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Proclamation 10481 of October 21, 2022

The President

United Nations Day, 2022

By the President of the United States of America**A Proclamation**

On United Nations Day, we celebrate this institution and its enduring commitment to advancing peace, protecting human rights, and promoting comity between nations and among the broader international community. Since its founding, the United Nations has shown that countries with different histories yet shared purpose can join together to bend the arc of history toward a freer and more just world.

In the past year, United Nations member states have faced daunting challenges: growing food insecurity; the persistent challenge of COVID-19 alongside additional infectious disease outbreaks; inflation; and record heat, floods, and droughts—all of which have threatened lives and livelihoods. In addition, the consequences of Russia's brazen war and attempts to annex Ukrainian territory in violation of international law have reverberated across the globe—not only exacerbating food and refugee crises but also imperiling the very foundation of a stable international rules-based order, for which the United Nations Charter is the cornerstone.

In the face of great upheaval, the United Nations has a critical role to play—defending the Charter, championing human rights, advancing sustainable development, and holding accountable those who violate international law. When Russia invaded Ukraine in February, an overwhelming majority of United Nations member states sent a resounding message unequivocally condemning the war and Russia's policies of fear and coercion. Today, the United Nations and countries around the world are providing life-saving aid to the Ukrainian people, supporting refugees, responding to health emergencies, and affirming Ukraine's right to sovereignty and territorial integrity—core principles of the United Nations Charter. Likewise, the United Nations is playing an essential part in our common effort to address the global challenges of the twenty-first century, including tackling the climate crisis, strengthening global health security and pandemic preparedness and response, advancing human rights and gender equality, and feeding the world.

The United States is determined to continue strengthening its relationships with United Nations member states as we advance an era of relentless diplomacy across the world. We will help developing countries reach their climate goals and make a just transition to clean energy, including by mobilizing funding. We will lead the way in bolstering the global health security architecture by partnering with countries to prevent, detect, and respond to infectious disease threats; strengthening and reforming the World Health Organization; and marshalling resources to support the historic new Financial Intermediary Fund for Pandemic Prevention, Preparedness, and Response at the World Bank.

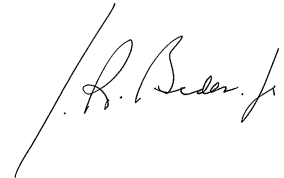
As the largest financial contributor to the United Nations, the United States is investing in this institution to advance the cause of freedom, equality, opportunity, and dignity everywhere. At the same time, we are committed to strengthening the United Nations internally. Efforts such as structural reforms to make the United Nations more inclusive, effective, and responsive to the needs of all member states, such as by increasing the number of both permanent and non-permanent representatives on the Security Council.

This includes permanent seats for those nations we have long supported and permanent seats for countries in Africa and Latin America and the Caribbean.

For almost 80 years, the United Nations has brought member states together to build a better world. Just as the need for this institution was plain in the aftermath of World War II and the atrocities of the Holocaust, its power to stand for liberty over authoritarianism, sovereignty over imperialism, and peace over war remains as vital today. The United Nations reminds us that, as President Truman said, when countries can state their differences, face them, and find common ground, we can author a new era of peace, progress, and hope for all people everywhere.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 24, 2022, as United Nations Day. I urge the Governors of the United States and its Territories, and the officials of all other areas under the flag of the United States, to observe United Nations Day with appropriate ceremonies and activities.

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



Presidential Documents

Executive Order 14088 of October 24, 2022

Taking Additional Steps To Address the National Emergency With Respect to the Situation in Nicaragua

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), the Nicaragua Investment Conditionality Act of 2018 (50 U.S.C. 1701 note), section 212(f) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code,

I, JOSEPH R. BIDEN JR., President of the United States of America, in order to take additional steps with respect to the national emergency declared in Executive Order 13851 of November 27, 2018 (Blocking Property of Certain Persons Contributing to the Situation in Nicaragua), hereby order:

Section 1. The first clause of the preamble to Executive Order 13851 is amended to read as follows:

“By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), the Nicaragua Investment Conditionality Act of 2018 (50 U.S.C. 1701 note), section 212(f) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code,”

Sec. 2. Section 1 of Executive Order 13851 is amended by adding a new subsection 1(a)(i)(E) after subsection 1(a)(i)(D), to read as follows:

“(E) the arrest or prosecution of a person, including an individual or media outlet disseminating information to the public, primarily because of the exercise by such person of the freedom of expression, including for members of the press, or assembly;”

Sec. 3. Subsections 1(a)(iv)(B) through 1(a)(v) of Executive Order 13851 are replaced with new subsections 1(a)(iv)(B) through 1(a)(vi), to read as follows:

“(B) any person whose property and interests in property are blocked pursuant to this order;

(v) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order; or

(vi) to operate or have operated in the gold sector of the Nicaraguan economy or in any other sector of the Nicaraguan economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State.”

Sec. 4. Subsection 1(b) of Executive Order 13851 is replaced with a new subsection 1(b), to read as follows:

“(b) The following are prohibited:

(i) the importation into the United States of any products of Nicaraguan origin as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Secretary of Commerce;

(ii) the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any items as may be determined by the Secretary of Commerce, in

consultation with the Secretary of State and the Secretary of the Treasury, to any person located in Nicaragua;

(iii) new investment in any sector of the Nicaraguan economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State, by a United States person, wherever located; and

(iv) any approval, financing, facilitation, or guarantee by a United States person, wherever located, of a transaction by a foreign person where the transaction by that foreign person would be prohibited by this subsection if performed by a United States person or within the United States.”.

Sec. 5. Section 1 of Executive Order 13851 is amended by adding a new subsection 1(c) after subsection 1(b), to read as follows:

“(c) The prohibitions in subsections (a) and (b) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, or pursuant to the export control authorities implemented by the Department of Commerce, and notwithstanding any contract entered into or any license or permit granted prior to the date of this order.”.

Sec. 6. Section 8 of Executive Order 13851 is revised to read as follows:

“Sec. 8. The Secretary of the Treasury and the Secretary of Commerce, in consultation with the Secretary of State, are hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury and the Secretary of Commerce may, consistent with applicable law, redelegate any of these functions within the Department of the Treasury and the Department of Commerce, respectively. All executive departments and agencies of the United States shall take all appropriate measures within their authority to implement this order.”.

Sec. 7. Section 9 of Executive Order 13851 is revised to read as follows:

“Sec. 9. The Secretary of the Treasury, in consultation with the Secretary of State and the Secretary of Commerce, is hereby authorized to submit the recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of the NEA (50 U.S.C. 1641(c)) and section 204(c) of IEEPA (50 U.S.C. 1703(c)).”.

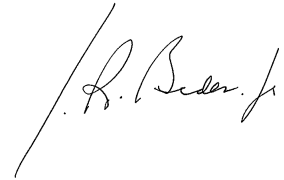
Sec. 8. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
October 24, 2022.

[FR Doc. 2022-23433
Filed 10-25-22; 8:45 am]
Billing code 3395-F3-P

Rules and Regulations

Federal Register

Vol. 87, No. 206

Wednesday, October 26, 2022

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 ENERGY

10 CFR Parts 429 and 431

[EERE-2020-BT-TP-0011]

RIN 1904-AE62

Energy Conservation Program: Test Procedure for Electric Motors

Correction

In rule document 2022-21891, appearing on pages 63588 through 63660 in the issue of Wednesday, October 19, 2022, make the following correction:

§ 431.12 [Corrected]

■ In § 431.12, on page 63655, in the second column, remove the first definition of *IEC Design HY* by removing lines eleven through twenty-five.

[FR Doc. C1-2022-21891 Filed 10-25-22; 8:45 am]

BILLING CODE 0099-10-D

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1022

Fair Credit Reporting; Facially False Data

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Advisory opinion.

SUMMARY: The Consumer Financial Protection Bureau (Bureau) is issuing this advisory opinion to highlight that a consumer reporting agency that does not implement reasonable internal controls to prevent the inclusion of facially false data, including logically inconsistent information, in consumer reports it prepares is not using reasonable procedures to assure maximum possible accuracy under section 607(b) of the Fair Credit Reporting Act (FCRA).

DATES: This advisory opinion is effective on October 26, 2022.

FOR FURTHER INFORMATION CONTACT:

Ilana Waxman, Senior Counsel, Tyler Sines or Jason Grimes, Counsels, Office of Supervision Policy at (202) 435-7700 or <https://reginquiries.consumerfinance.gov/>. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION: The Bureau is issuing this advisory opinion through the procedures for its Advisory Opinions Policy.¹ Refer to those procedures for more information.

I. Advisory Opinion

A. Background

Accuracy in consumer reports is of vital importance to the consumer reporting system, particularly as consumer reports play an increasingly central role in the lives of American consumers. Consumer reporting agencies collect and assemble credit, public record, and other consumer information into consumer reports.² Creditors, insurers, landlords, employers, and others use the information in these reports to make eligibility determinations and other decisions that can have a significant impact on consumers. For example, creditors use information in consumer reports to determine whether, and on what terms, to extend credit to a particular consumer, while landlords and employers use background screening reports in deciding whether to rent to prospective tenants and hire employees, respectively.

Inaccurate, derogatory information in consumer reports can have significant adverse impacts on consumers. For example, inaccurate, derogatory information in consumer reports can lead to higher interest rates, ineligibility for promotional offers, or otherwise less favorable credit terms for affected consumers. This in turn may cost consumers hundreds or thousands of dollars in additional interest. Even worse, inaccurate, derogatory information in consumer reports could lead lenders to deny a consumer credit entirely, making it difficult or impossible for that consumer to obtain a mortgage, auto loan, student loan, or other credit. Any of these consequences can be devastating for a consumer's

financial well-being and life. Inaccurate, derogatory information in consumer reports can also harm the businesses that use such reports by leading them to make unsupported decisions.

Consumer report accuracy depends on the various parties to the consumer reporting system, including: the three nationwide consumer reporting agencies (Equifax, Experian, and TransUnion); other consumer reporting agencies, such as background screening companies; entities such as creditors who furnish information to consumer reporting agencies (*i.e.*, furnishers); and public record repositories. While any of these parties may introduce inaccurate information into the consumer reporting process, a consumer reporting agency is uniquely positioned to identify certain obvious inaccuracies and implement policies, procedures, and systems to keep them off of consumer reports. In some cases, such as when certain account or other information fields on consumer reports are logically inconsistent with other fields of information, a consumer reporting agency can detect the logical inconsistencies and prevent the inaccurate information from being included in consumer reports it generates, thereby avoiding the consumer harm to individual consumers that can result from reporting such inaccurate information.

Inaccuracy in consumer reports is a long-standing issue that remains a problem today. Pursuant to its obligations under the Fair and Accurate Credit Transactions (FACT) Act³ to conduct a study of consumer report accuracy and completeness, the Federal Trade Commission in 2012 published a report finding, among other things, that one in five consumers who participated in the study had an error on at least one of their three nationwide credit reports.⁴ Another more recent study, published in 2021, found that over 34% of consumers surveyed were able to

³ Fair and Accurate Credit Transactions Act of 2003, Public Law 108-159, sec. 319, 117 Stat. 1952 (2003).

⁴ See Fed. Trade Comm'n, *Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003*, at 64 (Dec. 2012), <https://www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-fifth-interim-federal-trade-commission/130211factareport.pdf>.

¹ 85 FR 77987 (Dec. 3, 2020).

² See 15 U.S.C. 1681a(d) (defining "consumer report").

identify at least one error in their credit reports.⁵

Consumer complaints submitted to the Bureau continue to reflect significant consumer concern about inaccuracies in consumer reports. Complaints about “incorrect information on your report” have represented the largest share of credit or consumer reporting complaints submitted to the Bureau each year for at least the last six years.⁶ In 2021 alone, companies responded to more than 157,000 such complaints, representing a majority (53%) of credit or consumer reporting complaint responses that year.⁷

Moreover, the Bureau continues to see accuracy issues at furnishers and consumer reporting agencies through its supervisory activities. For example, the Bureau noted in its Spring 2022 Supervisory Highlights that many furnishers lacked “reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers.”⁸ In its Summer 2021 Supervisory Highlights, the Bureau explained that some consumer reporting agencies lacked adequate procedures for assuring maximum possible accuracy of consumer reports when they “continued to include information in consumer

reports that was provided by unreliable furnishers.”⁹

The Bureau also continues to find accuracy issues in the consumer reporting context through its enforcement activities. For example, the Bureau has brought enforcement actions against consumer reporting agencies whose inadequate “name-only matching” led to reports with inaccurate derogatory criminal and public records information on consumers.¹⁰ The Bureau also has brought enforcement actions against furnishers who furnish information with inherent logical inconsistencies, such as furnishing an increasing “original loan amount” over time, where that field should not change.¹¹

The FCRA regulates consumer reporting.¹² The statute was designed to ensure that “consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information.”¹³ In interpreting the statute, Federal courts likewise highlight the importance of data accuracy. The FCRA was enacted “to protect consumers from the transmission of inaccurate information about them and to establish credit reporting practices that utilize accurate, relevant, and current information in a confidential and responsible manner.”¹⁴ Because of the importance of consumer report accuracy to businesses and consumers, the structure of the FCRA creates interrelated legal standards and requirements to support the policy goal of accurate credit

reporting. Among these is the requirement that, when preparing a consumer report, consumer reporting agencies “shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.”¹⁵

Inaccuracies in consumer reports can, in part, be attributed to consumer reporting agencies failing to maintain reasonable procedures, such as business rules, to prevent the inclusion of facially false data, including logical inconsistencies relating to consumer data and/or the status or other information associated with consumer accounts, when preparing consumer reports. Courts have recognized that in “certain instances, inaccurate credit reports by themselves can fairly be read as evidencing unreasonable procedures[.]”¹⁶ The Bureau is issuing this advisory opinion to highlight that the legal requirement to follow reasonable procedures to assure maximum possible accuracy of the information concerning the individuals about whom the reports relate includes, but is not limited to, procedures to screen for and eliminate logical inconsistencies to avoid including facially false data in consumer reports.

There are many logical inconsistencies that could result in inaccurate, facially false data being included on consumer reports in violation of section 607(b). The following is a non-exhaustive list of examples of some of the types of logical inconsistencies that reasonable procedures to assure maximum possible accuracy would screen for and eliminate:

Inconsistent Account Information or Statuses

A consumer reporting agency’s policies and procedures should be sufficient to detect tradelines with account statuses or codes that are plainly inconsistent with other information reported for that same account, such that, if included in a consumer report, at least one item of information therein would necessarily be inaccurate. Such inconsistencies may include:

- An account whose status is paid in full, and thus has no balance due but nevertheless reflects a balance due;¹⁷

⁵ See Syed Ejaz, *Consumer Reports, A Broken System: How the Credit Reporting System Fails Consumers and What to Do About It* 4 (June 10, 2021), <https://advocacy.consumerreports.org/wp-content/uploads/2021/06/A-Broken-System-How-the-Credit-Reporting-System-Fails-Consumers-and-What-to-Do-About-It.pdf>.

⁶ See Consumer Fin. Prot. Bureau, *Consumer Response Annual Report*, at 20 (Mar. 2022), https://files.consumerfinance.gov/f/documents/cfpb_2021-consumer-response-annual-report_2022-03.pdf; Consumer Fin. Prot. Bureau, *Consumer Response Annual Report*, at 22 (Mar. 2021), https://files.consumerfinance.gov/f/documents/cfpb_2020-consumer-response-annual-report_03-2021.pdf; Consumer Fin. Prot. Bureau, *Consumer Response Annual Report*, at 19 (Mar. 2020), https://files.consumerfinance.gov/f/documents/cfpb_consumer-response-annual-report_2019.pdf; Consumer Fin. Prot. Bureau, *Consumer Response Annual Report*, at 19 (Mar. 2019), https://files.consumerfinance.gov/f/documents/cfpb_consumer-response-annual-report_2018.pdf; Consumer Fin. Prot. Bureau, *Consumer Response Annual Report*, at 13 (Mar. 2018), https://files.consumerfinance.gov/f/documents/cfpb_consumer-response-annual-report_2017.pdf; Consumer Fin. Prot. Bureau, *Consumer Response Annual Report*, at 18 (Mar. 2017), https://files.consumerfinance.gov/f/documents/201703_cfpb_Consumer-Response-Annual-Report-2016.PDF.

⁷ See Consumer Fin. Prot. Bureau, *Consumer Response Annual Report*, at 20 (Mar. 2022), https://files.consumerfinance.gov/f/documents/cfpb_2021-consumer-response-annual-report_2022-03.pdf for more in-depth analyses.

⁸ See Consumer Fin. Prot. Bureau, *Spring 2022 Supervisory Highlights*, at 10 (May 2022), https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-26_2022-04.pdf.

⁹ See Consumer Fin. Prot. Bureau, *Summer 2021 Supervisory Highlights*, at 7 (Jun. 2021), https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-24_2021-06.pdf.

¹⁰ Consent Order at ¶¶ 8–29, *In re Gen. Inf. Svcs. Inc.*, 2015–0028 (Oct. 29, 2015), https://files.consumerfinance.gov/f/201510_cfpb_consent-order_general-information-service-inc.pdf; Complaint at ¶¶ 5–11, *Consumer Fin. Prot. Bureau v. Sterling Infosys, Inc.*, No. 1:19–cv–10824 (S.D.N.Y. Nov. 22, 2019), <https://www.consumerfinance.gov/enforcement/actions/sterling-infosystems-inc/>.

¹¹ Consent Order at ¶ 41, *In re Hyundai Capital Am.*, 2022–CFPB–0005 (July 26, 2022), https://files.consumerfinance.gov/f/documents/cfpb_hyundai-capital-america_consent-order_2022-07.pdf.

¹² See 15 U.S.C. 1681–1681x.

¹³ 15 U.S.C. 1681(b).

¹⁴ *Guimond v. Trans Union Credit Info.*, 45 F.3d 1329, 1333 (9th Cir.1995) (citations omitted); see also S. Rep. No. 91–517, at 1 (1969) (explaining that the FCRA was intended to “prevent consumers from being unjustly damaged because of inaccurate or arbitrary information in a credit report”).

¹⁵ 15 U.S.C. 1681e(b).

¹⁶ *Stewart v. Credit Bureau, Inc.*, 734 F.2d 47, 52 (D.C. Cir. 1984).

¹⁷ Cf. Consent Order at ¶ 20, *In re Santander Consumer USA Inc.*, 2022–BCFP–0027 (Dec. 20, 2020) (“Respondent also reported in approximately 250,000 instances that accounts had a current balance and simultaneously furnished contradictory

- An account that reflects an “Original Loan Amount” that increases over time, an impossibility by definition;¹⁸ and

- Derogatory information being reported on an account, although that derogatory information predates an earlier report that did not include the derogatory information.¹⁹

A consumer reporting agency’s policies and procedures should further identify and prevent illogical reporting of a Date of First Delinquency in connection with an account.²⁰ Section 605(a) of the FCRA identifies categories of information that cannot be included in a consumer report after a certain amount of time.²¹ For example, a consumer reporting agency may not include on a consumer report accounts placed for collection or charged to profit and loss that antedate the report by more than seven years and 180 days.²² This provision enables consumers to move beyond their past and rebuild their credit following a delinquency. The Date of First Delinquency provided by a furnisher must reflect the month and year on which the delinquency being reported commenced.²³ When

information, such as also furnishing information indicating that the accounts were paid in full.”), https://files.consumerfinance.gov/f/documents/cfpb_santander-consumer-usa-inc_consent-order_2020-12.pdf. The Santander consent order, along with other CFPB consent orders cited herein, relate to furnisher obligations under section 623 of the FCRA, but the underlying logical inconsistencies involved, as described herein, are illustrative examples of the types of inconsistencies that a credit reporting agency’s reasonable policies and procedures to assure maximum possible accuracy should be designed to detect.

¹⁸ Cf. Consent Order at ¶ 41, *In re Hyundai Capital Am.*, 2022–CFPB–0005 (July 26, 2022) (“After furnishing the correct original loan amount [a field that should not change], Respondent furnished increased amounts for the “original loan amount,” making it appear that a consumer had taken out a larger loan than they had actually taken out.”), https://files.consumerfinance.gov/f/documents/cfpb_hyundai-capital-america_consent-order_2022-07.pdf.

¹⁹ *Bryant v. TRW, Inc.*, 487 F. Supp. 1234, 1242 (E.D. Mich. 1980) (refusing to set aside a jury verdict finding that a consumer reporting agency failed to follow reasonable procedures under FCRA section 607(b) for failing to detect inconsistencies between a September report containing derogatory information and an earlier May report on which such information did not appear even though at least one of the derogatory items predated the May report).

²⁰ The Date of First Delinquency herein refers to the date furnished to a credit reporting agency by a furnisher that purportedly reflects the month and year on which the delinquency being reported in connection with a consumer’s account commenced.

²¹ 15 U.S.C. 1681c(a).

²² 15 U.S.C. 1681c(a)(4), (c).

²³ 15 U.S.C. 1681s–2(a)(5)(A). Under the FCRA, furnishers must report a Date of First Delinquency within 90 days of furnishing information regarding delinquent accounts being placed for collection, charged to profit or loss, or subjected to any similar action. *Id.*

accurate, that date corresponds with the start of the time period that, once elapsed, precludes the delinquency from remaining on a consumer report under FCRA section 605(a). A Date of First Delinquency that is more recent than the start of a delinquency may lead a report user to believe a consumer had financial difficulty more recently than is the case. Similarly, a Date of First Delinquency reflected on a report where a consumer is not in fact delinquent could cause a user to inaccurately believe that the consumer is delinquent. Examples of an illogical Date of First Delinquency may include:

- A Date of First Delinquency reported for an account whose records reflect no delinquency, such as through activity reflecting a current account (complete history of timely payments, \$0 amount overdue) or through a current account status code;²⁴
- A Date of First Delinquency that post-dates a charge-off date; and
- A Date of First Delinquency, or date of last payment, that predates the account open date (for non-collection accounts).

Illogical Information Relating to Consumers

A consumer reporting agency’s policies and procedures should also identify logical inconsistencies in consumer information, such that, if included in a consumer report, some of the information therein would necessarily be inaccurate. Such inconsistencies may include:

- Impossible information about consumers—for example, a tradeline that includes a relevant date, such as a date of account opening, account closing, date of last payment, or date of first delinquency, for an account that is in the future—an obvious impossibility—or for an individual account that either predates that consumer’s listed date of birth or that is so far in the past (*e.g.*, January 1, 1800) that it must predate every living consumers’ date of birth, as individuals

²⁴ Cf. Consent Order at ¶ 36, *In re Hyundai Capital Am.*, 2022–CFPB–0005 (July 26, 2022) (“Respondent furnished account data showing that the consumer account was current, such as reporting \$0 amount overdue or full payments made timely each month, but then also furnished a [Date of First Delinquency], a field that inaccurately indicated that the account was in an ongoing delinquency.”); Consent Order at ¶ 17, *In re Santander Consumer USA Inc.*, 2020–BCFP–0027 (Dec. 20, 2020) (alleging Santander violated FCRA § 623(a)(1)(A) by inaccurately furnishing “internally inconsistent” data, including reporting “[Date of First Delinquencies] for accounts that were current, paid in full (and not delinquent immediately beforehand), or previously delinquent but subsequently became current”).

cannot open an account before they are born;²⁵ and

- Information about consumer accounts that is plainly inconsistent with other reported information, such that one piece of information must be inaccurate—for example, if every other tradeline is reporting ongoing payment activity, while one tradeline contains a “deceased” indicator, reasonable policies and procedures should identify the inconsistency and the consumer reporting agency should prevent the inclusion of the inaccurate information in consumer reports it generates.²⁶

A consumer reporting agency’s policies, procedures and internal controls should further identify and prevent reporting of illegitimate credit transactions for a minor. Minors generally cannot legally enter into contracts for credit except in certain limited circumstances. It is logically inconsistent when a credit transaction is reported for a person who lacks capacity to enter into a contract because they are a minor, unless there are indicia that the credit transaction is legitimate, such as in the context of student loans, credit card authorized users, or emancipated minors.²⁷ The Bureau is aware of evidence showing that instances of identity theft are especially prevalent for minors, suggesting that identity thieves may target minors due to the value of unused Social Security numbers and a belief that there is a lower probability of discovery of the

²⁵ See, *e.g.*, *Sheffer v. Experian Information Solutions, Inc.*, 2003 WL 21710573, at *2 (E.D. Pa. 2003) (referencing a consumer report that “indicated both that Plaintiff was born in 1969 and that the account was opened in 1965” as one of two “inconsistencies” that “provide[d] a basis from which a jury could infer that the procedures were unreasonable”).

²⁶ *Cohman v. Equifax Information Services, LLC*, 395 F. Supp. 2d 822, 827 (D. Minn. 2005); see also *Sheffer*, 2003 WL 21710573, at *2 (referencing the fact that only one account of approximately two dozen on a consumer’s report included the “deceased” notation as one of two “inconsistencies” that “provide[d] a basis from which a jury could infer that the procedures were unreasonable”).

²⁷ This example is consistent with prior Federal Trade Commission (FTC)’s *40 Years Report*. See FTC, 40 Years of Experience with the Fair Credit Reporting Act (July 2011) [hereinafter, the “FTC 40 Years Report”], available at <https://www.ftc.gov/sites/default/files/documents/reports/40-years-experience-fair-credit-reporting-act-ftc-staff-report-summary-interpretations/110720fcrareport.pdf>, at 68, comment 8 (“A [consumer reporting agency] must maintain procedures to avoid reporting information with obvious logical inconsistencies, such as a credit account opened when the consumer was known to be a minor.”). FTC staff published the *40 Years Report*, an updated compilation of past FTC interpretations of the FCRA, to coincide with the transfer of authority to the Bureau. Effective July 21, 2011, the Dodd-Frank Act transferred rulemaking authority related to most of the FCRA to the Bureau, giving the Bureau the primary regulatory and interpretive roles under the FCRA.

fraud.²⁸ This risk may be even more acute for minors in the United States foster care system, who often lack a permanent address and frequently have their personal information shared among numerous adults and agency databases, making them particularly susceptible to identity theft and inaccurate credit history information.²⁹ This heightened risk faced by minors underscores the importance for consumer reporting agencies to maintain procedures designed to identify illegitimate credit transactions reported for minors and prevent inclusion thereof when preparing consumer reports.

The Bureau is issuing this advisory opinion to remind consumer reporting agencies that the failure to maintain reasonable procedures to screen for and eliminate logical inconsistencies, to prevent the inclusion of facially false data in consumer reports, is a violation of their FCRA obligation to “follow reasonable procedures to assure maximum possible accuracy” under section 607(b) of the FCRA.

B. Coverage

This advisory opinion applies to all consumer reporting agencies as defined in FCRA section 603(f).³⁰

C. Legal Analysis

Section 607(b) of the FCRA provides that “[w]hensoever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.”³¹ The Bureau has interpreted this requirement in section 607(b) to include as an integral component that consumer reporting agencies implement and maintain reasonable screening procedures, such as business rules, designed to identify and prevent the inclusion of facially false data, such as logical inconsistencies relating to consumer or account information, in the consumer reports they prepare.

Courts have spoken on this topic. For example, in *Bryant v. TRW, Inc.*, the

court rejected a consumer reporting agency’s assertion that it had “no obligation” to compare facially inconsistent information contained in two of plaintiff’s consumer reports from different months because such an interpretation would make the consumer reporting agency “simply a conduit and eliminate from the [FCRA] its emphasis on the reasonableness of the procedures followed in putting together a consumer report,” contrary to Congressional intent.³² Courts have also indicated that the inclusion of facially false data inaccuracies on a consumer report may, in certain circumstances, evidence the unreasonableness of a consumer reporting agency’s procedures.³³

It continues to be the Bureau’s interpretation as outlined in this advisory opinion that such procedures are required, consistent with the core purpose of the FCRA as described in FCRA section 602—*i.e.*, to require consumer reporting agencies to adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner that is fair and equitable to the consumer with regard to accuracy, among other responsibilities.³⁴ This interpretation also aligns with the Federal Trade Commission’s *40 Years Report*, which states that pursuant to 607(b), a consumer reporting agency “must maintain procedures to avoid reporting information with obvious logical inconsistencies, such as a credit account opened when the consumer was known to be a minor.”³⁵

In addition to provisions authorizing Federal and State enforcement,³⁶ the FCRA contains two provisions relating to civil liability to consumers for noncompliance. Section 617 provides that “any person who is *negligent* in failing to comply with any requirement imposed under this title with respect to

any consumer is liable to that consumer in an amount equal to” the consumer’s actual damages, and costs and reasonable attorney’s fees.³⁷ Section 616 provides that “any person who *willfully* fails to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to” actual or statutory damages of up to \$1,000 per violation, such punitive damages as the court allows, and costs and reasonable attorney’s fees.³⁸ A violation is willful when it is inconsistent with “authoritative guidance” from a relevant agency.³⁹ As with any guidance issued by the CFPB on the FCRA, or predecessor agencies that were responsible for administering the FCRA prior to the CFPB’s creation, consumer reporting agencies risk liability under Section 616 if they violate the FCRA in a manner described in this Advisory Opinion, regardless of whether the consumer reporting agencies were previously liable for willful violations prior to its issuance.

II. Regulatory Matters

This advisory opinion is an interpretive rule issued under the Bureau’s authority to interpret the FCRA, including under section 1022(b)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act,⁴⁰ which authorizes guidance as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of Federal consumer financial laws.⁴¹

The Bureau has determined that this advisory opinion does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.⁴²

Pursuant to the Congressional Review Act,⁴³ the Bureau will submit a report containing this interpretive rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to the

²⁸ See, e.g., Richard Power, Carnegie Mellon CyLab, Child Identity Theft: New Evidence Indicates Identity Thieves are Targeting Children for Unused Social Security Numbers (2011), available at https://www.cylab.cmu.edu/_files/pdfs/reports/2011/child-identity-theft.pdf.

²⁹ See Consumer Fin. Prot. Bureau, “CFPB Releases Tools to Protect Foster Care Children from Credit Reporting Problems” (May 1, 2014), available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-releases-tools-to-protect-foster-care-children-from-credit-reporting-errors/#:~:text=To%20submit%20a%20complaint%2C%20consumers,1%2D855%2D237%2D2392>.

³⁰ 15 U.S.C. 1681a(f).

³¹ 15 U.S.C. 1681e(b).

³² See *Bryant v. TRW, Inc.*, 487 F. Supp. at 1242. See also *McKeown v. Sears Roebuck & Co.*, 335 F. Supp. 2d 917, 930 (W.D. Wis. 2004) (“[R]eceiving apparently inconsistent credit reports may trigger an obligation to investigate on the part of the credit reporting agency . . . [because] allowing credit reporting agencies to act as nothing more than mere conduits of information would eviscerate the act’s emphasis on reasonable compilation procedures.”) (citing *Bryant*, 487 F. Supp. at 1242); *Wright v. Experian Info. Sols., Inc.*, 805 F.3d 1232, 1239 (10th Cir. 2015) (“Courts have held [consumer reporting agencies] must look beyond information furnished to them when it is inconsistent with the [consumer reporting agencies’] own records, contains a facial inaccuracy, or comes from an unreliable source.”).

³³ See *Stewart v. Credit Bureau, Inc.*, 734 F.2d at 52; *Sheffer*, 2003 WL 21710573, at *2.

³⁴ 15 U.S.C. 1681(b); see also *Guimond*, 45 F.3d at 1333.

³⁵ FTC 40 Years Report, at 68, comment 8.

³⁶ 15 U.S.C. 1681s.

³⁷ 15 U.S.C. 1681o (emphasis added).

³⁸ 15 U.S.C. 1681n (emphasis added); *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 57–58 (2007) (construing meaning of “willful”).

³⁹ *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 70 (2007); *Fuges v. Sw. Fin. Servs., Ltd.*, 707 F.3d 241, 253 (3d Cir. 2012).

⁴⁰ Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

⁴¹ 12 U.S.C. 5512(b)(1).

⁴² 4 U.S.C. 3501–3521.

⁴³ 5 U.S.C. 801 *et seq.*

rule's published effective date. The Office of Information and Regulatory Affairs has designated this interpretive rule as not a "major rule" as defined by 5 U.S.C. 804(2).

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2022-23264 Filed 10-25-22; 8:45 am]

BILLING CODE 4810-AM-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2022-1252; Project Identifier AD-2022-01163-T; Amendment 39-22204; AD 2022-21-05]

RIN 2120-AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company Model 737-300, -400, and -500 series airplanes. This AD was prompted by a report that a spoiler sensor failure may go undetected by the autothrottle (A/T) computer. This AD requires repetitive built-in test equipment (BITE) tests of the A/T computer to detect a spoiler sensor failure, and corrective action if necessary. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 10, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 10, 2022.

The FAA must receive comments on this AD by December 12, 2022.

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* by searching for and locating Docket No. FAA-2022-1252; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110 SK57, Seal Beach, CA 90740-5600; telephone 562-797-1717; website *myboeingfleet.com*.

- You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available at *regulations.gov* by searching for and locating Docket No. FAA-2022-1252.

FOR FURTHER INFORMATION CONTACT: Eric Igama, Aerospace Engineer, Systems and Equipment Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712-4137; phone: 562-627-5388; email: *Roderick.igama@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA has received a report that a spoiler sensor failure may go undetected by the A/T computer. A review of the A/T cruise thrust split monitor logic terms showed that failure of the spoiler sensor input, including the wiring into the monitor logic, cannot be detected without a maintenance action performed on the flight control system. Latent loss of spoiler sensor position data or erroneous spoiler sensor position data could result in failure of the A/T cruise thrust split monitor to activate, which may result in a significant throttle split leading to asymmetric thrust. The subsequent lack of A/T disengagement could lead to an uncommanded roll. This condition, if not addressed, could result in potential loss of control of the airplane or reduced ability of the flightcrew to maintain the safe flight and landing of the airplane. The FAA is issuing this AD to address the unsafe condition on these products.

The FAA has confirmed that accomplishment of the applicable BITE test in the existing airplane maintenance

manual (AMM) detects the spoiler sensor failure. This test is currently not required to be performed repetitively, leading to a potential latent failure if the test is not performed regularly, which will be required by this AD.

FAA's Determination

The FAA is issuing this AD because the agency has determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 737-22A1411 RB, dated August 22, 2022. This service information specifies procedures for performing an A/T computer BITE test, "Autopilot Aileron Actuator Test—DFCS BITE," and, if the test fails, performing applicable corrective actions to repair defects and repeating the test until the test passes. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

AD Requirements

This AD requires accomplishing the actions identified in Boeing Alert Requirements Bulletin 737-22A1411 RB, dated August 22, 2022, already described, except as discussed under "Differences Between this AD and the Service Information," and except for any differences identified as exceptions in the regulatory text of this AD.

For information on the procedures and compliance times, see this service information at *regulations.gov* by searching for and locating Docket No. FAA-2022-1252.

Differences Between This AD and the Service Information

Boeing Alert Requirements Bulletin 737-22A1411 RB, dated August 22, 2022, specifies a compliance time of 250 flight hours for the initial BITE test. However, this AD requires the initial BITE test within 250 flight hours or 2 months after the effective date of this AD, whichever occurs first, to ensure that airplanes with low utilization rates are addressed in a timely manner.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for "good cause," finds that those

procedures are “impracticable, unnecessary, or contrary to the public interest.” Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because failure of a spoiler sensor could result in failure of the autothrottle cruise thrust split monitor to activate, which may result in a significant throttle split leading to asymmetric thrust. The subsequent lack of autothrottle disengagement could lead to an uncommanded roll. This condition, if not addressed, could result in potential loss of control of the airplane or reduced ability of the flightcrew to maintain the safe flight and landing of the airplane. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

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

the FAA found good cause to forgo notice and comment.

