Unk (Insufficient data).	Unk	0
Pantropical spotted dolphin.	Western North Atlantic.	Not Listed.	Depleted Not Strategic.	Nomadic	Small ..	Income	Med	Entanglement, illegal feeding/harassment, climate change.	No	No	No	None identified.	Stable, potentially increasing.	19	0
Pygmy killer whale.	Western North Atlantic.	Not Listed.	Not Depleted. Not Strategic.	Nomadic	Small ..	Income	Med	Entanglement, ocean noise, climate change.	No	No	No	None identified.	Unk (Insufficient data).	Unk	0

Risso's dolphin.	Western North Atlantic.	Not Listed.	Not Depleted. Not Strategic.	Nomadic	Small-Med.	Income	Med	Entanglement, environmental contamination, hunting, ocean noise, climate change.	No	No	No	None identified.	Unk (Insufficient data).	307	18
Rough-toothed dolphin.	Western North Atlantic.	Not Listed.	Not Depleted. Not Strategic.	Nomadic	Small ..	Income	Med	Entanglement, ocean noise, climate change.	No	No	No	None identified.	Unk (Insufficient data).	Und	0
Short-finned pilot whale.	Western North Atlantic.	Not Listed.	Not Depleted. Strategic	Resident-nomadic.	Med	Income	Slow	Entanglement, fishery interaction, vessel strikes, climate change.	No	No	No	Mid-Atlantic Bight Canyons m.	Stable	143	218
Spinner dolphin.	Western North Atlantic.	Not Listed.	Depleted. Not Strategic.	Nomadic	Small ..	Income	Fast	Marine debris, ocean noise, disease.	No	No	No	None identified.	Unk	19	0
Striped dolphin.	Western North Atlantic.	Not Listed.	Not Depleted. Not Strategic.	Nomadic	Small ..	Income	Med	Entanglement, disease, climate change.	No	No	No	None identified.	Unk	529	0
White-beaked dolphin.	Western North Atlantic.	Not Listed.	Not Depleted. Not Strategic.	Nomadic-migratory.	Small ..	Income	Fast	Entanglement, climate change.	No	No	No	None identified.	Unk	4,153	0

Note: Unk = Unknown, Und = Undetermined.

^a See Hubbard *et al.* (2004), Mackey (2010), Arick *et al.* (2024), McBride (2013), Miller *et al.* (2013), Mullin *et al.* (2017), and Vollmer *et al.* (2021) for more information.

^b See Ronje *et al.* (2022), Shane (1980), Weller (1998), and Würsig *et al.* (2022) for more information.

^c See Ronje *et al.* (2020), Ronje *et al.* (2021), Ronje *et al.* (2022), Wells (2014), and Würsig *et al.* (2022) for more information.

^d See Balmer *et al.* (2008), Balmer *et al.* (2010), Balmer *et al.* (2018), Balmer *et al.* (2019a), Balmer *et al.* (2019b), Blaylock and Hoggard (1994), Bouveroux *et al.* (2014), Colborn (1999), Hayes *et al.* (2020), Kendall *et al.* (1997), Pollock (1982), Pollock *et al.* (1990), Powell *et al.* (2018), Samuels and Bejder (2004), and Samuels and Spradlin (1995) for more information.

^e See Balmer *et al.* (2008), Balmer *et al.* (2010), Balmer *et al.* (2016), Balmer *et al.* (2019), Balmer *et al.* (2020), Hubard *et al.* (2004), Kendall *et al.* (1997), Rosel *et al.* (2011), Schwacke *et al.* (2010), and Toms (2019) for more information.

^f See Bassos (1993), Bassos-Hull *et al.* (2013), Boyd *et al.* (2021), Duffield and Wells (2002), Irvine and Wells (1972), Irvine *et al.* (1981), Leatherwood and Shaw (1980), Mate *et al.* (1995), McCallister (2011), Odell and Reynolds (1980), Scott *et al.* (1989), Sellas *et al.* (2005), Simard *et al.* (2011), Thompson (1981), Urian *et al.* (2009), van Ginkel *et al.* (2018), Weigle (1990), Wells (2014), Wells *et al.* (1998), Wells *et al.* (1996), Wells *et al.* (1987), and Wells *et al.* (2013) for more information.

^g See Durden *et al.* (2017), Durden *et al.* (2021), Odell and Asper (1990), Mazzoli *et al.* (2005), Mazzoli *et al.* (2008a), Mazzoli *et al.* (2008b), and Mazzoli *et al.* (2020) for more information.

^h See Caldwell (2001), and Mazzoli *et al.* (2020) for more information.

ⁱ See Gubbins (2000a), Gubbins (2000b), Gubbins (2000c), and Waring *et al.* (2014) for more information.

^j See Garrison *et al.* (2017) and Gorgone *et al.* (2014) for more information.

^k See Pulster and Maruya (2008) and Balmer *et al.* (2013) for more information.

^l See Urian *et al.* (1999), Read *et al.* (2003), Waring *et al.* (2014), and Silva *et al.* (2020) for more information.

^m See Thorne *et al.* (2017) for more information.

As shown in table 87, the maximum annual allowable instances of take by Level B harassment for Delphinid stocks ranges from 1 (Sabine Lake bottlenose dolphin stock) to 269,405 for the Western North Atlantic common dolphin, with 24 stocks below 2,000, seven stocks above 70,000, and the remainder between 2,000 and 38,000. Take by Level A harassment is 0 for 17 of the 53 stocks, above 15 for 11 stocks, and 11 or fewer for the remaining stocks. As indicated, the rule also allows for 1–2 takes annually by serious M/SI for five stocks (the Northern Gulf of America stocks of striped and pantropical dolphins, the Western North Atlantic offshore stock of bottlenose dolphins, the Western North Atlantic South Carolina/Georgia Coastal stock of Tamanend's bottlenose dolphin, and the Western North Atlantic stock of Clymene dolphins), the impacts of which are discussed above in the Mortality section. The total take allowable across all 7 years of the rule is indicated in table 49.

All but two Delphinid stocks are expected to incur some number of takes in the form of TTS. As described in the Auditory Injury from Sonar Acoustic Sources and Explosives and Non-Auditory Injury from Explosives section above, these temporary hearing impacts are expected to be lower-level, of short duration (from minutes to at most several hours or less than a day), and mostly not in a frequency band that would be expected to interfere with delphinid echolocation, overlap more than a relatively narrow portion of the vocalization range of any single species or stock, or preclude detection or interpretation of important low-frequency cues. Any associated lost opportunities or capabilities individuals might experience as a result of TTS would not be at a level or duration that would be expected to impact reproductive success or survival. About two-thirds of the affected Delphinid stocks will incur some number of takes by AUD INJ, the majority of single digits, with higher numbers exceeding 50 and up to 161 for several stocks. For reasons similar to those discussed for TTS, while AUD INJ impacts are permanent, given the anticipated effectiveness of the mitigation and the likelihood that individuals are expected to avoid higher levels associated with more severe impacts, the lower anticipated levels of PTS that could be reasonably expected to result from these activities are unlikely to affect the fitness of any individuals. Five stocks are projected to incur notably higher numbers of take by AUD INJ (85–161,

the Western North Atlantic stocks of Atlantic spotted dolphins, common dolphins, Clymene dolphins, striped dolphins, and offshore bottlenose dolphins) and while the conclusions above are still applicable, it is further worth noting that these five stocks have relatively large abundances and limited annual mortality as compared to PBR. The rule also allows for a limited number of takes by non-auditory injury (1–3) for 15 stocks. As described above in the Auditory Injury from Sonar Acoustic Sources and Explosives and Non-Auditory Injury from Explosives section, given the small number of potential exposures and the anticipated effectiveness of the mitigation measures in minimizing the pressure levels to which any individuals are exposed, these non-auditory injuries are unlikely to be of a nature or level that would impact reproduction or survival.

Regarding the likely severity of any single instance of take by behavioral disturbance, as described above, the majority of the predicted exposures are expected to be below 178 dB SPL and last from a few minutes to a few hours, at most, with associated responses most likely in the form of moving away from the source, foraging interruptions, vocalization changes, or disruption of other social behaviors, lasting from a few minutes to several hours. Delphinids are income breeders with a medium pace of life, meaning that while they can be sensitive to the consequences of disturbances that impact foraging during lactation, from a population standpoint, they can be moderately quick to recover. Further, as described in the *Group and Species-Specific Analyses* section above and the Proposed Mitigation Measures section, mitigation measures are expected to further reduce the potential severity of impacts through real-time operational measures that minimize higher level/longer duration exposures and time/area measures that reduce impacts in higher value habitat.

As described above, in addition to evaluating the anticipated impacts of the single instances of takes, it is important to understand the degree to which individual marine mammals may be disturbed repeatedly across multiple days of the year. In the case of just over half of the delphinid stocks (see the Maximum Annual Harassment As Percentage of Stock Abundance column in table 87), given the low number of takes by harassment as compared to the stock/species abundance alone, and also in consideration of their migratory movement pattern and whether take is concentrated in areas in which animals are known to congregate, it is unlikely

that these individual Delphinids would be taken on more than a small number of days within a year and, therefore, the anticipated behavioral disturbance is not expected to affect reproduction or survival. In the case of the rest of the stocks, with the exception of the Northern North Carolina Estuarine System stock of bottlenose dolphins (addressed below), given the number of takes by harassment as compared to the stock/species abundance, it is likely that some portion of the individuals taken are taken repeatedly over a small to moderate number of days (as indicated in the Greatest Degree Any Individual Expected to be Taken Repeatedly Across Multiple days column of table 87). However, given the variety of activity types that contribute to take across separate exercises conducted at different times and in different areas, and the fact that many result from transient activities conducted at sea, for all but one of the stocks (addressed below), it is unlikely that the anticipated small to moderate number of repeated takes for a given individual would occur clumped across sequential days in a manner likely to impact foraging success and energetics or other behaviors such that reproduction or survival of any individuals are likely to be impacted. Further, many of these stocks are nomadic or migratory and apart from the few small resident dolphin populations, there are no known foraging areas or other areas within which animals are known to congregate for important behaviors, and nor are the takes concentrated within a specific region and season.

Regarding the magnitude of repeated takes for the Northern North Carolina Estuarine System stock of bottlenose dolphins, given the number of takes by harassment as compared to the stock/species abundance, the small resident population, the fact that the predicted takes all occur in summer and are primarily from hull-mounted sonar pierside or navigating out of Norfolk (see appendix A to the application), it is more likely that some number of individuals occupying that area during the summer months would experience a comparatively higher number of repeated takes over a potentially fair number of sequential days. Due to the higher number of repeated takes focused within a limited time period, it is thereby more likely that a portion of the individuals occupying the area near Norfolk in the summer (approximately 50 percent of which would be female) could be repeatedly interrupted during foraging in a manner and amount such that impacts to the energy budgets of a

small number of females (from either losing feeding opportunities or expending considerable energy moving away from sound sources or finding alternative feeding options) could cause them to forego reproduction for a year (noting that bottlenose dolphin calving intervals are typically three or more years). Energetic impacts to males are generally meaningless to population rates unless they cause death, and it takes extreme energy deficits beyond what would ever be likely to result from these activities to cause the death of an adult marine mammal, male or female. This stock is considered potentially stable and, while strategic, is not depleted. Importantly, the increase in a calving interval by a year would have far less of an impact on a population rate than a mortality would and, accordingly, a small number of instances of foregone reproduction would not be expected to adversely affect this stock through effects on annual rates of recruitment or survival (noting also that no mortality is predicted or authorized for this stock).

Given the magnitude and severity of the take by harassment discussed above and any anticipated habitat impacts, and in consideration of the required mitigation measures and other information presented, the Action Proponents' activities are unlikely to result in impacts on the reproduction or survival of any individuals of Delphinid stocks, with the exception of the five

stocks for which 1–2 takes by M/SI are predicted and the one stock for which an increased calving interval could potentially occur. Regarding the Northern North Carolina Estuarine System stock of bottlenose dolphins, as described above, we do not anticipate the relatively small number of individuals that might be taken over repeated days within the year in a manner that results in a year of foregone reproduction to adversely affect the stock through effects on rates of recruitment or survival, given the status of the stock. Regarding the Northern Gulf of America stocks of striped and pantropical dolphins, the Western North Atlantic offshore stock of bottlenose dolphins, the Western North Atlantic offshore South Carolina/Georgia stock of Tamanend's bottlenose dolphins, and the Western North Atlantic Clymene dolphins, as described in the Mortality section, given the status of the stocks and in consideration of other ongoing anthropogenic mortality, the amount of allowed M/SI take proposed here would not, alone, nor in combination with the impacts of the take by harassment discussed above (which are not expected to impact the reproduction or survival of any individuals for those stocks), be expected to adversely affect rates of recruitment and survival. Last, we are aware that some Northern Gulf of America stocks of delphinids have experienced lower rates of reproduction and survival since the DWH oil spill,

however, those effects are reflected in the SARs and other data considered in these analyses and do not change our findings. For these reasons, we have determined that the total take (considering annual maxima and across seven years) anticipated and proposed for authorization would have a negligible impact on all Delphinid species and stocks.