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include Docket No. FAA-2022-1252 and Project Identifier AD-2022-01163-T at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

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

commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Eric Igama, Aerospace Engineer, Systems and Equipment Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712-4137; phone: 562-627-5388; email: *Roderick.igama@faa.gov*. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 21 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|-----------------|--|------------|----------------------|------------------------|
| BITE test | 2 work-hours × \$85 per hour = \$170 per test | \$0 | \$170 per test | \$3,570 per test. |

The FAA has received no definitive data on which to base the cost estimates for the on-condition corrective actions specified in this AD.

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and

procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–21–05 The Boeing Company:

Amendment 39–22204; Docket No. FAA–2022–1252; Project Identifier AD–2022–01163–T.

(a) Effective Date

This airworthiness directive (AD) is effective November 10, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–300, –400, and –500 series airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 737–22A1411 RB, dated August 22, 2022.

(d) Subject

Air Transport Association (ATA) of America Code 22, Auto flight.

(e) Unsafe Condition

This AD was prompted by a report that a spoiler sensor failure may go undetected by the autothrottle computer. The FAA is issuing this AD to address latent loss of spoiler sensor position data or erroneous spoiler sensor position data. The unsafe condition, if not addressed, could result in asymmetric thrust or an uncommanded roll and consequent potential loss of control of the airplane or reduced ability of the flightcrew to maintain the safe flight and landing of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the “Compliance” paragraph of Boeing Alert Requirements Bulletin 737–22A1411 RB, dated August 22, 2022, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 737–22A1411 RB, dated August 22, 2022.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 737–22A1411 RB, dated August 22, 2022, which is referred to in Boeing Alert Requirements Bulletin 737–22A1411 RB, dated August 22, 2022.

(h) Exceptions to Service Information Specifications

Where Boeing Alert Requirements Bulletin 737–22A1411 RB, dated August 22, 2022, specifies the compliance time for the initial autopilot aileron actuator test as “Within 250 flight hours after the Original Issue date of Requirements Bulletin 737–22A1411 RB,” for this AD the initial compliance time is within

250 flight hours or 2 months after the effective date of this AD, whichever occurs first.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Related Information

(1) For more information about this AD, contact Eric Igama, Aerospace Engineer, Systems and Equipment Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5388; email: *roderick.igama@faa.gov*.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (k)(3) and (4) of this AD.

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 737–22A1411 RB, dated August 22, 2022.

(ii) [Reserved]

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110 SK57, Seal Beach, CA 90740–5600; telephone 562 797 1717; website *myboeingfleet.com*.

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

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on

the availability of this material at NARA, email *fr.inspection@nara.gov*, or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued on September 29, 2022.

Christina Underwood,

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

[FR Doc. 2022–23366 Filed 10–24–22; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0248; Airspace Docket No. 22–AGL–4]

RIN 2120–AA66

Amendment of VOR Federal Airways V–24, V–78, V–181, and V–398; and Establishment of Area Navigation (RNAV) Route T–462; in the Vicinity of Watertown, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends VHF Omnidirectional Range (VOR) Federal airways V–24, V–78, V–181, and V–398, and establishes RNAV route T–462 in the vicinity of Watertown, SD. This action is necessary due to the planned decommissioning of the VOR portion of the Watertown, SD, VOR/Tactical Air Navigation (VORTAC) which provides navigational guidance to portions of the affected VOR Federal airways. The Watertown VOR is being decommissioned as part of the FAA’s VOR Minimum Operational Network (VOR MON) program.

DATES: Effective date 0901 UTC, December 29, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800

Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA-2022-0248 in the **Federal Register** (87 FR 17038; March 25, 2022), amending VOR Federal airways V-24, V-78, V-181, and V-398, and establishing RNAV route T-462. The proposed amendment and establishment actions were due to the planned decommissioning of the VOR portion of the Watertown, SD, VORTAC NAVAID. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

VOR Federal airways are published in paragraph 6010(a) and United States Area Navigation Routes are published in paragraph 6011 of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Air Traffic Service (ATS) routes listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by amending V-24, V-78, V-181, and V-398, and establishing T-462 due to the planned decommissioning of the VOR portion of the Watertown, SD, VORTAC NAVAID. The ATS route actions are described below.

V-24: V-24 extends between the Aberdeen, SD, VOR/Distance Measuring Equipment (VOR/DME) and the Rochester, MN, VOR/DME; between the Janesville, WI, VOR/DME and the Northbrook, IL, VOR/DME; and between the Peotone, IL, VORTAC and the Brickyard, IN, VORTAC. The airway segment between the Aberdeen, SD, VOR/DME and the Redwood Falls, MN, VOR/DME is removed. This results in the first segment of the airway extending between the Redwood Falls, MN, VOR/DME and the Rochester, MN, VOR/DME. The second and third segments of the airway remain unchanged.

V-78: V-78 extends between the Watertown, SD, VORTAC and the Escanaba, MI, VOR/DME; and between the Pellston, MI, VORTAC and the Saginaw, MI, VOR/DME. The airway segment between the Watertown, SD, VORTAC and the Darwin, MN, VORTAC is removed. This results in the first segment of the airway extending between the Darwin, MN, VORTAC and the Escanaba, MI, VOR/DME. The second segment of the airway remains unchanged.

V-181: V-181 extends between the Kirksville, MO, VORTAC and the Grand Forks, ND, VOR/DME. The airway segment between the Sioux Falls, SD, VORTAC and the Fargo, ND, VOR/DME is removed. This results in the airway extending between the Kirksville, MO, VORTAC and the Sioux Falls, SD, VORTAC; and between the Fargo, ND, VOR/DME and the Grand Forks, ND, VOR/DME.

V-398: V-398 extends between the Aberdeen, SD, VOR/DME and the Rochester, MN, VOR/DME. The airway segment between the Aberdeen, SD, VOR/DME and the Redwood Falls, MN, VOR/DME is removed. This results in the airway extending between the Redwood Falls, MN, VOR/DME and the Rochester, MN, VOR/DME.

T-462: T-462 is a new RNAV route that extends between the Bismarck, ND, VOR/DME and the GENE0, MN, waypoint (WP) located near the Darwin, MN, VOR. T-462 is established to mitigate the removal of the V-24 airway segment between the Aberdeen, SD, VOR/DME and the Watertown, SD, VORTAC and the removal of the V-78 airway segment between the Watertown,

SD, VORTAC and the Darwin, MN, VORTAC. The new route also provides navigational options in areas of limited or no radar coverage to pilots whose aircraft are RNAV equipped. The full route description of T-462 is listed in the amendments to part 71 set forth below.

All navigational aid radials listed in the VOR Federal airway descriptions below are unchanged and stated in True degrees.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of amending VOR Federal airways V-24, V-78, V-181, and V-398, and establishing RNAV route T-462, due to the planned decommissioning of the Watertown, SD, VOR NAVAID, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5-6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points) and paragraph 5-6.5k, which categorically excludes from further environmental impact review the publication of existing air traffic control procedures that do not essentially change existing tracks, create

new tracks, change altitude, or change concentration of aircraft on these tracks. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

| | | |
|--|---------|--|
| T-462 BISMARCK, ND (BIS) TO GENE0, MN [NEW] | | |
| Bismarck, ND (BIS) | VOR/DME | (Lat. 46°45'42.34" N, long. 100°39'55.47" W) |
| Aberdeen, SD (ABR) | VOR/DME | (Lat. 45°25'02.48" N, long. 098°22'07.39" W) |
| FFORT, SD | WP | (Lat. 44°58'47.45" N, long. 097°08'30.36" W) |
| GENEO, MN | WP | (Lat. 45°05'15.37" N, long. 094°27'14.30" W) |

Issued in Washington, DC, on October 17, 2022.

Scott M. Rosenbloom,
Manager, Airspace Rules and Regulations Group.

[FR Doc. 2022–22780 Filed 10–25–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0245; Airspace Docket No. 19–AAL–49]

RIN 2120–AA66

Establishment of United States Area Navigation (RNAV) Route T–380; Emmonak, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes RNAV T-route, T–380, in the vicinity of Emmonak, AK in support of a large and comprehensive T-route modernization project for the state of Alaska.

DATES: Effective date 0901 UTC, December 29, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal airways.

* * * * *

V–24 [Amended]

From Redwood Falls, MN; to Rochester, MN. From Janesville, WI; INT Janesville 112° and Northbrook, IL, 291° radials; to

Northbrook. From Peotone, IL; INT Peotone 152° and Brickyard, IN, 312° radials; to Brickyard.

* * * * *

V–78 [Amended]

From Darwin, MN; Gopher, MN; INT Gopher 091° and Eau Claire, WI, 290° radials; Eau Claire; Rhinelander, WI; Iron Mountain, MI; to Escanaba, MI. From Pellston, MI; Alpena, MI; INT Alpena 232° and Saginaw, MI, 353° radials; to Saginaw.

* * * * *

V–181 [Amended]

From Kirksville, MO; Lamoni, IA; Omaha, IA; Norfolk, NE; Yankton, SD; to Sioux Falls, SD. From Fargo, ND; to Grand Forks, ND.

* * * * *

V–398 [Amended]

From Redwood Falls, MN; to Rochester, MN.

* * * * *

Paragraph 6011 United States Area Navigation Routes.

* * * * *

revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/. For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the

safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it expands the availability of RNAV in Alaska and improve the efficient flow of air traffic within the National Airspace System by lessening the dependency on ground based navigation.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2022–0244 in the **Federal Register** (87 FR 16679; March 24, 2022), establishing RNAV T-route, T–380, in the vicinity of Emmonak, AK in support of a large and comprehensive T-route modernization project for the state of Alaska. Interested parties were invited to participate in this rulemaking effort by submitting comments on the proposal. No comments were received.

United States Area Navigation Routes are published in paragraph 6011 of FAA Order JO 7400.11G dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The RNAV route listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11G, Airspace Designations and

Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the ADDRESSES section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by establishing RNAV route T-380 in the vicinity of Emmonak, AK in support of a large and comprehensive T-route modernization project in the state of Alaska.

The new route is described below.

T-380: T-380 extends from the Emmonak, AK (ENM), VOR/Distance Measuring Equipment (VOR/DME) to the Sparrevohn, AK (SQA), VOR/DME, due to the decommissioning of St. Marys, AK, Aniak, AK, and Cairn Mountain, AK, Non-Directional Beacons (NDBs).

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine

matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this airspace action of establishing RNAV route T-380 in the vicinity of Emmonak, AK qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5-6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points), and paragraph 5-6.5i, which categorically excludes from further environmental review the establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima. As such, this action is not expected to result in any potentially significant environmental impacts. In

accordance with FAA Order 1050.1F, paragraph 5-2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T-380 EMMONAK, AK (ENM) TO SPARREVOHN, AK (SQA) [NEW]

| | | |
|----------------------|---------|--|
| Emmonak, AK (ENM) | VOR/DME | (Lat. 62°47'04.52" N, long. 164°29'15.12" W) |
| HUROP, AK | WP | (Lat. 62°05'37.50" N, long. 163°41'00.03" W) |
| JOPEs, AK | WP | (Lat. 62°03'33.30" N, long. 163°17'07.68" W) |
| CIBUP, AK | WP | (Lat. 61°34'53.76" N, long. 159°32'34.95" W) |
| AMEDE, AK | WP | (Lat. 61°34'17.31" N, long. 158°25'46.86" W) |
| CERTU, AK | WP | (Lat. 61°25'08.81" N, long. 157°15'46.63" W) |
| FABGI, AK | WP | (Lat. 61°13'51.69" N, long. 156°14'37.32" W) |
| Sparrevohn, AK (SQA) | VOR/DME | (Lat. 61°05'54.89" N, long. 155°38'04.49" W) |

* * * * *

Issued in Washington, DC, on October 17, 2022.

Scott M. Rosenbloom,
Manager, Airspace Rules and Regulations.

[FR Doc. 2022-22782 Filed 10-25-22; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2022-0231; Airspace
Docket No. 19-AAL-46]

RIN 2120-AA66

**Establishment of United States Area
Navigation (RNAV) Route T-377; Sitka,
AK**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes RNAV T-route, T-377, in the vicinity of Sitka, AK in support of a large and comprehensive T-route modernization project for the state of Alaska.

DATES: Effective date 0901 UTC, December 29, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/. For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:**Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it expands the availability of RNAV in Alaska and improve the efficient flow of air traffic within the National Airspace System by

lessening the dependency on ground based navigation.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA-2022-0231 in the **Federal Register** (87 FR 16669; March 24, 2022), establishing RNAV T-route T-377, in the vicinity of Sitka, AK in support of a large and comprehensive T-route modernization project for the state of Alaska. Interested parties were invited to participate in this rulemaking effort by submitting comments on the proposal. No comments were received.

United States Area Navigation Routes are published in paragraph 6011 of FAA Order JO 7400.11G dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The RNAV route listed in this document will be published subsequently in FAA Order JO 7400.11.

**Availability and Summary of
Documents for Incorporation by
Reference**

This document amends FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by establishing RNAV route T-377 in the vicinity of Sitka, AK in support of a large and comprehensive T-route modernization project in the state of Alaska.

The new route is described below.

T-377: RNAV T-route, T-377, extends from the Annette Island, AK (ANN), VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) to the Biorca Island, AK, (BKA) VOR and Tactical Air Navigation facility (VORTAC), in anticipation of the decommissioning of Sitka, AK (SIT), and Nichols, AK (ICK), Non-Directional Beacons (NDB). T-377 provides alternate navigation options for Colored Federal airways A-1 and B-28.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are

necessary to keep them operationally current. It, therefore: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this airspace action of establishing RNAV route T-377 in the vicinity of Sitka, AK qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5-6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points), and paragraph 5-6.5i, which categorically excludes from further environmental review the establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5-2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

| | | |
|--|---------|--|
| T-377 Annette Island, AK (ANN) to Biorka Island, AK (BKA) [New] | | |
| Annette Island, AK (ANN) | VOR/DME | (Lat. 55°03'37.47" N, long. 131°34'42.24" W) |
| INEPE, AK | WP | (Lat. 55°35'25.84" N, long. 133°24'52.15" W) |
| FOROP, AK | WP | (Lat. 56°05'08.84" N, long. 134°21'39.59" W) |
| Biorka Island, AK (BKA) | VORTAC | (Lat. 56°51'33.87" N, long. 135°33'04.72" W) |

* * * * *

Issued in Washington, DC, on October 17, 2022.

Scott M. Rosenbloom,
Manager, Airspace Rules and Regulations.
 [FR Doc. 2022-22781 Filed 10-25-22; 8:45 am]
BILLING CODE 4910-13-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2022-0757]

Special Local Regulations; Marine Events Within the Seventh Coast Guard District

AGENCY: Coast Guard, Department of Homeland Security (DHS).
ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a special local regulation for the Race World Offshore (RWO), Offshore World. During the enforcement period, no person or vessel may enter, transit through, anchor in, or remain within the regulated area without permission from the Captain of the Port Key West or a designated representative.

DATES: The regulations in 33 CFR 100.701 will be enforced for the location in Table 1 to § 100.701, Section (b), Item No. 4, from 10 a.m. until 4 p.m., on November 9, 11, and 13, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Lieutenant junior grade Hailye Reynolds, Sector Key West Waterways Management Division, Coast Guard; phone 305-292-8768, email SKWWaterways@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce special local

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

regulations in 33 CFR 100.701, Table 1 to § 100.701, Section (b), Item No. 4, for the RWO Offshore World Championship regulated area from 10:00 a.m. to 4:00 p.m. on November 9, 11, and 13, 2022. This action is being taken to provide for the safety of life on navigable waterways during this 3-day event. The regulation for this marine event within the Seventh Coast Guard District, § 100.701, Table 1 to § 100.701, Section (b), Item No. 4, specifies the location of the regulated area for the RWO Offshore World Championship which encompasses a portion of the Atlantic Ocean located southwest of Key West, Florida. During the enforcement period, all persons and vessels, except those persons and vessels participating in the high-speed boat races, are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area without obtaining permission from the Captain of the Port Key West or a designated representative.

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, marine information broadcasts, or both.

Dated: October 20, 2022.
Jason Ingram,
Captain, U.S. Coast Guard, Captain of the Port Key West.
 [FR Doc. 2022-23249 Filed 10-25-22; 8:45 am]
BILLING CODE 9110-04-P

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6011 United States Area Navigation Routes
 * * * * *

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-HQ-ES-2021-0043; FF09E21000 FXES1111090FEDR 232]

RIN 1018-BF35

Endangered and Threatened Wildlife and Plants; Threatened Species Status for Emperor Penguin With Section 4(d) Rule

AGENCY: Fish and Wildlife Service, Interior.
ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine threatened species status under the Endangered Species Act of 1973 (Act), as amended, for the emperor penguin (*Aptenodytes forsteri*), a flightless bird species from Antarctica. This rule adds the species to the List of Endangered and Threatened Wildlife. We also finalize a rule issued under the authority of section 4(d) of the Act that provides measures that are necessary and advisable to provide for the conservation of this species.

DATES: This rule is effective November 25, 2022.

ADDRESSES: The final rule is available on the internet at <https://www.regulations.gov> under Docket No. FWS-HQ-ES-2021-0043. Comments and materials received, as well as supporting documentation we used in preparing this rule, are available for public inspection at <https://www.regulations.gov> under Docket No. FWS-HQ-ES-2021-0043.

FOR FURTHER INFORMATION CONTACT: Elizabeth Maclin, Chief, Branch of Delineating and Foreign Species, Ecological Services Program, U.S. Fish and Wildlife Service, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041-

3803 (telephone 703–358–2171). 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:

Executive Summary

Why we need to publish a rule. Under the Act, a species warrants listing if it meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become endangered within the foreseeable future throughout all or a significant portion of its range). If we determine that a species warrants listing, we must list the species promptly and designate the species' critical habitat to the maximum extent prudent and determinable. We have determined that the emperor penguin meets the definition of a threatened species; therefore, we are listing it as such. Designating a species as an endangered or threatened species can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process.

What this document does. This rule lists emperor penguin (*Aptenodytes forsteri*) as a threatened species. This document also finalizes a rule issued under the authority of section 4(d) of the Act that provides measures that are necessary and advisable to provide for the conservation of emperor penguin.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that climate change (Factors A and E) presents the most substantial threat facing the emperor penguin. Other stressors on the species include tourism and research, contaminants and pollution, and commercial Antarctic krill fisheries (Factor E), but these stressors are not considered to be driving factors of the emperor penguin's viability now or in the foreseeable future.

Previous Federal Actions

On August 4, 2021, we published in the **Federal Register** (86 FR 41917) a proposed rule to list the emperor penguin as a threatened species under the Act (16 U.S.C. 1531 *et seq.*) with a rule issued under section 4(d) of the Act (“4(d) rule”) that provides measures that are necessary and advisable to provide for the conservation of emperor penguin. Please refer to that proposed rule for a detailed description of previous Federal actions concerning this species.

Summary of Changes From the Proposed Rule

In this final rule, we make no substantive changes from the August 4, 2021, proposed rule (86 FR 41917) after considering the comments we received during the comment period.

Summary of Comments and Recommendations

In the August 4, 2021, proposed rule (86 FR 41917), we requested that all interested parties submit written comments on the proposal by October 4, 2021. We also contacted appropriate Federal agencies, scientific experts, and other interested parties and invited them to comment on the proposal. We did not receive any requests for a public hearing. All substantive information we received during the comment period has either been incorporated directly into this final determination or is addressed below.

Peer Reviewer Comments

As discussed in Supporting Documents, below, we received comments from six peer reviewers. We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the information contained in the SSA report. The peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve the final SSA report. Peer reviewer comments are addressed in the following summary and were incorporated into the final SSA report as appropriate.

Comments from peer reviewers provided general technical corrections, provided updates on the status of the species or sea-ice conditions at breeding colonies, and clarified processes that affect sea-ice conditions and variability around Antarctica. The most substantial comment from peer reviewers was that comparing the existing low-, moderate-, and high-emissions scenarios from the published literature could be difficult because the projections of the

emperor penguin population used different modeling techniques to simulate the sea-ice conditions. Therefore, the SSA report includes an addendum with additional simulations of the emperor penguin population under existing Intergovernmental Panel on Climate Change (IPCC) climate-change scenarios using the Community Earth System Model to compare low-, moderate-, and high-emissions scenarios using the same modeling techniques (*see Jenouvrier et al.* 2021).

Public Comments

We also considered all comments and information we received from the public during the comment period for the proposed listing of the emperor penguin. We did not consider comments that were outside the scope of this rulemaking.

Issue: Best Available Science

Comment (1): One commenter shared their view that the Service, in listing the emperor penguin under the Act, is taking an advocacy position and using the species as a poster child for climate change. The commenter went on to suggest that emperor penguin populations are not in jeopardy and will not be so until well into the future.

Response: Because the Service was petitioned to evaluate the status of the emperor penguin under the Act, we must respond to the petition according to the requirements in the Act and our implementing regulations. In doing so, we evaluated the best scientific and commercial information available on the present and future status of the emperor penguin and its habitat as required by the Act. In making a determination as to whether a species meets the Act's definition of an endangered or threatened species, section 4(b)(1)(A) of the Act states that the Secretary shall make the determination “solely” on the basis of the best scientific and commercial data available. Other considerations cannot, by law, enter into the determination.

The emperor penguin is currently in high condition with high resiliency, redundancy, and representation. Emperor penguin breeding colonies are distributed around the continental coastline of Antarctica with no indication that their distribution is presently decreasing. The satellite record over 40 years (from 1979 to 2018) reveals that the sea-ice extent in the Southern Ocean is currently within its natural range of variability. Thus, we determined that the emperor penguin is not endangered. However, we determined that the emperor penguin is likely to become endangered in the

foreseeable future in a significant portion of its range, primarily because of climate change and the negative effect warming temperatures are projected to have on the fast ice that emperor penguins require for breeding. Therefore, our review of the best available scientific and commercial information indicates that the emperor penguin meets the Act's definition of a threatened species.

Comment (2): One commenter stated that the best available science we used as our basis to propose to list the emperor penguin as a threatened species under the Act is the same that we used in our previous not-warranted finding on December 18, 2008 (73 FR 77264). The commenter further stated that the only difference in our analysis is our ability to now assess emperor penguin colony size using high-resolution satellite imagery.

Response: Since our 2008 assessment of the emperor penguin's status, a substantial amount of new scientific information has become available. The use of satellite imagery has greatly increased the ability to assess emperor penguin colony sizes and locations. Additionally, between the not-warranted finding published on December 18, 2008 (73 FR 77264), and the proposed rule published on August 4, 2021 (86 FR 41917), climate-change modeling has advanced, as has the ability of experts to estimate future impacts and risks of climate change. Experiments, observations, and models used to estimate future impacts and risks from climate change have improved. For Antarctica, newer generations of climate models continue to improve in their ability to represent historical sea-ice conditions, thus increasing confidence in model projections. Published literature modeling the effects of climate change on emperor penguins, as well as research regarding the emperor penguins' life history, dispersal capabilities, genetic distribution, and loss or movement of colonies has also become available (e.g., Jenouvrier *et al.* 2012, 2014, 2017, 2020; Ainley *et al.* 2010; Younger *et al.*, 2015, 2017; LaRue *et al.* 2015; Cristofari *et al.* 2016). Therefore, we included new data in our analysis of the emperor penguin that was not available or considered in the previous not-warranted finding (73 FR 77264; December 18, 2008).

Comment (3): One commenter stated that the decision to list the emperor penguin is based on conjecture. The commenter also stated that the last demographic data collected on the emperor penguin occurred at one colony (low latitude Pointe Géologie) more than

20 years ago, no demographic data have been added since that time, and only a few additional studies have contributed to what we know of the foraging range and sea-ice habitat association of the species and of the species' diet.

Response: In accordance with section 4 of the Act, we are required to use the best scientific and commercial data available when listing a species under the Act. The best available information incorporates demographic parameters from the population at Pointe Géologie in Terre Adélie. This colony was monitored from 1952–2000. Therefore, even though the demographic data may have been collected 20 years ago, that almost 50 years of monitoring generated the longest data set available on an Antarctic marine predator (Barbraud and Weimerskirch 2001, p. 183). Because the vast majority of colonies have not been visited, are not practical to visit, and likely will not be visited or be part of long-term studies, demographic parameters must be based on a reasonable extrapolation of the data from Pointe Géologie to conduct a population viability analysis, given the absence of demographic data from the vast majority of other colonies.

Comment (4): One commenter disputed our assessment that there has only been a slight increase in Antarctic sea ice observed because millions of square kilometers of sea ice have been added to the Southern Ocean since 1979, when satellites first began to monitor sea-ice extent.

Response: The species status assessment (SSA) report includes data that analyzed the changes of sea ice over a 40-year timeframe, from 1979–2018 (Parkinson 2019, p. 14414). According to that analysis, the yearly sea-ice extent in the Southern Ocean, which includes the low sea-ice years, has a small, but statistically insignificant, positive trend over the 40 years from 1979–2018 (11,300 +/- 5,300 square kilometers per year (km²/y)). Additionally, the SSA report includes the graphical representations and a brief description for each of the five sectors around Antarctica in which the long-term trend and yearly averages of sea ice (km²/year) are described (see Parkinson 2019, pp. 14416–14421). The data used to assess the sea ice come from a 40-year multichannel passive-microwave satellite record that analyzed the changes in the extent and distribution of Antarctic sea ice. This resulted in a 40-year record covering all seasons of the year and observation of large-scale changes in the Southern Ocean sea-ice cover that would not be feasible without the satellite passive-microwave data (Parkinson 2019, pp. 14414–14415).

Comment (5): One commenter said that statements about melting sea ice endangering the emperor penguin are misleading because wind determines the amount of sea ice in the Southern Ocean, and wind strength has been growing, leading to annual sea ice expansion. The commenter went on to suggest that emperor penguins evolved to live in an unstable habitat, and indications suggest the species has an unparalleled adaptability for change.

Response: While climate change is the primary threat to the emperor penguin's long-term viability, we recognize that the emperor penguin's habitat is affected by multiple factors and complex interactions between the ocean and atmosphere that affect Antarctic sea ice—it is not as simple as “melting sea ice.” The SSA report discusses the relationship between wind and sea-ice formation (fast ice and pack ice), wind and polynya formation and persistence, wind affecting ice thickness and stability, and instances of early break up of sea ice as it relates to emperor penguin colonies. Because the resiliency of the emperor penguin at each colony is tied to the sea-ice conditions at a particular colony, estimates of sea-ice condition and the emperor penguin population are directly related. Therefore, sea ice serves as a proxy measure of all important habitat factors for the species. Emperor penguins are highly adapted for their marine environment, have existed over millennia, and have survived previous glacial and inter-glacial periods. However, the adaptive capacity of emperor penguins is unknown. Some colonies have been temporarily located on ice shelves as opposed to typical fast ice colonies, but the species has so far shown little evidence of adaptive capacity (Younger *et al.* 2015, p. entire).

Comment (6): One commenter implied that two of the six colonies that were documented to have moved in recent years (LaRue *et al.*, 2015) did so because they are located in the immediate neighborhood of two major national research bases with associated human activity and disturbance (Dumont d'Urville and Halley Bay).

Response: We are not aware of any information to indicate that human activity at the national research bases caused emperor penguins to move from the Halley Bay colony and the Dumont d'Urville Station in Terre Adélie (Pointe Géologie) colony to other nearby colonies. As the comment indicates, six documented cases exist of an entire breeding colony moving or new colonies being established for various reasons (LaRue *et al.*, 2015, p. 115). The movement of emperor penguins from

the Pointe Géologie colony is likely due to an abnormally warm period and the lowest sea-ice extent recorded at this location, which caused the population to decline by 50 percent (Barbraud and Weimerskirch 2001, p. 183; Jenouvrier *et al.*, 2012, p. 2766). The population has stabilized since the decline and exists as a smaller population size compared to pre-decline population size.

The loss of the Halley Bay colony was tied to poor sea-ice conditions in 2016. Sea ice broke out early and resulted in total breeding failure. Emperor penguins have not successfully bred at this colony since, because sea ice that has reformed has not been strong enough, and storm events occur in October and November that blow out the sea ice early (Fretwell and Trathan 2019, p. 3; British Antarctic Survey 2019, unpaginated). The Halley Bay location may remain an unfavorable breeding location for some time because sea-ice conditions are unsuitable for breeding and the Brunt Ice Shelf is likely to calve or break off in the future (Fretwell and Trathan 2019, p. 6; NOAA 2019, unpaginated). Breeding pairs have increased at nearby Dawson-Lambton colony because some Halley Bay colony penguins relocated due to the unfavorable habitat conditions (Fretwell and Trathan 2019, p. 3).

Comment (7): A commenter stated that the Service should consider the first installment of the IPCC's Sixth Assessment Report (AR6) as the "best available science." The commenter stated that the data in AR6, the release of which post-dates publication of the August 4, 2021, proposed rule, warrant reconsideration of the Service's assessments and findings that support the proposed rule because AR6 has a wider range of climate sensitivity than Coupled Model Intercomparison Project (CMIP) phase 5 (CMIP5) models, a higher average climate sensitivity than CMIP5, and the best estimates with a greater degree of confidence.

Response: We acknowledge continued advancements in experts' ability to estimate future impacts and risks of climate change, with increasing understanding across sectors and regions using Global Circulation Models. Compared to CMIP5, the projections of regional sea-ice distribution in the models have slightly improved, and the inter-model spread in projected mean sea-ice area has decreased using CMIP phase 6 (CMIP6) (Roach *et al.*, 2020, p. 6). However, issues remain, such as underestimating summer minimum sea-ice area and a larger inter-annual variability than historically observed, as well as many individual models simulating

implausible mean sea-ice area. Overall, the projected rate of change in sea-ice area is similar across the three CMIP generations (CMIP phase 3 (CMIP3), CMIP5, and CMIP6), and there is moderately higher confidence in simulations of the Antarctic climate in newer CMIP generations (CMIP6 compared to CMIP3; Roach *et al.* 2020, p. 6). As of March 2021, most Global Circulation Model outputs were available for the CMIP6 coordinated experiment, published results of which are featured as part of AR6. However, the analysis in the SSA report used sea-ice projections under CMIP5 simulations, which was the best available information at the time we published the August 4, 2021, proposed rule. The simulations using CMIP5 not only projected the rate of change in Antarctic sea ice, but also modeled the species' response to the projected changes in sea ice (Jenouvrier *et al.* 2017, 2019, 2020). We do not yet have models of the species response using data from CMIP6. Thus, the output from CMIP5 model projections that we used in our analysis, which includes the species response, is the more appropriate choice for this listing determination.

Comment (8): A commenter claimed that certain published literature was not considered in the proposed rule and stated that this omission warrants reconsideration of the Service's analysis and findings. The literature includes the following: Jenouvrier *et al.* (2021), Jenouvrier *et al.* (2020), Trathan *et al.* (2015), and Klein *et al.* (2018).

Response: All of the relevant information from these publications was considered, and the relevant information from these publications is cited in the SSA report. The SSA report provides the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies.

Comment (9): Two commenters stated that the best available science supports an end-of-century (2100) foreseeable future for purposes of assessing the likelihood that the emperor penguin will become endangered.

Response: We looked at climate-change projections through the end of century in our analysis. In the SSA report, when applying data that considered multiple future-emissions scenarios to a listing context, the projections of the size of the global emperor penguin population begin to diverge around 2050, and by 2100, there is substantial uncertainty regarding the size of the global population, as evidenced by a difference of almost

150,000 pairs between the highest and lowest scenarios. Most of the difference between the current climate and the change in climate projected at the end of the century that will affect emperor penguin's viability will be determined by decisions made by policymakers today and during the next few decades. At this time, the uncertainty regarding the decisions that will be made by policymakers in the next few decades results in substantial variation between the projections of the emperor penguin populations at late century. Therefore, in this evaluation we identified mid-century (2050) as the foreseeable future for the threat of climate change because that is the period over which the projections about sea ice and the future condition of emperor penguins are sufficiently reliable to provide a reasonable degree of confidence in them, in light of the conservation purposes of the Act (see discussion of foreseeable future under Summary of Biological Status and Threats, below). Finally, changing the foreseeable future from 2050 to the end of the century (2100) would not change our finding that the emperor penguin is a threatened species under the Act.

Issue: Antarctic Treaty System

Comment (10): The United States, as a Party to the Antarctic Treaty, should propose the emperor penguin as a "specially protected species."

Response: This issue is outside the scope of this rulemaking.

Issue: Section 7(a)(2) of the Act

Comment (11): Some commenters stated that section 7(a)(2) consultation is required for activities related to harvest of krill and fish caught near Antarctica in the Commission for the Conservation of Antarctic Marine Living Resources (Commission; CCAMLR) region and for seismic surveys within penguin habitat.

Response: Whether consultation is required for activities that relate to the harvest of krill and fish or seismic surveys will depend on the application of our Section 7 implementing regulations to the facts and circumstances of the proposed action. An "action" that is subject to the consultation provisions of section 7(a)(2) is defined in our implementing regulations at 50 CFR 402.02 as all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States or upon the high seas. With respect to the emperor penguin, actions that may require consultation under section 7(a)(2) of the Act include harvesting Antarctic marine living resources and scientific research activities. The National Science

Foundation and National Marine Fisheries Service are the lead Federal agencies for authorizing these activities in Antarctica that may affect the emperor penguin. Given the existing conservation measures of the ACA, AMLRCA, and CCAMLR that are implemented for these activities, and obligations of the United States under the Antarctic Treaty System, we do not anticipate adverse effects to the emperor penguin (*see* discussion of section 7 under Available Conservation Measures, below).

Activities relating to harvest and importation of krill and conducting seismic activities are authorized and permitted by other Federal agencies, namely the National Marine Fisheries Service and National Science Foundation. The National Marine Fisheries Service may issue authorizations for scientific research involving the catch of fish, krill, or other taxa. They have not done so in many years. However, in the event such research is authorized, existing permit requirements are in place such that the equipment is unlikely to affect emperor penguins. Additionally, the National Marine Fisheries Service may issue permits for harvesting or transshipping any Antarctic marine living resource, along with a high-seas fishing permit. They have not issued these permits in many years and do not anticipate doing so in the near future. However, in the instance that permits for these activities are issued, the National Marine Fisheries Service must determine that certain conditions are met, including ensuring that the activities do not violate the Convention on the Conservation of Antarctic Marine Living Resources (Convention) or any conservation measures in force with respect to the United States. These permits would also require compliance with any U.S. obligations under CCAMLR conservation measures.

We are not aware of any seismic activities in Antarctica that may affect emperor penguins. The National Science Foundation is the Federal agency that manages the U.S. Antarctic Program and manages a permit system, in coordination with appropriate agencies, and issues permits under the Antarctic Conservation Act of 1978 (ACA; 16 U.S.C. 2401 *et seq.*) for certain, otherwise prohibited activities. Permits under the ACA may be issued only: (1) For the purpose of providing specimens for scientific study or scientific information; (2) for the purpose of providing specimens for museums, zoological gardens, or other educational or cultural institutions or uses; or (3) for unavoidable consequences of scientific

activities or the construction and operation of scientific support facilities (see 16 U.S.C. 2404(e)(2)). Seismic surveys that may affect emperor penguins falls under the third condition (*e.g.*, scientific studies) and would require a permit.

In the 4(d) rule, we provide exceptions for certain otherwise prohibited activities that are permitted by the National Science Foundation. Importing Antarctic marine living resources and conducting seismic surveys would require authorizations and permits from the National Marine Fisheries Service and National Science Foundation, respectively. In the event such activities are authorized, the activity is anticipated to occur over a relatively brief time with negligible likelihood of interactions with emperor penguins. Additionally, these authorizations and permits are expected to have no measurable effects on emperor penguins because of existing processes and permit requirements in place under the ACA, AMLRCA, the Convention, and CCAMLR. Interactions with emperor penguins will be reported if they occur.

Issue: 4(d) Rule

Comment (12): One commenter recommended that the 4(d) rule include additional protective regulations to address climate change driven by greenhouse gas (GHG) emissions, which, the commenter stated, is the primary threat to emperor penguin survival and recovery.

Response: Our 4(d) rule applies all the section 9(a)(1)(A) prohibitions to emperor penguin, with certain narrowly tailored exceptions that are unrelated to GHG emissions. The commenter is correct that the threat of climate change driven by GHG emissions is the primary threat to emperor penguin survival and recovery, and that 4(d) of the Act requires the Secretary to issue such regulations as she deems necessary and advisable to provide for the conservation of the species. However, based on the best scientific data available we are unable to draw a causal link between the effects of specific GHG emissions and take of the emperor penguin in order to promulgate more specific regulations under 4(d).

Comment (13): One commenter recommended that the 4(d) rule incorporate all of the prohibitions against “take” found in section 9 of the Act in order to address all future threats to emperor penguins that were identified, specifically from fishing, shipping, resource exploitation, and other commercial activities.

Response: The 4(d) rule does prohibit take of emperor penguins. The 4(d) rule prohibits any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to the emperor penguin, except as otherwise authorized or permitted: Importing or exporting; take; possession and other acts with unlawfully taken specimens; delivering, receiving, carrying, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; and selling or offering for sale in interstate or foreign commerce. The prohibition of take of emperor penguins applies to any person under the jurisdiction of the United States within the United States, the territorial sea of the United States, or upon the high seas. The 4(d) rule provides certain exceptions to the prohibitions, and authorizes permits in some circumstances to allow otherwise prohibited take, as discussed in the proposed rule and in this final rule below (*see* Provisions of the 4(d) Rule, below).

Issue: Paris Agreement

Comment (14): One commenter stated that the proposed rule fails to consider the Paris Agreement as a “regulatory mechanism” or a “conservation measure” under the Act.

Response: The Paris Agreement is an international treaty on climate change. It was adopted by 196 Parties at the Conference of the Parties (CoP) 21 to the United Nations Framework Convention on Climate Change in Paris, on December 12, 2015, and entered into force on November 4, 2016. The United States officially rejoined the agreement on February 19, 2021. In our August 4, 2021, proposed rule (86 FR 41917), we considered scenarios simulated to reach the goals of the Paris Agreement (where the global temperature stabilizes below 2.0 degrees Celsius (°C), and preferably at 1.5 °C, above preindustrial levels by the end of the century) as our reasonable best-case scenario of the global emperor penguin population projected into the future. In this way, our analysis analyzed the effect of the Paris Agreement as a conservation measure and regulatory mechanism.

Comment (15): One commenter stated that because of the likelihood that global policymakers will take no action to reduce GHG emissions, the Service should consider the “worst-case scenarios” (global warming in excess of 4.3 °C) when analyzing climate-change effects on the emperor penguin using an end-of-century foreseeable future.

Response: We considered multiple future projections of emperor penguins and sea-ice habitat based on emissions scenarios analyzed under the Coupled Model Intercomparison Project (CMIP), which is the primary source of climate information used to project impacts of GHG emissions. Therefore, to assess the current and future conditions of the emperor penguin, and to account for uncertainty in modeled projections, we considered projections that included low- and moderate-emissions scenarios, as well as a high-emissions scenario that simulated global warming up to 4.8 °C. While some experts argue for differential likelihoods for individual scenarios in published literature, each scenario pathway trajectory through 2100 is plausible (Terando *et al.* 2020, pp. 10–11).

Issue: Critical Habitat

Comment (16): One commenter asked if critical habitat will be designated for the emperor penguin.

Response: No critical habitat will be designated for the emperor penguin. Under our regulations at 50 CFR 424.12(g), we do not designate critical habitat within foreign countries or in other areas outside of the jurisdiction of the United States.

Supporting Documents

A species status assessment (SSA) report was prepared for the emperor penguin, which represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species. We sought the expert opinions of six independent and knowledgeable specialists regarding the SSA report and received responses from all six reviewers. These peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve the SSA report. We also considered all comments and information we received from the public during the comment period for the proposed listing of emperor penguin.

I. Final Listing Determination

Background

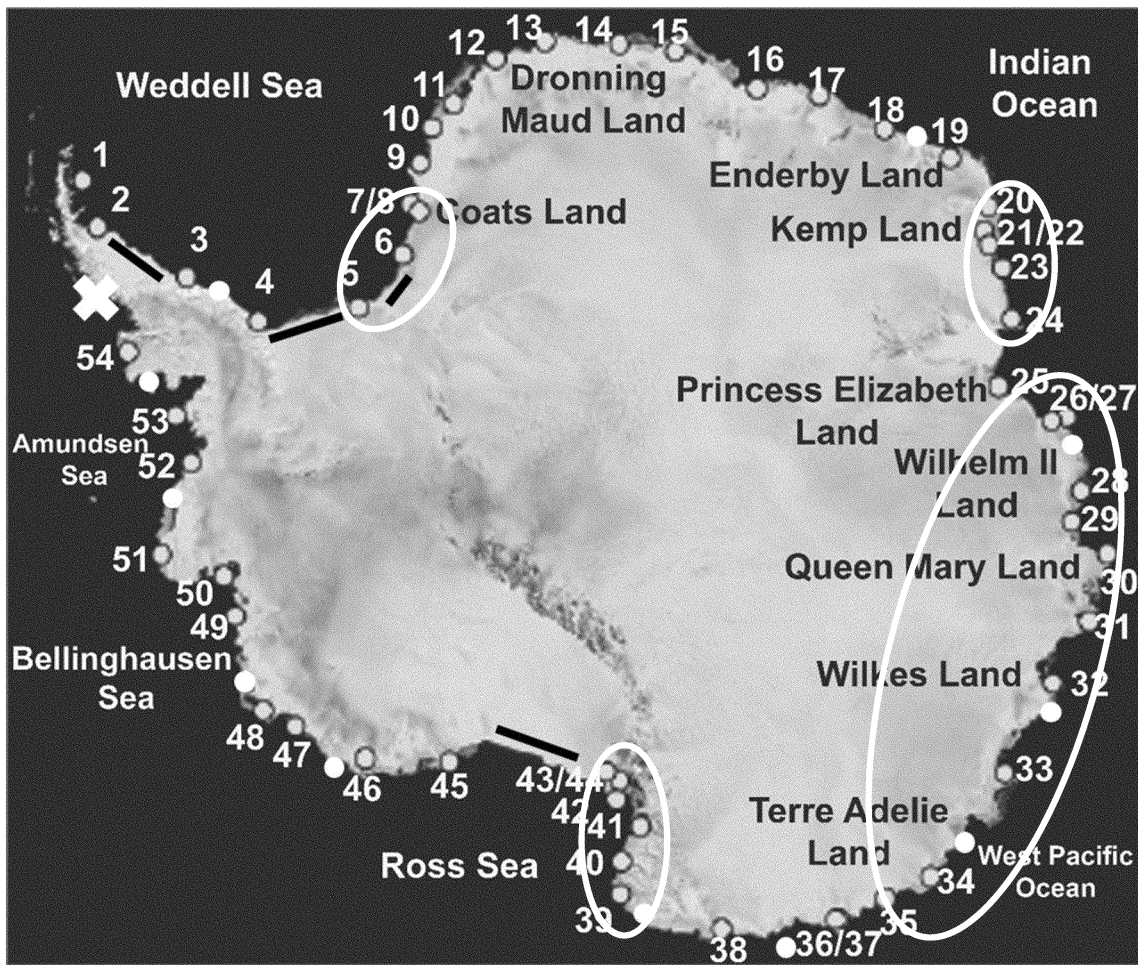
A thorough review of the taxonomy, life history, and ecology of the emperor penguin is presented in the SSA report (version 1; Service 2021, pp. 2–27; available at <https://www.regulations.gov> under Docket No. FWS–HQ–ES–2021–0043).

The emperor penguin is endemic to Antarctica, and the tallest and heaviest

of all living penguin species. The species breeds mainly on fast ice, which is sea ice attached or “fastened” to the coast, and has a pan-Antarctic distribution, meaning the species occurs around the entire continental coastline of Antarctica. Given the influence that weather and climate have in affecting the extent and duration of sea ice where the emperor penguin breeds and, relatedly, prey abundance around Antarctica, climate change is the most substantial potential threat facing the species.

As of 2020, 61 emperor penguin breeding colonies are extant. Of the 66 total known colonies, 4 were not extant or not visible in the 2019 satellite imaging, 1 colony is extirpated, and 11 of the colonies were newly discovered or rediscovered in 2019. The global population comprises approximately 270,000–280,000 breeding pairs or 625,000–650,000 individual birds. Sea ice surrounding Antarctica is described within five sectors (Weddell Sea, Indian Ocean, Western Pacific Ocean, Ross Sea, and Bellingshausen Sea-Amundsen Sea) (see figure 1, below), which may approximately correspond to the known genetic variation among colonies and the Southern Ocean as a whole. The Ross Sea and Weddell Sea sectors contain the highest abundance of birds relative to the other three sectors.

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Figure 1. Distribution of known emperor penguin breeding colonies as of 2020 (numbered dots), including four colonies that were not extant in 2019 (7, 15, 18, 37) and the extirpated Dion Islets colony with approximate location on the peninsula (marked as X). The unnumbered white dots with approximate locations are 11 colonies that were discovered or rediscovered in 2019. Black lines are the fronts of large ice shelves and probably unsuitable habitat. Four white ovals approximately represent the four known metapopulations (Credit for data and figure: Fretwell and Trathan 2009; Fretwell et al. 2012, 2014; Fretwell and Trathan 2020; Wienecke 2011; Ancel et al. 2014; LaRue et al. 2015; Younger et al. 2017; Jenouvrier et al. 2020; also see figures 2.1 and 2.10 in Service 2021).

Regulatory and Analytical Framework
Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures

for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for threatened and endangered species. In 2019, jointly with the National Marine Fisheries Service, the Service issued final rules that revised the regulations in 50 CFR parts 17 and 424 regarding how we add, remove, and reclassify threatened and endangered species and the criteria for designating listed species' critical habitat (84 FR 45020 and 84 FR 44752; August 27, 2019). At the same time the Service also issued final regulations that amended the Service's general protective regulations to no longer automatically apply to species listed as threatened species after September 26, 2019 the prohibitions that section 9(a) of the Act applies to endangered species (collectively, the 2019 regulations).

As with the proposed rule, we are applying the 2019 regulations for this final rule because the 2019 regulations are the governing law just as they were when we completed the proposed rule. Although there was a period in the

interim—between July 5, 2022, and September 21, 2022—when the 2019 regulations became vacated and the pre-2019 regulations therefore governed, the 2019 regulations are now in effect and govern listing and critical habitat decisions (see *Center for Biological Diversity v. Haaland*, No. 4:19-cv-05206-JST, Doc. 168 (N.D. Cal. July 5, 2022) (*CBD v. Haaland*) (vacating the 2019 regulations and thereby reinstating the pre-2019 regulations) and *In re: Cattlemen's Ass'n*, No. 22-70194 (9th Cir. Sept. 21, 2022) (staying the vacatur of the 2019 regulations and thereby reinstating the 2019 regulations until a pending motion for reconsideration before the district court is resolved)). However, given that litigation remains regarding the court's vacatur of those 2019 regulations, we also undertook an analysis in a separate memo of whether the decision would be different if we were to apply the pre-2019 regulations. We hereby adopt the analysis in the separate memo, and we conclude that, for the reasons stated in the memo analyzing the 2019 and pre-2019

regulations, the final rule would have been the same if we had applied the 2019 or pre-2019 regulations. The analysis based on the 2019 and pre-2019 regulations is included in the decision file for this decision.

The Act defines an “endangered species” as a species that is in danger of extinction throughout all or a significant portion of its range, and a “threatened species” as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

- (A) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) Overutilization for commercial, recreational, scientific, or educational purposes;
- (C) Disease or predation;
- (D) The inadequacy of existing regulatory mechanisms; or
- (E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species’ continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term “threat” to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term “threat” includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term “threat” may either encompass— together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an “endangered species” or a “threatened species.” In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, and

then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an “endangered species” or a “threatened species” only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

Foreseeable Future

The Act does not define the term “foreseeable future,” which appears in the statutory definition of “threatened species.” Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term “foreseeable future” extends only so far into the future as the Services can reasonably determine that both the future threats and the species’ responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. “Reliable” does not mean “certain”; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define the foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species’ likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species’ biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

We considered time horizons at mid-century, late-century, and end-of-century (2050, 2080, 2100) for analyzing the future condition of emperor penguins. When applying the best available information to a listing context in considering what the foreseeable future for emperor penguins is, the projections of the global emperor penguin population begin to diverge around 2050. At 2050, population projections from all scenarios are within 50,000 breeding pairs of each other (see figure A2 in the SSA report (Service 2021, p. 83)). The differences in population estimates increases to

approximately 150,000 breeding pairs by 2100, with the scenario based on representative concentration pathway (RCP) 8.5 predicting near extinction while the scenarios based on the Paris Accord commitments predict gradual declines that do not fall under 135,000 breeding pairs. Thus, after 2050, the variation in population size based on plausible global emissions trajectories results in too much uncertainty for the Service to make reliable predictions on whether the emperor penguin’s response to the threat of climate change will result in the species being in danger of extinction.

Climate change is the most substantial threat to emperor penguins in the future because of an increase in air and sea temperatures that negatively affects sea-ice habitat and, relatedly, prey abundance in Antarctica. Most of the difference between the present climate and the climate at the end of the century and beyond will be determined by decisions made by policymakers today and during the next few decades (Terando *et al.*, 2020, p. 15). At this time, we have little clarity on what decisions will be made by policymakers in the next few decades. Thus, we determined the projections of sea-ice conditions and the response of emperor penguins at the late-century and end-of-century (2080 and 2100) time horizons to be too uncertain to make reasonably reliable predictions. In contrast, at the 2050 time horizon the Service’s projections about sea-ice conditions and the response of emperor penguins have sufficient certainty to provide a reasonable degree of confidence, in light of the conservation purposes of the Act. Therefore, in this evaluation, we identified mid-century (2050) as the foreseeable future for the threat of climate change because that is the period over which we can make reliable predictions about the threats and the species’ response to those threats. “Reliable” does not mean “certain”; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions. Under this approach, since climate change and the related threats that it triggers—such as increases in air and sea temperatures that negatively affect sea-ice habitat and prey abundance in Antarctica—are still the most substantial threat to emperor penguins in the future, we evaluate how far into the future we can make reliable predictions about climate change, related increases in air and sea temperatures, consequent reductions in prey, and the responses of emperor

penguins to these threats. Most of the difference between the present climate and the climate at the end of the century and beyond will be determined by decisions made by policymakers today and during the next few decades (Terando *et al.* 2020, p. 15). At this time, we have little clarity on what decisions will be made by policymakers in the next few decades. We determined that the projections of sea-ice conditions and the response of emperor penguins at the late-century and end-of-century (2080 and 2100) time horizons are too uncertain for us to make reliable predictions. In contrast, at the 2050 time horizon, the Service can reasonably determine that both the future threats and the species' response to those threats are likely. Therefore, we identified mid-century (2050) as the foreseeable future for the threat of climate change because that is the period over which we can make reliable predictions as to sea ice and the future condition of emperor penguins. As noted above, the analysis based on the 2019 and pre-2019 regulations, including our foreseeable future analysis, is included in the decision file for this decision.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent a decision by the Service on whether the species should be listed as an endangered or threatened species under the Act. It does, however, provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS-HQ-ES-2021-0043 on <https://www.regulations.gov>.

To assess the emperor penguin's viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In

general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, to assess the species' overall viability and the risks to that viability.

Species Needs/Ecological Requirements

Emperor penguins rely on annual, stable fast ice to form breeding colonies; pack ice (belt of sea ice comprising ice floes of varying sizes that drifts in response to winds, currents, or other forces) and polynyas to forage; sufficient prey resources year-round; and areas of sea ice to haul out, molt, rest, and avoid predation.

The species hunts opportunistically and shifts foraging strategies relative to prey abundance and distribution. The life histories of emperor penguins and their primary prey species (*e.g.*, Antarctic silverfish and Antarctic krill) are tied to the sea-ice environment, and reproductive success of emperor penguins is highly dependent on foraging success. Thus, the interaction of demographic processes of reproduction and survival drives the population dynamics of emperor penguins, which are all related to the sea-ice environment.

Factors Influencing Viability of Emperor Penguins

Based on the emperor penguin's life history and habitat needs, climate change presents the most substantial threat facing emperor penguins. Other stressors on the species include tourism and research, contaminants and pollution, and commercial Antarctic krill fisheries, but these stressors are not considered to be driving factors of the emperor penguin's viability now or in the future. For a full description of our evaluation of the effects of these stressors, refer to the SSA report (Service 2021, pp. 27–45).

Climate Change

The Antarctic continent has seen less uniform temperature changes over the past 30–50 years, compared to the Arctic, and most of Antarctica has yet to see dramatic warming (Meredith *et al.* 2019, p. 212). The Antarctic Peninsula is one of the fastest warming places on Earth, warming 2.5 °C (4.5 °F) since 1950 (Meredith *et al.* 2019, p. 212). However, warming has slowed on the peninsula since the late-1990s; this variability is within the bounds of large natural decadal-scale regional climate variability (Turner *et al.* 2016, p. 7; Stroeve 2021, pers. comm.). In East Antarctica, no clear trend has emerged, although locations where some research stations occur appear to be cooling slightly (NSIDC 2020, unpaginated). The magnitude of climate change into the future depends in part on the amount of heat-trapping gases emitted globally and how sensitive Earth's climate is to those emissions, as well as any human responses to climate change by developing adaptation and mitigation policies (NASA 2020, unpaginated; IPCC 2014a, p. 17). Refer to the SSA report (Service 2021, pp. 28–40) and the August 4, 2021, proposed rule (86 FR 41917) for general climate-change-related information.

Sea ice is sensitive to both the atmosphere and ocean; thus, it is an important indicator of polar climate changes (Hobbs *et al.* 2016, p. 1543). Given the influence that weather and climate have in affecting the extent and duration of sea ice and, relatedly, prey abundance around Antarctica, climate change is a substantial threat facing emperor penguins. Changes in sea-ice conditions, due to climate change, are projected to affect the emperor penguin's long-term viability at breeding colonies throughout the species' range. Different aspects of atmospheric circulation influence the annual sea-ice extent around Antarctica (Turner *et al.* 2015, pp. 5–8). Thus,

climate change is not projected to have a uniform effect on the sea ice around the continent (Ainley *et al.* 2010, p. 56; Jenouvrier *et al.* 2014a, entire). Because sea ice in some regions of Antarctica is projected to be more affected than in other regions, emperor penguins and their breeding habitat around the continent will be affected at different magnitudes and temporal scales.

Unique to Antarctica is calving of huge, tabular icebergs, a process that can take a decade or longer by which pieces of ice break away from the terminus of a glacier (NSIDC 2020, unpaginated). On a stable ice shelf, iceberg calving is a near-cyclical, repetitive process producing large icebergs every few decades, which is part of the natural system and not a good indicator of warming or climate change (NSIDC 2020, unpaginated). However, warmer temperatures can destabilize this system, and rapid ice-shelf collapse attributed to warmer air and water temperatures, as well as increased melt on the ice surface, can affect emperor penguins, which mostly breed on fast ice at continental margins. Generally, catastrophic ice-shelf collapse or iceberg calving could cause mortality of chicks and adults, destroy a breeding colony resulting in total breeding failure, and prevent adult penguins from reaching their feeding ground affecting survival and reproductive success. For example, in March 2000, an iceberg from the Ross

Ice Shelf calved and lodged near the Cape Crozier and Beaufort Island colonies in the Ross Sea, which caused habitat destruction, mortality of adults and chicks, and blocked access to foraging areas (Kooyman *et al.* 2007, p.31). The effect would depend on the time of year (season) and the breeding colony's proximity to a collapsing ice shelf or calving iceberg (Fretwell and Trathan 2019, pp. 3–6; Kooyman *et al.* 2007, pp. 31, 36–37). If a catastrophic event occurs, emperor penguins have been known to try to return to that same breeding location or relocate to another nearby site. This could result in a loss of at least one breeding season for those birds because they may not find an alternate site that season.

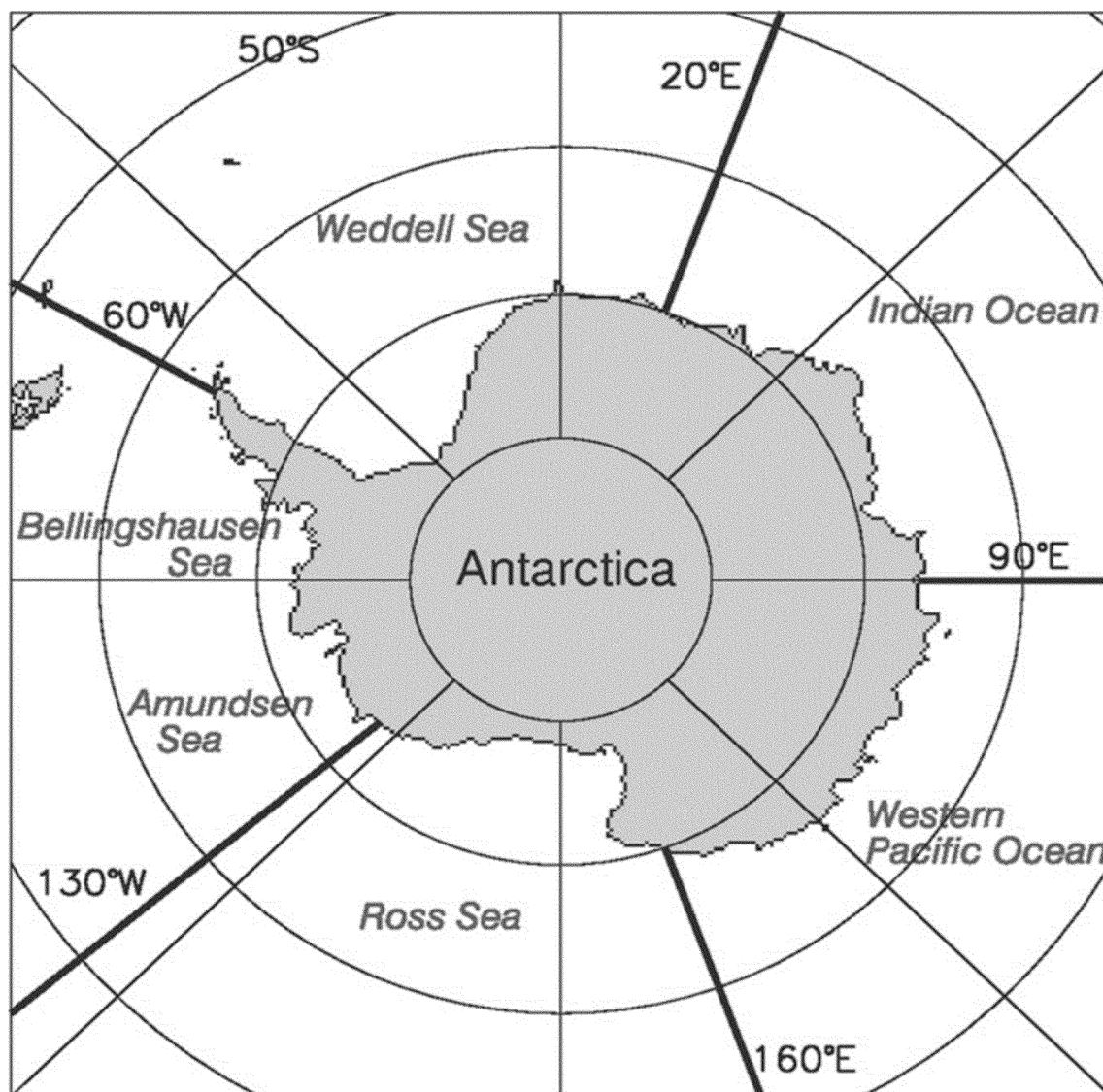
The effect of climate change on prey abundance, relative to changes in sea ice, for emperor penguin and other marine life in the Southern Ocean could be substantial. However, the effect of climate change on Southern Ocean pelagic primary production is difficult to determine given insufficient time series data (less than 30 years) to attribute a climate-change signature and effects may be due to a combination of climate change and natural variability (Meredith *et al.* 2019, p. 230; Ainley *et al.* 2010, p. 63). Nevertheless, the emperor penguin's primary prey species are positively tied to local sea-ice conditions, and because the penguin's breeding success is highly dependent on its foraging success, subsequent

distresses to the food web because of changes in sea ice increase the risk to emperor penguins over the long term.

Current Condition

The current condition of emperor penguin is based on population abundance (*i.e.*, number of breeding pairs) at each colony and the global abundance distributed throughout the species' range. The resiliency of each emperor penguin colony is tied to local sea-ice conditions because the species depends on sea ice that offers a breeding platform to complete its annual breeding cycle and promotes primary production. As sea ice melts in the summer, it releases algae and nutrients into the water that stimulate phytoplankton blooms, which play a key role in the Southern Ocean food web (Hempel 1985, in Flores *et al.* 2012, p. 4). Therefore, the estimates of sea-ice condition and the emperor penguin population are directly related, and sea ice serves as a proxy measure of all important habitat factors for the species. Sea ice surrounding Antarctica is described within five sectors (Weddell Sea, Indian Ocean, Western Pacific Ocean, Ross Sea, and Bellingshausen Sea-Amundsen Sea) (see figure 2, below), which may approximately correspond to the known genetic variation among colonies and the Southern Ocean as a whole.

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Figure 2. Image showing the five sectors of Antarctica: Weddell Sea (60 °W–20 °E), Indian Ocean sector of the Southern Ocean (20 °E–90 °E), Western Pacific Ocean sector of the Southern Ocean (90 °E–160 °E), Ross Sea (160 °E–130 °W), and the Bellingshausen Sea-Amundsen Sea (130 °W–60 °W).

Of the 66 total known colonies in 2020, 61 emperor penguin breeding colonies are extant, 4 were not extant or not visible in the 2019 satellite imaging, 1 colony is extirpated, and 11 of the colonies were newly discovered or rediscovered in 2019. The global population comprises approximately 270,000–280,000 breeding pairs or 625,000–650,000 individual birds. The Ross Sea and Weddell Sea sectors contain the highest abundance of birds relative to the other three sectors.

In the Southern Ocean, sea-ice extent undergoes considerable inter-annual variability, with much greater inter-annual variability regionally than for the Southern Ocean as a whole (Parkinson 2019, p. 14414). Sea-ice extent in the Southern Ocean is currently within its natural range of variability. Over the 40 years from 1979 to 2018, the yearly sea-ice extent in the Southern Ocean has a small, but statistically insignificant, positive trend. However, this overall increase masks larger and sometimes opposing regional differences in trends (Turner *et al.* 2015, pp. 1–2; Parkinson 2019, p. 14419). The greatest increase in sea-ice extent has been in the Ross Sea sector, with smaller increases in the Weddell Sea and along the coast of East Antarctica, and a decrease in the Bellingshausen Sea and Amundsen Sea in West Antarctica (Turner *et al.* 2015, p. 9; Holland 2014, in Meredith *et al.* 2019, p. 214; Parkinson 2019, entire).

The satellite record reveals that the gradual, decades-long overall increase in Antarctic sea-ice extent reversed in 2014, with subsequent rates of decrease in 2014–2018. All sectors, except the Ross Sea, have experienced at least one period since 1999 when the yearly average sea-ice extent decreased for 3 or more consecutive years only to rebound again, and eventually reach levels exceeding the sea-ice extent preceding the 3 years of decreases. Therefore, recent decreases in sea ice may not indicate a long-term negative trend (Parkinson 2019, p. 14420).

Emperor penguins may have difficulties finding food in years of low sea ice, which may increase adult mortality and reduce breeding success. Currently, prey abundance appears not to be a limiting factor for emperor penguins.

The emperor penguin currently has high resiliency, redundancy, and

representation. Sixty-one breeding colonies are distributed around the coastline of Antarctica with no indication that their distribution has decreased or is presently decreasing. The number of known breeding colonies has increased over time, because the use of satellite imagery has improved the ability to locate colonies and roughly estimate population sizes at colonies. Catastrophic events may include iceberg calving, ice-shelf disintegration, and storm events. However, if a catastrophic event occurs, it only affects a small proportion of the total breeding colonies at any one time, and the displaced penguins try to return to that same breeding location or relocate to another nearby colony. Breeding colonies within the four known metapopulations have some degree of connectivity among metapopulations and very high connectivity between breeding colonies within each of the metapopulations. Two of the four metapopulations are in East Antarctica (Mawson Coast and Amanda Bay/Point Géologie metapopulations), while the other two are the Weddell Sea metapopulation and the Ross Sea metapopulation (Younger *et al.* 2017, p. 3892). There has been no loss of the known metapopulations.

Future Condition

The interaction of demographic processes of reproduction and survival drives the population dynamics of the emperor penguin, which are all related to the sea-ice environment. Therefore, to project the long-term viability of emperor penguin, the sea-ice extent and/or concentration and how it relates to the emperor penguin's long-term demographics has been modeled under different climate-change scenarios (Ainley *et al.* 2010, entire; Jenouvrier *et al.* 2009, 2012, 2014, 2017, 2020). The research into emperor penguin populations and their habitat conditions uses an ensemble of climate models based on changes in sea ice into the future that is founded on standard climate modeling efforts (*e.g.*, Ainley *et al.* 2010; Jenouvrier *et al.* 2009, 2012, 2014, 2017, 2020; Melillo *et al.* 2014).

The future scenarios for population projections of emperor penguins are based on climate-change-model projections following available IPCC scenarios using Global Circulation Models driven by Special Report on Emissions Scenarios (SRES) and by RCP scenarios.

Modeling efforts projected sea-ice conditions and the emperor penguin's response under low-, moderate-, and high-emissions scenarios. The Paris Agreement set a goal to limit global

warming to below 2 °C and preferably to 1.5 °C, compared to pre-industrial levels (United Nations 2021, unpaginated). The Paris Agreement goals (low-emissions scenario) do not represent or equate to any RCP scenario; they are uniquely designed to meet the global-temperature-change targets set in the Paris Agreement (Sanderson and Knutti 2016, in Jenouvrier *et al.* 2020, p. 1; Sanderson *et al.* 2017, p. 828). The global temperature is likely to increase 0.3–1.7 °C under RCP 2.6, and 1.0–2.6 °C under RCP 4.5 (IPCCb 2019, p. 46). Therefore, based strictly on the projected increase in global temperature, the Paris Agreement goals would fall within the projected range of RCP 2.6 and RCP 4.5 projections. Thus, we view the two projections aligned with the Paris goals collectively as one low-emissions scenario. We also evaluated two moderate-emissions scenarios: one in which the global temperature is projected to increase up to 2.6 °C under RCP 4.5, and a second in which the global temperature is projected to increase up to 3.2 °C by the end of the century (SRES A1B). Finally, we evaluated a high-emissions scenario (RCP 8.5) where global temperature is projected to increase up to 4.8 °C (IPCC 2019b, p. 46).

Given the complexities of Global Circulation Models and advancements in technology, models typically build upon previous efforts. The modeling for the global population of emperor penguins and sea-ice conditions was initially run under scenario SRES A1B in Coupled Model Intercomparison Project phase 3 (CMIP3) using the best available information of the population and demographics at the time. SRES A1B in CMIP3 is consistent with RCP 6.0 in phase 5 (CMIP5; Melillo *et al.* 2014, p. 755). As newer models were developed, and experts learned more about emperor penguin dispersal behavior and discovered more colonies that increased the global population size, the modeling efforts were refined to account for additional colonies and inter-colony dispersal behaviors. Additionally, the most recent projections for the emperor penguin include simulations that account for extreme or catastrophic events occurring in Antarctica (Jenouvrier *et al.* 2021, in litt.).

The Community Earth System Model Large Ensemble project was used in the most recent modeling efforts to simulate the sea-ice conditions, building upon the initial efforts of the moderate-emissions scenario SRES A1B, which used models that contributed to CMIP3. The Community Earth System Model contributed to CMIP5 and was included

in the IPCC fifth assessment report (Jenouvrier *et al.* 2020, pp. 3–4). The sea-ice models relied on for the SSA report represent the best available scientific data.

The demographic parameters for emperor penguin used for all colonies are based on, and extrapolated from, the population at Pointe Géologie in Terre Adélie (*see* figure 1 (above), colony #35) because the vast majority of colonies have not been visited and likely will not be visited or be part of long-term studies. Sea-ice condition is projected to decrease in Antarctica, and emperor penguins will likely need to disperse or attempt to disperse as colonies are disrupted or lost due to sea-ice instability. The simulations in the latest models include emperor penguin dispersal behaviors and extreme or catastrophic events, and we find including these additional demographic factors is an improvement because they represent natural and observed parts of the emperor penguin's relationship to the sea-ice environment. *See* the SSA report for a more thorough discussion of the demographic uncertainties in century-scale projections of climate change as they relate to emperor penguins (Service 2021, pp. 56–57, 80–82).

Low-Emissions Scenario

Under the low-emissions scenario, the median global population of emperor penguins is projected to decline by 26 percent under Paris 1.5, and by 27 percent under Paris 2.0 by 2050. At that point, approximately 185,000 breeding pairs would remain. However, the declines would not occur equally around the continent. Colonies in the Ross Sea and Weddell Sea are likely to experience more stable conditions. Colonies in the Ross Sea are projected to increase from their current size by 2050, as penguins from other areas with less suitable habitat migrate to the Ross Sea. Colonies in the Weddell Sea are projected to increase initially; however, by 2050, the population is projected to be slightly smaller than the current population size in this sector. Colonies in the Indian Ocean, Bellingshausen Sea-Amundsen Sea, and Western Pacific Ocean sectors are projected to decline the most. By 2050, colonies within these three sectors are projected to decline by at least 50 percent, but the vast majority are projected to decline by more than 90 percent.

Moderate-Emissions Scenarios

For simulations under one of the moderate-emissions scenarios, SRES A1B in CMIP3, the population growth rate is projected to be slightly positive

until 2050, while the median global population is projected to decline by 19 to 33 percent by 2100 (Jenouvrier *et al.* 2014a, p. 716; Jenouvrier *et al.* 2014b, p. 28). We note this projection is at 2100, and we do not have an estimate of the global population or population size within each sector at 2050. Under the other moderate-emissions scenario, RCP 4.5, the global population is projected to decline by 33 percent by 2050 (to approximately 167,000 breeding pairs; Jenouvrier *et al.* 2021, in litt.). Similar to the projections under the low-emissions scenario, the declines are not equal around the continent. The Ross Sea and Weddell Sea experience the smallest decrease in breeding pairs. However, even high-latitude colonies in the Ross Sea and Weddell Sea are not immune to changes in sea-ice condition under this scenario (Jenouvrier *et al.* 2014, entire; Schmidt and Ballard 2020, pp. 183–184). The vast majority, and possibly all, colonies in the Indian Ocean, Bellingshausen Sea-Amundsen Sea, and Western Pacific Ocean sectors are projected to decline by more than 90 percent. Two important differences in the results of the two moderate-emissions scenarios are noteworthy: the projections under SRES A1B were modeled using a different model and method than all the other scenarios, and the projections under RCP 4.5 include demographic factors of dispersal and extreme events while SRES A1B projections do not. Dispersal behaviors may accelerate, slow down, or reverse the anticipated rate of population decline of emperor penguins, compared to the population projection without dispersal considered, but this does not change the overall conclusion that the global population will decline. Extreme events are projected to increase the magnitude of decline throughout the species' range.

High-Emissions Scenario

Under the high-emissions scenario, RCP 8.5, the global population of emperor penguins is projected to decline 47 percent by 2050 (to approximately 132,500 breeding pairs; Jenouvrier *et al.* 2021, in litt.). Similar to the low- and moderate-emissions scenarios, the declines are not equal around the continent. However, the population decline is greater in magnitude under the high-emissions scenario. The few colonies that are projected to remain occur in the Ross Sea and Weddell Sea. The breeding colonies in the Indian Ocean, Bellingshausen Sea-Amundsen Sea, and Western Pacific Ocean sectors are projected to decline by more than 90 percent.