Porpoises—

Harbor porpoise are not listed as endangered or threatened under the ESA, and the Gulf of Maine/Bay of Fundy stock is not considered depleted or strategic under the MMPA. The stock abundance is 85,765 animals. There are no UMEs or other factors that cause particular concern for this stock. A small and resident population BIA has been identified for this stock (LeBrecque *et al.*, 2015). There is no ESA-designated critical habitat for harbor porpoise, as the species is not ESA-listed. While the Gulf of Maine/Bay of Fundy stock of harbor porpoises can be found from Greenland to North Carolina, they are primarily concentrated in the southern Bay of Fundy and northern Gulf of Maine during warmer months (summer), and from Maine to New Jersey during colder months (fall and spring). Harbor porpoises face several chronic anthropogenic and non-anthropogenic risk factors, including fishery interaction, ocean noise, and climate change.

TABLE 89—ANNUAL ESTIMATED TAKE BY LEVEL B HARASSMENT, LEVEL A HARASSMENT, AND MORTALITY AND RELATED INFORMATION FOR PORPOISES IN THE AFTT STUDY AREA

Marine mammal species	Stock	NMFS stock abundance	NMSDD abundance	Maximum annual Level B harassment	Maximum annual Level A harassment	Maximum annual mortality	Maximum annual take	Maximum annual harassment as percentage of stock abundance	Season(s) with 40 percent of take or greater	Region(s) with 40 percent of take or greater
Harbor porpoise	Gulf of Maine/Bay of Fundy	* 85,765	10,270	87,119	147	0	87,266	102	Winter (48 percent). Spring (45 percent).	Northeast (85 percent).

Note: NMSDD abundances are averages only within the U.S. EEZ.
* Indicates which abundance estimate was used to calculate the maximum annual take as a percentage of abundance, either the NMFS SAR (Hayes *et al.*, 2024) or the NMSDD (table 2.4–1 in appendix A of the application). Please refer to the following section for details on which abundance estimate was selected.

TABLE 90—LIFE HISTORY TRAITS, IMPORTANT HABITAT, AND THREATS TO PORPOISES IN THE AFTT STUDY AREA

Marine mammal species	Stock	ESA status	MMPA status	Movement ecology	Body size	Reproductive strategy	Pace of life	Chronic risk factors	UME, oil spill, other	ESA-designated critical habitat	BIAs (LaBrecque <i>et al.</i> 2015)	Other important habitat	Population trend	PBR	Annual mortality/serious injury
Harbor porpoise.	Gulf of Maine/Bay of Fundy.	Not Listed	Not depleted; Not strategic.	Resident-nomadic.	Small	Income ...	Fast	Fishery interaction, ocean noise, climate change.	No	No	Yes: Small and resident population (n=1).	N/A	Unk	649	142.4

Note: N/A = Not Applicable; Unk = Unknown.

As shown in table 89, the maximum annual allowable instances of take under this proposed rule by Level A Harassment and Level B harassment is 147 and 87,119, respectively. No mortality is anticipated or proposed for authorization, and nor is any non-auditory injury. The total take allowable across all 7 years of the rule is indicated in table 49.

Regarding the potential takes associated with auditory impairment, as VHF cetaceans, harbor porpoises are more susceptible to auditory impacts in mid- to high frequencies and from explosives than other species. As described in the Temporary Threshold Shift section above, any takes in the form of TTS are expected to be lower-level, of short duration (even the longest recovering in less than a day), and mostly not in a frequency band that would be expected to interfere with porpoise communication or other important auditory cues. Any associated lost opportunities or capabilities individuals might experience as a result of TTS would not be at a level or duration that would be expected to impact reproductive success or survival. For similar reasons, while auditory injury impacts last longer, the low anticipated levels of AUD INJ that could be reasonably expected to result from these activities are unlikely to have any effect on fitness.

Harbor porpoises are more susceptible to behavioral disturbance than other species. They are highly sensitive to many sound sources and generally demonstrate strong avoidance of most types of acoustic stressors. The information currently available regarding harbor porpoises suggests a very low threshold level of response for both captive (Kastelein *et al.*, 2000; Kastelein *et al.*, 2005) and wild (Johnston, 2002) animals. Southall *et al.* (2007) concluded that harbor porpoises are likely sensitive to a wide range of anthropogenic sounds at low received levels (approximately 90 to 120 dB). Research and observations of harbor porpoises for other locations show that this species is wary of human activity and will display profound avoidance behavior for anthropogenic sound sources in many situations at levels down to 120 dB re: 1 μ Pa (Southall, 2007). Harbor porpoises routinely avoid and swim away from large motorized vessels (Barlow *et al.*, 1988; Evans *et al.*, 1994; Palka and Hammond, 2001; Polacheck and Thorpe, 1990). Accordingly, and as described in the Estimated Take of Marine Mammals section, the threshold for behavioral disturbance is lower for harbor porpoises, and the number of estimated

takes is higher, with many occurring at lower received levels than other taxa. Regarding the likely severity of any single instance of take by behavioral disturbance, as described above, the majority of the predicted exposures are expected to be below 154 dB SPL and last from a few minutes to a few hours, at most. Associated responses would likely include avoidance, foraging interruptions, vocalization changes, or disruption of other social behaviors, lasting from a few minutes to several hours and not likely to exceed 24 hours.

As small odontocetes and income breeders with a fast pace of life, harbor porpoises are less resilient to missed foraging opportunities than larger odontocetes. Although reproduction in populations with a fast pace of life are more sensitive to foraging disruption, these populations are quick to recover. Further, as described in the *Group and Species-Specific Analyses* section above and the Proposed Mitigation Measures section, mitigation measures are expected to further reduce the potential severity of impacts through real-time operational measures that minimize higher level/longer duration exposures and time/area measures that reduce impacts in high value habitat.

As described above, in addition to evaluating the anticipated impacts of the single instances of takes, it is important to understand the degree to which individual marine mammals may be disturbed repeatedly across multiple days of the year. In this case, given the number of takes by harassment as compared to the stock/species abundance (see table 89), the small resident population and concentration of takes (85 percent) in the Northeast, it is likely that some portion of the individuals taken are taken repeatedly over a small number of days. However, given the variety of activity types that contribute to take across separate exercises conducted at different times and in different areas, and the fact that many result from transient activities conducted at sea, it is unlikely that repeated takes would occur either in numbers or clumped across sequential days in a manner likely to impact foraging success and energetics or other behaviors such that reproduction or survival of any individuals is likely to be impacted.

Given the magnitude and severity of the impacts discussed above to harbor porpoises (considering annual take maxima and the total across seven years) and their habitat, and in consideration of the required mitigation measures and other information presented, the Action Proponents' activities are unlikely to result in

impacts on the reproduction or survival of any individuals and, thereby, unlikely to affect annual rates of recruitment or survival. For these reasons, we have determined that the take by harassment anticipated and proposed for authorization would have a negligible impact on the Gulf of Maine/Bay of Fundy stock of harbor porpoises.

Pinnipeds

This section builds on the broader discussion above and brings together the discussion of the different types and amounts of take that different stocks will incur, the applicable mitigation for each stock, and the status and life history of the stocks to support the negligible impact determinations for each stock. We have already described above why we believe the incremental addition of the small number of low-level auditory injury takes will not have any meaningful effect towards inhibiting reproduction or survival. We have also described above in this section the unlikelihood of any masking or habitat impacts having effects that would impact the reproduction or survival of any of the individual marine mammals affected by the Action Proponents' activities. For pinnipeds, there is no predicted non-auditory injury from explosives for any stock, and no predicted mortality for any stock. Regarding the severity of individual takes by Level B harassment by behavioral disturbance for pinnipeds, the majority of these responses are anticipated to occur at received levels below 172 dB, and last from a few minutes to a few hours, at most, with associated responses most likely in the form of moving away from the source, foraging interruptions, vocalization changes, or disruption of other social behaviors, lasting from a few minutes to several hours. Because of the small magnitude and severity of effects for all of the species, it is not necessary to break out the findings by species or stock.

In table 91 below for pinnipeds, we indicate the total annual mortality, Level A harassment, and Level B harassment, and a number indicating the instances of total take as a percentage of abundance. In table 92 below, we indicate the status, life history traits, important habitats, and threats that inform our analysis of the potential impacts of the estimated take on the affected pinniped stocks.

Gray seal, harbor seal, harp seal, and hooded seal are not listed as endangered or threatened under the ESA, and these stocks are not considered depleted or strategic under the MMPA. The

abundance estimates for both Western North Atlantic gray seals and harbor seals are 27,911 and 61,336, but both of those estimates are for the U.S. portion of the stock only, while each stock's range extends into Canada. The estimated abundance of Western North Atlantic harp seals is 7,600,600, and a current abundance estimate for hooded seals is not available, though the most recent SAR (2018; Hayes *et al.*, 2019)

estimated an abundance of 593,500 individuals. The range of both harp seals and hooded seals also extends into Canada. In 2018, NMFS declared a UME affecting both gray seals and harbor seals (Northeast Pinniped UME, see *Unusual Mortality Events* section), but the UME is currently non-active and pending closure, with infectious disease determined to be the cause of the UME. The only known important areas for

pinnipeds in the AFTT Study Area are known gray whale pupping areas on Green Island, Maine; Seal Island, Maine; and Muskeget Island, Maine. Pinnipeds in the AFTT Study Area face several chronic anthropogenic and non-anthropogenic risk factors, including entanglement, disease, and climate change, among others.

TABLE 91—ANNUAL ESTIMATED TAKE BY LEVEL B HARASSMENT, LEVEL A HARASSMENT, AND MORTALITY AND RELATED INFORMATION FOR PINNIPEDS IN THE AFTT STUDY AREA

Marine mammal species	Stock	NMFS stock abundance	NMSDD abundance	Maximum annual Level B harassment	Maximum annual Level A harassment	Maximum annual mortality	Maximum annual take	Maximum annual harassment as percentage of stock abundance	Take in important areas	Season(s) with 40 percent of take or greater	Region(s) with 40 percent of take or greater
Gray seal	Western North Atlantic ...	*27,911	24,717	15,724	24	0	15,748	56	No	Winter (44 percent)	Northeast (72 percent).
Harbor seal	Western North Atlantic ...	*61,336	10,184	22,094	32	0	22,126	36	No	Winter (47 percent)	Northeast (69 percent).
Harp seal	Western North Atlantic ...	*7,600,000	10,007	25,792	6	0	25,798	0	No	N/A	Northeast (100 percent).
Hooded seal	Western North Atlantic ...	*Unk	1,097	1,726	2	0	1,728	Unk	No	N/A	Northeast (100 percent).

Note: Unk = Unknown, N/A = Not Applicable. NMSDD abundances are averages only within the U.S. EEZ.

*Indicates which abundance estimate was used to calculate the maximum annual take as a percentage of abundance, either the NMFS SAR (Hayes *et al.*, 2024) or the NMSDD (table 2.4–1 in appendix A of the application). Please refer to the following section for details on which abundance estimate was selected.

TABLE 92—LIFE HISTORY TRAITS, IMPORTANT HABITAT, AND THREATS TO PINNIPEDS IN THE AFTT STUDY AREA

Marine mammal species	Stock	ESA status	MMPA status	Movement ecology	Body size	Reproductive strategy	Pace of life	Chronic risk factors	UME, oil spill, other	ESA-designated critical habitat	BIAs (LaBrecque <i>et al.</i> 2015)	Other important habitat	Population trend	PBR	Annual mortality/serious injury
Gray seal ..	Western North Atlantic.	Not Listed	Not Depleted. Not Strategic.	Nomadic migratory.	Small	Capital	Fast	Entanglement, illegal take/killing, chemical contaminants, oil spills and energy exploration, vessel strike/inter-action, disease, climate change.	UME (declared 2018, pending closure).	No	No	Pupping: Green Island, ME; Seal Island, ME; Muskeget Island, MA.	Increasing	756	4,491
Harbor seal	Western North Atlantic.	Not Listed	Not Depleted. Not Strategic.	Nomadic migratory.	Small	Capital	Fast	Entanglement, illegal feeding/harassment, habitat degradation, vessel strike, chemical contaminants, disease, climate change.	UME (declared 2018, pending closure).	No	No	None identified.	Stable/decline.	1,729	339
Harp seal ..	Western North Atlantic.	Not Listed	Not Depleted. Not Strategic.	Migratory	Small	Capital	Fast	Hunting, vessel strike, entanglement, pollution, oil spills/energy exploration, climate change, prey limitations.	No	No	No	None identified.	Increasing	426,000	178,573

TABLE 92—LIFE HISTORY TRAITS, IMPORTANT HABITAT, AND THREATS TO PINNIPEDS IN THE AFTT STUDY AREA—Continued

Marine mammal species	Stock	ESA status	MMPA status	Move-ment ecology	Body size	Repro-ductive strategy	Pace of life	Chronic risk factors	UME, oil spill, other	ESA-des-ignated critical habitat	BIAs (LaBrecque <i>et al.</i> 2015)	Other important habitat	Popu-lation trend	PBR	Annual mortality/serious injury
Hooded seal.	Western North Atlantic.	Not Listed	Not Depleted. Not Strategic.	Migratory	Small	Capital	Fast	Vessel strike, habitat loss, entanglement, harassment, harmful algal blooms, climate change.	No	No	No	Three breeding areas in Canada.	Increasing	Unk	1,680

Note: Unk = Unknown.