Resiliency, Redundancy, and Representation

The two most resilient sectors of Antarctica are first the Ross Sea and then the Weddell Sea under every emissions scenario. The breeding colonies in these sectors are projected to have the highest resiliency because these areas are likely to have the most stable long-term sea-ice conditions. The breeding colonies in the Indian Ocean sector are projected to be the least resilient, and experience the largest population declines and sea-ice decrease and variability under every scenario. The Bellingshausen Sea-Amundsen Sea sector is also projected to have low resiliency. Projected declines in the Western Pacific Ocean sector are more complex and vary according to emissions scenario; however, the colonies in this sector also markedly decline. Under the high-emissions scenario RCP 8.5, the vast majority of breeding colonies throughout the range decline significantly by 2050, resulting in the Ross Sea and Weddell Sea serving as the last refuges for the species.

Redundancy is higher under the low-emissions scenario than under the moderate- and high-emissions scenarios because more colonies remain extant under the low-emissions scenario. Under the high-emissions scenario, the colonies in the three least resilient sectors (Indian Ocean, Bellingshausen Sea-Amundsen Sea, and the Western Pacific Ocean) are predicted to decline substantially, if not disappear entirely, whereas under the other emissions scenarios some colonies are predicted to decline less appreciably in East Antarctica and in West Antarctica depending on the scenario. Including extreme events into the simulations increases the magnitude of declines at breeding colonies throughout the range under every scenario.

Representation is similar to redundancy in that it decreases as the distribution of the species declines. The emperor penguin is predicted to lose genetic diversity under every scenario because the overall population abundance is projected to decline. Under the low-emissions scenario with projections that do not include dispersal or extreme events, no known metapopulations are lost, although colonies that make up the two metapopulations in East Antarctica are projected to decline. However, when including dispersal and extreme events, both of the metapopulations in East Antarctica along with many other colonies in East Antarctica and in the Bellingshausen Sea-Amundsen Sea

sector for which genetics have not been analyzed are projected to decline by more than 90 percent by 2050.

Projections under the moderate-emissions scenarios show a similar pattern with an increase in magnitude of decline, which would also likely result in the loss of the two metapopulations in East Antarctica. Emperor penguins may migrate to the Ross Sea or Weddell Sea, where some habitat is projected to remain suitable as habitat quality declines in the other sectors. However, the colonies that remain will likely reach carrying capacity, and some colonies provide little potential for population expansion (Jenouvrier *et al.* 2014, p. 716).

Under the high-emissions scenario, the emperor penguin would increasingly lose genetic diversity, because of declines not only in the Mawson Coast and Amanda Bay/Point Géologie metapopulations, but also in the Weddell Sea and Ross Sea sectors, which account for the other two known metapopulations. Colonies within these two metapopulations would decrease in redundancy over time, thus reducing the genetic variation within the two metapopulations. The Ross Sea may be the last stronghold for the species, but even the number of breeding colonies in the Ross Sea have the potential to decline under the high-emissions scenario. Therefore, the genetic diversity of emperor penguins will substantially decrease under the high-emissions scenario because the vast majority of all colonies are likely to decline by more than 90 percent, or disappear entirely.

Summary

The emperor penguin is currently in high condition because the species has high resiliency, redundancy, and representation. Sixty-one breeding colonies are distributed around the coastline of Antarctica with no indication that there has been a decrease in their range or distribution. Colony size naturally fluctuates, and reproductive success varies from year to year at breeding colonies in relation to both biotic and abiotic factors, but emperor penguins have high survival rates and reproductive success. Genetic analysis has identified four known metapopulations of emperor penguins, with many areas of Antarctica not yet analyzed.

Sea-ice extent in the Southern Ocean is currently within its natural range of variability. The yearly sea ice extent in the Southern Ocean has a small positive but statistically insignificant trend over the 40 years from 1979 to 2018, although the overall increase masks

larger, opposing regional differences in trends. The emperor penguin's main prey resources are directly related to sea-ice conditions. Currently, prey abundance appears not to be a limiting factor for emperor penguins.

The Antarctic continent has seen less uniform temperature changes over the past 30 to 50 years, compared to the Arctic, and most of Antarctica has yet to see dramatic warming. Weather and climate are projected to affect the extent and duration of sea ice and, relatedly, prey abundance in Antarctica. Therefore, climate change presents the most substantial threat facing emperor penguins in the future. Antarctica will be profoundly different in the future compared with today, but the degree of that difference will depend on the magnitude of global climate change. The magnitude of climate change into the future depends in part on the amount of heat-trapping gases emitted globally and how sensitive the Earth's climate is to those emissions, as well as any human responses to climate change by developing adaptation and mitigation policies.

Under all scenarios, sea-ice extent and the global population of emperor penguins are projected to decline in the future; however, the degree and speed of the decline varies substantially by scenario. Accordingly, the resiliency, redundancy, and representation of the emperor penguin will also decrease across all scenarios. The rate and magnitude of decline of the sea-ice conditions and the number of breeding pairs and colonies of emperor penguins varies between scenarios, temporally and spatially. Breeding colonies in the Ross Sea and Weddell Sea sectors, the current strongholds for the species, are projected to retain the most resiliency and have the most stable sea-ice conditions into the future, relative to the Indian Ocean, Bellingshausen Sea-Amundsen Sea, and Western Pacific Ocean sectors. The projected decline in the global population of emperor penguins is much less under the low-emissions scenario (*i.e.*, the scenarios that model the Paris Accord) than under the high-emissions scenario (*i.e.*, RCP 8.5). Similarly, redundancy and representation are higher under the low-emissions scenarios compared to the high-emissions scenario because more colonies are projected to be extant. Redundancy and representation decline at a faster rate than resiliency because the Ross Sea and Weddell Sea sectors contain at least half the global population, have a greater initial population abundance compared to the other three sectors, and are projected to have higher-quality sea-ice habitat over

a longer time period. These two sectors, and particularly the Ross Sea, are strongholds for the species under every scenario, as the other sectors markedly decline because sea-ice conditions deteriorate.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative-effects analysis.

Conservation Efforts and Regulatory Mechanisms

Antarctica is designated as a natural reserve devoted to peace and science under the Protocol on Environmental Protection to the Antarctic Treaty (Protocol) that was signed in 1991, and entered into force in 1998 (Secretariat of the Antarctic Treaty 2020, unpaginated). The Protocol includes annexes with measures to minimize effects to the Antarctic environment from conduct related to activities in Antarctica such as national program operations, scientific research, tourism, and other nongovernmental activities. The Antarctic Treaty System (see United States Treaties and Other International Agreements (UST): 12 UST 794; Treaties and Other International Acts Series (TIAS): TIAS 4780; and the United Nations Treaty Series (UNTS): 402 UNTS 71), first signed in 1959 by 12 nations, regulates international relations with respect to Antarctica. Fifty-four countries have acceded to the Treaty, and 29 of them participate in decision making as Consultative Parties. Protection of the Antarctic environment has been a central theme in the cooperation among Parties (Secretariat of the Antarctic Treaty 2020, unpaginated).

Under the Protocol, certain protected areas have been established to protect outstanding environmental, scientific,

historic, aesthetic, or wilderness values, any combination of those values, or ongoing or planned scientific research. Additionally, marine-protected-area boundaries may include ice shelves, adjacent fast ice, and pack ice, and potentially afford more complete protection for emperor penguins at their breeding site and while feeding or molting at sea than protected areas that are land-based (Trathan *et al.* 2020, p. 7). To date, seven active breeding sites are protected within protected areas and seven are protected by the Ross Sea region marine protected area, including three colonies that are also in protected areas (Trathan *et al.* 2020, p. 8) The management plans for these areas explain specific concerns about emperor penguins (Secretariat of the Antarctic Treaty 2020, unpaginated).

In the United States, the Antarctic Conservation Act of 1978 (ACA; 16 U.S.C. 2401 *et seq.*) also provides for the conservation and protection of the fauna and flora of Antarctica (defined to mean the area south of 60°S latitude (16 U.S.C. 2402(2))), and of the ecosystem upon which those fauna and flora depend, consistent with the Antarctic Treaty System and the Protocol. The ACA's implementing regulations (45 CFR part 670) include provisions relating to the conservation of Antarctic animals, including native birds such as emperor penguins.

Additionally, the Convention on the Conservation of Antarctic Marine Living Resources (Convention) (33 UST 3476; TIAS 10240), which establishes the Commission for the Conservation of Antarctic Marine Living Resources (Commission; CCAMLR), provides for the conservation, including rational use, of marine living resources in the Convention area. The Commission was established in 1982, with the objective of conserving Antarctic marine life, in response to increasing commercial interest in Antarctic krill resources and a history of over-exploitation of several other marine resources in the Southern Ocean (Commission 2020, unpaginated). Twenty-five countries plus the European Union are party to the Convention, with another 10 countries also having acceded (Commission 2020, unpaginated). The United States implements the Convention through the Antarctic Marine Living Resources Convention Act of 1984 (16 U.S.C. 2431 *et seq.*) (AMLRCA). Under the AMLRCA, among other prohibitions, it is unlawful to: (1) Engage in harvesting or other associated activities in violation of the provisions of the Convention or in violation of a conservation measure in force with respect to the United States; and (2) ship, transport, offer for

sale, sell, purchase, import, export, or have custody, control or possession of, any Antarctic marine living resource (or part or product thereof) harvested in violation of a conservation measure in force with respect to the United States (16 U.S.C. 2435).

The regulatory mechanisms and conservation efforts focus on the native marine and terrestrial resources of Antarctica. The existing mechanisms minimize environmental impacts to emperor penguins from national program operations, scientific research, tourism, and other nongovernmental activities in Antarctica. None of the existing regulatory mechanisms addresses the primary and unique nature of the threat of climate change on emperor penguins; however, we recognize the value these regulatory mechanisms and conservation efforts play in helping to conserve the species.

Determination of Emperor Penguin's Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an "endangered species" as a species in danger of extinction throughout all or a significant portion of its range, and a "threatened species" as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of endangered species or threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we find that climate change presents the most substantial threat to emperor penguin's viability. No other stressors are drivers of the species' viability.

The emperor penguin is currently in high condition because the species has high resiliency, redundancy, and representation. Emperor penguin breeding colonies are distributed around the continent (see figure 1, above) with

no indication that their distribution or genetic or ecological diversity is presently decreasing. Sixty-one breeding colonies are extant. The global population comprises approximately 270,000–280,000 breeding pairs or 625,000–650,000 individual birds, with the greatest abundance in the Ross Sea and Weddell Sea sectors. Emperor penguins have high survival and reproductive success, and genetic analysis has identified four known metapopulations of emperor penguins. Finally, the species is not subject to any imminent threats that would otherwise render it in danger of extinction.

The sea-ice conditions in Antarctica are described within five sectors (Weddell Sea, Indian Ocean, Western Pacific Ocean, Ross Sea, and Bellingshausen Sea-Amundsen Sea), and colonies within these sectors may approximately correspond to the genetic variation of the four known metapopulations (see figures 1 and 2, above). Sea-ice condition in the Southern Ocean serves as a proxy measure of all important habitat factors for emperor penguins. Sea-ice extent is currently within its natural range of variability. The yearly sea-ice extent in the Southern Ocean has a small positive, but statistically insignificant, trend over the 40 years from 1979 to 2018, although the overall increase masks larger, and sometimes opposing, regional differences in trends. The emperor penguin's main prey resources (Antarctic silverfish and Antarctic krill) are directly related to the extent and duration of sea-ice conditions. Currently, foraging success and prey availability appear not to be limiting factors for emperor penguins throughout their range.

Thus, after assessing the best available information, we determined that the emperor penguin is not currently in danger of extinction throughout all of its range because the current condition of the species is high, and we do not anticipate that any combination of threats could imminently change that situation. We then turned our attention to determining whether the emperor penguin is likely to become in danger of extinction throughout all of its range within the foreseeable future.

We determined that the foreseeable future is 2050 for this rulemaking (see *Foreseeable Future*, above). The Ross Sea and Weddell Sea sectors currently contain the greatest abundance of emperor penguin breeding pairs and are projected to be the most resilient sectors within the foreseeable future, relative to the Indian Ocean, Western Pacific Ocean, and Bellingshausen Sea-Amundsen Sea sectors. The resiliency of

penguin colonies in the Ross Sea and Weddell Sea sectors is sufficient to ensure that the species as a whole is not in danger of extinction in the foreseeable future. Redundancy and representation decline at a faster rate than resiliency as the colonies in the other sectors (Indian Ocean, Western Pacific Ocean, and Bellingshausen Sea-Amundsen Sea) markedly decline because sea-ice conditions are projected to deteriorate more rapidly in those areas. Assessing the results of the projections for all scenarios shows that the majority of the remaining global population would be in the Weddell Sea and Ross Sea sectors, which contain two of the four known metapopulations (Weddell Sea and Ross Sea metapopulations) and are the two most resilient sectors.

The global population at 2050 is projected to decline between 26 percent (to approximately 185,000 breeding pairs) and 47 percent (to approximately 132,500 breeding pairs) under the low- and high-emissions scenarios, respectively. The global population would be large enough and retain sufficient viability so that the species would not be in danger of extinction by 2050, because the breeding pairs remaining include at least 50 percent of the global breeding pairs, even under the high-emissions scenario. That said, the distribution of the species will be reduced by 2050 because most, and possibly all, colonies and breeding pairs will be limited to the Weddell Sea and Ross Sea sectors; almost the entire decline of breeding pairs is because of the loss of breeding colonies in the Indian Ocean, Bellingshausen Sea-Amundsen Sea, and Western Pacific Ocean sectors. However, enough breeding colonies would be extant in the Weddell Sea and Ross Sea to withstand localized stochastic and catastrophic events. The ecological diversity of emperor penguins will be reduced because the decrease in distribution of breeding colonies results in the loss of the colonies that make up the two metapopulations in East Antarctica (Mawson Coast and Amanda Bay/Point Géologie metapopulations), and many other colonies in East Antarctica and in the Bellingshausen Sea-Amundsen Sea sector for which breeding colony genetics have not been analyzed. The genetic diversity from those two metapopulations would be maintained but is likely to shift to the Weddell Sea and Ross Sea sectors because emperor penguins from East Antarctica and the Bellingshausen Sea-Amundsen Sea sector are likely to disperse to the Weddell Sea and Ross

Sea sectors, which contain the other two metapopulations with genetic and ecological diversity and are the strongholds for the species. The Weddell Sea and Ross Sea sectors are projected to contain the vast majority, and possibly all, the remaining breeding colonies at 2050. The emperor penguin will decrease in resiliency, representation, and redundancy compared to current conditions. However, the global population size at 2050 will be sufficiently large, and enough colonies will be extant in the Weddell Sea and Ross Sea, such that the species as a whole will not likely be in danger of extinction.

Thus, after assessing the best available information, we conclude that the emperor penguin is not likely to become in danger of extinction within the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. We determined that the emperor penguin is not in danger of extinction or likely to become so within the foreseeable future throughout all of its range. Therefore, we proceed to evaluating whether the species is endangered or likely to become so within the foreseeable future in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion, or likely to become so in the foreseeable future. Depending on the case, it might be more efficient for us to address the "significance" question or the "status" question first. We can choose to address either question first. Regardless of which question we choose to address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

For the emperor penguin, sea-ice conditions in Antarctica are described in five sectors, which also may approximately correspond to the known genetic variation among breeding colonies. Emperor penguins are distributed around the entire coastline of Antarctica, and we assessed the status of the species in relation to the five sectors. Therefore, to assess the significance and status questions, we consider emperor penguins to occur within five sectors.

We now consider whether there are any significant portions of the species' range where the species is endangered or likely to become so in the foreseeable future. In undertaking this analysis for the emperor penguin, we chose to first address the status question—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species is endangered or threatened.

For emperor penguin, we considered whether the threat of climate change is geographically concentrated in any portion of the species' range at a biologically meaningful scale. Climate change is not projected to have a uniform effect around the entire continent of Antarctica; the rate and magnitude of decline of sea-ice conditions and breeding colonies vary temporally and spatially. It is in this context that we considered the concentration of threats of climate change to the emperor penguin.

We found that climate change is projected to substantially affect the Indian Ocean, Bellingshausen Sea-Amundsen Sea, and Western Pacific Ocean sectors under every modeled emissions scenario within the foreseeable future. The Ross Sea and Weddell Sea sectors are considered strongholds for the species now and into the foreseeable future because they have the most stable long-term sea-ice condition. However, projections under low-, moderate-, and high-emissions scenarios result in a substantial decline of the breeding colonies and sea-ice condition in the Indian Ocean, Bellingshausen Sea-Amundsen Sea, and Western Pacific Ocean sectors. By 2050, the colonies within these three sectors decline rather quickly and are projected to decline by at least 50 percent, with the vast majority projected to decline by more than 90 percent under every scenario.

Currently, breeding colonies are distributed along the entire coastline of Antarctica with no gaps larger than 500 kilometers (311 miles) between colonies, except in front of large ice shelves (see figure 1, above). By 2050, the global population of emperor penguins is projected to decline between 26 percent (to approximately 185,000 breeding pairs) and 47 percent (to approximately 132,500 breeding pairs); however, almost the entire decline of global breeding pairs is because of the loss of breeding colonies in the Indian Ocean, Bellingshausen Sea-Amundsen Sea, and Western Pacific Ocean sectors. This results in a substantial decline of the population

and distribution of breeding colonies in these three sectors. Therefore, because climate change is projected to affect the Indian Ocean, Bellingshausen Sea-Amundsen Sea, and Western Pacific Ocean sectors of the species' range more than the Ross Sea and Weddell Sea sectors, resulting in a substantial decline of the breeding colonies in these three sectors, the species may be in danger of extinction or likely to become so within the foreseeable future in this portion of its range.

We first considered whether the species was endangered in the Indian Ocean, Bellingshausen Sea-Amundsen Sea, and Western Pacific Ocean portion of the species' range. The emperor penguin is currently in high condition throughout its range (see *Status Throughout All of Its Range*, above). Therefore, the emperor penguin within these three sectors of its range is also currently in high condition, and the best scientific and commercial data available indicates that this portion of its range currently has sufficient resiliency, redundancy, and representation to be secure in its current state. The species is not subject to any imminent threats in this portion of its range that would otherwise render it in danger of extinction. Therefore, the emperor penguin is not currently in danger of extinction (endangered) in that portion of its range.

However, while the divergence in global population projections between the scenarios becomes more evident around 2050, under every scenario the Indian Ocean, Bellingshausen Sea-Amundsen Sea, and Western Pacific Ocean sectors are projected to substantially decline within the foreseeable future. The decline in the global population is almost entirely attributed to the decline of sea-ice conditions and loss of breeding colonies in the Indian Ocean, Bellingshausen Sea-Amundsen Sea, and Western Pacific Ocean sectors. By 2050, breeding colonies within these three sectors decline by at least 50 percent, with the vast majority projected to decline by more than 90 percent. Therefore, the emperor penguin in the Indian Ocean, Bellingshausen Sea-Amundsen Sea, and Western Pacific Ocean sectors will have minimal to no resiliency, distribution of breeding colonies, or genetic and ecological diversity because very few colonies and breeding pairs are projected to remain in this portion of the species' range by 2050. Thus, the species is likely to become in danger of extinction within the foreseeable future in the Indian Ocean, Bellingshausen Sea-Amundsen Sea, and Western Pacific Ocean sectors.

We then proceeded to ask the question whether the portion of the range including the Indian Ocean, Bellingshausen Sea-Amundsen Sea, and Western Pacific Ocean sectors is significant. We assessed whether this portion of the species' range is biologically significant by considering it in terms of the portion's contribution to resiliency, redundancy, or representation of the species as a whole.

The Indian Ocean, Bellingshausen Sea-Amundsen Sea, and Western Pacific Ocean sectors account for 40 to 50 percent of the global population, approximately 60 percent of the species' range and total number of known breeding colonies, and 50 percent of the known genetic diversity. Ecological diversity between breeding colonies in the Indian Ocean, Bellingshausen Sea-Amundsen Sea, and Western Pacific Ocean sectors include breeding location (sea ice vs. ice shelf), distance to open water, exposure to katabatic winds (cold, dense air flowing out from interior Antarctica to the coast), and amount of snowfall. Breeding colonies within the Indian Ocean, Bellingshausen Sea-Amundsen Sea, and Western Pacific Ocean sectors provide connectivity between colonies within the metapopulations and among the metapopulations in different sectors. Currently, it is likely that all breeding colonies are connected because the average distance between colonies of 311 kilometers +/- 176 kilometers, with no gaps between colonies throughout the species' range greater than 500 kilometers except in front of large ice shelves, is well within the distance that emperor penguins can travel/disperse. The fact that emperor penguins travel widely as juveniles, move among breeding colonies, and share molting locations indicates that dispersal between breeding colonies provides gene flow among colonies (Thiebot *et al.* 2013, entire; Younger *et al.* 2017, p. 3894). If there were minimal to no breeding colonies (as projected) in the Indian Ocean, Bellingshausen Sea-Amundsen Sea, and Western Pacific Ocean sectors, the distance between colonies would substantially increase and reduce the probability that all colonies are connected and provide gene flow among colonies. Additionally, the diversity of the species and its habitat would substantially decrease because the vast majority of colonies that would remain (as projected) would only be in the Ross Sea and Weddell Sea sectors. The Indian Ocean, Bellingshausen Sea-Amundsen Sea, and Western Pacific Ocean sectors contribute significantly to the emperor

penguin's global population size (resiliency), global distribution around the entire coastline of Antarctica (redundancy), and genetic and ecological diversity (representation) of the species as a whole, and the conservation of the species would suffer the loss of these significant contributions if these sectors were lost. We conclude that the Indian Ocean, Bellingshausen Sea-Amundsen Sea, and Western Pacific Ocean sectors collectively constitute a significant portion of the range of the emperor penguin.

Therefore, having determined that the Indian Ocean, Bellingshausen Sea-Amundsen Sea, and Western Pacific Ocean sectors (or portion of the species' range) do indeed meet both prongs of the significant-portion-of-its-range analysis (1) the portion is significant; and (2) the species is, in that portion, likely to become in danger of extinction within the foreseeable future), we conclude that the emperor penguin is likely to become in danger of extinction within the foreseeable future within a significant portion of its range. This is consistent with the courts' holdings in *Desert Survivors v. Department of the Interior*, No. 16-cv-01165-JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), and *Center for Biological Diversity v. Jewell*, 248 F. Supp. 3d 946, 959 (D. Ariz. 2017).

Determination of Status

Our review of the best available scientific and commercial information indicates that the emperor penguin meets the Act's definition of a threatened species. Therefore, we are listing the emperor penguin as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Available Conservation Measures

The purposes of the Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in the Act. Under the Act there are a number of steps available to advance the conservation of species listed as endangered or threatened species under the Act. As explained further below, these conservation measures include: (1) recognition, (2) recovery actions, (3) requirements for Federal protection, (4) financial assistance for conservation programs, and (5) prohibitions against certain activities.

First, recognition through listing results in public awareness, as well as in conservation by Federal, State, Tribal, and local agencies, foreign governments, private organizations, and individuals. Second, the Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species.

Third, our regulations at 50 CFR part 402 implement the interagency cooperation provisions found under section 7 of the Act. Under section 7(a)(1) of the Act, Federal agencies are to use, in consultation with and with the assistance of the Service, their authorities in furtherance of the purposes of the Act. Section 7(a)(2) of the Act, as amended, requires Federal agencies to ensure, in consultation with the Service, that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of its critical habitat.

A Federal "action" that is subject to the consultation provisions of section 7(a)(2) is defined in our implementing regulations at 50 CFR 402.02 as all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States or upon the high seas. With respect to the emperor penguin, actions that may require consultation under section 7(a)(2) of the Act include harvesting Antarctic marine living resources and scientific research activities. The National Science Foundation and National Marine Fisheries Service are the lead Federal agencies for authorizing these activities in Antarctica that may affect the emperor penguin. With existing conservation measures of the ACA, AMLRCA, and CCAMLR that are implemented for these activities, and obligations of the United States under the Antarctic Treaty System, adverse effects to the emperor penguin are not anticipated. Additionally, no critical habitat will be designated for this species because, under 50 CFR 424.12(g), we will not designate critical habitat within foreign countries or in other areas outside of the jurisdiction of the United States.

Fourth, section 8(a) of the Act (16 U.S.C. 1537(a)) authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered or threatened species in foreign countries. Sections 8(b) and 8(c) of the Act (16 U.S.C. 1537(b) and (c)) authorize the Secretary to encourage

conservation programs for foreign listed species, and to provide assistance for such programs, in the form of personnel and the training of personnel.

Finally, the Act puts in place prohibitions against particular actions. When a species is listed as endangered, certain actions are prohibited under section 9 of the Act and are implemented through our regulations in 50 CFR 17.21. For endangered wildlife, these include prohibitions under section 9(a)(1) on import; export; delivery, receipt, carriage, transport, or shipment in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity; or sale or offer for sale in interstate or foreign commerce of any endangered species. It is also illegal to take within the United States or on the high seas; or to possess, sell, deliver, carry, transport, or ship, by any means whatsoever any endangered species that have been taken in violation of the Act. It is also unlawful to attempt to commit, to solicit another to commit or to cause to be committed, any of these acts. Exceptions to the prohibitions for endangered species may be granted in accordance with section 10 of the Act and our regulations at 50 CFR 17.22.

The Act does not specify particular prohibitions and exceptions to those prohibitions for threatened species. Instead, under section 4(d) of the Act, the Secretary, as well as the Secretary of Commerce depending on the species, was given the discretion to issue such regulations as deemed necessary and advisable to provide for the conservation of such species. The Secretary also has the discretion to prohibit by regulation with respect to any threatened species any act prohibited under section 9(a)(1) of the Act. Exercising this discretion, the Service has developed general prohibitions in the Act's regulations (50 CFR 17.31) and exceptions to those prohibitions (50 CFR 17.32) that apply to most threatened wildlife species. Under 50 CFR 17.32, permits may be issued to allow persons to engage in otherwise prohibited acts for certain purposes.

Under section 4(d) of the Act, the Secretary, who has delegated this authority to the Service, may also develop specific prohibitions and exceptions tailored to the particular conservation needs of a threatened species. In such cases, the Service issues a 4(d) rule that may include some or all of the prohibitions and authorizations set out in 50 CFR 17.31 and 17.32, but which also may be more or less restrictive than the general provisions at 50 CFR 17.31 and 17.32. For emperor

penguin, the Service has determined that a 4(d) rule is necessary and advisable.

As noted above, the 2019 regulations are in effect. Under the 2019 regulations, 17.31(a) only applies to those wildlife species listed as threatened on or prior to September 26, 2019. The 4(d) rule for the emperor penguin—which, as described further below, contains specific prohibitions and exceptions tailored to the particular conservation needs of this threatened species—would be authorized under the 2019 regulations. As noted above, the analysis based on the 2019 and pre-2019 regulations, including our 4(d) rule analysis, is included in the decision file for this decision.

As explained below, the 4(d) rule for the emperor penguin will, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export; deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any emperor penguins. It will also be illegal to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or to attempt any of these) within the United States or on the high seas; or to possess, sell, deliver, carry, transport, or ship, by any means whatsoever any emperor penguins that have been taken in violation of the Act. It will also be unlawful to attempt to commit, to solicit another to commit or to cause to be committed, any of these acts. Certain exceptions apply to agents of the Service and State conservation agencies.

Additional exceptions are also provided in the 4(d) rule for activities permitted under the Antarctic Conservation Act of 1978, as amended (16 U.S.C. 2401 *et seq.*), and its implementing regulations (45 CFR part 670), including for take and possession of emperor penguins within Antarctica, and for import and export of emperor penguins between the United States and Antarctica. An exception is also provided for interstate commerce from public institutions to other public institutions, specifically museums, zoological parks, and scientific or educational institutions that meet the definition of “public” at 50 CFR 10.12.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits for threatened species are codified at 50 CFR 17.32, and general Service permitting regulations are

codified at 50 CFR part 13. With regard to threatened wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act. The Service may also register persons subject to the jurisdiction of the United States through its captive-bred-wildlife (CBW) program if certain established requirements are met under the CBW regulations (50 CFR 17.21(g)). Through a CBW registration, the Service may allow a registrant to conduct the following otherwise prohibited activities under certain circumstances to enhance the propagation or survival of the affected species: take; export or re-import; deliver, receive, carry, transport, or ship in interstate or foreign commerce, in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce. A CBW registration may authorize interstate purchase and sale only between entities that both hold a registration for the taxon concerned. The CBW program is available for species having a natural geographic distribution not including any part of the United States and other species that the Service Director has determined to be eligible by regulation. The individual specimens must have been born in captivity in the United States. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within the range of the species. The discussion in this preamble regarding protective regulations under section 4(d) of the Act complies with our policy.

II. Final Rule Issued Under Section 4(d) of the Act

Background

Section 4(d) of the Act contains two sentences. The first sentence states that the Secretary shall issue such regulations as she deems necessary and advisable to provide for the conservation of species listed as threatened. The U.S. Supreme Court has noted that statutory language like “necessary and advisable” demonstrates

a large degree of deference to the agency (see *Webster v. Doe*, 486 U.S. 592 (1988)). Conservation is defined in the Act to mean the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Additionally, the second sentence of section 4(d) of the Act states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants. Thus, the combination of the two sentences of section 4(d) provides the Secretary with broad discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion to the Service when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld rules developed under section 4(d) as a valid exercise of agency authority where they prohibited take of threatened wildlife or include a limited taking prohibition (see *Alsea Valley Alliance v. Lautenbacher*, 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council v. National Marine Fisheries Service*, 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana v. Verity*, 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, "once an animal is on the threatened list, the Secretary has an almost infinite number of options available to [her] with regard to the permitted activities for those species. [She] may, for example, permit taking, but not importation of such species, or [she] may choose to forbid both taking and importation but allow the transportation of such species" (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Exercising this authority under section 4(d), we have developed a rule that is designed to address the emperor penguin's specific threats and conservation needs. Although the statute does not require us to make a "necessary and advisable" finding with respect to the adoption of specific prohibitions under section 9, we find that this rule as a whole satisfies the requirement in section 4(d) of the Act to

issue regulations deemed necessary and advisable to provide for the conservation of the emperor penguin.

As discussed above under Summary of Biological Status and Threats, and Determination of Emperor Penguin's Status, we have concluded that the emperor penguin is likely to become in danger of extinction within the foreseeable future primarily due to climate change. Under this 4(d) rule, certain prohibitions and provisions that apply to endangered wildlife under the Act's section 9(a)(1) prohibitions will help minimize threats that could cause further declines in the species' status. The provisions of this 4(d) rule promote conservation of emperor penguins by ensuring that activities undertaken with respect to the species by any person under the jurisdiction of the United States are also supportive of the conservation efforts undertaken for the species in Antarctica. The provisions of this 4(d) rule are one of many tools that we will use to promote the conservation of emperor penguins.

Provisions of the 4(d) Rule

Climate change is the greatest threat affecting the status of the emperor penguin. However, other activities, including tourism, research, commercial krill fisheries, and activities that could lead to marine pollution, also may affect emperor penguins. These other factors all have minor effects on emperor penguins, and regulating these activities could help conserve emperor penguins and decrease synergistic, negative effects from the threat of climate change. Thus, the 4(d) rule provides for the conservation of the species by regulating and prohibiting the following activities, except as otherwise authorized or permitted: importing or exporting; take; possession and other acts with unlawfully taken specimens; delivering, receiving, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; or selling or offering for sale in interstate or foreign commerce.

Under the Act, "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these words have been further defined in regulations at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. The Act's prohibitions on take apply to take within the United States, within the territorial sea of the United States, or upon the high seas.

As noted previously, the U.S. Antarctic Conservation Act of 1978 (ACA; 16 U.S.C. 2401 *et seq.*) provides

for the conservation and protection of the fauna and flora of Antarctica, and of the ecosystem upon which such fauna and flora depend, consistent with the Antarctic Treaty System and the Protocol. The ACA's implementing regulations (45 CFR part 670) include provisions relating to the conservation of Antarctic animals, including native birds such as emperor penguins. The National Science Foundation is the lead agency that manages the U.S. Antarctic Program and administers the ACA and its implementing regulations at 45 CFR part 670.

Under the ACA, certain activities are prohibited related to flora and fauna in Antarctica. Of particular relevance to emperor penguins, the ACA prohibits take of any native bird within Antarctica without a permit. The term "native bird" under the ACA means "any member, at any stage of its life cycle (including eggs), of any species of the class Aves which is indigenous to Antarctica or occurs there seasonally through natural migrations, and includes any part of such member" (16 U.S.C. 2402(9); 45 CFR 670.3). Emperor penguins are designated as native birds under the ACA (45 CFR 670.20). To "take" under the ACA means "to kill, injure, capture, handle, or molest a native mammal or bird, or to remove or damage such quantities of native plants that their local distribution or abundance would be significantly affected" or to attempt to engage in such conduct (16 U.S.C. 2402(20); 45 CFR 670.3). The ACA also makes it unlawful for any person, unless authorized by a permit, to receive, acquire, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any native bird, native mammal, or native plant which the person knows, or in the exercise of due care should have known, was taken in violation of the ACA (16 U.S.C. 2403(b)(5)).

A permit system managed by the National Science Foundation, in coordination with appropriate agencies, issues permits under the ACA for certain, otherwise prohibited activities such as take, import, and export. Permits authorizing take of emperor penguins under the ACA may be issued only: (1) For the purpose of providing specimens for scientific study or scientific information; (2) for the purpose of providing specimens for museums, zoological gardens, or other educational or cultural institutions or uses; or (3) for unavoidable consequences of scientific activities or the construction and operation of scientific support facilities (16 U.S.C. 2404(e); 45 CFR 670.17(a)).

Additionally, ACA permits shall ensure, as far as possible, that (1) no more native mammals, birds, or plants are taken than are necessary to meet the purposes set forth above; (2) no more native mammals or native birds are taken in any year than can normally be replaced by net natural reproduction in the following breeding season; (3) the variety of species and the balance of the natural ecological systems within Antarctica are maintained; and (4) the authorized taking, transporting, carrying, or shipping of any native mammal or bird is carried out in a humane manner (16 U.S.C. 2404(e); 45 CFR 670.17(b)). Specific requirements also apply to permits for proposed imports and exports of emperor penguins (*see* 45 CFR part 670, subpart G). While we have found above that these current efforts alone will be inadequate to prevent the species from likely becoming in danger of extinction within the foreseeable future due to the unique nature of the threat of climate change, we also recognize the value these management efforts play in helping to conserve the species.

The ACA applies to the area south of 60 °S latitude, which encompasses Antarctica and the entire distribution of emperor penguins. Many provisions under the ACA are comparable to similar provisions in the Act, including with regard to take, prohibitions on activities with unlawfully taken specimens, and prohibitions on import and export. As discussed above, for decades the ACA has provided significant conservation benefits and protections to the emperor penguin through its regulation of these activities with emperor penguin. Accordingly, we provide exceptions from permitting requirements under the Act for certain otherwise prohibited activities with emperor penguins that are authorized by permit or regulation by the National Science Foundation under the ACA. Specifically, we provide exceptions for take in Antarctica, import to the United States from Antarctica, and export from the United States to Antarctica when these activities are authorized under an ACA permit issued by the National Science Foundation.

These exceptions will not apply where there is a violation of the ACA; thus, a violation of the ACA will also be a violation of the Act under the 4(d) rule. For example, for import to the United States from Antarctica where the ACA requires an import permit, the import of an emperor penguin without an ACA permit will fail to meet the regulatory exception; therefore, the import will be prohibited by both the ACA and the Act under the 4(d) rule. A

permit under the Act will be required for the import and export of any emperor penguins for any other purpose (*e.g.*, import from or export to another country, or import or export of a captive-bred emperor penguin). Accordingly, all imports and exports of emperor penguins will be prohibited unless authorized by an ACA permit, a permit under the Act, or for law enforcement purposes. Exceptions will also apply to take of emperor penguins if the activity meets the ACA regulatory exceptions for emergency circumstances (45 CFR 670.5(a) and (c)), to aid or salvage a specimen (45 CFR 670.5(b) and (c)), or for law enforcement purposes (including the import or export of emperor penguins for law enforcement purposes; 45 CFR 670.9).

The 4(d) rule also provides an exception for interstate commerce from public institutions to other public institutions, specifically museums, zoological parks, and scientific or educational institutions meeting the definition of “public” at 50 CFR 10.12. The majority of records of import of emperor penguins into the United States have been for this very purpose. Demand for emperor penguins held at or captive-bred by these types of public institutions in the United States is not substantial, nor is it likely to pose a significant threat to the wild population in Antarctica. As defined in our regulations, “public” museums, zoological parks, and scientific or educational institutions are those that are open to the general public and are either established, maintained, and operated as a governmental service or are privately endowed and organized but not operated for profit.

We may issue permits to carry out otherwise prohibited activities, including those described above, involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act. As noted above, we may also authorize certain activities associated with conservation breeding under captive-bred wildlife registrations. We recognize that captive breeding of wildlife can support conservation, for example by producing animals that could be used for reintroductions into Antarctica, if permitted under the ACA. We are not aware of any captive breeding programs

for emperor penguins for this purpose. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act. This 4(d) rule applies to all live and dead emperor penguin parts and products, and supports conservation management efforts for emperor penguins in the wild.

Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited in this rulemaking is available on the internet at <https://www.regulations.gov> and upon request from the Branch of Delisting and Foreign Species (**FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the Fish and Wildlife Service’s Species Assessment Team and the Branch of Delisting and Foreign Species.

Signing Authority

Martha Williams, Director of the U.S. Fish and Wildlife Service, approved this action on September 20, 2022, for publication. On October 19, 2022, Martha Williams authorized the undersigned to sign the document electronically and submit it to the Office of the Federal Register for publication as an official document of the U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

Threatened Wildlife in alphabetical order under Birds to read as follows:

■ 1. The authority citation for part 17 continues to read as follows:

■ 2. Amend § 17.11, in paragraph (h), by adding an entry for “Penguin, emperor” to the List of Endangered and

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

| Common name | Scientific name | Where listed | Status | Listing citations and applicable rules |
|------------------------|-----------------------------------|----------------------|--------|---|
| * | * | * | * | * |
| | | BIRDS | | |
| Penguin, emperor | <i>Aptenodytes forsteri</i> | Wherever found | T | 87 FR [Insert Federal Register page where the document begins], October 26, 2022; 50 CFR 17.41(m). ^{4d} |
| * | * | * | * | * |

■ 3. Amend § 17.41 by adding reserved paragraphs (g) through (l) and adding paragraph (m) to read as follows:

§ 17.41 Special rules—birds.

* * * * *

(g)–(l) [Reserved]

(m) Emperor penguin (*Aptenodytes forsteri*).

(1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the emperor penguin. Except as provided under paragraph (m)(2) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at § 17.21(b) for endangered wildlife.

(ii) Take, as set forth at § 17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.21(e) for endangered wildlife.

(v) Sale or offer for sale in foreign commerce, as set forth at § 17.21(f) for endangered wildlife.

(vi) Sale or offer for sale in interstate commerce, as set forth at § 17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions.* In regard to the emperor penguin, you may:

(i) Sell, offer for sale, deliver, receive, carry, transport, or ship in interstate commerce live emperor penguins from one public institution to another public institution. For the purposes of this paragraph, “public institution” means a museum, zoological park, and scientific

or educational institution that meets the definition of “public” at 50 CFR 10.12.

(ii) Take emperor penguins within Antarctica as authorized under implementing regulations for the Antarctic Conservation Act of 1978 (16 U.S.C. 2401 *et seq.*), either in accordance with the provisions set forth at 45 CFR 670.5 or 670.9, or as authorized by a permit under 45 CFR part 670.

(iii) Import emperor penguins into the United States from Antarctica or export emperor penguins from the United States to Antarctica as authorized under implementing regulations for the Antarctic Conservation Act of 1978 (16 U.S.C. 2401 *et seq.*), either in accordance with the provisions set forth at 45 CFR 670.9, or as authorized by a permit under 45 CFR part 670.

(iv) Conduct activities as authorized by a permit under § 17.32.

(v) Take, as set forth at § 17.21(c)(2) through (4) for endangered wildlife.

(vi) Possess and engage in other acts with unlawfully taken wildlife, as set forth at § 17.21(d)(2) for endangered wildlife.

(vii) Conduct activities as authorized by a captive-bred wildlife registration under § 17.21(g) for endangered wildlife.

Madonna Baucum,

Chief, Policy and Regulations Branch, U.S. Fish and Wildlife Service.

[FR Doc. 2022–23164 Filed 10–25–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220523–0119; RTID 0648–XC431]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; Closure of the General Category October Through November Fishery for 2022

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the General category fishery for large medium and giant (*i.e.*, measuring 73 inches (185 cm) curved fork length or greater) Atlantic bluefin tuna (BFT) for the October through November subquota time period. This action applies to Atlantic Tunas General category (commercial) permitted vessels and highly migratory species (HMS) Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT. This action also waives the previously scheduled restricted-fishing days (RFDs) for the remainder of the October through November subquota time period. With the RFDs waived during the closure, fishermen aboard General category permitted vessels and HMS Charter/Headboat permitted vessels may tag and release BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs. On December 1, 2022, the fishery will reopen automatically.

DATES: Effective 11:30 p.m., local time, October 24, 2022, through November 30, 2022.

FOR FURTHER INFORMATION CONTACT: Ann Williamson, ann.williamson@noaa.gov, 301-427-8583, Larry Redd, Jr., larry.redd@noaa.gov, 301-427-8503, or Nicholas Velseboer, nicholas.velseboer@noaa.gov, 978-281-9260.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

Under § 635.28(a)(1), NMFS files a closure action with the Office of the Federal Register for publication when a BFT quota (or subquota) is reached or is projected to be reached. Retaining, possessing, or landing BFT under that quota category is prohibited on or after the effective date and time of a closure notice for that category until the opening of the relevant subsequent quota period or until such date as specified.

The baseline U.S. BFT quota is 1,316.14 mt (§ 635.27(a)). The current baseline quota for the General category is 587.9 mt and the baseline subquota for the October through November time period is 76.4 mt. NMFS recently increased the October through November subquota to 177.9 mt through an inseason quota transfer (87 FR 60938, October 7, 2022).

Closure of the October Through November 2022 General Category Fishery

To date, reported landings for the General category October through November subquota time-period total approximately 138.1 mt. Based on these landings data, as well as average catch

rates and anticipated fishing conditions, NMFS projects the adjusted October through November 2022 subquota of 177.9 mt will be reached shortly. Therefore, retaining, possessing, or landing large medium or giant (*i.e.*, measuring 73 inches (185 cm) curved fork length or greater) BFT by persons aboard vessels permitted in the Atlantic Tunas General category and HMS Charter/Headboat permitted vessels (while fishing commercially) must cease at 11:30 p.m. local time on October 24, 2022. This action applies to Atlantic Tunas General category (commercial) permitted vessels and HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT, and is taken consistent with the regulations at § 635.28(a)(1). The intent of this closure is to prevent overharvest of the available October through November subquota. The General category will automatically reopen December 1, 2022, for the December 2022 subquota time period.

Adjustment of the Daily Retention Limit for Selected Dates

On June 1, 2022 (87 FR 33056), NMFS published a final rule implementing RFDs every Tuesday, Friday, and Saturday through November 30, 2022. Because the fishery will be closed for the remainder of the October through November subquota time period, NMFS has decided to waive the previously scheduled RFDs for the remainder of that period.

With the RFDs waived during the closure, consistent with § 635.23(a)(4), fishermen aboard General category permitted vessels and HMS Charter/Headboat permitted vessels may tag and release BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. All BFT that are released must be handled in a manner that will maximize their survival, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the “Careful Catch and Release” brochure available at <https://www.fisheries.noaa.gov/resource/outreach-and-education/careful-catch-and-release-brochure/>.

Monitoring and Reporting

NMFS will continue to monitor the BFT fisheries closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS’ ability to timely implement actions such as quota and retention limit adjustment, as well as

closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General category and HMS Charter/Headboat permitted vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing www.hmspermits.noaa.gov, using the HMS Catch Reporting app, or calling 888-872-8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

After the fishery reopens on December 1, depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments are necessary to ensure available subquotas are not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at 978-281-9260, or access www.hmspermits.noaa.gov, for updates on quota monitoring and inseason adjustments.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act and regulations at 50 CFR part 635 and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS (AA) finds that pursuant to 5 U.S.C. 553(b)(B), it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons: Specifically, the regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments and fishery closures to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Providing for prior notice and an opportunity to comment is impracticable and contrary to the public interest. This fishery is currently underway and, based on landings information, delaying this action could result in BFT landings exceeding the adjusted October through November 2022 General category subquota. Taking this action does not raise conservation and management concerns. NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the U.S. BFT quota and the inseason adjustment criteria.

For all of the above reasons, the AA also finds that pursuant to 5 U.S.C.

553(d), there is good cause to waive the 30-day delay in effectiveness.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: October 21, 2022.

Jennifer M. Wallace,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022-23300 Filed 10-21-22; 4:15 pm]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 210325-0071; RTID 0648-XC475]

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Adjustment to the 2022 Specifications

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

ACTION: Temporary rule; inseason adjustment.

SUMMARY: NMFS increases the 2022 Atlantic herring annual catch limit and Area 1A sub-annual catch limit by 1,000

metric tons (mt) for the remainder of 2022. This action is required by the herring regulations when, based on data through October 1, NMFS determines that the New Brunswick weir fishery landed less than 3,012 mt of herring. This notification informs the public of these catch limit changes.

DATES: Effective October 21, 2022, through December 31, 2022.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, Fishery Policy Analyst, (978) 281-99272; or *Carrie.Nordeen@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS published final 2022 specifications for the Atlantic Herring Fishery Management Plan on January 7, 2022 (87 FR 887), establishing the 2022 annual catch limit (ACL) and area sub-ACLs. Table 1 shows the current herring specifications for 2022 and the specifications as revised by this action for the remainder of the calendar year.

The NMFS Regional Administrator tracks herring landings in the New Brunswick weir fishery each year. The regulations at 50 CFR 648.201(h) require that if the New Brunswick weir fishery landings through October 1 are determined to be less than 3,012 mt, then NMFS subtracts 1,000 mt from the management uncertainty buffer and reallocates that amount to the ACL and

Area 1A sub-ACL. When such a determination is made, NMFS is required to notify the New England Fishery Management Council and publish the ACL and Area 1A sub-ACL adjustment in the **Federal Register**.

Information from Canada's Department of Fisheries and Oceans indicates that the New Brunswick weir fishery landed 1,385 mt of herring through October 1, 2022. Therefore, the Regional Administrator determined that, effective October 21, 2022, 1,000 mt will be reallocated from the management uncertainty buffer to the Area 1A sub-ACL and the ACL. This 1,000 mt reallocation increases the Area 1A sub-ACL from 1,075 mt to 2,075 mt and the ACL from 3,813 mt to 4,813 mt for the remainder of 2022.

Additionally, NMFS will use the adjusted allocations when we project whether catch from Area 1A will reach 92 percent of the Area 1A sub-ACL, or whether overall herring catch will reach 95 percent of the ACL. When Area 1A catch is projected to reach 92 percent of the Area 1A sub-ACL, catch from this area is reduced to 2,000 lb (907 kilogram (kg)) per trip, per calendar day. When overall catch is projected to reach 95 percent of the ACL, then catch in or from all herring management areas is limited to 2,000 lb (907 kilogram (kg)) per trip, per calendar day.

TABLE 1—ATLANTIC HERRING SPECIFICATIONS FOR 2022

| | Current specifications (mt) | Adjusted specifications (mt) |
|-----------------------------------|---------------------------------|------------------------------|
| Overfishing Limit | 26,292 | 26,292. |
| Acceptable Biological Catch | 8,767 | 8,767. |
| Management Uncertainty | 4,669 | 3,669. |
| Optimum Yield/ACL | 3,813 | 4,813. |
| Domestic Annual Harvest | 3,813 | 4,813. |
| Border Transfer | 0 | 0. |
| Domestic Annual Processing | 3,813 | 4,813. |
| U.S. At-Sea Processing | 0 | 0. |
| Area 1A Sub-ACL | 1,075 | 2,075. |
| Area 1B Sub-ACL | 0 | 0. |
| Area 2 Sub-ACL | 1,300 | 1,300. |
| Area 3 Sub-ACL | 1,824 | 1,824. |
| Fixed Gear Set-Aside | 30 | 30. |
| Research Set-Aside (RSA)* | 0 percent of each sub-ACL | 0 percent of each sub-ACL. |

* Because RSA participants are not pursuing RSA in 2022, we did not deduct it from the sub-ACLs. RSA will be revisited for 2023-2025 specifications.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 648, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public

comment on this inseason adjustment because it would be unnecessary and contrary to the public interest. This action allocates a portion of the management uncertainty buffer to the ACL and Area 1A sub-ACL for the remainder of the calendar year pursuant to a previously published regulation that provides no discretionary decision-making. This reallocation process was the subject of prior notice and comment

rulemaking. The adjustment is routine and formulaic, required by regulation, and is expected by industry. The potential to reallocate the management uncertainty buffer was also outlined in the 2021-2023 herring specifications that were published April 1, 2021 (86 FR 17081), which were developed through public notice and comment. Further, this reallocation provides additional economic opportunity for the

herring fleet. If implementation of this action is delayed to solicit public comment, the objective of the fishery management plan to achieve optimum yield in the fishery could be compromised. Deteriorating weather conditions during the latter part of the fishing year may reduce fishing effort, and could also prevent the ACL from being fully harvested. This would result in a negative economic impact on vessels permitted to fish in this fishery. Based on these considerations, NMFS further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reasons stated above.

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

Dated: October 21, 2022.

Jennifer M. Wallace,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 2022-23304 Filed 10-21-22; 4:15 pm]
BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 220216-0049; RTID 0648-XC376]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2022 total allowable catch of pollock in Statistical Area 620 in the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), October 21, 2022, through 2400 hours, A.l.t., December 31, 2022.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907-586-7228.

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

The 2022 total allowable catch (TAC) of pollock in Statistical Area 620 of the GOA is 69,250 metric tons (mt) as established by the final 2022 and 2023 harvest specifications for groundfish in the GOA (87 FR 11599, March 2, 2022).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the 2022 TAC of pollock in Statistical Area 620 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 69,150 mt and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached.

Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA.

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

Classification

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

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion, and would delay the closure of pollock in Statistical Area 620 in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 20, 2022.

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

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

Dated: October 20, 2022.

Jennifer M. Wallace,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 2022-23244 Filed 10-21-22; 4:15 pm]
BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 87, No. 206

Wednesday, October 26, 2022

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

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 120 and 121

RIN 3245-AH87

Affiliation and Lending Criteria for the SBA Business Loan Programs

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) is proposing to amend various regulations governing SBA's 7(a) Loan Program and 504 Loan Program, including use of proceeds for partial changes of ownership, lending criteria, loan conditions, reconsiderations, and affiliation standards, to expand access to capital to small businesses and drive economic recovery. The proposed amendments to affiliation standards will also apply to the Microloan Program, Intermediary Lending Pilot Program, Surety Bond Guarantee Program, and the Disaster Loan programs (except for the COVID Economic Injury Disaster Loan (EIDL) Disaster Loan Program).

DATES: SBA must receive comments on this proposed rule on or before December 27, 2022.

ADDRESSES: You may submit comments, identified by RIN 3245-AH87, through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

SBA will post all comments on <http://www.regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <http://www.regulations.gov>, please submit the information via email to Dianna.Seaborn@sba.gov. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Dianna Seaborn, Director, Office of

Financial Assistance, Office of Capital Access, Small Business Administration, at (202) 205-3645 or Dianna.Seaborn@sba.gov.

SUPPLEMENTARY INFORMATION:

I. Background Information

The mission of SBA is to “aid, counsel, assist and protect the interests of small business concerns in order to preserve free competitive enterprise and to maintain and strengthen the overall economy of our nation.” 15 U.S.C. 631(a). SBA accomplishes this mission, in part, through Capital Access programs that bridge the financing gap in the private market and help businesses of all sizes to recover from disasters. 15 U.S.C. 636(a) and (b). SBA has determined that changing conditions in the American economy, technological developments, and a constantly evolving small business community necessitate the need to revise regulations to improve program efficiency and the customer experience for the 7(a) and 504 Loan Programs. Additionally, SBA has determined that revisions for similar purposes to SBA regulations on affiliation determinations should also apply to the Microloan Program, the Intermediary Lending Pilot Program (ILP Program), the Surety Bond Guarantee Program (SBG Program), and the Business Disaster Loan Programs, which consist of Physical Disaster Business Loans, Economic Injury Disaster Loans, and Military Reservist Economic Injury Disaster Loans (but do not include COVID EIDL Disaster Loans).

SBA is proposing to streamline and modernize the 7(a) Loan Program and 504 Loan Program regulations setting forth use of proceeds regarding partial changes of ownership, lending criteria, hazard insurance requirements, and reconsiderations. Specifically, SBA is revising 13 CFR 120.130 on “Restrictions on uses of proceeds”; 13 CFR 120.150 on “What are SBA’s lending criteria?”; 13 CFR 120.160 on “Loan conditions”; 13 CFR 120.193 on “Reconsideration after denial”; 13 CFR 120.202 on “Restrictions on loans for changes of ownership”.

Historically, SBA has permitted loan proceeds for use only in three situations involving a change of ownership: (1) A complete change of ownership where the debt was used to finance a change of ownership of a business concern with

new owner(s) who previously held no interest in the small business concern acquiring 100 percent of the outstanding equity ownership in the small business from the selling owner(s), and the seller(s) completely divest from all ownership interest and management activities for the small business concern; or (2) A Partner Buyout, where the small business concern uses the loan to affect a change of ownership between existing owners and the owners which remain after the sale is complete held an ownership interest prior to the sale, and the selling owner(s) completely divest from all ownership interest and management activities for the small business concern; and (3) where an Employee Stock Ownership Plan or equivalent trust (ESOP) purchases a controlling interest (51% or more) in the employer small business from the current owner(s). Except for where an ESOP purchases a controlling interest (51% or more) in the employer small business from the current owner(s), SBA’s current regulations do not permit 7(a) loan proceeds to be used for partial changes of ownership. SBA proposes to revise restrictions on Borrowers using 7(a) loan proceeds to effect partial changes of ownership to assist small businesses and expand pathways to ownership.

SBA believes that streamlining and modernizing regulations on lending criteria and loan conditions for its 7(a) Loan Program and 504 Loan Program can better position the Agency and participating lenders to meet the needs of America’s small businesses, create jobs, assist with recovery from the COVID-19 pandemic, and grow the economy, fueling American entrepreneurship. Further, these proposed changes will enable SBA to provide capital in the form of 7(a) and 504 loans to more small businesses.

SBA also proposes to revise the process for reconsideration after denial of a loan application or loan modification request in its 7(a) Loan Program and 504 Loan Program to provide the Director, Office of Financial Assistance, with the authority to delegate decision making to designees. The proposed revision would also provide that the Administrator, solely within her discretion, may review these matters and make the final agency decision on reconsideration. Such discretionary authority of the

Administrator would not create additional rights of appeal on the part of an applicant not otherwise specified in SBA regulations.

Further, SBA proposes to simplify 13 CFR 121.301, which sets forth the principles for determining affiliation in the 7(a) Loan Program, 504 Loan Program, Microloan Program, ILP Program, SBG Program, and Business Disaster Loan Programs (except for the COVID EIDL Disaster Loan Program). Specifically, SBA proposes to remove the provisions on affiliation arising from management and control, franchise or license agreements, and identity of interest, and SBA proposes to streamline affiliation determinations based on ownership. This proposed rule would redefine affiliation for all these programs, thereby simplifying affiliation determinations.

The Agency requests comments on all aspects of regulatory revisions in this proposed rule and on any related issues affecting the 7(a) Loan, 504 Loan, Microloan, ILP, SBG, and Business Disaster Loan Programs.

II. Section-by-Section Analysis

Section 120.130—Restrictions on Uses of Proceeds

Current § 120.130, paragraph (g), refers to a restriction in § 120.202 regarding restrictions on Borrowers from using loan proceeds to purchase a portion of a business or another owner's interest in a business. SBA proposes to revise § 120.202, as described below, to allow use of 7(a) loan proceeds to fund partial changes of ownership. SBA is proposing to make this change to assist small businesses and provide a path to ownership for employees. Therefore, SBA is proposing to revise § 120.130(g) to remove the reference to § 120.202.

Section 120.150—What are SBA's lending criteria?

Current § 120.150 states that SBA's lending criteria for 7(a) and 504 loans requires that the applicant (including the Operating Company) must be creditworthy; loans must be so sound as to reasonably assure repayment; and SBA will consider nine specific factors in its lending criteria. The factors consist of: (a) Character, reputation, and credit history of the applicant (and the Operating Company, if applicable), its Associates, and guarantors; (b) Experience and depth of management; (c) Strength of the business; (d) Past earnings, projected cash flow, and future prospects; (e) Ability to repay the loan with earnings from the business; (f) Sufficient invested equity to operate on a sound financial basis; (g) Potential for

long-term success; (h) Nature and value of collateral (although inadequate collateral will not be the sole reason for denial of a loan request); and (i) The effect any affiliates (as defined in part 121 of this chapter) may have on the ultimate repayment ability of the applicant. SBA proposes to revise this regulation as discussed below.

In revising § 120.150, SBA would retain the requirement that the applicant (including an Operating Company) must be creditworthy and that loans must be so sound as to reasonably assure repayment, consistent with section 7(a)(6) of the Small Business Act.

SBA is proposing to incorporate into the regulation a new requirement that Lenders and Certified Development Companies (CDCs) must use appropriate and prudent generally acceptable commercial credit analysis processes and procedures consistent with those used for their similarly-sized, non-SBA guaranteed commercial loans. In using such appropriate and prudent processes and procedures, Lenders and CDCs would be required to underwrite SBA loans in the same manner in which the Lenders and CDCs underwrite their similarly-sized, non-SBA-guaranteed commercial loans where they bear all risk of loss in the case of loan default. SBA is aware that some SBA Supervised Lenders (as defined in 13 CFR 120.10) and some CDCs do not make non-SBA guaranteed commercial loans, and therefore do not have comparable processes and procedures for non-SBA guaranteed commercial loans. Therefore, the proposed language regarding non-SBA guaranteed commercial loans would not apply to such SBA Supervised Lenders and CDCs. For these SBA Supervised Lenders and CDCs, SBA has and would continue to require that they submit their credit policies, including credit scoring models, for review by SBA during the participant application process and/or during lender oversight processes in accordance with Loan Program Requirements as defined in 13 CFR 120.10.

SBA believes that allowing Lenders and CDCs to use appropriate and prudent commercially acceptable credit analysis processes and procedures consistent with those used for their similarly-sized, non-SBA guaranteed commercial loans will encourage Lenders and CDCs to participate in the 7(a) loan program because of alignment between their processes for guaranteed and non-guaranteed loans. This will allow CDCs to align with the credit processes and procedures of the 504 Loan Program's Third Party Lenders. SBA also believes this may encourage

Lenders and CDCs to make smaller loans by reducing the underwriting burden, including time and costs.

SBA also proposes adding language to § 120.150 to permit Lenders, CDCs, and SBA to use a business credit scoring model. Lenders and CDCs may use SBA's Small Business Scoring Service (SBSS) credit scoring model. Lenders and CDCs may also use other credit scoring models; however, when doing so, Lenders and CDCs must be able to validate the credit scoring model and must document with appropriate statistical methodologies that their credit analysis procedures are predictive of loan performance, and they must provide that documentation to SBA upon request and during oversight reviews. Credit scoring models could incorporate, for example, the earnings and cashflow of an applicant, equity, or collateral, in which case those factors would not necessarily be separately considered by a Lender or CDC unless otherwise specified by Loan Program Requirements (*e.g.*, where SBA requires an equity injection for certain project financing). SBA would continue to require new SBA Supervised Lender applicants and CDCs to submit their credit policies in accordance with Loan Program Requirements; as part of this process, SBA would require that these policies include any credit scoring models that the applicant intends to use for SBA lending at the time of application. SBA may use a business credit scoring model for non-delegated loan processing. SBA believes that allowing Lenders and CDCs to use credit scoring models for credit underwriting will result in more lenders making more smaller loans because the costs for making the small loans will decrease. SBA anticipates that credit scoring models will primarily be used for small loans. SBA anticipates that the higher an applicant's requested loan amount is, the more likely it will be that a Lender or CDC will conduct more traditional underwriting in accordance with their credit analysis processes and procedures consistent with those used for their similarly-sized, non-SBA guaranteed commercial loans.

The use of credit scoring models will not replace the requirement for Lenders and CDCs to comply with other Loan Program Requirements, such as, ensuring the project meets program eligibility requirements, adequate controls on disbursements are in place, providing accurate descriptions of uses of proceeds, and documenting that credit is not available elsewhere.

Modernizing SBA's lending criteria may result in the leveraging of technology by Lenders, including credit

scoring, to assess a loan's risk more quickly without compromising the credit quality of the overall 7(a) and 504 portfolios and possibly reducing fraud. A Congressional Research Service report reviewing the use of data by marketplace lenders indicates that accuracy of credit assessments may improve by using data and advanced statistical modeling, leading to fewer delinquencies and write-offs.¹ Additionally, using data in credit models could also allow Lenders, CDCs, and SBA to make credit assessments on applicants with little or no traditional credit history. According to a U.S. Department of the Treasury Report, industry proponents state that the use of data and modeling techniques for underwriting is a promising source of innovation that benefits small businesses.² Use of data may allow reduction in the cost of acquiring customers, automation of the origination of loans and the collection of loan documentation, and reduction in fraud.³

SBA proposes to revise this section to state that, as part of considering whether the applicant (including an Operating Company) is creditworthy and the loan is so sound as to reasonably assure repayment, SBA, Lenders, and CDCs may consider (as applicable) three specific criteria when approving loans: (a) The credit score or credit history of the applicant (and the Operating Company, if applicable), its Associates and any guarantors; (b) The earnings or cashflow of the applicant; or (c) Where applicable, any equity or collateral of the applicant. SBA believes consideration of these factors may be necessary to determine whether a small business is creditworthy and there is reasonable assurance of repayment.

Under the proposed rule, SBA, Lenders, and CDCs may consider the credit score or credit history of the applicant (including any Operating Company, if applicable), any Associates of the applicant, and any individuals or entities that will guarantee the loan. SBA is removing the requirement to consider character and reputation. The lending industry commonly uses the terms character and credit history interchangeably. The term credit history has a clearer meaning in the context of loan underwriting and credit review.

¹ Congressional Research Service, "Marketplace Lending: Fintech in Consumer and Small-Business Lending," September 4, 2018, Summary page and page 8 at <https://crsreports.congress.gov/product/pdf/R/R44614>.

² U.S. Department of the Treasury, "Opportunities and Challenges in Online Marketplace Lending," May 10, 2016, page 19 at https://home.treasury.gov/system/files/231/Opportunities_and_Challenges_in_Online_Marketplace_Lending_white_paper.pdf.

³ Ibid.

Reputation is difficult to define and apply as a component of loan underwriting and credit review. SBA, Lenders, and CDCs may also consider an applicant's earnings and cashflow (based on historical financial information or projections, depending on whether the applicant is an existing business or a startup) as part of the analysis to ensure that the applicant is creditworthy, and the loan is so sound as to reasonably assure repayment. SBA notes that some businesses, such as startups or new businesses, may not yet have historical data regarding earnings and cashflow, and as such, use of realistic projections would be reasonable and prudent. Where applicable, SBA, Lenders, and CDCs may also consider any equity or collateral of the applicant. In continuing with SBA's current policy, however, inadequate collateral would not be the sole reason for denial of a loan application, as some businesses may not have sufficient collateral available. There may also be circumstances where equity must be considered, such as where SBA requires an equity injection for certain project financing, e.g., for start-up businesses and certain changes of ownership.

SBA's proposed rule streamlines SBA's lending criteria by reducing the number of factors that are required to be applied in determining creditworthiness and reasonable assurance of repayment and allows for flexibility. Reducing the required factors does not prevent Lenders, CDCs, or SBA from considering other appropriate factors, particularly if the Lender's or CDC's generally acceptable commercial credit analysis processes and procedures for their similarly-sized, non-SBA-guaranteed commercial loans require review of additional factors. SBA will continue to provide further guidance regarding creditworthiness and reasonable assurance of repayment in Loan Program Requirements.

Section 120.160—Loan Conditions

Current § 120.160(c) states that for 7(a) and 504 loans SBA requires hazard insurance on all collateral and does not distinguish this requirement by loan size. SBA has determined that the hazard insurance requirement can be burdensome for the smallest businesses borrowing the smallest amount of money. SBA proposes to modify the requirement for hazard insurance for all 7(a) and 504 loans \$150,000 and under to create flexibility for SBA Lenders. SBA proposes revising this regulation to state that SBA requires hazard insurance for loans greater than \$150,000. SBA will include guidance in the Loan

Program Requirements for loans of \$150,000 or under, that SBA Lenders must follow the hazard insurance policies and procedures they have established and implemented for their similarly-sized, non-SBA-guaranteed commercial loans. SBA Lenders must continue ensuring that borrowers obtain flood insurance per § 120.170 when required under the Flood Disaster Protection Act of 1973 (Sec. 205(b) of Pub. L. 93-234; 87 Stat. 983 (42 U.S.C. 4000 *et seq.*)).

Section 120.193—Reconsideration After Denial

Under current § 120.193, the process for reconsideration after denial of a loan application or loan modification request in the 7(a) and 504 Loan Programs states that final reconsideration is made by the Director of the Office of Financial Assistance. To facilitate fair and expeditious reconsiderations, SBA proposes revising this regulation to state that the Director of the Office of Financial Assistance or the Director's designee(s) may make the final decision on reconsideration. For purposes of 7(a) loan applications, the Director's designee would include the Chief, 7(a) Loan Policy. For purposes of 504 loans, the Director's designee would include the Chief, 504 Loan Policy. From time to time, SBA may change the designee(s) and would do so in accordance with published Delegations of Authority. Further, SBA proposes also revising this regulation to provide the Administrator with the authority, solely within the Administrator's discretion, to review a reconsideration request and make the final Agency decision. Finally, the proposed regulation would state that the Administrator's discretionary authority does not create any additional appeal rights for the applicant that are not otherwise specified in regulation.

Section 120.202—Restrictions on Loans for Changes of Ownership

Current § 120.202 restricts Borrowers from using 7(a) loan proceeds to purchase a portion of a business or a portion of another owner's interest. SBA proposes to revise this section to allow Borrowers to use 7(a) loan proceeds to fund partial changes of ownership in addition to full changes of ownership. The proposed revision will allow a Borrower to purchase a portion of the business or a portion of an owner's interest in a business, or to purchase the entire business or an owner's entire interest. A Borrower could also purchase the partial or entire interests of multiple owners. This revision will allow Borrowers to use 7(a) loan proceeds to fund partial changes of

ownership and will help provide employees a path to ownership.

SBA has determined there is a need to assist small businesses to carry out partial changes of ownership. For example, the mass retirement of Baby Boomers is creating a glut of businesses that must either undergo a change of ownership or close. SBA currently authorizes complete changes of ownership; however, a gap in financing exists for those businesses that wish to undergo a partial change of ownership, such as when the owner is unable to find a buyer for a complete change of ownership, and when employees are unable to find private financing to capitalize a partial change of ownership. Partial changes of ownership allow the seller to remain in place as a part owner and employee, providing guidance and experience to ensure the success of the business. Partial changes of ownership also allow businesses to attract new owners or partners to expand, transfer interests in family businesses to family members, and facilitate continuity for both the business and employees.

ESOPs provide employees with a path to partial or complete ownership in the business, which aligns the interests of the owner-employees with the interest of the business. Further, ESOPs provide participants with tax benefits and the opportunity for retirement benefits. SBA currently facilitates employee ownership through ESOPs by providing 7(a) loan guarantees to ESOPs to purchase a controlling interest in the employer small business and by providing 7(a) loan guarantees to an eligible employer small business for the sole purpose of making a loan to an ESOP that results in the ESOP trust owning at least 51 percent of the employer small business. This proposed rule will not change SBA's current rules on ESOP lending. However, SBA has determined that the costs for ESOP formation and remaining in compliance with all applicable Internal Revenue Service, U.S. Department of the Treasury, and Department of Labor regulations are prohibitive barriers to entry and participation for most small businesses. As described below in the Regulatory Impact Analysis, from Fiscal Years 2018 through 2021, SBA approved a total of only 17 7(a) loans to assist an ESOP in acquiring 51% or more of a business, indicating that current policies are not accomplishing the Agency's intended goal of increasing employee ownership of businesses.

Accordingly, SBA proposes to remove its prohibition on partial buyouts in the 7(a) Loan Program to fill the gap in financing and to provide a path to ownership for employees.

Section 121.301—What size standards and affiliation principles are applicable to financial assistance programs?

Section 121.301 states the size standards and affiliation principles that are applicable to SBA's financial assistance programs. Paragraph (f) details how affiliation principles are applied for the 7(a) Loan Program, the 504 Loan Program, the Microloan Program, the ILP Program, the Business Disaster Loan Programs (except for the COVID EIDL Disaster Loan Program),⁴ and the SBG Program. This paragraph currently has seven sub-paragraphs, each of which details a separate affiliation principle that must be applied to the applicant and other entities to determine whether the entities are affiliated. The determination of affiliation is necessary to ensure that an applicant is "small" for purposes of eligibility for SBA financial assistance and to ensure that the applicant (including affiliates) does not exceed the maximum guaranty amount available. The seven sub-paragraphs consider: (1) affiliation based on ownership, including the principal of control of one entity over another; (2) affiliation arising under stock options, convertible securities, and agreements to merge, including the principal of control of one entity over another; (3) affiliation based on management, including the principal of control of one entity over another; (4) affiliation based on identity of interest between close relatives; (5) affiliation based on franchise and license agreements, including the principal of control of one entity over another; (6) determining the concern's size; and (7) exceptions to affiliation.

Participating lenders and the public have requested simplification of the affiliation rules for SBA's financial assistance programs, and recent Congressional actions have streamlined the affiliation rules for certain circumstances. For example, certain temporary COVID-19 pandemic relief programs enacted by Congress streamlined SBA's financial assistance affiliation requirements to speed relief to small businesses in hard-hit industries. The CARES Act created the Paycheck Protection Program (PPP), which is a temporary 7(a) Loan Program, and for that program, Congress waived affiliation requirements for businesses operating under North American Industry Classification System (NAICS) Code 72 (Accommodations and Food Services), for small businesses operating under a franchise agreement listed on

⁴ The affiliation principles for the COVID EIDL Disaster Loan Program are contained in paragraph (g) of § 121.301.

SBA's Franchise Directory, and for small businesses that were financed by a Small Business Investment Company (SBIC). Similarly, the American Rescue Plan Act (ARPA), Public Law 117-2, enacted on March 11, 2021, created the Restaurant Revitalization Fund (RRF), a program to assist hard-hit eligible restaurants and other food-related businesses that experienced pandemic-related revenue loss, and for that program, Congress provided a streamlined definition of an "affiliated business" in section 5003(a)(2). In SBA's interim final rule on "Disaster Loan Program Changes" (86FR50214, September 8, 2021), SBA adopted the simplified RRF definition of "affiliated business" for the temporary COVID EIDL program so that those applicants could more easily identify affiliates and complete the loan application process, with the expectation that this simplification would expedite the flow of funds to applicants that still needed relief from the COVID-19 pandemic.