As shown in table 91, the maximum annual allowable instances of take under this proposed rule by Level A Harassment and Level B harassment range from 2 (hooded seal) to 32 (harbor seal) and 1,726 (hooded seal) to 25,792 (harp seal), respectively. No mortality is anticipated or proposed for authorization, and nor is any non-auditory injury. The total take allowable across all 7 years of the rule for each stock is indicated in table 49.

Regarding the potential takes associated with auditory impairment, as described above, any takes in the form of TTS are expected to be lower-level, of short duration, and mostly not in a frequency band that would be expected to interfere with pinniped communication or other important low-frequency cues. Any associated lost opportunities or capabilities individuals might experience as a result of TTS would not be at a level or duration that would be expected to impact reproductive success or survival. For similar reasons, while auditory injury impacts last longer, the low anticipated levels of AUD INJ that could be reasonably expected to result from these activities are unlikely to have any effect on fitness.

Regarding the likely severity of any single instance of take by behavioral disturbance, as described above, the majority of the predicted exposures are expected to be below 172 dB SPL and last from a few minutes to a few hours, at most, with associated responses most likely in the form of moving away from the source, increased swimming speeds, increased surfacing time, or foraging interruptions, lasting from a few minutes to several hours. Pinnipeds have a fast pace of life, but have a relatively lower energy requirement for their body size, which may moderate any impact due to foraging disruption. However, of note, harp seals have a large inter-annual variability in reproductive rates due to variations in prey abundance (rely primarily on capelin as their preferred prey) and mid-winter ice coverage and may not reproduce as quickly as other pinnipeds. Also of note, gray seals are likely to be exposed to Navy noise sources when in their more southern habitats in the northeast region, especially in colder months when they breed and give birth.

As described above, in addition to evaluating the anticipated impacts of the single instances of takes, it is important to understand the degree to which individual marine mammals may be disturbed repeatedly across multiple days of the year. For gray seals and harbor seals the SARs do not provide

stock abundances that reflect the full ranges of the stocks. For hooded seals, the SAR does not provide an up-to-date abundance estimate for any portion of the stock's range. The Navy's NMSDD abundance estimate for hooded seals was 1,097; however, this estimate appears to be underestimated by several orders of magnitude, as the most recent SAR estimate (2018 SAR; Hayes *et al.* 2019) was 593,500 animals. For all pinniped species, given the lower number of takes by harassment as compared to the stock/species abundance (accounting for the factors described above regarding abundance estimates; see table 91), and their migratory or nomadic-migratory movement patterns, it is unlikely that any individual pinnipeds would be taken on more than a small number of days within a year and, therefore, the anticipated behavioral disturbance is not expected to affect reproduction or survival.

Given the magnitude and severity of the impacts discussed above (considering annual maxima and across 7 years) and in consideration of the required mitigation measures and other information presented, for each pinniped stock, the Action Proponents' 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. Last, we have both considered the effects of the Northeast Pinniped UME, pending closure, in our analysis and findings regarding the impact of the activity on these stocks and also determined that we do not expect the proposed take to exacerbate the effects of the UME or otherwise impact the populations. For these reasons, we have determined that the take by harassment anticipated and to be authorized would have a negligible impact on all pinniped stocks.

Preliminary Determination

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

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that

the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Classification

Endangered Species Act

There are six marine mammal species under NMFS jurisdiction that are listed as endangered or threatened under the ESA with confirmed or possible occurrence in the AFTT Study Area: blue whale, fin whale, NARW, Rice's whale, sei whale, and sperm whale. The NARW has critical habitat designated under the ESA in the AFTT Study Area (81 FR 4837, February 26, 2016) and the Rice's whale has proposed critical habitat in the AFTT Study Area (88 FR 47453, July 24, 2023).

The Action Proponents will consult with NMFS pursuant to section 7 of the ESA for the AFTT Study Area activities. NMFS will also consult internally on the issuance of the regulations and three LOAs under section 101(a)(5)(A) of the MMPA.

National Marine Sanctuaries Act

The Action Proponents and NMFS will work with NOAA's Office of National Marine Sanctuaries to fulfill our responsibilities under the National Marine Sanctuaries Act as warranted and will complete any NMSA requirements prior to a determination on the issuance of the final rule and LOAs.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed actions with respect to potential impacts on the human environment. Accordingly, NMFS plans to adopt the 2024 AFTT Draft Supplemental EIS/OEIS for the AFTT Study Area, provided our independent evaluation of the document finds that it includes adequate information analyzing the effects on the human environment of issuing regulations and LOAs under the MMPA. NMFS is a cooperating agency on the 2024 AFTT Draft Supplemental EIS/OEIS and has worked extensively with the Navy in developing the document. The 2024 AFTT Draft Supplemental EIS/OEIS was made available for public comment at <https://www.nepa.navy.mil/aftteis/>, which also provides additional information about the NEPA process, from September 20, 2024, to November 21, 2024. We will review all comments

prior to concluding our NEPA process and making a final decision on the MMPA rulemaking and request for LOAs.

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

Regulatory Flexibility Act

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866. Pursuant to the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The RFA requires Federal agencies to prepare an analysis of a rule's impact on small entities whenever the agency is required to publish a notice of proposed rulemaking. However, a Federal agency may certify, pursuant to 5 U.S.C. 605(b), that the action will not have a significant economic impact on a substantial number of small entities. The Action Proponents are the only entities that would be affected by this rulemaking, and the Action Proponents are not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Any requirements imposed by an LOA issued pursuant to these regulations, and any monitoring or reporting requirements imposed by these regulations, would be applicable only to the Action Proponents. NMFS does not expect the issuance of these regulations or the associated LOAs to result in any impacts to small entities pursuant to the RFA. Because this action, if adopted, would directly affect only the Action Proponents and not any small entities, NMFS concludes that the action would not result in a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 218

Administrative practice and procedure, Endangered and threatened species, Fish, Fisheries, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: April 30, 2025.

Samuel D. Rauch III,

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

For reasons set forth in the preamble, NMFS proposes to amend 50 CFR part 218 as follows:

PART 218—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

- 1. The authority citation for part 218 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

- 2. Revise subpart I of part 218 to read as follows:

Subpart I—Taking and Importing Marine Mammals; Military Readiness Activities in the Atlantic Fleet Training and Testing Study Area

Sec.

218.80 Specified activity and geographical region.

218.81 Effective dates.

218.82 Permissible methods of taking.

218.83 Prohibitions.

218.84 Mitigation requirements.

218.85 Requirements for monitoring and reporting.

218.86 Letters of Authorization.

218.87 Modifications of Letters of Authorization.

218.88–218.89 [Reserved]

Subpart I—Taking and Importing Marine Mammals; Military Readiness Activities in the Atlantic Fleet Training and Testing Study Area

§ 218.80 Specified activity and geographical region.

(a) Regulations in this subpart apply only to the U.S. Navy (Navy) and U.S. Coast Guard (Coast Guard) (collectively referred to as the “Action Proponents”) for the taking of marine mammals that occurs in the area described in paragraph (b) of this section and that occurs incidental to the activities listed in paragraph (c) of this section.

(b) The taking of marine mammals by the Action Proponents under this subpart may be authorized in Letters of Authorization (LOAs) only if it occurs within the Atlantic Fleet Training and Testing (AFTT) Study Area. The AFTT Study Area includes areas of the western Atlantic Ocean along the east coast of North America, the Gulf of America, and portions of the Caribbean

Sea, covering approximately 2.6 million nmi² (8.9 million km²) of ocean, oriented from the mean high tide line along the U.S. coast and extending east to 45° W longitude line, north to 65° N latitude line, and south to approximately the 20° N latitude line. It also includes Navy and Coast Guard pierside locations, port transit channels, bays, harbors, inshore waterways (*e.g.*, channels, rivers), civilian ports where military readiness activities occur, and vessel and aircraft transit routes among homeports, designated operating areas (OPAREAs), and testing and training ranges.

(c) The taking of marine mammals by the Action Proponents is only authorized if it occurs incidental to the Action Proponents conducting training and testing activities, including the following:

- (1) Amphibious warfare;
- (2) Anti-submarine warfare;
- (3) Expeditionary warfare;
- (4) Mine warfare;
- (5) Surface warfare;
- (6) Vessel evaluation;
- (7) Unmanned systems;
- (8) Acoustic and oceanographic science and technology;
- (9) Vessel movement; and
- (10) Other training and testing activities.

§ 218.81 Effective dates.

Regulations in this subpart are effective from November 14, 2025, through November 13, 2032.

§ 218.82 Permissible methods of taking.

(a) Under LOAs issued pursuant to §§ 216.106 of this chapter and 218.87, the Holder of the LOAs (hereinafter “Action Proponents”) may incidentally, but not intentionally, take marine mammals within the area described in § 218.80(b) by Level A harassment and Level B harassment associated with the use of active sonar and other acoustic sources and explosives, as well as serious injury or mortality associated with vessel strikes and explosives, provided the activity is in compliance with all terms, conditions, and requirements of this subpart and the applicable LOAs.

(b) The incidental take of marine mammals by the activities listed in § 218.80(c) is limited to the following species:

TABLE 1 TO PARAGRAPH (b)

Species	Stock
North Atlantic right whale	Western.
Blue whale	Western North Atlantic.
Bryde's whale	Primary.
Fin whale	Western North Atlantic.
Humpback whale	Gulf of Maine.
Minke whale	Canadian Eastern Coast.
Rice's whale	Northern Gulf of America.
Sei whale	Nova Scotia.
Sperm whale	North Atlantic.
Sperm whale	Northern Gulf of America.
Dwarf sperm whale	Northern Gulf of America.
Pygmy sperm whale	Northern Gulf of America.
Dwarf sperm whale	Western North Atlantic.
Pygmy sperm whale	Western North Atlantic.
Blainville's beaked whale	Northern Gulf of America.
Goose-beaked whale	Northern Gulf of America.
Gervais' beaked whale	Northern Gulf of America.
Blainville's beaked whale	Western North Atlantic.
Goose-beaked whale	Western North Atlantic.
Gervais' beaked whale	Western North Atlantic.
Northern bottlenose whale	Western North Atlantic.
Sowerby's beaked whale	Western North Atlantic.
True's beaked whale	Western North Atlantic.
Atlantic spotted dolphin	Northern Gulf of America.
Bottlenose dolphin	Gulf of America Eastern Coastal.
Bottlenose dolphin	Gulf of America Northern Coastal.
Bottlenose dolphin	Gulf of America, Oceanic.
Bottlenose dolphin	Gulf of America Western Coastal.
Bottlenose dolphin	Mississippi Sound, Lake Borgne, and Bay Boudreau.
Bottlenose dolphin	Northern Gulf of America Continental Shelf.
Bottlenose dolphin	Nueces and Corpus Christi Bays.
Bottlenose dolphin	Sabine Lake.
Bottlenose dolphin	St. Andrew Bay.
Bottlenose dolphin	St. Joseph Bay.
Bottlenose dolphin	Tampa Bay.
Clymene dolphin	Northern Gulf of America.
False killer whale	Northern Gulf of America.
Fraser's dolphin	Northern Gulf of America.
Killer whale	Northern Gulf of America.
Melon-headed whale	Northern Gulf of America.
Pygmy killer whale	Northern Gulf of America.
Risso's dolphin	Northern Gulf of America.
Rough-toothed dolphin	Northern Gulf of America.
Short-finned pilot whale	Northern Gulf of America.
Striped dolphin	Northern Gulf of America.
Pantropical spotted dolphin	Northern Gulf of America.
Spinner dolphin	Northern Gulf of America.
Atlantic white-sided dolphin	Western North Atlantic.
Common dolphin	Western North Atlantic.
Atlantic spotted dolphin	Western North Atlantic.
Bottlenose dolphin	Indian River Lagoon Estuarine System.
Bottlenose dolphin	Jacksonville Estuarine System.
Bottlenose dolphin	Northern Georgia/Southern South Carolina Estuarine System.
Bottlenose dolphin	Northern North Carolina Estuarine System.
Bottlenose dolphin	Southern Georgia Estuarine System.
Bottlenose dolphin	Southern North Carolina Estuarine System.
Tamanend's bottlenose dolphin	Western North Atlantic Central Florida Coastal.
Tamanend's bottlenose dolphin	Western North Atlantic Northern Florida Coastal.
Bottlenose dolphin	Western North Atlantic Northern Migratory Coastal.
Bottlenose dolphin	Western North Atlantic Offshore.
Tamanend's bottlenose dolphin	Western North Atlantic South Carolina/Georgia Coastal.
Bottlenose dolphin	Western North Atlantic Southern Migratory Coastal.
Clymene dolphin	Western North Atlantic.
False killer whale	Western North Atlantic.
Fraser's dolphin	Western North Atlantic.
Killer whale	Western North Atlantic.
Long-finned pilot whale	Western North Atlantic.
Melon-headed whale	Western North Atlantic.
Pantropical spotted dolphin	Western North Atlantic.
Pygmy killer whale	Western North Atlantic.
Risso's dolphin	Western North Atlantic.
Rough-toothed dolphin	Western North Atlantic.