Drawing on the successful experience of affiliation streamlining under the temporary pandemic relief programs and mindful of lender and public comments requesting affiliation streamlining for the permanent financial assistance programs, SBA is proposing to streamline the financial assistance affiliation requirements as set forth in this proposed rule.

Accordingly, SBA proposes to revise the § 121.301 affiliation provisions to simplify the program requirements, streamline the application process for SBA's programs, and facilitate the review of such applications. SBA proposes to specifically remove the principle of control of one entity over another as a separate basis for finding affiliation because the concept of control has proven particularly burdensome for applicants and lenders to understand and implement. For example, determining whether an entity has control over another has at times required in-depth analyses of franchise and license agreements and management agreements and delayed application processing. SBA believes that affiliation based on ownership also captures much of the control component, and control as a separate basis for finding affiliation is not necessary.

SBA is revising § 121.301 to add an introductory paragraph at the beginning to include the Small Business Act definition of a small business concern as one which is independently owned and operated, and which is not dominant in its field of operation. SBA interprets this statutory definition to require, in certain circumstances, the inclusion of other

entities (“Affiliates”) owned by the applicant or an owner of the applicant in determining the size of the applicant.

SBA is revising § 121.301(f)(1), “Ownership,” to remove the principle of control of one entity over another when determining affiliation. SBA is proposing to expand upon the definition of “ownership” under paragraph (f)(1) to clarify the thresholds of ownership at which SBA considers an Applicant to be affiliated with an individual or another business. The Small Business Act defines a small business concern as one which is independently owned and operated and which is not dominant in its field of operation. Accordingly, SBA will also clarify that certain instances of affiliation by ownership will only arise if the Applicant and another business operate in the same 3-digit NAICS subsector to restrict affiliates to businesses in the same field. Paragraph (f)(1)(i) will state that businesses in which the Applicant is a majority owner are affiliates of the Applicant. Paragraph (f)(1)(ii) describes affiliation with businesses that own a majority of the Applicant as well as businesses in the same 3-digit NAICS subsector that are majority-owned by the Applicant’s owner. Paragraph (f)(1)(iii) describes affiliation with another business when the Applicant and the other business are both majority-owned by the same individual and operate in the same 3-digit NAICS subsector. Paragraph (f)(1)(iv) describes a 20 percent threshold of ownership for affiliation with the Applicant when the Applicant does not have a majority owner if a 20% owner also operates in the same 3-digit NAICS subsector as the Applicant. Paragraph (f)(1)(v) will state that if the Applicant does not have a majority owner and an individual owns 20 percent or more of the Applicant, businesses that are majority-owned by that owner and operate in the same 3-digit NAICS subsector will be affiliates of the Applicant. Paragraph (f)(1)(vi) will state that ownership interests of spouses and minor children will be combined when determining ownership interest (as interests may be held in trust by parents for minors). Finally, paragraph (f)(1)(vii) will state that SBA will analyze the pro rata beneficial ownership of entities to determine affiliation and provide an example of the combined interest of an individual and an entity that is wholly-owned by the same individual. SBA believes this proposed regulatory language provides increased detail and clarity for lenders to apply, and also eliminates the confusion and frustration of determining affiliation by control.

Because SBA is revising its regulation generally by removing the principle of control of one entity over another as a separate basis for finding affiliation, the proposed rule would also revise § 121.301(f)(2), “Stock options, convertible securities, and agreements to merge,” paragraphs (f)(2)(i) and (iv). Where paragraph (f)(2)(i) currently states that SBA considers stock options, convertible securities, and agreements to merge (including agreements in principle) to have a present effect on the power to control a concern, the revised paragraph (f)(2)(i) would state that these items will have a present effect on ownership of the entity. SBA proposes to revise paragraph (f)(2)(iv) by deleting the first sentence where SBA currently states SBA will consider whether an individual, concern or other entity that controls one or more other concerns cannot use options, convertible securities, or agreements to appear to terminate such control before actually doing so. The proposed rule would remove the first sentence of paragraph (f)(2)(iv) because it is superfluous; the remaining sentence of the paragraph clearly states that SBA will not give present effect to the ability of an entity to divest in the future to avoid a finding of ownership.

SBA proposes to remove paragraph (f)(3), affiliation based on management, because SBA is revising its regulation generally by removing the principal of control of one entity over another from consideration of affiliation. SBA believes it should not interfere in a business owner’s right to enter into a service agreement with a management company. The business owner’s decision to hire a management company is a decision best left to the business.

The proposed rule would also remove paragraph (f)(4), affiliation based on identity of interest, because SBA believes it is inherently unfair and impractical to require close relatives to provide multiple years’ worth of financial statements for review by a lender and by SBA when the close relative is not a principal of the applicant business. For example, the current rule requires a sole proprietor who is requesting an SBA direct or guaranteed loan to provide their sibling’s business’s financial statements for review when the sibling is in the same or similar industry in the same geographic area. SBA believes this requirement imposes a chilling effect on applicants that may elect to use alternative predatory lending when relatives will not disclose their business financial statements for transactions in which they have no ownership interest. However, as stated above, SBA will still

combine the ownership interests of spouses and minor children when determining affiliation by ownership.

SBA proposes to remove paragraph (f)(5), affiliation based on franchise and license agreements. Because SBA is removing the principal of control of one entity over another from its affiliation consideration, this paragraph is no longer needed. Upon the effective date of this rule, SBA would no longer publish the SBA Franchise Directory. SBA Lenders retain the responsibility for ensuring that the applicant meets all Loan Program Requirements. SBA will continue to collect a franchise identifier number on each loan for the purpose of completing mandatory reporting requirements to Congress and for responding to congressional inquiries. Upon entering a loan into SBA’s electronic transmission system (E-TRAN), SBA Lenders will, for a franchise that is already listed in E-TRAN, pick the franchise from a list, for example a dropdown menu, or, for franchises that are not yet listed in E-TRAN, the SBA Lender will request a franchise identifier number, which SBA will provide without regard to whether the franchise meets SBA eligibility rules. SBA will use a franchise identifier number rather than allowing the SBA Lender to type in the name of the franchise so that SBA can ensure an exact match to the appropriate franchise.

SBA Lenders will still be expected to examine Franchised businesses for affiliation based on ownership. For example, when lending to a Franchised business, the SBA Lender should determine who owns the applicant business and any businesses the applicant owns in accordance with these regulations. However, neither the SBA Lender nor SBA will review the applicant Franchised business for affiliation with other entities beyond ownership; the applicant business will not be considered affiliated with the Franchisor or other Franchised businesses except by ownership.

SBA Lenders will also be expected to ensure the applicant meets Loan Program Requirements, including but not limited to eligibility and SBA’s lien priority. Some of these determinations may require a limited examination of the Franchise Agreement (or similar agreement) to determine whether there are any restrictions that would violate Loan Program Requirements (*e.g.*, discriminatory hiring practices, restrictions on security interests or lien priority for the Franchisor, etc.). For example, regardless of restrictions on security interests for Franchisor’s collateral present in Franchise

Agreements, SBA Lenders must ensure that the SBA Lender obtains, for the 7(a) loan program, a first lien, and for the 504 loan program, a second lien, on any property, equipment, inventory, etc. purchased with loan proceeds.

Compliance With Executive Orders 12866, 12988, 13132, and 13563, the Paperwork Reduction Act (44 U.S.C., Ch. 35), the Congressional Review Act (5 U.S.C. 801–808), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget has determined that this rulemaking is a “significant regulatory action” under Executive Order 12866. SBA has drafted a Regulatory Impact Analysis for the public’s information in the next section. Each section begins with a core question.

A. Regulatory Objective of the Proposal

Is there a need for this regulatory action?

The Agency believes it needs to streamline and reduce regulatory burdens to facilitate robust participation in the business loan programs that assist small and underserved U.S. businesses and the disaster loan programs that assist businesses of all sizes with recovery from disasters.

Regarding modernization of lending criteria, as a result of the emergency lending programs mandated to address economic impacts of the pandemic, SBA significantly leveraged the use of technology in loan delivery to capture efficiencies that can be applied across programs to increase access and lower costs for both participating lenders and the public. SBA also understands that lenders are currently leveraging data analytics tools and machine learning modelling in their conventional lending criteria models, particularly for small dollar loans, and that by modernizing SBA’s lending criteria to match lending practices already being implemented by its participating lenders, SBA will encourage more lender participation in its programs. For these reasons, among others, SBA is proposing the changes to SBA’s lending criteria rules at 13 CFR 120.150.

By dispensing with the requirement for hazard insurance for all 7(a) and 504 loans \$150,000 or less, SBA will eliminate a burdensome regulatory requirement for small loans while providing SBA Lenders with the flexibility use their own policies for similarly-sized non-SBA guaranteed loans regarding hazard insurance on these loans.

By permitting the Director, Office of Financial Assistance, to delegate reconsideration requests to a designee, SBA will facilitate fair and expeditious review of reconsideration requests and provide finality to applicants that are in the process of making important financial decisions.

SBA is revising its affiliation regulations in response to continuing requests by SBA’s participating lenders and the public. SBA believes that revising its affiliation regulations will result in expansion of credit to those who cannot obtain credit elsewhere and increased understanding of and compliance with program rules while decreasing time spent reviewing an applicant for eligibility.

There is also a need for SBA to address financing for changes of ownership. Orderly transitions of business ownership are beneficial both to the small business and its employees. Employees acquiring partial ownership interest in small businesses assists with transitions of ownership, especially when there is more than one current owner and one of the current owners intends to sell their equity stake in the small business to one or more employees who may not have an equity ownership interest at that time. The small business benefits by remaining in operation when it might otherwise be forced to close, and the employees benefit by having a path to ownership in a small business that remains in operation. Partial changes of ownership among existing owners of a small business permit such businesses to attract new employees as partial owners (e.g., allowing a dental group to attract a new dentist to the practice and providing the new dentist with partial ownership in the small business). Financing for changes of ownership also permit family members to purchase partial ownership in a family-run small business to ensure continuation of the small business after the retirement or death of an owner. However, SBA does not fully meet the financing needs of small businesses regarding partial changes of ownership due to current restrictions, necessitating this proposed rule.

Historically, SBA has permitted loan proceeds for use only in three situations involving a change of ownership: (1) A complete change of ownership; (2) a Partner Buyout; and (3) where an ESOP purchases a controlling interest (51% or more) in the employer small business from the current owner(s). Outside of loans to ESOPs, SBA’s current regulations do not permit 7(a) loan proceeds to be used for partial changes of ownership.

Over the past 4 completed fiscal years (FY 2018 through FY 2021), SBA approved 31,940 7(a) loans where loan proceeds were used to affect a change of ownership. ESOP loans (loans to assist an ESOP trust in acquiring 51 percent or more of the equity ownership in the small business concern) accounted for only 17 of the 31,940 loans used for a change of ownership in the four years between FY 2018 and FY 2021, or fewer than five loans per year, and therefore ESOP loans have not made the anticipated impact in transitioning small businesses to employee ownership as originally intended by the Agency. For these reasons, SBA intends to lift the prohibition on partial changes of ownership.

Current SBA policy only permits the selling owner(s) to remain as an owner or as an Associate or Key Employee of the small business in cases where the SBA guaranteed loan is made to the ESOP. SBA also permits 7(a) loans to an eligible employer small business for the sole purpose of making a loan (often referred as a back-to-back loan) to an ESOP that results in the ESOP owning at least 51 percent of the employer small business concern. However, the costs associated with the creation of an ESOP and ongoing compliance with associated regulations may be cost-prohibitive for small businesses.

The organizational costs for unleveraged ESOPs start at \$80,000 with additional annual compliance reporting obligations.⁵ In a leveraged ESOP transaction, the initial costs increase by 25 percent or more.⁶ SBA believes these costs to be prohibitive for many small businesses that qualify for SBA assistance. Consequently, SBA intends for the proposed rule change to allow for partial changes of ownership for employee ownership without the additional upfront and ongoing costs incurred by the small business in the formation and operation of an ESOP trust.

The proposed changes will reduce regulatory burdens, modernize program delivery through the use of data analytics tools and machine learning modelling, reduce the number of hours spent processing an application to deliver a loan for both SBA and lenders and increase access to capital.

⁵ <https://www.nceo.org/articles/too-small-for-esop> “How Small is Too Small for an ESOP?” by the National Center for Employee Ownership, updated July 29, 2022.

⁶ *Ibid.*

B. Benefits and Costs of the Rule

What are the potential benefits and costs of this regulatory action?

SBA does not anticipate significant additional costs or impact on the subsidy to operate the 7(a), 504, Microloan, ILP, SBG and Business Disaster Loan Programs under these proposed regulations.

SBA anticipates a minor impact to the subsidy as a result of approximately 800 new loans per year in 7(a) loan activity for loans involving a partial change of ownership. Over the past 4 completed fiscal years (FY 2018 through FY 2021), SBA processed a total of 206,415 7(a) loans, of which 31,940 loans (approximately 15.5%) included loan proceeds used to affect a change of ownership. ESOP loans (loans to assist an ESOP trust in acquiring 51 percent or more of the equity ownership in the small business concern) accounted for only 17 loans in the four years between FY 2018 and FY 2021, or fewer than five loans per year, and therefore ESOP loans have not made the anticipated impact in transitioning small businesses to employee ownership as originally intended by the Agency.

In revising SBA's lending criteria at 13 CFR 120.150, SBA anticipates that modernizing SBA's lending criteria to include credit scoring will not compromise the credit quality of the overall 7(a) and 504 portfolios. When using a credit scoring model other than SBA's SBSS model, Lenders and CDCs must be able to validate the credit scoring model and must document that their credit analysis procedures are predictive of loan performance; therefore, no reduction in credit quality is anticipated as a result of using credit scoring models. Streamlining the number of criteria lenders consider when approving loans, and for regulated lenders, using the same commercial credit analysis processes and procedures consistent with those used for their similarly-sized, non-SBA guaranteed commercial loans will not negatively impact the credit quality of the 7(a) and 504 Loan Program portfolios and will provide a time saving ranging from zero to several hours per loan depending on the size and complexity of the loan. SBA anticipates that modernizing SBA's lending criteria and allowing Lenders and CDCs to use their own processes and procedures will result in an increase in the number of participating lenders and loans in both programs, which would mean increased access to capital for small businesses.

The primary goal driving the revisions to 13 CFR 120.150 is to encourage and

facilitate more lenders to make more small dollar loans. SBA believes these streamlined rules will result in increased lender participation, particularly for community banks, credit unions and other mission-based lenders that generally serve more rural communities and underserved populations with smaller dollar loans. Currently, a substantial portion of SBA's portfolio is made by a small number of lenders: the top 25 lenders that participate in the 7(a) Loan Program make 40 percent of total loans (based on outstanding balance), and the top 2 lenders make 12 percent of the loans (based on outstanding balance). Meanwhile, the number of participating 7(a) Lenders has steadily decreased each year from FY 2010 with 2,034 Lenders to FY 2019 with 1,632 Lenders.

With more community-based lenders making small loans, borrowers that would not otherwise be able to obtain credit elsewhere will benefit by having access to credit being extended at non-predatory interest rates, fees, and terms. For example, Loan Program Requirements set the maximum variable interest rate that may be charged on a 7(a) Loan of \$50,000 or less at 6.5 percentage points over the base rate (e.g., prime rate). Since March 16, 2020, the prime rate is currently 5.5 percent, which equates to a maximum interest rate of 12 percent for a 7(a) Loan up to \$50,000 (loans above \$50,000 have lower maximum interest rates) and a maturity of up to 10 years. This is in comparison to a large online lender offering small business loans with annual percentage rates up to 98.4 percent with a maximum maturity of 36 months.⁷ A loan for \$50,000 made through the 7(a) Loan Program at 12 percent over 10 years results in a monthly payment of \$717, whereas a loan made by an online lender, at for example, 28 percent interest over 3 years results in a monthly payment more than three times higher at \$2,068. The smaller monthly payments accessible through the 7(a) Loan Program represent a significant increase in monthly capital available for other expenses.

By revising 13 CFR 120.160 to state that SBA requires hazard insurance only for loans greater than \$150,000, SBA anticipates a de minimis impact on annual subsidy calculation for the 7(a) 504 Loan Programs. The primary benefit to removing the requirement for hazard insurance on these small loans is to increase the speed with which lenders

can disburse loan proceeds after loan approval. Hazard insurance is only impactful when it is protecting collateral. Currently, SBA does not require collateral for loans \$25,000 or less, so these loans are not impacted by the proposed revision to hazard insurance requirements. Further, Lenders will continue to require hazard insurance for loans of \$150,000 and under when tangible assets such as real estate or equipment are financed with the loan in accordance with their non-SBA guaranteed policies and federal regulators. As such, although lenders will continue to require hazard insurance in accordance with their similarly-sized non-SBA guaranteed policies, they will experience a time savings by no longer providing SBA with documentation of proof of hazard insurance as part of SBA's loan origination and monitoring requirements. Further, even with hazard insurance in place, the lender and/or SBA's recovery on assets in this dollar range is minimal after the costs of liquidation and litigation are considered. In the 7(a) Loan Program, SBA is not listed as a loss payee on hazard insurance policies, so SBA does not have data regarding hazard insurance collections. However, from October 1, 2020, through December 31, 2021, the 504 Loan Program reported 270 instances of collection on a hazard insurance policy, 30 of which were for loans \$150,000 or less. This is an average of 2 collections per month for loans \$150,000 or less in a portfolio of approximately 56,000 total outstanding loans and 5,962 loans of \$150,000 or less. Although SBA does not collect hazard insurance payment data in the 7(a) Loan Program, it is reasonable to assume the 7(a) Loan Program experiences approximately the same hazard insurance collection rates. As of December 31, 2021, the 7(a) Loan Program had approximately 100,000 outstanding loans of \$150,000 or less, which approximates to 400 instances where a 7(a) lender would receive a hazard insurance collection, representing a minimal impact in the 7(a) Loan Program. The benefit to SBA for requiring hazard insurance at this amount is minimal, while lenders will save time and be able to disburse loan proceeds more quickly after loan approval by using their own procedures and not having to provide additional documentation evidencing insurance to SBA.

Revising 13 CFR 120.193 will allow the Director of the Office of Financial Assistance to delegate to a designee the authority to make final decisions on

⁷ U.S. Department of the Treasury, "Opportunities and Challenges in Online Marketplace Lending," May 10, 2016, page 10.

reconsideration after denial of a loan application or loan modification request in the 7(a) and 504 Loan Programs. SBA does not anticipate any additional costs or impact on the subsidy to operate the 7(a) and 504 Loan Programs under this proposed regulation. Additionally, the number of loans impacted by this change is very low in comparison to the number of loans processed in both loan programs. On average, the 7(a) Loan Program accounts for 10 to 12 requests per year, and the 504 Loan Program accounts for 28 to 41 requests per year. For comparison, in fiscal year 2021, the 7(a) Loan Program approved 51,856 loans, and the 504 Loan Program approved 9,676 loans. Lenders, CDCs, and applicants will benefit in a faster turn time for decision-making.

SBA does not anticipate significant additional costs or impact on the subsidy to operate the 7(a), 504, Microloan, ILP, SBG and Business Disaster Loan Programs under the proposed regulations at 13 CFR 121.301 regarding affiliation. Complex affiliation rules limit accessibility to SBA's business loan programs, with an outsized impact on underserved borrowers who may struggle to access traditional capital or other resources such as attorneys and CPAs. SBA anticipates that providing clear and streamlined regulatory guidance for its affiliation rules will result in an increase in the number of participating lenders and loans and will encourage more borrowers to apply. SBA anticipates that participating lenders will spend less time screening applicants for eligibility under SBA Size Standards because lenders and applicants will readily be able to determine which entities they are affiliated with, and lenders will have fewer documents to examine.

C. Alternatives

What alternatives have been considered?

SBA considered eliminating even more regulatory burdens and determined the proposed rules strike the right balance in responsibly streamlining regulations without substantially increasing the risk of waste, fraud, or abuse of the programs or otherwise threatening the integrity of the business loan programs or taxpayer dollars. Regarding affiliation, SBA has implemented several variations of its affiliation rules as discussed above, and SBA has determined the simplest affiliation rules were the least burdensome.

SBA also considered limiting partial changes of ownership to employees of

the business; however, the Agency believes this may restrict small businesses in need of additional expertise from providing a percentage of ownership as an incentive to recruit and retain new highly skilled employees. For example, an existing dental practice may recruit a new dentist by offering the dentist an equity ownership in the business as a hiring incentive. For this reason, SBA determined that partial changes of ownership should not be exclusive to existing employees of the business.

Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have preemptive effect or retroactive effect.

Executive Order 13132

This proposed rule does not have federalism implications as defined in Executive Order 13132. It will not have substantial direct effects 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, as specified in the Executive Order. As such it does not warrant the preparation of a Federalism Assessment.

Executive Order 13563

A description of the need for this regulatory action and benefits and costs associated with this action, including possible distributional impacts that relate to Executive Order 13563, are included above in the Regulatory Impact Analysis under Executive Order 12866.

Paperwork Reduction Act, 44 U.S.C. Ch. 35

SBA has determined that this proposed rule would require that the following forms be revised: SBA Form 1919, "Borrower Information Form," SBA Form 1920, "Lender's Application for Loan Guaranty for all 7(a) Loan Programs," SBA Form 1244, "Application for Section 504 Loans," SBA Form 5—Disaster Business Loan Application, and SBA Form 5C—Disaster Home/Sole Proprietor Loan Application.

SBA Forms 1919 and 1920 are approved under OMB Control number 3245–0348. SBA Form 1244 is approved under OMB Control number 3245–0071. SBA Form 5 is approved under OMB Control number 3245–0017 and SBA Form 5C is approved under OMB Control number 3245–0018.

SBA will revise SBA Form 1919, SBA Form 1920, and SBA Form 1244 to conform to the lending criteria changes at 13 CFR 120.150. When lenders choose to use a credit scoring model in accordance with 13 CFR 120.150, the estimated hour burden for lenders will decrease when the credit score incorporates consideration of certain lending criteria (e.g., the earnings and cashflow of an applicant), in which case those factors would not necessarily be separately considered by a lender unless otherwise specified by Loan Program Requirements. However, SBA expects that Lenders and CDCs will make more smaller loans due to the ability to use credit scoring models, which increase the estimated burden hours due to the increase in loans. This reporting requirement will be included in the OMB-approved collections for the affected forms. The other revisions to 120.150 (i.e., requirement that Lenders and CDCs use appropriate and prudent generally acceptable commercial credit analysis processes and procedures consistent with those used for their similarly-sized, non-SBA guaranteed commercial loans, and criteria that may be considered in lending criteria), will have a de minimis impact on the estimated hour burden because regulated lenders must comply with more rigorous lending criteria requirements from their federal regulators, and SBA-Supervised Lenders and CDCs must continue to comply with the credit policies submitted to OCRM.

SBA will revise SBA Form 1920 to conform to revisions at 13 CFR 120.130 and 13 CFR 120.202 to permit partial changes of ownership.

SBA will revise SBA Form 1919, SBA Form 1920, SBA Form 1244, and SBA Form 5 to conform to the affiliation rule changes at 13 CFR 121.301, which will reduce the estimated hour burden for applicants and lenders because SBA anticipates fewer entities will fall under the definition of "affiliate."

Congressional Review Act, 5 U.S.C. Ch. 8

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional Review Act or CRA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. SBA will submit a report containing this rulemaking and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major

rule under the CRA cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rulemaking is not a “major rule” as defined by 5 U.S.C. 804(2). Therefore, this rulemaking is not subject to the 60-day restriction.

Regulatory Flexibility Act, 5 U.S.C. 601–612

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires the agency to “prepare and make available for public comment an initial regulatory analysis” which will “describe the impact of the proposed rule on small entities.” Although the rulemaking will impact all of the approximately 2,897 7(a) Lenders, all of the approximately 216 CDCs, all of the approximately 150 Microloan Intermediaries, all of the approximately 35 ILP Intermediaries, and all of the approximately 44 Sureties that participate in the SBG Program, SBA does not believe the impact will be significant because this proposal modifies and streamlines existing regulations and procedures. However, as described below, there may be impacts due to increased 7(a) loans for partial changes of ownership.

SBA approved a total of 206,419 7(a) loans for the four-year period between FY 2018 and the end of FY 2021 (not including PPP loans), of which there were 31,940 loans that included proceeds used for a change of ownership (an average of just under 7,985 loans per year, or 15.5 percent of 7(a) loans approved each year).

SBA estimates the burden for completing SBA Form 1919, “SBA 7a Borrower Information Form”, including time for reviewing instructions, gathering data needed, and completing and reviewing the form, is 15 minutes per response. SBA will not need to change SBA Form 1919 as a result of the proposed rule for partial changes of ownership because the applicant simply writes in the dollar amount of the loan request and the purpose of the loan. SBA anticipates the proposed rule allowing partial changes of ownership will increase the number of 7(a) loans by 800 loans per year, with each of the loans representing a unique small business applicant. SBA Form 1919 will not need to be revised due to the proposed rule for SBLCs because Applicants use SBA Form 1919 regardless of whether their lender is an SBLC or some other type of 7(a) Lender.

The estimated burden for completing the SBA Form 1919, including time for reviewing instructions, gathering data needed, and completing and reviewing

the form remains unchanged at 15 minutes per response. SBA anticipates the proposed rules will result in an increase to loan volume by a potential 1,225 loans per year⁸ representing 1,225 unique small business Applicants.

An applicant completing the SBA Form 1919 will spend approximately fifteen minutes per response in completing the form, at a cost of \$23.55 per loan application. This estimate represents a total time burden cost of \$28,849 for the 1,225 total anticipated additional unique small business Applicants for loans for partial changes of ownership and new loans from SBLCs, including Mission-Based SBLCs. This small business Applicant burden estimate was derived from using the median hourly rate for General and Operations Managers from the May 2021 National Occupational Employment and Wage Estimates for the United States of \$47.10 per hour,⁹ and increasing this rate by an additional 100 percent (an additional \$47.10) to allow for the hourly costs for overhead and benefits, bringing the total hourly cost to complete SBA Form 1919 per applicant to \$94.20 per hour (Base) multiplied by fifteen minutes per response. The proposed rules will not change the time costs of completing the revised SBA Form 1919 as the proposed rule changes will not require the Applicant small business to provide any additional responses in completing SBA Form 1919 other than those already required.

In revising 13 CFR 120.130 and 120.202 to permit partial change of ownership, SBA will update the SBA Form 1920, “Lender’s Application for Loan Guaranty for all 7(a) Loan Programs”, in Section “O”, to add a question for the Lender to indicate that the change of ownership is a partial change of ownership. The current estimated burden for the 7(a) Lender in completing SBA Form 1920, including time for reviewing instructions, gathering data needed, and completing and reviewing the form is 25 minutes per response. Section “O” of SBA Form 1920 is required to be completed in cases involving a change of ownership using the loan proceeds. SBA Form 1920 currently requires the Lender to check an “N/A” box if the loan does not finance a change of ownership and answer an additional six “Yes” or “No” questions about the circumstances for the change of ownership. It is

⁸ The 1,225 additional loans represents 800 additional loans due to the proposed rule for partial changes of ownership and 425 new loans from the three new anticipated SBLC applicants.

⁹ Data available at the U.S. Bureau of Labor Statistics website at https://www.bls.gov/oes/current/oes_nat.htm#11-0000.

anticipated the additional language will be similar in length to the existing questions of approximately 30 words per question, which should add approximately 10 seconds per application to read and respond to the question by checking the yes or no box,¹⁰ which represents a cost increase to lenders of approximately 11 cents per application.¹¹

13 CFR 120.150, “What are SBA’s lending criteria?”

Based on industry feedback, SBA estimates Lenders and CDCs will save anywhere from zero to 2 hours per loan under the proposed revision of 13 CFR 120.150 to require that Lenders and CDCs must use appropriate and prudent generally acceptable commercial credit analysis processes and procedures consistent with those used for their similarly-sized, non-SBA guaranteed commercial loans. The range in time saving is due to the size and complexity of the loan and federally regulated lenders continuing to underwrite loans in accordance with their own procedures. Based on the average of the most recent 3 fiscal years, each year the 7(a) Loan Program approves 48,687 loans and the 504 Loan Program approves 7,631 loans, for a total of 56,318 loans approved per year. The mean hourly wage of a loan officer is \$36.99 according to the May 2020 U.S. Bureau of Labor Statistics. SBA estimates a cost saving ranging from \$0 to \$2,083,215 per year for Lenders and CDCs, calculated by multiplying 56,318 (total loans approved per year) by \$36.99 (mean hourly wage of a loan officer). This revision will have no direct impact on Applicants and possibly an indirect impact due to faster processing times that could lead to faster loan approval.

SBA anticipates the proposal to allow Lenders and CDCs to use a credit scoring model will increase the number of small loans approved while generally decreasing the length of time required to process a loan. Not all lenders will use credit scoring, and those that do will limit credit scoring to small loans. SBA estimates lenders will save from 2 to 4 hours per loan when they elect to use a credit scoring model.

¹⁰ The average silent reading rate for adults in English is 238 words per minute, based on an analysis of 190 studies with 18,573 participants by Brysbaert, Marc (April 12, 2019) How many words do we read per minute? A review and meta-analysis of reading rate, page 2, at <https://psyarxiv.com/xynwg/>.

¹¹ Based on the mean hourly wage of \$38.74 per hour for Loan Officers as of May 2021 U.S. Bureau of Labor Statistics at https://www.bls.gov/oes/current/oes_nat.htm#13-0000.

13 CFR 120.160, “Loan Conditions”

SBA estimates Lenders and CDCs will save anywhere from 0.25 to 6 hours per loan over the life of the loan under the proposed revision of 13 CFR 120.160 to eliminate the requirement for hazard insurance on loans \$150,000 or less. The range in time saving is due to whether lenders require hazard insurance on similarly-sized non SBA guaranteed loans in accordance with their own procedures. Lenders that do not require hazard insurance may save up to 6 hours over the life of the loan when including the time required to monitor whether the policy remains in place each year. Lenders that continue requiring insurance will experience a time savings by no longer documenting proof of insurance for SBA.

13 CFR 120.193, “Reconsideration After Denial”

The Director of the Office of Financial Assistance processes an average of 10 to 12 reconsideration requests for the 7(a) Loan Program and 28 to 41 reconsideration requests for the 504 Loan Program each year. Revising this rule will have a minimal impact on the overall portfolio; however, to the individual applicants that are impacted by reconsideration requests, a faster decision will allow the applicants to quickly move forward with financing with a positive decision or pursue other financing options with a negative decision.

Section 121.301, “What size standards and affiliation principles are applicable to financial assistance programs?”

The revisions to 13 CFR 121.301 will impact all of the approximately 1,738 7(a) Lenders and 186 CDCs that make an SBA loan annually (based on FY 2021 data), all of the approximately 150 Microloan Intermediaries, all of the approximately 44 Sureties that participate in the SBG Program, and all of the applicants for each of these programs and SBA’s Disaster programs. SBA’s proposal to streamline its affiliation rules will increase the overall number of loans made while simultaneously reducing the time required to process each loan.

List of Subjects*13 CFR Part 120*

Community development, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 121

Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA proposes to amend 13 CFR parts 120 and 121 as follows:

PART 120—BUSINESS LOANS

■ 1. The authority citation for 13 CFR part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), (b)(7), (b)(14), (h), and note, 636(a), (h) and (m), and note, 636m, 650, 657t, and note, 657u, and note, 687(f), 696(3), and (7), and note, and 697, 697a and e, and note; Public Law 116–260, 134 Stat. 1182.

■ 2. Amend § 120.130 by revising paragraph (g) to read as follows:

§ 120.130 Restrictions on uses of proceeds.

* * * * *

(g) Any use restricted by §§ 120.201 and 120.884 (specific to 7(a) loans and 504 loans respectively).

■ 3. Revise § 120.150 to read as follows:

§ 120.150 What are SBA’s lending criteria?

The applicant (including an Operating Company) must be creditworthy. Loans must be so sound as to reasonably assure repayment. Lenders and CDCs must use appropriate and prudent generally acceptable commercial credit analysis processes and procedures consistent with those used for their similarly-sized, non-SBA guaranteed commercial loans. Lenders, CDCs, and SBA may use a business credit scoring model. When approving direct or guaranteed loans, Lenders, CDCs, and SBA may consider (as applicable) the following criteria: credit score or credit history of the applicant (and the Operating Company, if applicable), its Associates and any guarantors; the earnings or cashflow of applicant; or where applicable any equity or collateral of the applicant.

§ 120.160 [Amended]

■ 4. Amend § 120.160(c) by adding the phrase “for loans greater than \$150,000,” after the words “SBA requires hazard insurance.”

■ 5. Amend § 120.193 by adding the words “or designee(s),” after the words “Director, Office of Financial Assistance (D/FA)” and by adding two sentences at the end of the section to read as follows:

§ 120.193 Reconsideration after denial.

* * * If the reconsideration is denied, a second and final reconsideration may be considered by the Director, Office of Financial Assistance (D/FA) or designee(s), whose decision is final. The

SBA Administrator, solely within the Administrator’s discretion, may choose to review the matter and make the final decision. Such discretionary authority of the Administrator does not create additional rights of appeal on the part of an applicant not otherwise specified in SBA regulations.

■ 6. Revise § 120.202 to read as follows:

§ 120.202 Loans for changes of ownership.

Notwithstanding § 120.130(a), a Borrower may use 7(a) loan proceeds to purchase a portion of or the entirety of an owner’s interest in a business, or a partial or full purchase of a business itself.

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 7. The authority citation for 13 CFR part 121 is revised to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(a)(36), 662, 694a(9), and 9012.

■ 8. Amend § 121.301 by adding introductory text and revising paragraph (f) to read as follows:

§ 121.301 What size standards and affiliation principles are applicable to financial assistance programs?

The Small Business Act defines a small business concern as one which is independently owned and operated, and which is not dominant in its field of operation. SBA interprets this statutory definition to require, in certain circumstances, the inclusion of other entities (“Affiliates”) owned by the applicant or an owner of the applicant in determining the size of the applicant.

* * * * *

(f) Any of the circumstances described below establishes affiliation for applicants of SBA’s Business Loan, Disaster Loan, and Surety Bond Programs. For this rule, the Business Loan Programs consist of the 7(a) Loan Program (Direct and Guaranteed Loans), the Microloan Program, the Intermediary Lending Pilot Program, and the Development Company Loan Program (“504 Loan Program”). The Disaster Loan Programs consist of Physical Disaster Business Loans, Economic Injury Disaster Loans, Military Reservist Economic Injury Disaster Loans, and Immediate Disaster Assistance Program loans. The following principles apply for the Business Loan, Disaster Loan, and Surety Bond Guarantee Programs:

(1) *Ownership.* (i) When the Applicant owns more than 50 percent of another business, the Applicant and the other business are affiliated.

(ii) When a business owns more than 50 percent of an Applicant, the business

that owns the Applicant is affiliated with the Applicant. Additionally, if the business entity owner that owns more than 50 percent of the Applicant also owns more than 50 percent of another business that operates in the same 3-digit NAICS subsector as the Applicant, they are all affiliated.

(iii) When an individual owns more than 50 percent of the Applicant and the individual also owns more than 50 percent of another business entity that operates in the same 3-digit NAICS subsector as the Applicant, the Applicant and the individual owner's other business entity are affiliated.

(iv) When the Applicant does not have an owner that owns more than 50 percent of the Applicant, if an owner of 20 percent or more of the Applicant is a business that operates in the same 3-digit NAICS subsector as the Applicant, the Applicant and the owner are affiliated.

(v) When the Applicant does not have an owner that owns more than 50 percent of the Applicant, if an owner of 20 percent or more of the Applicant also owns more than 50 percent of another business entity that operates in the same 3-digit NAICS subsector as the Applicant, the Applicant and the owner's other business entity are affiliated.

(vi) Ownership interests of spouses and minor children must be combined when determining amount of ownership interest.

(vii) When determining the percentage of ownership that an individual owns in a business, SBA considers the pro rata beneficial ownership of entities. For example, John Smith, Jane Doe, and Jane Doe, Inc., each own an interest in the Applicant. Jane Doe owns 15 percent of the Applicant, and she also owns 100 percent of Jane Doe, Inc. Jane Doe, Inc. owns 50 percent of the Applicant. SBA considers Jane Doe to own 65 percent of the Applicant.

(2) *Stock options, convertible securities, and agreements to merge.* (i) SBA considers stock options, convertible securities, and agreements to merge (including agreements in principle) to have a present effect on the ownership of the entity. SBA treats such options, convertible securities, and agreements as though the rights granted have been exercised.

(ii) Agreements to open or continue negotiations towards the possibility of a merger or a sale of stock at some later date are not considered "agreements in principle" and are thus not given present effect.

(iii) Options, convertible securities, and agreements that are subject to

conditions precedent which are incapable of fulfillment, speculative, conjectural, or unenforceable under state or Federal law, or where the probability of the transaction (or exercise of the rights) occurring is shown to be extremely remote, are not given present effect.

(iv) SBA will not give present effect to individuals', concerns', or other entities' ability to divest all or part of their ownership interest to avoid a finding of affiliation.

(3) *Determining the concern's size.* In determining the concern's size, SBA counts the receipts, employees (see § 121.201), or the alternate size standard (if applicable) of the concern whose size is at issue and all of its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit.

(4) *Exceptions to affiliation.* For exceptions to affiliation, see § 121.103(b).

* * * * *

Isabella Casillas Guzman,
Administrator.

[FR Doc. 2022-23167 Filed 10-25-22; 8:45 am]

BILLING CODE 8026-03-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2022-1303; Project Identifier MCAI-2022-01001-G]

RIN 2120-AA64

Airworthiness Directives; Alexander Schleicher GmbH & Co. Segelflugzeugbau Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2022-14-14, which applies to all Alexander Schleicher GmbH & Co. Segelflugzeugbau Model ASW-15 gliders. AD 2022-14-14 requires repetitively inspecting the wing root ribs for cracks, looseness, and damage and replacing any root rib with a crack, a loose rib or lift pin bushing, or any damage. Since the FAA issued AD 2022-14-14, the European Union Aviation Safety Agency (EASA) superseded its mandatory continuing airworthiness information (MCAI) to add all Model ASW-15B gliders to the applicability. This proposed AD is prompted by MCAI originated by an

aviation authority of another country to identify and correct an unsafe condition on an aviation product. This proposed AD would retain the requirements from AD 2022-14-14 of repetitively inspecting the wing root ribs for cracks, looseness, and damage and replacing any root rib with a crack, a loose rib or lift pin bushing, or any damage; and would add the Model ASW-15B gliders to the applicability. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by December 12, 2022.

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](https://www.regulations.gov). Follow the instructions for submitting comments.

- *Fax:* (202) 493-2251.

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

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

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2022-1303; 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 MCAI, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact Alexander Schleicher GmbH & Co. Segelflugzeugbau, Alexander-Schleicher-Str. 1, Poppenhausen, Germany D-36163; phone: +49 (0) 06658 89-0; email: info@alexander-schleicher.de; website: [alexander-schleicher.de](https://www.alexander-schleicher.de).

- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222-5110.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329-4165; email: jim.rutherford@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 **ADDRESSES**. Include “Docket No. FAA–2022–1303; Project Identifier MCAI–2022–01001–G” 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 the 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 Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2022–14–14, Amendment 39–22119 (87 FR 43403,

July 21, 2022), (AD 2022–14–14), for all serial-numbered Alexander Schleicher GmbH & Co. Segelflugzeugbau Model ASW–15 gliders. AD 2022–14–14 was prompted by MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued EASA AD 2021–0187, dated August 9, 2021 (EASA AD 2021–0187), for all Alexander Schleicher GmbH & Co. Segelflugzeugbau Model ASW 15 gliders to correct an unsafe condition identified as wing root rib damage.

AD 2022–14–14 requires repetitively inspecting the wing root ribs for cracks, looseness, and damage and replacing any root rib with a crack, a loose rib or lift pin bushing, or any damage. The FAA issued AD 2022–14–14 to detect and correct damaged root ribs.

Actions Since AD 2022–14–14 Was Issued

Since the FAA issued AD 2022–14–14, Alexander Schleicher GmbH & Co. Segelflugzeugbau determined that Model ASW–15B gliders can also be affected by wing root rib damage. As a result, EASA superseded EASA AD 2021–0187, and issued EASA AD 2022–0146, dated July 11, 2022 (referred to after this as “the MCAI”). The MCAI states that wing root rib damage can also affect Model ASW–15B gliders and the Model ASW–15B as well as the ASW–15 gliders require repetitively inspecting the wing root ribs and replacing any damaged wing root ribs. The MCAI retains the requirements of EASA AD 2021–0187 and expands the applicability to include all Model ASW–15B gliders.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1303.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Alexander Schleicher GmbH & Co. Segelflugzeugbau ASW 15 Technical Note No. 29, Issue II (TN No. 29, Issue II), dated May 4, 2022. This service information specifies replacement of root ribs.

This proposed AD would also require Alexander Schleicher GmbH & Co. Segelflugzeugbau ASW 15 Technical Note No. 29, dated June 28, 2021; Alexander Schleicher GmbH & Co. Segelflugzeugbau ASW 15 Repair

instruction exchange of wing root ribs according to TN 29, dated June 28, 2021; and Alexander Schleicher GmbH & Co. Segelflugzeugbau ASW 15 Maintenance Instruction G, Issue 1, dated June 28, 2021, which the Director of the Federal Register approved for incorporation by reference as of August 25, 2022 (87 FR 43403, July 21, 2022).

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

FAA’s Determination

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information described 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 these same type designs.

Proposed AD Requirements in This NPRM

This proposed AD would retain all of the requirements of AD 2022–14–14, would add Model ASW–15B gliders to the applicability, and would provide the option of using the service material from AD 2022–14–14 or the updated service material.

Differences Between This Proposed AD and the Service Information

TN No. 29, Issue II, specifies the exchange of page 22A and page 27A of the Flight and Operations Manual for the Model ASW–15 and ASW–15B gliders, respectively, with a new version of those pages and then specifies documenting this change on page 3, Amendments, of the respective manual, and the MCAI, and this proposed AD do not.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 29 gliders of U.S. registry.

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

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|-------------------------|-------------------------------------|----------------------|--|-------------------------------|
| Inspect root ribs | 1 work-hour × \$85 per hour = \$85. | Not Applicable | \$85 per product per inspection cycle. | \$2,465 per inspection cycle. |

The FAA estimates the following costs to do any necessary replacements that would be required based on the

results of the proposed inspection. The agency has no way of determining the

number of gliders that might need these replacements:

ON-CONDITION COSTS

| Action | Labor cost | Parts cost | Cost per product |
|----------------------------------|--|------------|------------------|
| Replace all four root ribs | 8 work-hours × \$85 per hour = \$680 | \$1,000 | \$1,680 |

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 that the 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:
 - a. Removing Airworthiness Directive AD 2022–14–14, Amendment 39–22119 (87 FR 43403, July 21, 2022); and
 - b. Adding the following new airworthiness directive:

Alexander Schleicher GmbH & Co.

Segelflugzeugbau: Docket No. FAA–2022–1303; Project Identifier MCAI–2022–01001–G.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by December 12, 2022.

(b) Affected ADs

This AD replaces AD 2022–14–14, Amendment 39–22119 (87 FR 43403, July 21, 2022) (AD 2022–14–14).

(c) Applicability

This AD applies to Alexander Schleicher GmbH & Co. Segelflugzeugbau Model ASW–15 and ASW–15B gliders, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 5712, Wing, Rib/Bulkhead.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as wing root rib damage. The FAA is issuing this AD to detect and correct damaged root ribs. The unsafe condition, if not addressed, could result in reduced structural integrity of the wing assembly, which could lead to loss of control of the glider.

(f) Compliance

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

(g) Action

(1) *For Model ASW–15 gliders:* Within 30 days after August 25, 2022 (effective date of AD 2022–14–14), and thereafter at intervals not to exceed 12 months, inspect all wing root ribs (4 places) for cracks, looseness, and damage, in accordance with the Action section in Alexander Schleicher GmbH & Co. Segelflugzeugbau ASW 15 Maintenance Instruction G, Issue 1, dated June 28, 2021. If there is a crack in any root rib, a loose rib or lift pin bushing, or any damage, before further flight, replace the root rib in accordance with Action paragraph (B) in Alexander Schleicher GmbH & Co. Segelflugzeugbau ASW 15 Technical Note No. 29, dated June 28, 2021, and steps 1 through 7 in Alexander Schleicher GmbH & Co. Segelflugzeugbau ASW 15 Repair instruction exchange of wing root ribs according to TN 29, dated June 28, 2021; or Action paragraph (C) in Alexander Schleicher GmbH & Co. Segelflugzeugbau ASW 15 Technical Note No. 29, Issue II, dated May 4, 2022, and steps 1 through 7 in Alexander Schleicher GmbH & Co. Segelflugzeugbau ASW 15 Repair instruction exchange of wing root ribs according to TN 29, dated June 28, 2021.

(2) *For Model ASW–15B gliders:* Within 30 days after the effective date of this AD and thereafter at intervals not to exceed 12 months, inspect all wing root ribs (4 places) for cracks, looseness, and damage, in accordance with the Action section in

Alexander Schleicher GmbH & Co. Segelflugzeugbau ASW 15 Maintenance Instruction G, Issue 1, dated June 28, 2021. If there is a crack in any root rib, a loose rib or lift pin bushing, or any damage, before further flight, replace the root rib in accordance with Action paragraph (C) in Alexander Schleicher GmbH & Co. Segelflugzeugbau ASW 15 Technical Note No. 29, Issue II, dated May 4, 2022, and steps 1 through 7 in Alexander Schleicher GmbH & Co. Segelflugzeugbau ASW 15 Repair instruction exchange of wing root ribs according to TN 29, dated June 28, 2021.

(3) *For Model ASW-15 and ASW-15B gliders:* Replacing all four wing root ribs is terminating action for the repetitive inspections required by this AD.

(h) Alternative Methods of Compliance (AMOCs)

The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in § 39.19. In accordance with § 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, mail it to the address identified in paragraph (i)(2) of this AD or email to: 9-AVS-AIR-730-AMOC@faa.gov. If mailing information, also submit information by email. 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.

(i) Additional Information

(1) Refer to European Union Aviation Safety Agency (EASA) AD 2022-0146, dated July 11, 2022, for related information. This EASA AD may be found in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2022-1303.

(2) For more information about this AD, contact Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329-4165; email: jim.rutherford@faa.gov.

(j) Material Incorporated by Reference

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

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

(3) The Director of the Federal Register approved the following service information for incorporation by reference on November 30, 2022.

(i) Alexander Schleicher GmbH & Co. Segelflugzeugbau ASW 15 Technical Note No. 29, Issue II dated May 4, 2022.

(ii) [Reserved]

(4) The Director of the Federal Register approved the following service information for incorporation by reference on August 25, 2022 (87 FR 43403, July 21, 2022)

(i) Alexander Schleicher GmbH & Co. Segelflugzeugbau ASW 15 Maintenance Instruction G, Issue 1, dated June 28, 2021.

(ii) Alexander Schleicher GmbH & Co. Segelflugzeugbau ASW 15 Repair instruction exchange of wing root ribs according to TN 29, dated June 28, 2021.

(iii) Alexander Schleicher GmbH & Co. Segelflugzeugbau ASW 15 Technical Note No. 29, dated June 28, 2021.

(5) For service information identified in this AD, contact Alexander Schleicher GmbH & Co. Segelflugzeugbau, Alexander-Schleicher-Str. 1, Poppenhausen, Germany D-36163; phone: +49 (0) 06658 89-0; email: info@alexander-schleicher.de; website: alexander-schleicher.de.

(6) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222-5110.

(7) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: fr.inspection@nara.gov, or go to: www.archives.gov/federal-register/cfr/ibr-locations.html.

Issued on October 13, 2022.

Christina Underwood,

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

[FR Doc. 2022-22698 Filed 10-25-22; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2022-0999; Airspace Docket No. 22-AWA-2]

RIN 2120-AA66

Proposed Amendment of Class C Airspace; Chicago, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Chicago Midway International Airport, IL (MDW) Class C airspace area by extending the existing MDW Class C airspace shelf within 10 nautical miles (NM) of MDW from the southeast counterclockwise to the northeast. The FAA is proposing this action to reduce the risk of midair collisions and enhance the efficient management of air traffic operations in the MDW terminal area.

DATES: Comments must be received on or before December 27, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590; telephone: (800) 647-5527, or (202) 366-9826. You must identify FAA Docket No. FAA-2022-0999; Airspace Docket No. 22-AWA-2, at the beginning of your comments. You may also submit comments through the internet at www.regulations.gov.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/. For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the airspace structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA-

2022–0999; Airspace Docket No. 22–AWA–2) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at www.regulations.gov.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: “Comments to FAA Docket No. FAA–2022–0999; Airspace Docket No. 22–AWA–2.” The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

An electronic copy of this document may be downloaded through the internet at www.regulations.gov. Recently published rulemaking documents can also be accessed through the FAA’s website at www.faa.gov/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas,

air traffic service routes, and reporting points.

Background

In 1988, the FAA issued a final rule that established the Chicago Midway Airport, IL, Airport Radar Service Area (ARSA) (53 FR 11020; April 4, 1988). As a result of the Airspace Reclassification final rule (56 FR 65638; December 17, 1991), which became effective in September 1993, the term “Airport Radar Service Area” was replaced by “Class C airspace area.” Further, as a result of the Terminal Airspace Reconfiguration final rule (57 FR 38962; August 27, 1992), also effective in September 1993, the Chicago Midway Airport, IL, ARSA was amended to lower the ceiling from 4,000 feet mean sea level (MSL) to 3,600 feet MSL so it would not overlap the floor of the Chicago O’Hare International Airport, IL, Terminal Control Area (TCA), which is the Chicago, IL, Class B airspace area today. The Chicago Midway Airport, IL, ARSA is now the MDW Class C airspace area.

As with the former ARSA, the primary purpose of a Class C airspace area is to reduce the potential for midair collisions in terminal areas and promote the efficient management of air traffic in those areas. Pilots are required to establish two-way radio communications with air traffic control (ATC) before entering Class C airspace and they must maintain two-way radio communications with ATC while operating in Class C airspace. These requirements are designed to keep ATC informed of all aircraft operating within the Class C airspace area.

Developments Since the Designation of the MDW Class C Airspace Area

Despite increases in aircraft operations and passenger enplanements, as well as establishment and amendment of instrument arrival procedures at MDW over the years, the MDW Class C airspace area has not been modified since 1993.

Prior to 2014, the proximity of buildings in the downtown Chicago area precluded the establishment of ground based precision instrument approach procedures to Runway (RWY) 22L at MDW. As a result, instrument flight rules (IFR) aircraft landing RWY 22L had to conduct an instrument approach to RWY 31C and then circled the airport to land RWY 22L. Although this procedure was necessary when weather or airfield conditions dictated the use of RWY 22L for arriving aircraft, the circling maneuver was considered inefficient and was avoided whenever possible.

The incorporation of Area Navigation (RNAV) Global Positioning System (GPS) systems within the aviation industry and the FAA’s implementation of three new RNAV standard instrument approach procedures to RWY 22L in February 2014, eliminated the circling maneuver that was necessary when using the ground based system. These new Performance Based Navigation (PBN) approaches featured a curved course to avoid the obstructions in downtown Chicago and have accounted for approximately one-third of MDW’s annual IFR arrivals from 2017 to 2022.

The MDW RNAV RWY 22L approach procedures provide a significant benefit to the airlines and general aviation aircraft landing MDW, but have created safety concerns within the airspace east of the MDW Class C airspace between RWY 22L arriving IFR aircraft and visual flight rules (VFR) general aviation aircraft operating along the Lake Michigan shoreline. The flight tracks of the RNAV RWY 22L approaches for arrivals from the east trace a descending path for IFR aircraft that crosses the Lake Michigan shoreline from east to west. While at the same time, general aviation VFR aircraft use the Lake Michigan shoreline as a visual reference to transit along a north-south flow east of the MDW Class C airspace.

Impact of MDW Class C Airspace Area Configuration on Operations

The current MDW Class C airspace area surrounds MDW within 5 NM of the airport from the surface to 3,600 feet MSL and within 5 NM to 10 NM around MDW from 1,900 feet MSL to 3,600 feet MSL beginning at a line 2 NM northeast of and parallel to the MDW RWY 31C localizer course clockwise to the boundary of the Chicago, IL, Class B airspace area. The MDW Class C airspace area encompasses the final approach courses for runways 4, 13, and 31, but does not include the final approach course for IFR arrivals conducting instrument approach procedures to RWY 22L. The MDW Class C airspace has not kept pace with PBN procedures development, increasing operations, or newer aircraft designs.

The MDW Class C airspace design provides VFR aircraft the maximum use of the airspace located east of MDW and south of downtown Chicago along the Lake Michigan shoreline without the requirement to be in two-way communication with ATC. This was possible because the VFR flyway located along the Lake Michigan shoreline did not conflict with inbound IFR aircraft conducting an approach to RWY 31C

and then circling MDW to land RWY 22L.

With the implementation of RNAV approaches to RWY 22L at MDW, IFR arrival aircraft are now routinely descending east to west across the VFR flyway along the Lake Michigan shoreline that is often densely populated with itinerant VFR aircraft. Although the VFR flyway is charted along the Lake Michigan shoreline with recommended altitude information "AT OR BELOW 2,000 [feet MSL]", VFR aircraft routinely operate to the base of the overlying Chicago, IL, Class B airspace at 3,600 feet MSL. The combination of IFR aircraft flying RNAV approaches to land RWY 22L and VFR aircraft using the VFR flyway along the Lake Michigan shoreline, sometimes upwards to the overlying Chicago, IL, Class B airspace, has increased the possibility of loss of separation, near midair, or midair collision situations between IFR and VFR aircraft over Chicago. Under this proposal, the final approach courses for all RNAV RWY 22L approaches would be encompassed in Class C airspace and VFR aircraft desiring to fly within the proposed Class C airspace shelf would be required to establish two-way communications with ATC so all aircraft, IFR and VFR, would be communicating with ATC within the proposed Class C airspace shelf extension; enabling greater safety and efficiency for all.

Benefits of Modifying the MDW Class C Airspace Area

Modifications of the current MDW Class C airspace area would enhance safety by lessening the likelihood of IFR aircraft flying RNAV procedures to RWY 22L encountering VFR aircraft, that are not in contact with ATC, flying along the Lake Michigan shoreline. The unique combination of high volumes of general aviation and commercial operations within the immediate vicinity of the MDW terminal area support a proposal to expand the MDW Class C airspace area in the interest of safety and the efficient use of the airspace.

The FAA believes that all users would benefit from participation in the proposed expanded availability of Class C airspace and services around MDW which include: sequencing of all aircraft to the primary airport (MDW); standard IFR services to IFR aircraft; separation, traffic advisories, and safety alerts between IFR and VFR aircraft; and, traffic advisories and safety alerts between VFR aircraft.

Pre-NPRM Public Input

In 2019, the FAA initiated an action to form an Ad Hoc Committee (Committee) to seek input and recommendations from representatives of effected aviation segments for the FAA to consider in designing proposed modifications to the Class C airspace surrounding MDW. The Committee, composed of local airspace users and aviation interested organizations, was formed and held two meetings. The basis for the FAA's proposed action was aimed at addressing issues associated with IFR aircraft (communicating with ATC) flying MDW RNAV RWY 22L approaches inbound from over Lake Michigan receiving Traffic Alert and Collision Avoidance System (TCAS) Resolution Advisory (RA) warnings for VFR aircraft (not communicating with ATC) flying along the Lake Michigan shoreline. Participants in the Committee included representatives from the Chicago Area Business Aviation Association, Illinois Department of Transportation, Chicago Department of Aviation, Chicago Executive Airport (PWK), Gary/Chicago International Airport (GYY), Waukegan National Airport (UGN), Southwest Airlines, Walsh Group/Griffith Aviation, Aircraft Owners and Pilots Association (AOPA), and congressional staff members from three aviation interested Congressional offices.

Discussion of Ad Hoc Committee Recommendations

The Committee submitted a recommended airspace design for consideration, as well as five requested items for the FAA to consider in designing the proposed modifications of the MDW Class C airspace area.

The Committee recommended that the FAA align the boundaries of the Class C airspace with prominent geographical features (visual landmarks) whenever possible. After considering the Chicago, IL, Class B airspace floor over the airspace between MDW and Lake Michigan; the MDW RNAV RWY 22L approaches and associated descent points; and the VFR aircraft flying along the Lake Michigan shoreline using the charted VFR flyway, sometimes operating upwards to the floor of the Chicago Class B airspace, the Committee agreed with FAA's proposed action, but recommended extending the MDW Class C airspace shelf between 5 NM and 10 NM further around the east side of MDW to Interstate 290. The recommended altitudes for the portion of the proposed Class C airspace shelf extension over land would remain consistent with the existing airspace

shelf, having a 1,900 foot MSL floor and a 3,600 foot MSL ceiling. The recommended altitudes for the portion of the proposed MDW Class C airspace shelf extension over Lake Michigan would have a 2,300 foot MSL floor and a 3,600 foot MSL ceiling. The Committee offered that this would encompass the MDW RNAV RWY 22L approaches for IFR aircraft landing at MDW, enable VFR aircraft to continue to use the Lake Michigan shoreline for reference in circumnavigating the MDW Class C airspace if they did not want to establish two-way communications with ATC to operate in the MDW Class C airspace shelf, and allow aerial sightseeing operations north of Interstate 290 to continue unhampered.

The FAA agrees and tries to adopt the use of geographical features whenever possible, but acknowledges that the proposed Class C airspace area that overlies Lake Michigan lacks prominent landmarks. However, there are currently four VFR checkpoints and multiple geographic references on the shoreline, including Interstate 290, Soldier Field, the Navy Pier located north of Interstate 290, and the electric power plant located southeast of MDW depicted on the VFR Flyway Planning Chart in the MDW area. All of these reference points would aid in VFR pilots determining the boundary of the proposed Class C airspace shelf extension.

The Committee recommended that the FAA update the Chicago VFR Flyway Planning Chart in the MDW area to reflect the status of the MDW RNAV RWY 22L approaches to provide awareness for the VFR aircraft using the charted VFR flyway along the Lake Michigan shoreline, as well as the VFR aircraft operating in the Class E airspace beneath the Chicago, IL, Class B airspace and east of the MDW Class C airspace.

The FAA agrees with this recommendation and has already adopted charting the MDW RNAV RWY 22L approach paths to the Lake Michigan shoreline and the VFR flyway depicted on the Chicago VFR Flyway Planning Chart and the Chicago Terminal Area Chart. The charted approach paths will continue to be charted and updated on future charts as required should the approaches be amended from the existing depiction. The FAA does not support extending the charted approach paths beyond the Lake Michigan shoreline or VFR flyway due to the chart clutter that would be created in the charted area east of MDW. The FAA continues to urge VFR pilots to use the charted VFR flyway along the Lake Michigan shoreline and to comply with the recommended altitudes as the

proposed Class C airspace shelf is considered for adoption to support the safety and efficiency of IFR and VFR aircraft operations in the airspace east of the existing MDW Class C airspace area.

The Committee also recommended that anytime an IFR aircraft is arriving to MDW from the east and is approved to fly visually to RWY 22L, that ATC require the inbound IFR aircraft to maintain 3,000 feet MSL to the Lake Michigan shoreline or the DXXON Fix before initiating its descent to MDW. Specifically, this would keep IFR aircraft arriving to MDW from the east from descending early and causing potential loss of separation, near midair, or midair collision situations with VFR aircraft operating on the chart VFR flyway at the recommended altitudes.

The FAA does not agree with this recommendation. Currently, ATC requires inbound IFR aircraft on a visual approach to RWY 22L to maintain 2,500 feet MSL until contacting Midway Airport Traffic Control Tower (ATCT) for landing or a lower altitude assignment. A Letter of Agreement between the Chicago Terminal Radar Approach Control (TRACON) and Midway ATCT requires that IFR aircraft cleared for a visual approach to maintain 2,500 feet MSL for all landing runways. This requirement ensures appropriate separation between MDW IFR arrivals worked by Chicago TRACON and VFR traffic worked by Midway ATCT is provided. Additionally, the 2,500-foot MSL altitude restriction keeps all MDW IFR arrivals conducting a visual approach above the VFR flyway recommended altitude of 2,000 feet MSL along the Lake Michigan shoreline. Finally, visual approaches to MDW RWY 22L are infrequently issued due to the proximity of RWY 22L approach course to IFR traffic inbound to Chicago O'Hare International Airport to their runways used during west flow operations. MDW IFR arrivals on a visual approach maintain 2,500 feet MSL until a lower altitude is assigned by Midway ATCT, e.g., clearance to land.

The Committee further recommended that when RWY 22L is not being used, and traffic flows allow, that ATC (Midway ATCT and Chicago TRACON) allow aircraft to fly through the proposed Class C airspace shelf east of the Lake Michigan shoreline. This would support an efficient use of the airspace by enabling VFR aircraft flying north and south along the shoreline, ensure ATC is aware of and communicating with VFR aircraft within the Class C airspace shelf, and not interrupt IFR aircraft arrival operations to the other runways that

may be in use. The recommendation was aimed at ensuring the efficient use of the regularly congested airspace east of MDW, while supporting ATC, IFR aircraft, and VFR aircraft operating requirements all at the same time.

The FAA agrees with the Committee's recommendation and encourages VFR pilots to establish two-way communications with ATC to fly through the proposed Class C airspace shelf, if established, along the Lake Michigan shoreline in the interest of flight safety for IFR and VFR aircraft alike. As the Committee noted, the airspace east of MDW, included in the proposed MDW Class C airspace shelf extension, is regularly congested. Safety of both IFR and VFR aircraft operating in the proposed MDW Class C airspace shelf is the goal of this proposed action.

The Committee also recommended the FAA work with the appropriate organizations and agency offices that coordinate and produce the Oshkosh Airshow Notice to Air Missions (NOTAMs) to ensure detailed information and instructions for IFR and VFR pilots to fly through the airspace proposed for the Class C airspace shelf extension is included. As the Oshkosh Airshow is conducted annually in Oshkosh, WI, and draws a high volume of general aviation enthusiasts, providing detailed information and instructions to transit the airspace east of MDW is vital to ensuring flight safety and efficiency in that congested airspace area.

Planning for the Experimental Aircraft Association (EAA) AirVenture event at Oshkosh, WI, is a yearlong process that includes collaboration between ATC, EAA, the U.S. military, and pilots who support and attend EAA's AirVenture. Public outreach is accomplished by a Notice published in the Domestic Notices link of the Air Traffic Plans and Publications website at www.faa.gov/air_traffic/publications/ and a NOTAM booklet with detailed information for aircraft transitioning the Lake Michigan shoreline and nearby airspace. In the 2022 EAA AirVenture Oshkosh Notice and NOTAM booklet, a "VFR Transition through Chicago Approach" section details how pilots are urged to use the Chicago VFR Flyway Planning Chart for the Chicago area. Specifically addressed for aircraft transiting the shoreline is to listen to the MDW Airport Traffic Information System (ATIS), as well as information addressing jet traffic crossing the shoreline at 3,000 feet MSL if MDW is landing on RWY 22L. It further urges pilots to comply with the VFR flyway altitudes south of the Navy Pier and north of the Electric Power Plant, as published. The Chicago

TRACON will continue to collaborate with EAA on future AirVenture Oshkosh events to ensure flight safety is maintained in the congested airspace east along the Lake Michigan shoreline.

Lastly, the Committee recommended ATC use of a single frequency VFR aircraft operations using the VFR flyway or using the Lake Michigan shoreline for reference as they transit north and south along the shoreline. The Committee acknowledged and understood that ATC has a staffing issue currently that prevents the use of a single frequency, but wanted the recommendation to be considered for implementation should the FAA make a determination to adopt the proposed amendment action.

The FAA is unable to adopt the Committee's recommendation for operational reasons. The Chicago TRACON has two separate low altitude sectors, one northeast of Chicago O'Hare International Airport and one southeast of the airport, that work VFR traffic transitioning the Lake Michigan shoreline below the Chicago, IL, Class B airspace. Both low altitude sectors, which use separate frequencies, will continue to use the existing frequencies even if the proposed MDW Class C airspace shelf extension is established. It is not possible to combine these two low altitude sectors in order to use a single frequency due to the complexity, traffic volume, and geographic size of each of the sectors. Pilots would continue to be able to fly along the shoreline underneath the proposed Class C airspace shelf with no change in their operating practice. For the pilots flying along the shoreline that would be within the proposed Class C airspace shelf, they would be required to establish two-way communication with ATC for their transition. The use of the existing frequencies along the Lake Michigan shoreline is based on the ATC sectors and facilities providing service, not on staffing issues.

After full consideration of the Committee's discussions and recommendations, the FAA decided to pursue the Committee's proposed airspace configuration. However, rather than extending the Class C airspace shelf between 5 NM and 10 NM at MDW further around the east side of MDW to Interstate 290, the FAA proposes to extend it to a point short of the interstate defined by the 090° bearing of the intersection of the 10-mile radius around the Chicago O'Hare International Airport and the 5-mile radius of the Chicago Midway International Airport. The FAA supports the altitudes recommended by the Committee for the proposed Class C airspace shelf extension for the portions over land and

over Lake Michigan. This alternative would still provide the benefits of using geographic landmarks, while keeping the Class C airspace extension from extending beyond what is necessary for encompassing the MDW RNAV RWY 22L approaches for IFR aircraft and enabling the VFR sightseeing operations north of Interstate 290 from being affected. This NPRM proposes modifications to the MDW Class C airspace shelf.

Discussion of Informal Airspace Meeting Comments

As announced in the **Federal Register** on August 23, 2021 (86 FR 47043), the FAA conducted two virtual informal airspace meetings using the Zoom teleconferencing tool: September 28, 2021, beginning at 1:00 p.m. (Central Time) and on September 29, 2021, beginning at 6:00 p.m. (Central Time). The virtual informal airspace meetings were also available to watch on the FAA's Facebook, Twitter, and YouTube social media channels. These meetings provided interested airspace users with an opportunity to present their views and offer recommendations regarding the planned modification of the MDW Class C airspace area. The FAA received comments from 32 individuals in response to the 2 meetings and all substantive comments received were considered in developing this proposal.

Seven commenters, including AOPA, commended the FAA for its efforts in developing this proposal, the public outreach and inclusion in developing the proposal, and the professional and courteous ATC services they receive. One of the commenters thanked the FAA for switching to the RNAV RWY 22L approaches instead of the RWY 31C localizer approach to then circling to RWY 22L when arriving from the east. A second commenter, who flies a local news helicopter, thought the proposal is a great idea. Two other commenters appreciated the opportunity to establish two-way communications with ATC while operating within the Class C shelf as they transited the Lake Michigan shoreline; one further acknowledging the benefit of doing that so they're not flying too low, and the other seeing the proposal as an opportunity to educate the pilot community and increase VFR pilots' ATC communications proficiency. A commenter shared that he had initial concerns about the impact of the proposal on recreational pilots; however, he now understands the FAA's IFR/VFR traffic safety related concerns and has determined it will not significantly affect the freedom of shoreline flights and is in full support of the proposal.

The FAA appreciates the positive comments received acknowledging the FAA's work on this proposal so far, the public outreach efforts to include the local flying community in the proposal development process, and the efforts to minimize impacts to the VFR general aviation traffic flying along the Lake Michigan shoreline, or lakefront.

Two commenters challenged the basis for the proposed Class C airspace shelf being extended to cover the east side of MDW. The first commenter alluded that the increase in IFR traffic to MDW RWY 22L is due to the change in Chicago O'Hare International Airport's arrival traffic due to the change in runways, which are all on an east/west orientation. The commenter stated further, previously, many airliners would come in from the southeast for landing. The second commenter asserted that besides the increase in safety margin for IFR traffic from VFR traffic, this proposal was indirectly trying to reduce VFR traffic flying along the Lake Michigan shoreline.

The FAA does not agree with these comments. The purpose of Class C airspace is to reduce the risk of midair collisions in the terminal area. A number of considerations are evaluated before determining whether an airport qualifies for the establishment or modification of a Class C airspace area. Proposed Class C airspace area designs are based on site-specific factors and for MDW it is specifically due to the development and availability of RNAV approach procedures to MDW RWY 22L that did not exist prior to 2014. The arrival flow at Chicago O'Hare International Airport (ORD) may affect the approach procedures in use at MDW; however, the proposal to extend the MDW Class C airspace shelf to include the east side of MDW is due to the RNAV RWY22L arrival procedures. The ORD arrivals still arrive from the southeast, mostly using the WATSN ARRIVAL (RNAV) procedure; flying from the southeast over Lake Michigan and then turning straight in to land on one of the ORD west runways.

The assertion this proposal was indirectly aimed at reducing VFR traffic along the Lake Michigan shoreline is not correct. With IFR aircraft inbound to MDW flying RNAV RWY 22L procedures, the aircraft begin descending out of 3,000 feet MSL, east to west, as they cross the VFR flyway which is often times full of itinerate VFR aircraft at and above the recommended 2,000 feet MSL altitude and not communicating with ATC. The Class C airspace shelf is intended to enhance flight safety by ensuring all aircraft, IFR and VFR, that are flying in

the area surrounding where the MDW RNAV RWY 22L approaches cross the VFR flyway are communicating with ATC. The FAA remains committed to providing Class C services in a manner that keeps the area safe for all users.

Two commenters questioned the floor altitude of the proposed Class C airspace shelf over Lake Michigan, while two additional commenters addressed the airspace shelf in general. The first two commenters were interested in why the floor altitude of the airspace shelf over Lake Michigan was proposed to extend upward from 2,300 feet MSL. One of the two commenters went on to ask further if a higher floor could be considered, sharing that a 2,600-foot floor would still provide a 400-foot buffer below the RNAV RWY 22L procedures and allow VFR aircraft to transition at 2,500 feet MSL. The two additional commenters asked if there was any consideration taken for airline pilots flying the RNAV Z RWY 22L procedure in the proposal, and were departure and missed approach procedures considered in the extension of the Class C airspace shelf or just IFR arrivals.

The proposed Class C airspace area boundaries, and the proposed altitude of the airspace areas, are shaped by the operational requirements of aviation users at and around MDW; the MDW terminal airspace environment; and the geographic, operation, and procedural factors specific to MDW. The 2,300-foot MSL Class C airspace shelf floor over Lake Michigan was a Committee recommendation that the FAA adopted. The proposed 2,300-foot floor of the airspace shelf over Lake Michigan ensures a safe operating environment for all aircraft flying within the shelf by enabling timely and effective traffic advisories for VFR overflight aircraft and IFR arrival aircraft operating in two-way communication with ATC. Further, it provides a higher Class C airspace shelf floor for VFR aircraft to transit below the Class C airspace from what was originally being considered. The original design the FAA provided to the Committee, as a starting point, was a single airspace shelf between 5 NM and 10 NM of MDW that extended from the Chicago, IL, Class B airspace northwest of MDW all the way around to the Chicago O'Hare Class B airspace northeast of MDW from 1,900 feet MSL to 3,600 feet MSL. With respect to the question of whether a higher airspace shelf floor could be considered from that proposed, the FAA offers that as noted above in the Comments Invited section, the proposal contained in this action may be changed in light of comments received.