TABLE 1 TO PARAGRAPH (b)—Continued

Species	Stock
Short-finned pilot whale	Western North Atlantic.
Spinner dolphin	Western North Atlantic.
Striped dolphin	Western North Atlantic.
White-beaked dolphin	Western North Atlantic.
Harbor porpoise	Gulf of Maine/Bay of Fundy.
Gray seal	Western North Atlantic.
Harbor seal	Western North Atlantic.
Harp seal	Western North Atlantic.
Hooded seal	Western North Atlantic.

§ 218.83 Prohibitions.

(a) Except incidental take described in § 218.82 and authorized by a LOA issued under this subpart, it shall be unlawful for any person to do the following in connection with the activities described in this subpart:

(1) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under §§ 216.106 of this chapter, 218.86, or 218.87;

(2) Take any marine mammal not specified in § 218.82(b);

(3) Take any marine mammal specified in § 218.82(b) in any manner other than as specified in the LOAs; or

(4) Take a marine mammal specified in § 218.82(b) after NMFS determines such taking results in more than a negligible impact on the species or stock of such marine mammal.

(b) [Reserved]

§ 218.84 Mitigation requirements.

(a) When conducting the activities identified in § 218.80(c), the mitigation measures contained in this section and any LOA issued under §§ 218.86 or 218.87 must be implemented by Action Proponent personnel or contractors who are trained according to the requirements in the LOA. If Action Proponent contractors are serving in a role similar to Action Proponent personnel, Action Proponent contractors must follow the mitigation applicable to Action Proponent personnel. These mitigation measures include, but are not limited to:

(1) *Activity-based mitigation.* Activity-based mitigation is mitigation that the Action Proponents must implement whenever and wherever an applicable training or testing activity takes place within the AFTT Study Area. The Action Proponents must implement the mitigation described in paragraphs (a)(1)(i) through (a)(1)(xxi) of this section, except as provided in paragraph (a)(1)(xxii).

(i) *Active acoustic sources with power down and shut down capabilities.* For active acoustic sources with power down and shutdown capabilities (low-

frequency active sonar ≥ 200 dB, mid-frequency active sonar sources that are hull mounted on a surface ship (including surfaced submarines), and broadband and other active acoustic sources > 200 dB):

(A) *Mitigation zones and requirements.* During active acoustic sources with power down and shutdown capabilities, the following mitigation zone requirements apply:

(1) At 1,000 yd (914.4 m) from a marine mammal, Action Proponent personnel must power down active acoustic sources by 6 decibels (dB) total.

(2) At 500 yd (457.2 m) from a marine mammal, Action Proponent personnel must power down active acoustic sources by 10 dB total.

(3) At 200 yd (182.9 m) from a marine mammal, Action Proponent personnel must shut down active acoustic sources.

(B) *Lookout requirements.* The following Lookout requirements apply:

(1) One Lookout in or on one of the following: aircraft; pierside, moored, or anchored vessel; underway vessel with space/crew restrictions (including small boats); or underway vessel already participating in the event that is escorting (and has positive control over sources used, deployed, or towed by) an unmanned platform.

(2) Two Lookouts on an underway vessel without space or crew restrictions.

(3) Lookouts must use information from passive acoustic detections to inform visual observations when passive acoustic devices are already being used in the event.

(C) *Mitigation zone observation.* Action Proponent personnel must observe the mitigation zones in accordance with the following:

(1) Action Proponent personnel must observe the applicable mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of using active acoustic sources (e.g., while maneuvering on station).

(2) Action Proponent personnel must observe the applicable mitigation zone

for marine mammals during use of active acoustic sources.

(D) *Commencement or recommencement conditions.* Action Proponent personnel must ensure one of the commencement or recommencement conditions in § 218.84(a)(1)(xxi) is met prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing or powering up active sonar transmission). The wait period for this activity is 30 minutes for activities conducted from vessels and for activities conducted by aircraft that are not fuel constrained and 10 minutes for activities involving aircraft that are fuel constrained (e.g., rotary-wing aircraft, fighter aircraft).

(ii) *Active acoustic sources with shut down capabilities only (no power down capability).* For active acoustic sources with shut down capabilities only (no power down capability) (low-frequency active sonar < 200 dB, mid-frequency active sonar sources that are not hull mounted on a surface ship (e.g., dipping sonar, towed arrays), high-frequency active sonar, air guns, and broadband and other active acoustic sources < 200 dB):

(A) *Mitigation zones and requirements.* During use of active acoustic sources with shut down capabilities only, the following mitigation zone requirements apply:

(1) At 200 yd (182.9 m) from a marine mammal, Action Proponent personnel must shut down active acoustic sources.

(2) [Reserved]

(B) *Lookout requirements.* The following Lookout requirements apply:

(1) One Lookout in or on one of the following: aircraft; pierside, moored, or anchored vessel; underway vessel with space/crew restrictions (including small boats); or underway vessel already participating in the event that is escorting (and has positive control over sources used, deployed, or towed by) an unmanned platform.

(2) Two Lookouts on an underway vessel without space or crew restrictions.

(3) Lookouts must use information from passive acoustic detections to

inform visual observations when passive acoustic devices are already being used in the event.

(C) *Mitigation zone observation.*

Action Proponent personnel must observe the mitigation zones in accordance with the following:

(1) Action Proponent personnel must observe the applicable mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of using active acoustic sources (e.g., while maneuvering on station).

(2) Action Proponent personnel must observe the applicable mitigation zone for marine mammals during use of active acoustic sources.

(D) *Commencement or recommencement conditions.* Action Proponent personnel must ensure one of the commencement or recommencement conditions in § 218.84(a)(1)(xxi) is met prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing or powering up active sonar transmission. The wait period for this activity is 30 minutes for activities conducted from vessels and for activities conducted by aircraft that are not fuel constrained and 10 minutes for activities involving aircraft that are fuel constrained (e.g., rotary-wing aircraft, fighter aircraft).

(iii) *Pile driving and extraction.* For pile driving and extraction:

(A) *Mitigation zones and requirements.* During vibratory and impact pile driving and extraction, the following mitigation zone requirements apply:

(1) Action Proponent personnel must cease pile driving or extraction if a marine mammal is sighted within 100 yd (91.4 m) of a pile being driven or extracted.

(2) [Reserved]

(B) *Lookout requirements.* The following Lookout requirements apply:

(1) One Lookout in or on one of the following: shore, pier, or small boat.

(2) [Reserved]

(C) *Mitigation zone observation.*

Action Proponent personnel must observe the mitigation zones in accordance with the following:

(1) Action Proponent personnel must observe the mitigation zone for marine mammals and floating vegetation for 15 minutes prior to the initial start of pile driving or pile extraction.

(2) Action Proponent personnel must observe the mitigation zone for marine mammals during pile driving or extraction.

(D) *Commencement or recommencement conditions.* Action Proponent personnel must ensure one of the commencement or recommencement

conditions in § 218.84(a)(1)(xxi) is met prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing vibratory and impact pile driving and extraction). The wait period for this activity is 15 minutes.

(iv) *Weapons firing noise.* For weapons firing noise:

(A) *Mitigation zones and requirements.* During explosive and non-explosive large-caliber gunnery firing noise (surface-to-surface and surface-to-air), the following mitigation zone requirements apply:

(1) Action Proponent personnel must cease weapons firing if a marine mammal is sighted within 30 degrees on either side of the firing line out to 70 yd (64 m) from the gun muzzle (cease fire).

(2) [Reserved]

(B) *Lookout requirements.* The following Lookout requirements apply:

(1) One Lookout on a vessel.

(2) [Reserved]

(C) *Mitigation zone observation.*

Action Proponent personnel must observe the mitigation zones in accordance with the following:

(1) Action Proponent personnel must observe the mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of large-caliber gun firing (e.g., during target deployment).

(2) Action Proponent personnel must observe the mitigation zone for marine mammals during large-caliber gun firing.

(D) *Commencement or recommencement conditions.* Action Proponent personnel must ensure one of the commencement or recommencement conditions in § 218.84(a)(1)(xxi) is met prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing explosive and non-explosive large-caliber gunnery firing noise (surface-to-surface and surface-to-air)). The wait period for this activity is 30 minutes.

(v) *Explosive bombs.* For explosive bombs:

(A) *Mitigation zones and requirements.* During the use of explosive bombs of any net explosive weight (NEW), the following mitigation zone requirements apply:

(1) Action Proponent personnel must cease explosive bomb use if a marine mammal is sighted within 2,500 yd (2,286 m) from the intended target.

(2) [Reserved]

(B) *Lookout requirements.* The following Lookout requirements apply:

(1) One Lookout in an aircraft.

(2) [Reserved]

(C) *Mitigation zone observation.*

Action Proponent personnel must

observe the mitigation zones in accordance with the following:

(1) Action Proponent personnel must observe the applicable mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of bomb delivery (e.g., when arriving on station).

(2) Action Proponent personnel must observe the applicable mitigation zone for marine mammals during bomb delivery.

(3) After the event, when practical, Action Proponent personnel must observe the detonation vicinity for injured or dead marine mammals. If any injured or dead marine mammals are observed, Action Proponent personnel must follow established incident reporting procedures.

(D) *Commencement or recommencement conditions.* Action Proponent personnel must ensure one of the commencement or recommencement conditions in § 218.84(a)(1)(xxi) is met prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing use of explosive bombs of any NEW). The wait period for this activity is 10 minutes.

(vi) *Explosive gunnery.* For explosive gunnery:

(A) *Mitigation zones and requirements.* During air-to-surface medium-caliber, surface-to-surface medium-caliber, surface-to-surface large-caliber explosive gunnery, the following mitigation zone requirements apply:

(1) Action Proponent personnel must cease air-to-surface medium-caliber use if a marine mammal is sighted within 200 yd (182.9 m) of the intended impact location.

(2) Action Proponent personnel must cease surface-to-surface medium-caliber use if a marine mammal is sighted within 600 yd (548.6 m) of the intended impact location.

(3) Action Proponent personnel must cease surface-to-surface large-caliber use if a marine mammal is sighted within 1,000 yd (914.4 m) of the intended impact location.

(B) *Lookout requirements.* The following Lookout requirements apply:

(1) One Lookout on a vessel or in an aircraft.

(2) [Reserved]

(C) *Mitigation zone observation.*

Action Proponent personnel must observe the mitigation zones in accordance with the following:

(1) Action Proponent personnel must observe the applicable mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of gun firing (e.g., while maneuvering on station).

(2) Action Proponent personnel must observe the applicable mitigation zone for marine mammals during gunnery fire.

(3) After the event, when practical, Action Proponent personnel must observe the detonation vicinity for injured or dead marine mammals. If any injured or dead marine mammals are observed, Action Proponent personnel must follow established incident reporting procedures.

(D) *Commencement or recommencement conditions.* Action Proponent personnel must ensure one of the commencement or recommencement conditions in § 218.84(a)(1)(xxi) is met prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing air-to-surface medium-caliber, surface-to-surface medium-caliber, surface-to-surface large-caliber explosive gunnery). The wait period for this activity is 30 minutes for activities conducted from vessels and for activities conducted by aircraft that are not fuel constrained and 10 minutes for activities involving aircraft that are fuel constrained (e.g., rotary-wing aircraft, fighter aircraft).

(vii) *Explosive line charges.* For explosive line charges:

(A) *Mitigation zones and requirements.* During the use of explosive line charges of any NEW, the following mitigation zone requirements apply:

(1) Action Proponent personnel must cease explosive line charges if a marine mammal is sighted within 900 yd (823 m) of the detonation site.

(2) [Reserved]

(B) *Lookout requirements.* The following Lookout requirements apply:

(1) One Lookout on a vessel.

(2) [Reserved]

(C) *Mitigation zone observation.*

Action Proponent personnel must observe the mitigation zones in accordance with the following:

(1) Action Proponent personnel must observe the mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of detonations (e.g., while maneuvering on station).

(2) Action Proponent personnel must observe the mitigation zone for marine mammals during detonations.

(3) After the event, when practical, Action Proponent personnel must observe the detonation vicinity for injured or dead marine mammals. If any injured or dead marine mammals are observed, Action Proponent personnel must follow established incident reporting procedures.

(D) *Commencement or recommencement conditions.* Action

Proponent personnel must ensure one of the commencement or recommencement conditions in § 218.84(a)(1)(xxi) is met prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing use of explosive line charges of any NEW). The wait period for this activity is 30 minutes.

(viii) *Explosive mine countermeasure and neutralization (no divers).* For explosive mine countermeasure neutralization (no divers):

(A) *Mitigation zones and requirements.* During explosive mine countermeasure and neutralization using 0.1–5 pound (lb) (0.05–2.3 kilogram (kg)) NEW and >5 lb (2.3 kg) NEW, the following mitigation zone requirements apply:

(1) Action Proponent personnel must cease 0.1–5 lb (0.05–2.3 kg) NEW use if a marine mammal is sighted within 600 yd (548.6 m) of detonation site.

(2) Action Proponent personnel must cease >5 lb (2.3 kg) NEW use if a marine mammal is sighted within 2,100 yd (1,920.2 m) of the detonation site.

(B) *Lookout requirements.* The following Lookout requirements apply:

(1) One Lookout on a vessel or in an aircraft during 0.1–5 lb (0.05–2.3 kg) NEW use.

(2) Two Lookouts: one on a small boat and one in an aircraft during >5 lb (2.3 kg) NEW use.

(C) *Mitigation zone observation.*

Action Proponent personnel must observe the mitigation zones in accordance with the following:

(1) Action Proponent personnel must observe the applicable mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of detonations (e.g., while maneuvering on station; typically, 10 or 30 minutes depending on fuel constraints).

(2) Action Proponent personnel must observe the applicable mitigation zone for marine mammals during detonations or fuse initiation.

(3) After the event, when practical, Action Proponent personnel must observe the detonation vicinity for 10 or 30 minutes (depending on fuel constraints) for injured or dead marine mammals. If any injured or dead marine mammals are observed, Action Proponent personnel must follow established incident reporting procedures.

(D) *Commencement or recommencement conditions.* Action Proponent personnel must ensure one of the commencement or recommencement conditions in § 218.84(a)(1)(xxi) is met prior to the initial start of the activity (by delaying the start) or during the

activity (by not recommencing explosive mine countermeasure and neutralization using 0.1–5 pound (lb) (0.05–2.3 kilogram (kg)) NEW and >5 lb (2.3 kg) NEW). The wait period for this activity is 30 minutes for activities conducted from vessels and for activities conducted by aircraft that are not fuel constrained and 10 minutes for activities involving aircraft that are fuel constrained (e.g., rotary-wing aircraft, fighter aircraft).

(ix) *Explosive mine neutralization (with divers).* For explosive mine neutralization (with divers):

(A) *Mitigation zones and requirements.* During explosive mine neutralization (with divers) using 0.1–20 lb (0.05–9.1 kg) NEW (positive control), 0.1–20 lb (0.05–9.1 kg) NEW (time-delay), and >20–60 lb (9.1–27.2 kg) NEW (positive control), the following mitigation zone requirements apply:

(1) Action Proponent personnel must cease 0.1–20 lb (0.05–9.1 kg) NEW (positive control) use if a marine mammal is sighted within 500 yd (457.2 m) of the detonation site (cease fire).

(2) Action Proponent personnel must cease 0.1–20 lb (0.05–9.1 kg) NEW (time-delay) and >20–60 lb (9.1–27.2 kg) NEW (positive control) use if a marine mammal is sighted within 1,000 yd (914.4 m) of the detonation site (cease fire).

(B) *Lookout requirements.* The following Lookout requirements apply:

(1) Two Lookouts in two small boats (one Lookout per boat) or one small boat and one rotary-wing aircraft (with one Lookout each) during 0.1–20 lb (0.05–9.1 kg) NEW (positive control) use.

(2) Four Lookouts in two small boats (two Lookouts per boat) and one additional Lookout in an aircraft if used in the event during 0.1–20 lb (0.05–9.1 kg) NEW (time-delay) and >20–60 lb (9.1–27.2 kg) NEW (positive control) use.

(C) *Mitigation zone observation.*

Action Proponent personnel must observe the mitigation zones in accordance with the following:

(1) Time-delay devices must be set not to exceed 10 minutes.

(2) Action Proponent personnel must observe the applicable mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of detonations or fuse initiation for positive control events (e.g., while maneuvering on station) or for 30 minutes prior for time-delay events.

(3) Action Proponent personnel must observe the applicable mitigation zone for marine mammals during detonations or fuse initiation.

(4) When practical based on mission, safety, and environmental conditions:

(i) Boats must observe from the mitigation zone radius mid-point.

(ii) When two boats are used, boats must observe from opposite sides of the mine location.

(iii) Platforms must travel a circular pattern around the mine location.

(iv) Boats must have one Lookout observe inward toward the mine location and one Lookout observe outward toward the mitigation zone perimeter.

(v) Divers must be part of the Lookout Team.

(5) After the event, when practical, Action Proponent personnel must observe the detonation vicinity for 30 minutes for injured or dead marine mammals. If any injured or dead marine mammals are observed, Action Proponent personnel must follow established incident reporting procedures.

(D) *Commencement or recommencement conditions.* Action Proponent personnel must ensure one of the commencement or recommencement conditions in § 218.84(a)(1)(xxi) is met prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing explosive mine neutralization (with divers) using 0.1–20 lb (0.05–9.1 kg) NEW (positive control), 0.1–20 lb (0.05–9.1 kg) NEW (time-delay), and >20–60 lb (9.1–27.2 kg) NEW (positive control)). The wait period for this activity is 30 minutes for activities conducted from vessels and for activities conducted by aircraft that are not fuel constrained and 10 minutes for activities involving aircraft that are fuel constrained (e.g., rotary-wing aircraft, fighter aircraft).

(x) *Explosive missiles and rockets.* For explosive missiles and rockets:

(A) *Mitigation zones and requirements.* During the use of explosive missiles and rockets using 0.6–20 lb (0.3–9.1 kg) NEW (air-to-surface) and >20–500 lb (9.1–226.8 kg) NEW (air-to-surface), the following mitigation zone requirements apply:

(1) Action Proponent personnel must cease 0.6–20 lb (0.3–9.1 kg) NEW (air-to-surface) use if a marine mammal is sighted within 900 yd (823 m) of the intended impact location (cease fire).

(2) Action Proponent personnel must cease >20–500 lb (9.1–226.8 kg) NEW (air-to-surface) use if a marine mammal is sighted within 2,000 yd (1,828.8 m) of the intended impact location (cease fire).

(B) *Lookout requirements.* The following Lookout requirements apply:

(1) One Lookout in an aircraft.

(2) [Reserved]

(C) *Mitigation zone observation.*

Action Proponent personnel must observe the mitigation zones in accordance with the following:

(1) Action Proponent personnel must observe the applicable mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of missile or rocket delivery (e.g., during a fly-over of the mitigation zone).

(2) Action Proponent personnel must observe the applicable mitigation zone for marine mammals during missile or rocket delivery.

(3) After the event, when practical, Action Proponent personnel must observe the detonation vicinity for injured or dead marine mammals. If any injured or dead marine mammals are observed, Action Proponent personnel must follow established incident reporting procedures.

(D) *Commencement or recommencement conditions.* Action Proponent personnel must ensure one of the commencement or recommencement conditions in § 218.84(a)(1)(xxi) is met prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing use of explosive missiles and rockets using 0.6–20 lb (0.3–9.1 kg) NEW (air-to-surface) and >20–500 lb (9.1–226.8 kg) NEW (air-to-surface)). The wait period for this activity is 30 minutes for activities conducted from vessels and for activities conducted by aircraft that are not fuel constrained and 10 minutes for activities involving aircraft that are fuel constrained (e.g., rotary-wing aircraft, fighter aircraft).

(xi) *Explosive sonobuoys and research-based sub-surface explosives.* For explosive sonobuoys and research-based sub-surface explosives:

(A) *Mitigation zones and requirements.* During the use of explosive sonobuoys and research-based sub-surface explosives using any NEW of sonobuoys and 0.1–5 lb (0.05–2.3 kg) NEW for other types of sub-surface explosives used in research applications, the following mitigation zone requirements apply:

(1) Action Proponent personnel must cease use of explosive sonobuoys and research-based sub-surface explosives using any NEW of sonobuoys and 0.1–5 lb (0.05–2.3 kg) NEW for other types of sub-surface explosives used in research applications if a marine mammal is sighted within 600 yd (548.6 m) of the device or detonation sites (cease fire).

(2) [Reserved]

(B) *Lookout requirements.* The following Lookout requirements apply:

(1) One Lookout on a small boat or in an aircraft.

(2) Conduct passive acoustic monitoring for marine mammals; use information from detections to assist visual observations.

(C) *Mitigation zone observation.*

Action Proponent personnel must observe the mitigation zones in accordance with the following:

(1) Action Proponent personnel must observe the mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of detonations (e.g., during sonobuoy deployment, which typically lasts 20–30 minutes).

(2) Action Proponent personnel must observe the mitigation zone for marine mammals during detonations.

(3) After the event, when practical, Action Proponent personnel must observe the detonation vicinity for injured or dead marine mammals. If any injured or dead marine mammals are observed, Action Proponent personnel must follow established incident reporting procedures.

(D) *Commencement or recommencement conditions.* Action Proponent personnel must ensure one of the commencement or recommencement conditions in § 218.84(a)(1)(xxi) is met prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing use of explosive sonobuoys and research-based sub-surface explosives using any NEW of sonobuoys and 0.1–5 lb (0.05–2.3 kg) NEW for other types of sub-surface explosives used in research applications). The wait period for this activity is 30 minutes for activities conducted from vessels and for activities conducted by aircraft that are not fuel constrained and 10 minutes for activities involving aircraft that are fuel constrained (e.g., rotary-wing aircraft, fighter aircraft).

(xii) *Explosive torpedoes.* For explosive torpedoes:

(A) *Mitigation zones and requirements.* During the use of explosive torpedoes of any NEW, the following mitigation zone requirements apply:

(1) Action Proponent personnel must cease use of explosive torpedoes of any NEW if a marine mammal is sighted within 2,100 yd (1,920.2 m) of the intended impact location.

(2) [Reserved]

(B) *Lookout requirements.* The following Lookout requirements apply:

(1) One Lookout in an aircraft.

(2) Conduct passive acoustic monitoring for marine mammals; use information from detections to assist visual observations.

(C) *Mitigation zone observation.*

Action Proponent personnel must observe the mitigation zones in accordance with the following:

(1) Action Proponent personnel must observe the mitigation zone for marine mammals, floating vegetation, and jellyfish aggregations immediately prior to the initial start of detonations (*e.g.*, during target deployment).

(2) Action Proponent personnel must observe the mitigation zone for marine mammals and jellyfish aggregations during torpedo launches.

(3) After the event, when practical, Action Proponent personnel must observe the detonation vicinity for injured or dead marine mammals. If any injured or dead marine mammals are observed, Action Proponent personnel must follow established incident reporting procedures.

(D) *Commencement or recommencement conditions.* Action Proponent personnel must ensure one of the commencement or recommencement conditions in § 218.84(a)(1)(xxi) is met prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing use of explosive torpedoes of any NEW). The wait period for this activity is 30 minutes for activities conducted from vessels and for activities conducted by aircraft that are not fuel constrained and 10 minutes for activities involving aircraft that are fuel constrained (*e.g.*, rotary-wing aircraft, fighter aircraft).

(xiii) *Ship shock trials.* For ship shock trials:

(A) *Mitigation zones and requirements.* During ship shock trials using any NEW, the following mitigation zone requirements apply:

(1) Action Proponent personnel must cease ship shock trials of any NEW if a marine mammal is sighted within 3.5 nmi (6.5 km) of the target ship hull (cease fire).

(2) [Reserved]

(B) *Lookout requirements.* The following Lookout requirements apply:

(1) On the day of the event, 10 observers (Lookouts and third-party observers combined), spread between aircraft or multiple vessels as specified in the event-specific mitigation plan.

(2) [Reserved]

(C) *Mitigation zone observation.*

Action Proponent personnel must observe the mitigation zones in accordance with the following:

(1) Action Proponent personnel must develop a detailed, event-specific monitoring and mitigation plan in the year prior to the event and provide it to NMFS for review.

(2) Beginning at first light on days of detonation, until the moment of

detonation (as allowed by safety measures) Action Proponent personnel must observe the mitigation zone for marine mammals, floating vegetation, jellyfish aggregations, large schools of fish, and flocks of seabirds.

(3) If any dead or injured marine mammals are observed after an individual detonation, Action Proponent personnel must follow established incident reporting procedures and halt any remaining detonations until Action Proponent personnel or third-party observers can consult with NMFS and review or adapt the event-specific mitigation plan, if necessary.

(4) During the 2 days following the event (minimum) and up to 7 days following the event (maximum), and as specified in the event-specific mitigation plan, Action Proponent personnel must observe the detonation vicinity for injured or dead marine mammals.

(D) *Commencement or recommencement conditions.* Action Proponent personnel must ensure one of the commencement or recommencement conditions in § 218.84(a)(1)(xxi) is met prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing ship shock trials). The wait period for this activity is 30 minutes.

(xiv) *Sinking Exercises.* For Sinking Exercises (SINKEX):

(A) *Mitigation zones and requirements.* During SINKEX using any NEW, the following mitigation zone requirements apply:

(1) Action Proponent personnel must cease SINKEX of any NEW if a marine mammal is sighted within 2.5 nmi (4.6 km) of the target ship hull (cease fire).

(2) [Reserved]

(B) *Lookout requirements.* The following Lookout requirements apply:

(1) Two Lookouts: one on a vessel and one in an aircraft.

(2) Conduct passive acoustic monitoring for marine mammals; use information from detections to assist visual observations.

(C) *Mitigation zone observation.*

Action Proponent personnel must observe the mitigation zones in accordance with the following:

(1) During aerial observations for 90 minutes prior to the initial start of weapon firing, Action Proponent personnel must observe the mitigation zone for marine mammals, floating vegetation, and jellyfish aggregations.

(2) From the vessel during weapon firing, and from the aircraft and vessel immediately after planned or unplanned breaks in weapon firing of more than 2 hours, Action Proponent personnel

must observe the mitigation zone for marine mammals.

(3) Action Proponent personnel must observe the detonation vicinity for injured or dead marine mammals for 2 hours after sinking the vessel or until sunset, whichever comes first. If any injured or dead marine mammals are observed, Action Proponent personnel must follow established incident reporting procedures.

(D) *Commencement or recommencement conditions.* Action Proponent personnel must ensure one of the commencement or recommencement conditions in § 218.84(a)(1)(xxi) is met prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing SINKEX). The wait period for this activity is 30 minutes.

(xv) *Non-explosive aerial-deployed mines and bombs.* For non-explosive aerial-deployed mines and bombs:

(A) *Mitigation zones and requirements.* During the use of non-explosive aerial-deployed mines and non-explosive bombs, the following mitigation zone requirements apply:

(1) Action Proponent personnel must cease using non-explosive aerial-deployed mines and non-explosive bombs use if a marine mammal is sighted within 1,000 yd (914.4 m) of the intended target (cease fire).

(2) [Reserved]

(B) *Lookout requirements.* The following Lookout requirements apply:

(1) One Lookout in an aircraft.

(2) [Reserved]

(C) *Mitigation zone observation.*

Action Proponent personnel must observe the mitigation zones in accordance with the following:

(1) Action Proponent personnel must observe the mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of mine or bomb delivery (*e.g.*, when arriving on station).

(2) Action Proponent personnel must observe the mitigation zone for marine mammals during mine or bomb delivery.

(D) *Commencement or recommencement conditions.* Action Proponent personnel must ensure one of the commencement or recommencement conditions in § 218.84(a)(1)(xxi) is met prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing use of non-explosive aerial-deployed mines and non-explosive bombs). The wait period for this activity is 10 minutes.

(xvi) *Non-explosive gunnery.* For non-explosive gunnery:

(A) *Mitigation zones and requirements.* During the use of non-

explosive surface-to-surface large-caliber ordnance, non-explosive surface-to-surface and air-to-surface medium-caliber ordnance, and non-explosive surface-to-surface and air-to-surface small-caliber ordnance, the following mitigation zone requirements apply:

(1) Action Proponent personnel must cease non-explosive surface-to-surface large-caliber ordnance, non-explosive surface-to-surface and air-to-surface medium-caliber ordnance, and non-explosive surface-to-surface and air-to-surface small-caliber ordnance use if a marine mammal is sighted within 200 yd (182.9 m) of the intended impact location (cease fire).

(2) [Reserved]

(B) *Lookout requirements.* The following Lookout requirements apply:

(1) One Lookout on a vessel or in an aircraft.

(2) [Reserved]

(C) *Mitigation zone observation.* Action Proponent personnel must observe the mitigation zones in accordance with the following:

(1) Action Proponent personnel must observe the mitigation zone for marine mammals and floating vegetation immediately prior to the start of gun firing (e.g., while maneuvering on station).

(2) Action Proponent personnel must observe the mitigation zone for marine mammals during gunnery firing.

(D) *Commencement or recommencement conditions.* Action Proponent personnel must ensure one of the commencement or recommencement conditions in § 218.84(a)(1)(xxi) is met prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing use of non-explosive surface-to-surface large-caliber ordnance, non-explosive surface-to-surface and air-to-surface medium-caliber ordnance, and non-explosive surface-to-surface and air-to-surface small-caliber ordnance). The wait period for this activity is 30 minutes for activities conducted from vessels and for activities conducted by aircraft that are not fuel constrained and 10 minutes for activities involving aircraft that are fuel constrained (e.g., rotary-wing aircraft, fighter aircraft).

(xvii) *Non-explosive missiles and rockets.* For non-explosive missiles and rockets:

(A) *Mitigation zones and requirements.* During the use of non-explosive missiles and rockets (air-to-surface), the following mitigation zone requirements apply:

(1) Action Proponent personnel must cease non-explosive missile and rocket (air-to-surface) use if a marine mammal

is sighted within 900 yd (823 m) of the intended impact location.

(2) [Reserved]

(B) *Lookout requirements.* The following Lookout requirements apply:

(1) One Lookout in an aircraft.

(2) [Reserved]

(C) *Mitigation zone observation.*

Action Proponent personnel must observe the mitigation zones in accordance with the following:

(1) Action Proponent personnel must observe the mitigation zone for marine mammals and floating vegetation immediately prior to the start of missile or rocket delivery (e.g., during a fly-over of the mitigation zone).

(2) Action Proponent personnel must observe the mitigation zone for marine mammals during missile or rocket delivery.

(D) *Commencement or recommencement conditions.* Action Proponent personnel must ensure one of the commencement or recommencement conditions in § 218.84(a)(1)(xxi) is met prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing use of non-explosive missiles and rockets (air-to-surface)). The wait period for this activity is 30 minutes for activities conducted from vessels and for activities conducted by aircraft that are not fuel constrained and 10 minutes for activities involving aircraft that are fuel constrained (e.g., rotary-wing aircraft, fighter aircraft).

(xviii) *Manned surface vessels.* For manned surface vessels:

(A) *Mitigation zones and requirements.* During the use of manned surface vessels, including surfaced submarines, the following mitigation zone requirements apply:

(1) Underway manned surface vessels must maneuver themselves (which may include reducing speed) to maintain the following distances as mission and circumstances allow:

(i) 500 yd (457.2 m) from whales.

(ii) 200 yd (182.9 m) from other

marine mammals.

(2) [Reserved]

(B) *Lookout requirements.* The following Lookout requirements apply:

(1) One or more Lookouts on manned underway surface vessels in accordance with the most recent navigation safety instruction.

(2) [Reserved]

(C) *Mitigation zone observation.*

Action Proponent personnel must observe the mitigation zones in accordance with the following:

(1) Action Proponent personnel must observe the mitigation zone for marine mammals immediately prior to manned surface vessels getting underway and while underway.

(2) [Reserved]

(xix) *Unmanned vehicles.* For unmanned vehicles:

(A) *Mitigation zones and requirements.* During the use of unmanned surface vehicles and unmanned underwater vehicles already being escorted (and operated under positive control) by a manned surface support vessel, the following mitigation zone requirements apply:

(1) A surface support vessel that is already participating in the event, and has positive control over the unmanned vehicle, must maneuver the unmanned vehicle (which may include reducing its speed) to ensure it maintains the following distances as mission and circumstances allow:

(i) 500 yd (457.2 m) from whales.

(ii) 200 yd (182.9 m) from other marine mammals.

(2) [Reserved]

(B) *Lookout requirements.* The following Lookout requirements apply:

(1) One Lookout on a surface support vessel that is already participating in the event, and has positive control over the unmanned vehicle.

(2) [Reserved]

(C) *Mitigation zone observation.* Action Proponent personnel must observe the mitigation zones in accordance with the following:

(1) Action Proponent personnel must observe the mitigation zone for marine mammals immediately prior to unmanned vehicles getting underway and while underway.

(2) [Reserved]

(xx) *Towed in-water devices.* For towed in-water devices:

(A) *Mitigation zones and requirements.* During the use of in-water devices towed by an aircraft, a manned surface vessel, or an Unmanned Surface Vehicle or Unmanned Underwater Vehicle already being escorted (and operated under positive control) by a crewed surface vessel, the following mitigation zone requirements apply:

(1) Manned towing platforms, or surface support vessels already participating in the event that have positive control over an unmanned vehicle that is towing an in-water device, must maneuver itself or the unmanned vehicle (which may include reducing speed) to ensure towed in-water devices maintain the following distances as mission and circumstances allow:

(i) 250 yd (228.6 m) from marine mammals.

(ii) [Reserved]

(2) [Reserved]

(B) *Lookout requirements.* The following Lookout requirements apply:

(1) One Lookout on the manned towing vessel, or on a surface support

vessel that is already participating in the event and has positive control over an unmanned vehicle that is towing an in-water device.

(2) [Reserved]

(C) *Mitigation zone observation.*

Action Proponent personnel must observe the mitigation zones in accordance with the following:

(1) Action Proponent personnel must observe the mitigation zone for marine mammals immediately prior to and while in-water devices are being towed.

(2) [Reserved]

(xxi) *Commencement or recommencement conditions.* Action Proponents must not commence or recommence an activity after a marine mammal is observed within a relevant mitigation zone until one of the following conditions has been met:

(A) *Observed exiting.* A Lookout observes the animal exiting the mitigation zone;

(B) *Concluded to have exited.* A Lookout concludes that the animal has exited the mitigation zone based on its observed course, speed, and movement relative to the mitigation zone;

(C) *Clear from additional sightings.* A Lookout affirms the mitigation zone has been clear from additional sightings for the activity-specific wait period; or

(D) *Stressor transit.* For mobile events, the stressor has transited a distance equal to double the mitigation zone size beyond the location of the last sighting.

(xxii) *Exceptions to activity-based mitigation.* Activity-based mitigation for acoustic stressors will not apply to:

(A) Sources not operated under positive control (e.g., moored oceanographic sources);

(B) Sources used for safety of navigation (e.g., fathometers);

(C) Sources used or deployed by aircraft operating at high altitudes (e.g., bombs deployed from high altitude (since personnel cannot effectively observe the surface of the water));

(D) Sources used, deployed, or towed by unmanned platforms except when escort vessels are already participating in the event and have positive control over the source;

(E) Sources used by submerged submarines (e.g., sonar (since they cannot conduct visual observation));

(F) De minimis sources (e.g., those >200 kHz);

(G) Long-duration sources, including those used for acoustic and oceanographic research; and

(H) Vessel-based, unmanned vehicle-based, or towed in-water sources when marine mammals (e.g., dolphins) are determined to be intentionally swimming at the bow or alongside or directly behind the vessel, vehicle, or device (e.g., to bow-ride or wake-ride).

(2) *Geographic mitigation areas.* The Action Proponents must implement the geographic mitigation requirements described in paragraphs (a)(2)(i) through (a)(2)(viii) of this section.

(i) *Ship shock trial mitigation area.* Figure 1 to this paragraph (a)(2) shows the location of the mitigation areas. Within the ship shock trial mitigation areas, the following requirements apply:

(A) *Jacksonville Operating Area.* Navy personnel must not conduct ship shock trials within the portion of the ship shock trial box that overlaps the Jacksonville Operating Area from November 15 through April 15.

(B) *Pre-event planning.* Pre-event planning for ship shock trials must include the selection of one primary and two secondary sites (within one of the ship shock trial boxes) where marine mammal abundance is expected to be the lowest during an event, with the primary and secondary locations located more than 2 nmi (3.7 km) from the western boundary of the Gulf Stream for events planned within the portion of the ship shock trial box that overlaps the Jacksonville Operating Area.

(C) *Environmentally unsuitable site.* If Action Proponent personnel determine during pre-event visual observations that the primary site is environmentally unsuitable (e.g., continuous observations of marine mammals), personnel must evaluate the potential to move the event to one of the secondary sites as described in the LOAs.

(ii) *Major training exercise planning awareness mitigation areas.* Figure 1 to this paragraph (a)(2) shows the location of the mitigation area. Within the major training exercise planning awareness mitigation areas, the following requirements apply:

(A) *Northeast.* Within Major Training Exercise Planning Awareness Mitigation Areas located in the Northeast (i.e., the combined areas within the Gulf of Maine, over the continental shelves off Long Island, Rhode Island, Massachusetts, and Maine), the Action Proponents must not conduct any full or partial Major Training Exercises (MTEs).

(B) *Mid-Atlantic.* Within Major Training Exercise Planning Awareness Mitigation Areas located in the Mid-Atlantic (i.e., the combined areas off Maryland, Delaware, and North Carolina), the Action Proponents must not conduct any full or partial MTEs to the maximum extent practical, and must not conduct more than four full or partial MTEs per year.

(iii) *Northeast North Atlantic right whale mitigation area.* Figure 1 to this paragraph (a)(2) shows the location of the mitigation area. Within the northeast

North Atlantic right whale mitigation area, the following requirements apply:

(A) *Active sonar.* The Action Proponents must minimize the use of low-frequency active sonar, mid-frequency active sonar, and high-frequency active sonar in the mitigation area to the maximum extent practical.

(B) *In-water explosives.* The Action Proponents must not detonate in-water explosives (including underwater explosives and explosives deployed against surface targets) within the mitigation area.

(C) *Explosive sonobuoys.* The Action Proponents must not detonate explosive sonobuoys within 3 nmi (5.6 km) of the mitigation area.

(D) *Non-explosive bombs.* The Action Proponents must not use non-explosive bombs within the mitigation area.

(E) *Non-explosive torpedoes.* During non-explosive torpedoes events within the mitigation area:

(1) The Action Proponents must conduct activities during daylight hours in Beaufort sea state 3 or less;

(2) The Action Proponents must post two Lookouts in an aircraft during dedicated aerial surveys, and one Lookout on the submarine participating in the event (when surfaced), in addition to Lookouts required as described in § 218.84(a)(1)(xvii).

(i) Lookouts must begin conducting visual observations immediately prior to the start of an event.

(ii) If floating vegetation or marine mammals are observed in the event vicinity, the event must not commence until the vicinity is clear or the event is relocated to an area where the vicinity is clear.

(iii) Lookouts must continue to conduct visual observations during the event.

(iv) If marine mammals are observed in the vicinity, the event must cease until one of the commencement or recommencement conditions in § 218.84(a)(1)(xxi) is met.

(3) During transits and normal firing, surface ships must maintain a speed of no more than 10 knots (kn; 18.5 kilometer/hour (km/hr)); during submarine target firing, surface ships must maintain speeds of no more than 18 kn (33.3 km/hr); and during vessel target firing, surface ship speeds may exceed 18 kn (33.3 km/hr) for brief periods of time (e.g., 10–15 minutes).

(F) *Vessel transits.* For vessel transits within the mitigation area:

(1) The Action Proponents must conduct a web query or email inquiry to the North Atlantic Right Whale Sighting Advisory System or WhaleMap (<https://whalemap.org/>) to obtain the latest North Atlantic right whale sightings

data prior to transiting the mitigation area.

(2) The Action Proponents must provide Lookouts the sightings data prior to standing watch. Lookouts must use that data to help inform visual observations during vessel transits.

(G) *Speed reductions.* Surface ships must implement speed reductions after observing a North Atlantic right whale, if transiting within 5 nmi (9.3 km) of a sighting reported to the North Atlantic Right Whale Sighting Advisory System within the past week, and when transiting at night or during periods of reduced visibility.

(iv) *Gulf of Maine marine mammal mitigation area.* Figure 1 to this paragraph (a)(2) shows the location of the mitigation area. Within the Gulf of Maine marine mammal mitigation area, the following requirements apply:

(A) *Surface ship hull-mounted mid-frequency active sonar.* The Action Proponents must not use more than 200 hours of surface ship hull-mounted mid-frequency active sonar annually within the mitigation area.

(B) [Reserved]

(v) *Jacksonville Operating Area North Atlantic right whale mitigation area.* Figure 1 to this paragraph (a)(2) shows the location of the mitigation area. Within the Jacksonville Operating Area North Atlantic right whale mitigation area, the following requirements apply:

(A) *November 15 to April 15.* From November 15 to April 15 within the mitigation area, prior to vessel transits or military readiness activities involving active sonar, in-water explosives (including underwater explosives and explosives deployed against surface targets), or non-explosive ordnance deployed against surface targets (including aerial-deployed mines), the Action Proponents must initiate communication with Fleet Area Control and Surveillance Facility, Jacksonville to obtain Early Warning System data. The facility must advise of all reported North Atlantic right whale sightings in the vicinity of planned vessel transits and military readiness activities. Sightings data must be used when planning event details (e.g., timing, location, duration) to minimize impacts to North Atlantic right whale to the maximum extent practical.

(B) *Sightings data to Lookouts.* Action Proponent personnel must provide the sightings data to Lookouts prior to standing watch to help inform visual observations.

(vi) *Southeast North Atlantic right whale mitigation area.* Figure 1 to this paragraph (a)(2) shows the location of the mitigation area. Within the Southeast North Atlantic right whale

mitigation area, the following requirements apply:

(A) *Helicopter dipping sonar and low-frequency or surface ship hull-mounted mid-frequency active sonar during navigation training or object detection.* From November 15 to April 15 within the mitigation area, to the maximum extent practical, the Action Proponents must minimize use of helicopter dipping sonar (a mid-frequency active sonar source) and low-frequency or surface ship hull-mounted mid-frequency active sonar during navigation training or object detection.

(B) *All other high-frequency, mid-frequency, or low-frequency active sonars.* From November 15 to April 15 within the mitigation area, the Action Proponents must not use high-frequency active sonar; or low-frequency or mid-frequency active sonar with the exception of the sources listed in paragraph (a)(2)(vi)(A) of this section in accordance with that paragraph.

(C) *Explosives.* From November 15 to April 15 within the mitigation area, the Action Proponents must not detonate in-water explosives (including underwater explosives and explosives deployed against surface targets).

(D) *Physical disturbance.* From November 15 to April 15 within the mitigation area, the Action Proponents must not deploy non-explosive ordnance against surface targets (including aerial-deployed mines).

(E) *Vessel strike.* From November 15 to April 15 within the mitigation area, surface ships must minimize north-south transits to the maximum extent practical, and must implement speed reductions to the maximum extent practicable after they observe a North Atlantic right whale, if they are within 5 nmi (9.3 km) of an Early Warning System sighting reported within the past 12 hours, and at night and in poor visibility.

(F) *Acoustic, explosives, and physical disturbance and vessel strike.* From November 15 to April 15 within the mitigation area, prior to vessel transits or military readiness activities involving active sonar, in-water explosives (including underwater explosives and explosives deployed against surface targets), or non-explosive ordnance deployed against surface targets (including aerial-deployed mines), the Action Proponents must initiate communication with Fleet Area Control and Surveillance Facility, Jacksonville to obtain Early Warning System sightings data. The facility must advise of all reported North Atlantic right whale sightings in the vicinity of planned vessel transits and military readiness activities. The Action

Proponents must provide Lookouts the sightings data prior to standing watch to help inform visual observations.

(vii) *Dynamic North Atlantic right whale mitigation areas.* The applicable dates and locations of this mitigation area must correspond with NMFS' Dynamic Management Areas, which vary throughout the year based on the locations and timing of confirmed North Atlantic right whale detections. Within the Dynamic North Atlantic right whale mitigation areas, the following requirements apply:

(A) *North Atlantic right whale Dynamic Management Area notifications.* The Action Proponents must provide North Atlantic right whale Dynamic Management Area information (e.g., location and dates) to applicable assets transiting and training or testing in the vicinity of the Dynamic Management Area. The broadcast awareness notification messages must alert assets (and their Lookouts) to the possible presence of North Atlantic right whale in their vicinity.

(B) *Visual observations.* Lookouts must use the information to help inform visual observations during military readiness activities that involve vessel movements, active sonar, in-water explosives (including underwater explosives and explosives deployed against surface targets), or non-explosive ordnance deployed against surface targets in the mitigation area.

(viii) *Rice's whale mitigation area.* Figure 1 to this paragraph (a)(2) shows the location of the mitigation area. Within the Rice's whale mitigation area, the following requirements apply:

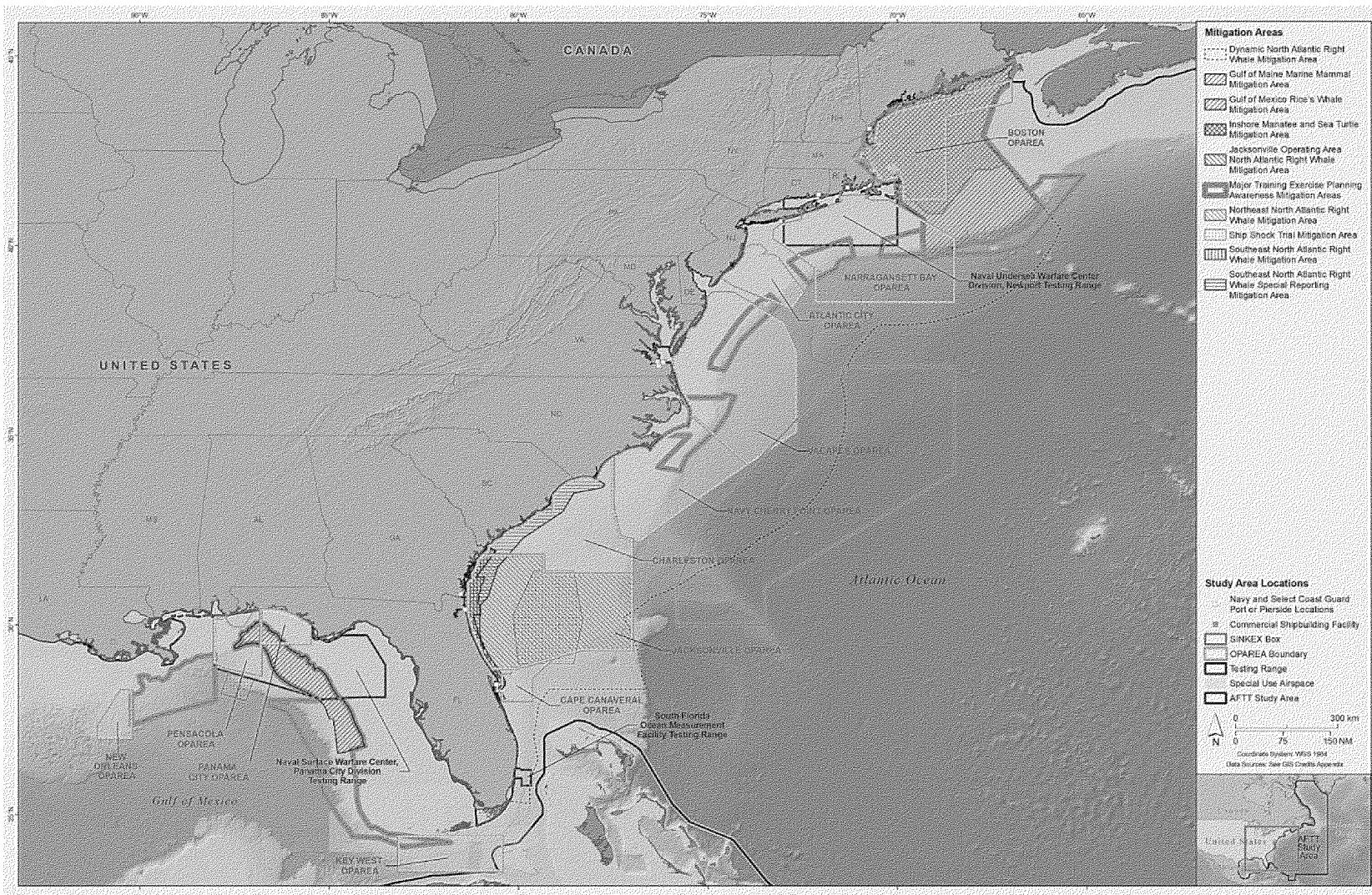
(A) *Surface ship mid-frequency active sonar.* The Action Proponents must not use more than 200 hours of surface ship hull-mounted mid-frequency active sonar annually within the mitigation area.

(B) *Explosives.* The Action Proponents must not detonate in-water explosives (including underwater explosives and explosives deployed against surface targets) within the mitigation area, except during mine warfare activities.

(ix) *National Security Requirement.* Should national security require the Action Proponents to exceed a requirement in paragraphs (a)(2)(i) through (a)(2)(viii) of this section, Action Proponent personnel must provide NMFS with advance notification and include the information (e.g., sonar hours, explosives usage, or restricted area use) in its annual activity reports submitted to NMFS

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Figure 1 to Paragraph (a)(2)—Geographic Mitigation Areas for Marine Mammals in the AFTT Study Area



(b) [Reserved]

§ 218.85 Requirements for monitoring and reporting.

The Action Proponents must implement the following monitoring and reporting requirements when conducting the specified activities:

(a) *Notification of take.* Action proponent personnel must notify NMFS immediately (or as soon as operational security considerations allow) if the specified activity identified in § 218.80 is thought to have resulted in the mortality or serious injury of any marine mammals, or in any Level A harassment or Level B harassment of marine mammals not identified in this subpart.

(b) *Monitoring and reporting under the LOAs.* The Action Proponents must conduct all monitoring and reporting required under the LOAs.

(c) *Notification of injured, live stranded, or dead marine mammals.* Action Proponent personnel must abide by the Notification and Reporting Plan, which sets out notification, reporting, and other requirements when dead, injured, or live stranded marine mammals are detected. The Notification and Reporting Plan is available at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities>.

(d) *Annual AFTT Study Area marine species monitoring report.* The Action Proponents must submit an annual AFTT Study Area marine species monitoring report describing the implementation and results from the previous calendar year. Data collection methods will be standardized across range complexes and the AFTT Study Area to allow for comparison in different geographic locations. The draft report must be submitted to the Director, Office of Protected Resources, NMFS, annually. NMFS will submit comments or questions on the report, if any, within 3 months of receipt. The report will be considered final after the Action Proponents have addressed NMFS' comments, or 3 months after submittal of the draft if NMFS does not provide comments on the draft report. The report must describe progress of knowledge made with respect to intermediate scientific objectives within the AFTT Study Area associated with the Integrated Comprehensive Monitoring Program (ICMP). Similar study questions must be treated together so that progress on each topic can be summarized across all Navy ranges. The report need not include analyses and content that do not provide direct assessment of cumulative progress on the monitoring plan study questions.

(e) *Quick look reports.* In the event that the sound levels analyzed in promulgation of these regulations were exceeded within a given reporting year, the Action Proponents must submit a preliminary report(s) detailing the exceedance within 21 days after the anniversary date of issuance of the LOAs.

(f) *Annual AFTT Training and Testing Reports.* Regardless of whether analyzed sound levels were exceeded, the Navy must submit a detailed report (AFTT Annual Training Exercise Report and Testing Activity Report) and the Coast Guard must submit a detailed report (AFTT Annual Training Exercise Report) to the Director, Office of Protected Resources, NMFS annually. NMFS will submit comments or questions on the reports, if any, within 1 month of receipt. The reports will be considered final after the Action Proponents have addressed NMFS' comments, or 1 month after submittal of the drafts if NMFS does not provide comments on the draft reports. The annual reports must contain a summary of all sound sources used (total hours or quantity (per the LOAs) of each bin of sonar or other non-impulsive source; total annual number of each type of explosive exercises; and total annual expended/detonated rounds (missiles, bombs, sonobuoys, etc.) for each explosive bin). The annual reports must also contain cumulative sonar and explosive use quantity from previous years' reports through the current year. Additionally, if there were any changes to the sound source allowance in the reporting year, or cumulatively, the reports would include a discussion of why the change was made and include analysis to support how the change did or did not affect the analysis in the 2024 AFTT Draft Supplemental EIS/OEIS and MMPA final rule. The annual reports must also include the details regarding specific requirements associated with the mitigation areas listed in paragraph (f)(4) of this section. The analysis in the detailed report must be based on the accumulation of data from the current year's report and data collected from previous annual reports. The final annual/close-out report at the conclusion of the authorization period (year 7) will also serve as the comprehensive close-out report and include both the final year annual incidental take compared to annual authorized incidental take as well as a cumulative 7-year incidental take compared to 7-year authorized incidental take. The AFTT Annual Training and Testing Reports must

include the specific information described in the LOAs.

(1) *MTEs.* This section of the report must contain the following information for MTEs conducted in the AFTT Study Area.

(i) *Exercise information (for each MTE).* For exercise information (for each MTE):

(A) Exercise designator.

(B) Date that exercise began and ended.

(C) Location.

(D) Number and types of active sonar sources used in the exercise.

(E) Number and types of passive acoustic sources used in exercise.

(F) Number and types of vessels, aircraft, and other platforms participating in each exercise.

(G) Total hours of all active sonar source operation.

(H) Total hours of each active sonar source bin.

(I) Wave height (high, low, and average) during exercise.

(ii) *Individual marine mammal sighting information for each sighting in each exercise where mitigation was implemented.* For individual marine mammal sighting information for each sighting in each exercise where mitigation was implemented:

(A) Date, time, and location of sighting.

(B) Species (if not possible, indication of whale/dolphin/pinniped).

(C) Number of individuals.

(D) Initial Detection Sensor (e.g., passive sonar, Lookout).

(E) Indication of specific type of platform observation was made from (including, for example, what type of surface vessel or testing platform).

(F) Length of time observers maintained visual contact with marine mammal.

(G) Sea state.

(H) Visibility.

(I) Sound source in use at the time of sighting.

(J) Indication of whether animal was less than 200 yd (182.9 m), 200 to 500 yd (182.9 to 457.2 m), 500 to 1,000 yd (457.2 m to 914.4 m), 1,000 to 2,000 yd (914.4 m to 1,828.8 m), or greater than 2,000 yd (1,828.8 m) from sonar source.

(K) Whether operation of sonar sensor was delayed, or sonar was powered or shut down, and the length of the delay.

(L) If source in use was hull-mounted, true bearing of animal from the vessel, true direction of vessel's travel, and estimation of animal's motion relative to vessel (opening, closing, parallel).

(M) Lookouts must report, in plain language and without trying to categorize in any way, the observed behavior of the animal(s) (such as

animal closing to bow ride, paralleling course/speed, floating on surface and not swimming, *etc.*) and if any calves were present.

(iii) *An evaluation (based on data gathered during all of the MTEs) of the effectiveness of mitigation measures designed to minimize the received level to which marine mammals may be exposed.* For an evaluation (based on data gathered during all of the MTEs) of the effectiveness of mitigation measures designed to minimize the received level to which marine mammals may be exposed:

(A) This evaluation must identify the specific observations that support any conclusions the Navy reaches about the effectiveness of the mitigation.

(B) [Reserved]

(2) *Sinking Exercises.* This section of the report must include the following information for each SINKEX completed that year in the AFTT Study Area:

(i) *Exercise information.* For exercise information:

(A) Location.

(B) Date and time exercise began and ended.

(C) Total hours of observation by Lookouts before, during, and after exercise.

(D) Total number and types of explosive source bins detonated.

(E) Number and types of passive acoustic sources used in exercise.

(F) Total hours of passive acoustic search time.

(G) Number and types of vessels, aircraft, and other platforms participating in exercise.

(H) Wave height in feet (high, low, and average) during exercise.

(I) Narrative description of sensors and platforms utilized for marine mammal detection and timeline illustrating how marine mammal detection was conducted.

(ii) *Individual marine mammal observation (by Action Proponent Lookouts) information for each sighting where mitigation was implemented.* For individual marine mammal observation (by Action Proponent Lookouts) information for each sighting where mitigation was implemented:

(A) Date/Time/Location of sighting.

(B) Species (if not possible, indicate whale, dolphin, or pinniped).

(C) Number of individuals.

(D) Initial detection sensor (*e.g.*, sonar or Lookout).

(E) Length of time observers maintained visual contact with marine mammal.

(F) Sea state.

(G) Visibility.

(H) Whether sighting was before, during, or after detonations/exercise, and how many minutes before or after.

(I) Distance of marine mammal from actual detonations (or target spot if not yet detonated): Less than 200 yd (182.9 m), 200 to 500 yd (182.9 to 457.2 m), 500 to 1,000 yd (457.2 m to 914.4 m), 1,000 to 2,000 yd (914.4 m to 1,828.8 m), or greater than 2,000 yd (1,828.8 m).

(J) Lookouts must report, in plain language and without trying to categorize in any way, the observed behavior of the animal(s) (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming *etc.*), including speed and direction and if any calves were present.

(K) The report must indicate whether explosive detonations were delayed, ceased, modified, or not modified due to marine mammal presence and for how long.

(L) If observation occurred while explosives were detonating in the water, indicate munition type in use at time of marine mammal detection.

(3) *Summary of sources used.* This section of the report must include the following information summarized from the authorized sound sources used in all training and testing events:

(i) *Totals for sonar or other acoustic source bins.* Total annual hours or quantity (per the LOA) of each bin of sonar or other acoustic sources (*e.g.*, pile driving and air gun activities); and

(ii) *Total for explosive bins.* Total annual expended/detonated ordnance (missiles, bombs, sonobuoys, *etc.*) for each explosive bin.

(4) *Special reporting for geographic mitigation areas.* This section of the report must contain the following information for activities conducted in geographic mitigation areas in the AFTT Study Area:

(i) *Northeast North Atlantic Right Whale Mitigation Area.* The Action Proponents must report the total annual hours and counts of active sonar and in-water explosives (including underwater explosives and explosives deployed against surface targets) used in the mitigation area.

(ii) *Gulf of Maine Marine Mammal Mitigation Area.* The Action Proponents must report the total annual hours and counts of active sonar and in-water explosives (including underwater explosives and explosives deployed against surface targets) used in the mitigation area.

(iii) *Southeast North Atlantic Right Whale Mitigation Area.* The Action Proponents must report the total annual hours and counts of active sonar and in-water explosives (including underwater explosives and explosives deployed against surface targets) used in the

mitigation area from November 15 to April 15.

(iv) *Southeast North Atlantic Right Whale Special Reporting Mitigation Area.* The Action Proponents must report the total annual hours and counts of active sonar and in-water explosives (including underwater explosives and explosives deployed against surface targets) used within the mitigation area from November 15 to April 15.

(v) *Rice's Whale Mitigation Area.* The Action Proponents must report the total annual hours and counts of active sonar and in-water explosives (including underwater explosives and explosives deployed against surface targets) used in the mitigation area.

(vi) *National security requirement.* If an Action Proponent(s) evokes the national security requirement described in § 218.84(a)(2)(ix), the Action Proponent personnel must include information about the event in its Annual AFTT Training and Testing Report.

(g) *MTE sonar exercise notification.* The Action Proponents must submit to NMFS (contact as specified in the LOAs) an electronic report within 15 calendar days after the completion of any MTE indicating:

(1) *Location.* Location of the exercise;

(2) *Dates.* Beginning and end dates of the exercise; and

(3) *Type.* Type of exercise.

§ 218.86 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to this subpart, the Action Proponents must apply for and obtain LOAs.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of this subpart.

(c) In the event of projected changes to the activity or to mitigation, monitoring, or reporting measures (excluding changes made pursuant to the adaptive management provision of § 218.87(c)(1)) required by an LOA, the Action Proponent must apply for and obtain a modification of the LOA as described in § 218.87.

(d) Each LOA will set forth:

(1) Permissible methods of incidental taking;

(2) Geographic areas for incidental taking;

(3) Means of effecting the least practicable adverse impact (*i.e.*, mitigation) on the species and stocks of marine mammals and their habitat; and

(4) Requirements for monitoring and reporting.

(e) Issuance of the LOA(s) must be based on a determination that the level of taking is consistent with the findings

made for the total taking allowable under the regulations of this subpart.

(f) Notice of issuance or denial of the LOA(s) will be published in the **Federal Register** within 30 days of a determination.

§ 218.87 Modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 of this chapter and 218.86 for the activity identified in § 218.80(c) shall be modified, upon request by the 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 the regulations in this subpart (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOAs under this subpart were implemented.

(b) For LOA modification requests by the applicants that include changes to the activity or to the mitigation, monitoring, or reporting measures (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section), the LOA should be modified provided that:

(1) NMFS determines that the change(s) to the activity or the mitigation, monitoring or reporting do not change the findings made for the regulations and do not result in more than a minor change in the total estimated number of takes (or distribution by species or stock or years), and

(2) NMFS may 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) An LOA issued under §§ 216.106 and 218.86 of this chapter for the activities identified in § 218.80(c) may be modified by NMFS Office of Protected Resources under the following circumstances:

(1) After consulting with the Action Proponents regarding the practicability of the modifications, through adaptive management, NMFS may modify (including remove, revise or add to) the existing mitigation, monitoring, or reporting measures if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring measures set forth in this subpart.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting

measures in an LOA include, but are not limited to:

(A) Results from the Action Proponents' monitoring report and annual exercise reports from the previous year(s);

(B) Results from other marine mammal and/or sound research or studies; or

(C) Any information that reveals marine mammals may have been taken in a manner, extent, or number not authorized by this subpart or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS shall publish a notice of proposed LOA(s) in the **Federal Register** and solicit public comment.

(2) If the 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 LOAs issued pursuant to §§ 216.106 of this chapter and 218.86, a LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within 30 days of the action.

§§ 218.88–218.89 [Reserved]

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FEDERAL REGISTER

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Part IV

The President

Notice of May 7, 2025—Continuation of the National Emergency With Respect to Yemen

Presidential Documents

Title 3—

Notice of Notice of May 7, 2025

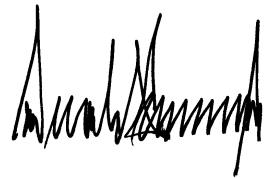
The President

Continuation of the National Emergency With Respect to Yemen

On May 16, 2012, by Executive Order 13611, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of certain members of the Government of Yemen and others that threatened Yemen's peace, security, and stability. These actions include obstructing the political process in Yemen and blocking the implementation of the agreement of November 23, 2011, between the Government of Yemen and those in opposition to it, which provided for a peaceful transition of power that meets the legitimate demands and aspirations of the Yemeni people.

The actions and policies of Ansar Allah, also known as the Houthis, in threatening Yemen's peace, security, and stability continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared in Executive Order 13611 must continue in effect beyond May 16, 2025. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13611 with respect to Yemen.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
May 7, 2025.

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