In the development of the proposed Class C airspace shelf extension around the east side of MDW, the FAA considered all of the RNAV and conventional IFR arrival and departure procedures operating within the proposed airspace area to ensure the IFR aircraft receive the communications benefit of the ATC traffic advisory exchanges with VFR overflight aircraft also operating with the Class C airspace area. Additionally, the FAA considered the impacts associated with the VFR aircraft operating along the VFR flyway and proposed Class C airspace shelf floor altitudes with the intention of enabling enough airspace for VFR aircraft that opt to not establish two-way communications with ATC to fly beneath the Class C airspace or farther offshore safely.

One commenter asked whether the Class C airspace expansion would result in increased ATC staffing levels; thereby making VFR flight following request for VFR aircraft transiting the area more likely to be supported by ATC on a workload basis.

The ATC facility staffing levels are determined by numerous factors and criteria, and classification of airspace is only one factor considered. Based on the extent of the proposed Class C airspace shelf extension, the FAA does not anticipate this proposed action to affect the Chicago TRACON or Midway ATCT staffing levels. Further, the FAA does not expect an increase in VFR aircraft flying outside the Chicago, IL, Class B airspace area or the proposed Chicago Midway Class C airspace shelf requesting flight following. The Chicago TRACON will continue to provide VFR aircraft flight following services on a workload basis. Likewise, the FAA does not anticipate a large number of VFR aircraft seeking flight following within the proposed Class C airspace shelf. However, those VFR pilots who opt to fly within the proposed Class C airspace shelf and establish two-way communications with ATC will receive Class C services commensurate with the service provided in the existing MDW Class C airspace area.

Five commenters raised questions about airspace violations and aircraft conflicts in the airspace area of the proposed Class C airspace shelf. One commenter asked if there had been any studies or surveys to show actual airspace violations or aircraft conflicts and another commenter stated the ATO should make available all Class C and Class B airspace incursions within 15 NM from MDW between the 000 bearing to the 180 bearing. Two commenters asked about documented conflicts and TCAS RA warnings, and the nature of

the conflicts, occurring under the current airspace configuration. One of those commenters went on to ask if there was a plan to use the RNAV (RNP) X RWY 22L approach more when aircraft are arriving from the west to avoid crossing over the shoreline and VFR traffic flying in that area. A final commenter asked if the affected area east of MDW along the shoreline had any accident history.

The FAA finds that the questions and comments addressing studies, surveys, or reporting of airspace violations in the airspace of the proposed Class C airspace shelf to be outside the scope of this rulemaking. The airspace area of the proposed Class C airspace shelf is currently Class E airspace and there is no requirement to obtain a clearance or establish two-way communications with ATC to operate within that airspace area.

To the comments addressing aircraft conflicts and RAs, the FAA offers the following. On May 18, 2018, the Chicago TRACON accomplished a staff study to initiate consideration of this proposal. In the staff study, the TRACON reported 69 TCAS RA events by IFR aircraft landing MDW RWY 22L between September 1, 2016, and August 31, 2017, with the Midway ATCT reporting 17 additional TCAS RA events during the same time period. With a total of 86 TCAS RA events occurring between IFR arrivals descending to MDW flying RNAV RWY 22L procedures and VFR transient traffic flying near the Lake Michigan shoreline for the timeframe reported, that amounts to just over 7 incidents per month, on average. Since then, there have been an additional 89 TCAS RA events, collectively, by IFR aircraft landing MDW RWY 22L; further confirming the necessity for the proposed MDW Class C airspace shelf in this action.

Normally, the TCAS RA results in the IFR pilot conducting a climb or descent evasive maneuver. In rare cases, the IFR pilots may also turn the aircraft. If the IFR aircraft is near MDW when the TCAS RA event occurs, then often the IFR pilots must conduct a missed approach. This proposal to establish the Class C airspace shelf is intended to avoid these aircraft conflicts between MDW RWY 22L arrivals and VFR traffic operating near the MDW RWY 22L final approach course, and to avoid IFR aircraft arriving to MDW RWY 22L conducting missed approaches due to TCAS RA events.

It should be noted that the vast majority of “conflicts” are actually “potential conflicts” in which an air traffic controller detects that two or more aircraft will come within unsafe

proximity of each other unless some type of control action is taken, and then the controller takes that action. The number of documented conflicts only include TCAS RA events and close-proximity events involving non-TCAS-equipped aircraft and not events where air traffic controllers took action to prevent such events. As a result, considering TCAS RA events only does not reflect the actual safety risk mitigated by this proposal.

With respect to the comment reference using the RNAV (RNP) X RWY 22L approach more when aircraft are arriving from the west, the Chicago TRACON controllers use the MDW RNAV (RNP) X RWY 22L approach as often as possible. From an ATC and airspace efficiency perspective, this is the preferred approach for MDW RWY 22L arrivals from the west, but it cannot be used when arrivals from the west need to be sequenced further out to land behind arrivals from the southeast and east.

Five commenters expressed concerns resulting from VFR aircraft being pushed lower to remain below the proposed Class C airspace shelf floors (1,900 feet MSL and 2,300 feet MSL) and compressed into more congested airspace closer to the ground. Two of the five commenters also asked if any studies had been accomplished addressing the effect of restricting VFR aircraft below the proposed airspace shelf with the 1,900-foot MSL floor and the 2,300-foot MSL floor. One of those commenters was concerned with VFR aircraft flying over Lake Michigan being able to remain within glide distance of shore; whereas the other commenter was concerned with VFR aircraft “forced” to fly below the proposed airspace shelf over land. Another of the commenters asked if the FAA anticipated more VFR aircraft conflicts under the proposed airspace shelf, with another of the commenters asking if ATC would be able to handle the increase in flight following requests caused by the higher density of VFR traffic in an already congested area. Finally, a sixth commenter raised a concern that some aircraft would not be able to accomplish flying southbound along the lakeshore below the Chicago O’Hare Class B airspace shelf with a 3,000-foot floor, then descend below the proposed MDW Class C airspace shelf with a 2,300-foot floor, then climb above the Gary/Chicago Class D airspace with a 3,100-foot ceiling in the distance required.

The FAA does not agree. VFR aircraft are not being restricted below or forced to fly lower to remain below the proposed Class C airspace shelf; rather,

VFR pilots that operate within the airspace proposed to become Class C airspace are encouraged to establish two-way communications with MDW approach and use the services provided by ATC. The FAA recognizes that some pilots may opt to fly below the proposed Class C airspace shelf, but the safety provided by all pilots, IFR and VFR, within the Class C airspace shelf communicating with ATC is necessary and outweighs the concerns associated with establishing the proposed airspace shelf. The FAA audited 7 random weeks from 2019 and 2021 (2020 was not included due to pandemic related flight reductions) and the survey showed, on average, approximately 23 aircraft per day operating at and below 1,900 feet MSL under the proposed airspace shelf while only 10 aircraft per day operating between 2,300 feet MSL and 3,000 feet MSL. As such, the FAA does not anticipate an appreciable increase in VFR traffic operating lower over Lake Michigan. Additionally, the FAA does not anticipate more VFR conflicts below the proposed Class C airspace shelf, as well. Lastly, reference the concern of VFR aircraft not being able to navigate south along the Lake Michigan shoreline, or lakefront, making the altitude changes resulting from the proposal in the distance provided, the existing VFR flyway supports and provides exactly what the commenter stated concern over. The FAA anticipates VFR aircraft will plan accordingly to make the recommended altitudes to remain under the Chicago O'Hare Class B airspace, under the proposed MDW Class C airspace shelf, and over the Gary/Chicago Class D in the distance provided.

The FAA acknowledges that some compression may occur and that non-participating VFR traffic may have to fly below or circumnavigate the proposed MDW Class C airspace shelf in order to remain clear of it should they decide not to establish two-way communications with ATC to seek Class C airspace services. All aircraft operating beneath or in the vicinity of the proposed Class C airspace shelf are expected to continue to comply with the regulatory requirements of 14 CFR 91.111, titled Operating Near Other Aircraft, to avoid creating a collision hazard with other aircraft operating in the same airspace. Additionally, all aircraft operating in the same areas noted above are expected to continue complying with the requirements in 14 CFR 91.113, Right-of-Way Rules: Except Water Operations, to "see and avoid" other aircraft as well. The FAA believes that continued VFR pilot compliance with established flight

rules regulatory requirements, and these two regulations specifically, will overcome the compression and mid-air collision concerns raised by the commenters.

Ultimately, it is the pilot's responsibility to evaluate all factors that could affect a planned flight and determine the safest course of action whether it is circumnavigating the Class C, flying beneath the airspace shelf area, utilizing the charted VFR flyway, or establishing two-way communications with ATC and requesting Class C services.

One commenter referenced 14 CFR 91.119, Minimum safe altitudes: General, highlighting that over any congested area of a city, town or settlement, or over any open air assembly of persons, an aircraft must fly an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft. The commenter used that reference to argue that the airspace below the proposed Class C airspace shelf with a 1,900-foot floor is in effect unusable given the height of obstructions above sea level within that sector.

The FAA does not agree. There are only two charted obstructions that fall approximately 1 NM within the proposed 1,900-foot floor Class C airspace shelf boundary northeast of MDW and are located southwest and west of Soldier Field. The remaining portion of Class E airspace that would fall under the proposed Class C airspace shelf is unaffected by the commenter's concern. The Class E airspace that would remain beneath the proposed Class C airspace shelf with a 1,900-foot floor would be navigable by VFR aircraft, as it is under the current Class C airspace shelf that extends upward from 1,900 feet MSL, for pilots who elect not to establish two-way communications with MDW approach to fly within the proposed Class C airspace shelf. Additionally, flight around the two charted obstructions noted above would be still be possible using the existing VFR flyway along the Lake Michigan shoreline.

Two commenters addressed the use of visual landmarks in their comments. The first commenter argued how pilots were to know where the 10 NM radius of MDW was located for the airspace shelf outer boundary over Lake Michigan. He further noted that aircraft not utilizing GPS navigation might have difficulty recognizing the Class C airspace shelf outer boundary; noting the CRIB and EAST CRIB VFR checkpoints may be helpful, but encouraged the FAA to consider other mitigations that might be possible. The

second commenter shared that the recommendation offered by the Committee on the airspace shelf floor altitude, as well as the use of visual landmarks as reference points, were very positive developments.

The FAA acknowledges it is difficult to provide visual landmarks over Lake Michigan to determine the Class C airspace shelf 10 NM boundary. As such, pilots who do fly over Lake Michigan are encouraged to use GPS, Distance Measuring Equipment (DME), or other electronic means to determine spatial awareness of their location and the Class C airspace shelf boundary.

As noted previously in response to the Committee's recommendation to use visual landmarks when able, the FAA tries to adopt the use of geographical features whenever possible and acknowledges that the proposed Class C airspace area that overlies Lake Michigan lacks prominent landmarks. However, there are currently four VFR checkpoints (CRIB, EAST CRIB, NAVY PIER, and LAKE CALUMET) that could be used to roughly interpolate the airspace shelf boundary over Lake Michigan. Additionally, there are multiple geographic references on the shoreline, including Interstate 290 and Soldier Field located north of Interstate 290 and the electric power plant located southeast of MDW that could also be used. All of these reference points would aid VFR pilots in determining the boundary of the proposed Class C airspace shelf extension.

One commenter shared that MDW RWY 22L is used much of the time when RWY 13C would be the best runway for winds. The commenter argued that using RWY 13C would avoid the shoreline no matter if aircraft were coming from the east or west and there are Instrument Landing System (ILS), RNAV Localizer Performance with Vertical Guidance (LPV), and RNAV-Required Navigation Performance (RNP)-Authorization Required (AR) approaches available.

The FAA does not agree. The decision for selecting the MDW runway in use between RWY 13C and RWY 22L is made primarily on landing aircraft into the wind. When the winds are directly out of the south, there are ATC procedures that favor using MDW RWY 22L for operational efficiency reasons. There is no correlation between the proximity of Chicago O'Hare International Airport and the MDW RWY13C final approach course to the selection of the MDW landing runway. Additionally, any impacts to the Chicago O'Hare International Airport operations caused by MDW landing aircraft using RWY 13C have been

mostly mitigated and are not significant enough to favor the selection or use of one MDW runway over the other.

Two commenters asked about the current RWY 22L approach procedures and how/if they are expected to change with regard to this proposal. The first commenter was concerned about impacts that may be expected to aircraft flying the RNAV (RNP) Y RWY 22L approach versus the RNAV (RNP) X RWY 22L. The other commenter asked if the RNAV RWY 22L procedures were new, stating further that aircraft flying the procedures to RWY 31 and then circling to land RWY 22L have always been common in the past.

The FAA is not proposing or making any changes to any of the RNAV RWY 22L procedures. To the first commenter's question, the MDW RNAV (RNP) X RWY 22L procedure is used for aircraft arriving from the west when RWY 22L is in use; whereas, the MDW RNAV (RNP) Y RWY 22L procedure is used for aircraft arriving from the east when RWY 22L is in use. The procedures both support RWY 22L operations and cater to arrival aircraft depending on which direction they are arriving from. In response to the other commenter's question and statement, the RNAV RWY 22L procedures have been available for use since 2014. Additionally, rather than requiring pilots to fly a conventional or RNAV approach to RWY 31C and then circle the airport to land on RWY 22L, both ATC and pilots prefer to use the RNAV RWY 22L approaches to RWY 22L. The FAA believes using the RNAV RWY 22L procedures when RWY 22L is the runway in use, instead of having aircraft circle the airport visually from an approach flown to RWY 31C, is a much safer operation and provides an orderly, efficient arrival flow to MDW.

Six commenters questioned the ATC services to be provided by the FAA with the proposal. One commenter stated ATC currently makes transit of the MDW Class C nearly impossible for aircraft not landing at MDW and asked about the considerations made for the safety of flight issues for VFR aircraft transiting the lakeshore. Another commenter was concerned about ATC being able to handle the increase in flight following requests that the proposal was expected to incur. Three other commenters were concerned about air traffic controllers vectoring small, VFR aircraft further out over Lake Michigan and asking if MDW approach would still approve lakefront transitions similar to how they are currently, as well as be willing to extend traffic advisories beyond the proposed Class C airspace boundaries. The fifth

commenter questioned if MDW would have increased ATC responsibilities north of Montrose Harbor, located east of Chicago O'Hare International Airport, with the proposed Class C airspace shelf.

The FAA audited VFR aircraft operations in the proposal airspace area for 7 random weeks from 2019 and 2021 (2020 was not included due to pandemic related flight reductions). The audit results showed approximately 23 aircraft operations per day in the proposed airspace at and below 1,900 feet MSL and 10 aircraft operations per day between 2,300 feet MSL and 3,000 feet MSL. With that, the FAA does not anticipate there will be an appreciable increase in VFR traffic forced lower or pushed over the lake.

The FAA remains committed to providing ATC services to all aircraft, IFR and VFR, in the interest of flight safety in congested airspace areas. Since the proposed Class C airspace shelf is in an area that is currently Class E airspace, it is difficult to assert that ATC routinely denies entry into or makes it harder to enter MDW Class C airspace. The only Class C airspace currently east of MDW is the 5 NM surface area airspace located immediately around MDW from the surface upward to the base of the overlying Chicago O'Hare Class B airspace shelf. This is very congested airspace around the MDW airport and the FAA suspects it may explain why some aircraft may be denied entry into MDW Class C airspace. Again, the FAA encourages VFR pilots flying along the Lake Michigan shoreline consider establishing two-way communications with ATC to fly within the proposed Class C airspace shelf in the interest of flight safety for IFR and VFR aircraft alike.

Air traffic controllers are trained to consider many factors associated with operational situations as they control the aircraft within their responsible airspace sectors. However, if ATC should provide a control instruction that a pilot feels would jeopardize flight safety or their ability to comply, it is incumbent on the pilot to advise ATC of this and take appropriate action. Midway ATCT and Chicago TRACON will continue to provide lakefront transitions as they do today and continue to provide traffic advisories for the airspace under their control on a traffic and workload permitting basis. Typically, aircraft operating outside of the airspace under an air traffic controller's control will not be provided traffic advisories.

Lastly, Montrose Harbor is located north of the proposed Class C airspace

shelf boundary in Class E airspace underlying the Chicago O'Hare Class B airspace area. As such, it is not anticipated that ATC will have increased ATC responsibilities in that area.

One commenter challenged the suggestion that this proposal wouldn't impact traffic. The commenter stated that if effective, the increased IFR/VFR traffic separation made possible by the changes would in fact allow more curved approaches instead of reducing the use of them and would increase aircraft capacity within MDW Class C airspace via closer spacing of IFR approaches.

The FAA notes that the proposed action is aimed at enhancing flight safety for all by lessening the likelihood of IFR aircraft flying RNAV procedures to RWY 22L encountering VFR aircraft flying along the Lake Michigan shoreline and not in contact with ATC. It is not aimed at enabling more curved approaches. Further, IFR approach spacing is determined by two factors, (1) separation standards found in FAA Order JO 7110.65, Air Traffic Control, and (2) the operational demand of aircraft flying in the same airspace area. IFR arrival aircraft to RWY 22L can be no closer than 3 NM separation and due to operational demand of aircraft flying in the vicinity of MDW, they are typically further separated than that in the interest of flight safety in the MDW terminal area. Only during high demand "rush" periods will multiple IFR arrival aircraft 3 NM in trail of other IFR arrival aircraft be observed.

Two comments were received addressing ATC frequencies for the VFR aircraft that fly the Lake Michigan shoreline. One commenter was interested in knowing if the frequencies would be changed and how, if changing, while a second commenter asked if there were any plans to implement a Chicago shoreline common traffic advisory frequency (CTAF) for use similar to the "Watson Island" frequency in Miami.

The FAA does not intend to change the frequencies currently in use along the Lake Michigan shoreline since there are multiple ATC sectors and facilities controlling different airspace areas along the shoreline; which requires the use of the existing frequencies. Additionally, the FAA is not planning to add a common use frequency along the Lake Michigan shoreline similar to the "Watson Island" frequency noted on the Miami Terminal Area Chart. The FAA has opted to continue using the existing frequencies noted on the Chicago Terminal Area Chart to avoid potential frequency confusion that

could occur with the existing frequency that is published in the chart note for aircraft flying within 15 NM of MDW requesting services in Class C airspace.

Three comments addressed the proposed Class C airspace shelf boundary and the associated VFR flyway on the Chicago VFR Flyway Planning Chart. The first commenter simply asked if the existing Class C airspace shelf boundary located southeast of MDW would be removed should the FAA determine to extend the airspace shelf with a 1,900-foot floor further around the east side of MDW. The second commenter questioned if the VFR Flyway Planning Chart would change and if notes at the north and south ends of the VFR flyway would be added recommending how pilots should transit the proposed Class C airspace shelf area. The third commenter recommended charting a frequency for transitioning VFR aircraft to use to self-announce their intentions as the flight volume would be squeezed in that area.

The FAA offers that should the Class C airspace shelf be extended as proposed, the airspace shelf boundary line located southeast of MDW would be removed and the new airspace shelf boundary with a 1,900-foot MSL floor (over land) and 2,300-foot floor (over water) between 5 NM and 10 NM of MDW would be charted at the 090° bearing of the intersection of the 10-mile radius around the Chicago O'Hare International Airport and the 5-mile radius around the Chicago Midway International Airport. The VFR Flyway Planning Chart would change with the new Class C airspace shelf boundaries depicted, but the FAA does not intend to pursue adding chart notes at the north and south ends of the VFR flyway as recommended. The existing chart note with the frequency and who to contact to enter the Class C airspace would remain and apply to the extended Class C airspace shelf. Chart notes recommending how VFR pilots should transit the Class C airspace area are also not planned. The decision of whether to fly through the Class C airspace shelf or avoid entering the Class C airspace is up to each pilot after they flight plan and consider all factors. The FAA encourages VFR pilots to consider establishing two-way communications with ATC for Class C services in the proposed MDW Class C airspace shelf to enhance the flight safety in that area, especially when there is IFR traffic flying RNAV RWY 22L approaches inbound to MDW. Lastly, the FAA does not anticipate transitioning VFR aircraft to be squeezed below the Class C airspace shelf; therefore, the FAA intends to

retain the VFR flyway outside the airspace shelf with a 1,900-foot MSL floor as charted for VFR pilots should they opt to not establish two-way communications with MDW approach for Class C services.

Two commenters were concerned about the environmental analysis conducted in support of the proposed Class C airspace shelf extension around MDW. The first commenter asked what type of environmental factors the FAA addresses for amending the airspace. The second commenter shared that the proposal lowers the shelf from 3,600 feet MSL to 1,900 feet MSL over south side [Chicago] neighborhoods and that VFR traffic would be flying substantially lower outside the Class C as a result. The commenter asked if consideration is given to the noise impact over the neighborhoods under the shelf.

The FAA's environmental review for the proposed Class C airspace amendment is conducted in accordance with the National Environmental Policy Act (NEPA) requirements and considers several different categories which include, but are not limited to, biological resources, air quality, historical resources, and noise. With respect to the question of noise impact considerations over the south side neighborhoods under the proposed Class C airspace shelf, the FAA does not anticipate any adverse noise impacts from what is experienced today. As mentioned previously, based upon our traffic audit, the majority of VFR flights above 1,900 feet MSL today occur over Lake Michigan and most VFR flights over land today occur between 1,500 feet MSL and 1,900 feet MSL.

One commenter shared their concern that if this proposal was to overcome a safety of flight concern, why does it take two years to accomplish the proposed change. The commenter thought the airspace changes should be accomplished quicker.

The FAA acknowledges the concern for how long it appears to take to accomplish the rulemaking requirements to effect Class C airspace changes. The FAA does not take the regulatory requirements for changing airspace classifications and establishing operating rules and requirements in new airspace areas lightly. There are established regulatory processing procedures and timelines associated with ensuring public engagement and notice, as well as the opportunity to comment on proposed actions in accordance with the Administrative Procedures Act requirements contained in Title 5 of United States Code 553, while a proposal is being considered. Further, the processing steps are

developed to prevent arbitrary and capricious decision making that result in needless or unnecessary airspace changes. The rulemaking process includes public engagement to aid the FAA in developing its proposed airspace amendments (ad hoc committee) and then public opportunities to comment on the proposed action for consideration by the FAA (informal airspace meetings and notice of proposed rulemaking (NPRM)) as it reviews and evaluates all inputs prior to making a determination. Additionally, the FAA must accomplish and consider regulatory evaluations of Class C airspace proposals (initial and final), required NEPA reviews and considerations, and legal sufficiency reviews before publishing its regulatory determination. As Class C airspace actions tend to be controversial, rulemaking to establish or modify Class C airspace can take 24–36 months or more depending on the extent of the proposal.

One commenter recommended the FAA create a new program to replace Operation Rain Check (an FAA program to enhance pilot awareness of NAS functions, safety, and airspace procedures) and coordinate a program every 90 days that conducts a virtual fly-in and virtual community of that event.

This comment falls outside the scope of this rulemaking.

One commenter recommended establishing a VFR helicopter corridor on the north side of the MDW Class C airspace like the some of the corridors in the New York area in 14 CFR part 93, subpart W—New York Class B Airspace Hudson River and East River Exclusion Special Flight Rules Area. The location of the recommended VFR corridor was from the Lake Michigan shoreline in the vicinity of Soldier Field to the Vertiport Chicago Heliport.

The FAA does not agree. The VFR helicopter corridors in the New York area mentioned by the commenter are for access to Class B airspace by helicopters without talking to ATC. A VFR corridor is defined as airspace through Class B airspace, with defined vertical and lateral boundaries, in which aircraft may operate without an ATC clearance or communication with ATC. These corridors are, in effect, a “hole” through Class B airspace. The recommended VFR helicopter corridor is located within Class E and Class G airspace below the proposed MDW Class C airspace shelf, as well as the overlying Chicago O'Hare Class B airspace. As such, the FAA has determined a VFR helicopter corridor, as recommended, is unnecessary.

One commenter was concerned how the MDW Class C airspace proposal might impact the large volume of VFR traffic that traverses the VFR flyway along the Lake Michigan shoreline during the Experimental Aircraft Association's (EAA) Annual AirVenture "Oshkosh" event in Oshkosh, WI.

The FAA expects any impacts associated with the proposal to amend the MDW Class C airspace shelf around the east side of MDW to be minimal. As noted in response to the Committee's recommendation on the same issue, planning for the EAA AirVenture event at Oshkosh, WI, is a yearlong process that includes collaboration between ATC, EAA, the U.S. military, and pilots who support and attend EAA's AirVenture. Public outreach is accomplished by a Notice published in the Domestic Notices link of the Air Traffic Plans and Publications website at www.faa.gov/air_traffic/publications/ and a NOTAM booklet with detailed information for aircraft transiting the Lake Michigan shoreline and nearby airspace, including the MDW and Chicago TRACON controlled airspace areas. The 2022 EAA AirVenture Oshkosh Notice and NOTAM booklet that are published contain a "VFR Transition through Chicago Approach" section that details how pilots are urged to use the Chicago VFR Flyway Planning Chart for the Chicago area. It specifically addressed VFR aircraft transiting the shoreline to listen to the MDW ATIS transit guidance, as well as information addressing jet traffic crossing the shoreline at 3,000 feet MSL if MDW is landing on RWY 22L. The Notice and NOTAM booklet further urge pilots to comply with the VFR flyway altitudes south of the Navy Pier and north of the Electric Power Plant, as published. The Chicago TRACON will continue to collaborate with EAA on future AirVenture Oshkosh events and the FAA anticipates the event Notice and NOTAM booklet information to remain consistent with respect to guidance for transiting the lakefront (Lake Michigan shoreline) area even if the proposed MDW Class C airspace shelf would be established.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to modify the Chicago, IL, Class C airspace area by extending the airspace shelf around Chicago Midway International Airport further around the airport on the east side to end northeast of the airport. This amendment is proposed to enhance flight safety in the Chicago Midway International Airport terminal area (see the attached chart).

The current Chicago Class C airspace consists of a surface area and airspace shelf centered on the airport reference point: (1) that airspace extending upward from the surface to 3,600 feet MSL within a 5 NM radius of the airport; and (2) that airspace extending upward from 1,900 feet MSL to 3,600 feet MSL between 5 NM and 10 NM from 2-miles northeast of and parallel to the MDW RWY 31C localizer course southeast of the airport, clockwise to the Chicago O'Hare Class B airspace area northwest of the airport. The Class C airspace area excludes the airspace within the Chicago, IL, Class B airspace area. The footprint of the proposed Class C airspace area would be expanded to include an airspace shelf east of MDW, but the current 3,600-foot MSL ceiling of the Class C airspace area and Chicago Class B airspace exclusion would be retained. The proposed modifications are described below. In developing these modifications, the FAA has considered the comments, questions, and recommendations received from the Committee and the informal airspace meetings.

This proposal would reconfigure the Class C airspace area by extending the existing airspace shelf between 5 NM and 10 NM further around MDW on the east side from the existing boundary located 2 NM northeast of and parallel to the MDW RWY 31C localizer course to a new boundary defined by the 090° bearing of the intersection of the 10-mile radius around the Chicago O'Hare International Airport and the 5-mile radius around the Chicago Midway International Airport. This proposed new Class C airspace shelf would extend from the Chicago Class B airspace located northwest of MDW counterclockwise around MDW to a boundary slightly south of Interstate 290 located northeast of MDW and include the airspace over Chicago and Lake Michigan between 5 NM and 10 NM of MDW. The portion of the proposed airspace shelf over land would retain the existing airspace shelf altitudes extending upward from 1,900 feet MSL to 3,600 feet MSL, and the portion of the extended airspace shelf over Lake Michigan would extend upward from 2,300 feet MSL to 3,600 feet MSL. The exclusion of the airspace within the Chicago, IL, Class B airspace area would also be retained.

This proposed airspace shelf would enhance flight safety in the MDW terminal area by encompassing the MDW RNAV RWY 22L approaches for IFR aircraft, retaining a VFR flyway along the Lake Michigan shoreline outside Class C airspace for VFR pilots that elect not to fly within the proposed

Class C airspace and communicating with ATC, and preserving the VFR sightseeing operations north of Interstate 290 without impact.

Class C Airspace areas are published in paragraph 4000 of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class C airspace area modifications proposed in this document would be published subsequently in FAA Order JO 7400.11.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there would be no new requirement for information collection associated with this proposed rule.

Regulatory Notices and Analyses

Federal agencies consider impacts of regulatory actions under a variety of executive orders and other requirements. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify the costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (Pub. L. 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year. The current threshold after adjustment for inflation is \$165,000,000, using the most current (2021) Implicit Price Deflator for the Gross Domestic Product.

In conducting these analyses, the FAA has determined that this rule: (1) will

generate benefits that justify costs; (2) is not an economically “significant regulatory action” as defined in section 3(f) of Executive Order 12866; (3) will not have a significant economic impact on a substantial number of small entities; (4) will not create unnecessary obstacles to the foreign commerce of the United States; and (5) will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

The benefits of the proposed regulation are the value of the risk reductions resulting from modification of the MDW Class C airspace area. These benefits include the value of avoiding accident consequences (e.g., fatalities, injuries, and property damage) that could occur in the absence of the rule. As an example, the FAA estimates the value of reducing the risk of fatalities using the “value of statistical life,” currently \$11.8 million.¹ The FAA is proposing the rule to reduce the risk of midair collisions in an area in which there is a high volume of commercial and general aviation traffic. As described above regarding the staff study, the FAA identified an average of over 7 incidents (TCAS RA events) per month from 2016 to 2017 and additional subsequent events, which do not include events for which air traffic controllers took action to prevent such events. Midair collisions may result in fatalities, injuries, and property damage both to persons in the aircraft and on the ground.

The costs of the proposed rule are the value of resources needed to comply with the airspace changes. In this case, VFR pilots desiring to fly at their current altitudes that would be within the proposed Class C airspace would be required to establish two-way communications with ATC. VFR pilots flying in the vicinity of MDW are likely equipped for this communication and as such this change would involve only minimal time for awareness and planning. The FAA also does not anticipate increased staffing needs. Therefore, costs are likely minimal.

The FAA welcomes comments on the benefits and costs of this proposal.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980, Public Law 96–354, 94 Stat. 1164 (5 U.S.C. 601–612), as amended by

¹ See: U.S. Department of Transportation (DOT) March 2021, Treatment of the Value of Preventing Fatalities and Injuries in Preparing Economic Analyses. Office of the Secretary of Transportation, www.transportation.gov/office-policy/transportation-policy/revise-departmental-guidance-on-valuation-of-a-statistical-life-in-economic-analysis.

the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857, Mar. 29, 1996), and the Small Business Jobs Act of 2010 (Pub. L. 111–240, 124 Stat. 2504 Sept. 27, 2010), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term “small entities” comprises small businesses and 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.

Agencies must prepare an initial regulatory flexibility analysis (IRFA) if a proposed rule will have a significant economic impact on a substantial number of small entities. However, if not, the head of the agency may so certify per section 605(b) of the RFA. The certification must include a statement providing the factual basis for the determination,

The proposed rule does not impose requirements on small businesses, not-for-profit organizations, or governments. Therefore, per section 605(b), the head of the FAA certifies that the proposed rule would not result in a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rule and determined that it will improve aviation safety and does not exclude imports that meet this objective. As a result, the FAA does not consider this rule as creating an unnecessary obstacle to foreign commerce.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4)

requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action”. The FAA currently uses an inflation-adjusted value of \$165 million in lieu of \$100 million. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal government having first provided the funds to pay those costs. The FAA determined that the proposed rule will not result in the expenditure of \$165,000,000 or more by State, local, or tribal governments in the aggregate, or the private sector, in any one year. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures” prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 4000—Subpart C—Class C Airspace.

* * * * *

AGL IL C Chicago, IL [Amended]

Chicago Midway International Airport, IL
(Lat. 41°47'10" N, long. 087°45'09" W)

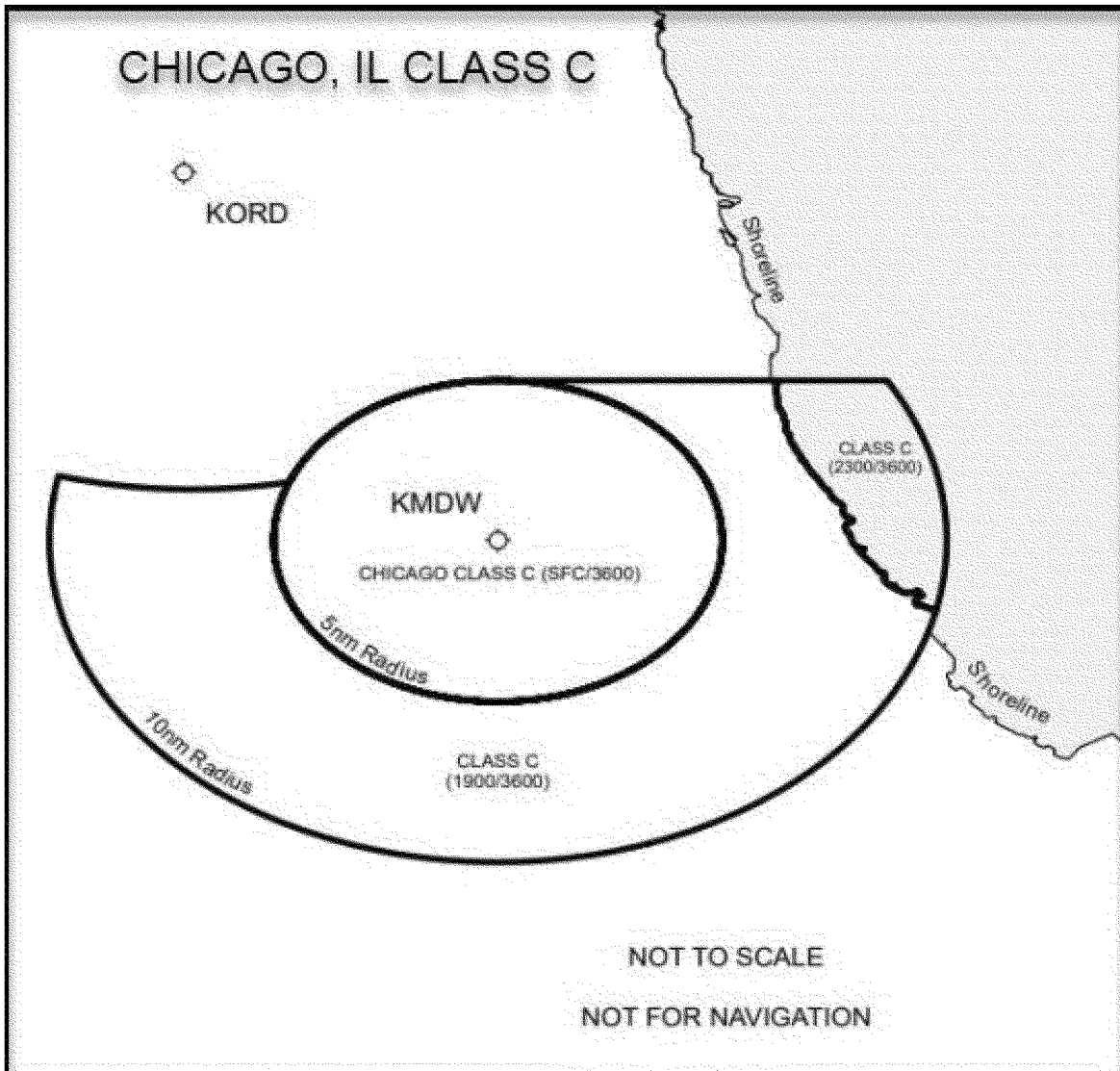
That airspace extending upward from the surface to 3,600 feet MSL within a 5-mile radius of the Chicago Midway International Airport; that airspace extending upward from 1,900 feet MSL to 3,600 feet MSL within an area beginning at a point north of Chicago Midway International Airport at the intersection of the 10-mile radius around a point centered at lat. 41°59'16" N, long. 087°54'17" W and the 5-mile radius of the Chicago Midway International Airport, thence extending on a 090° bearing to the

Lake Michigan shoreline at lat. 41°52'09" N, long. 087°36'59" W, thence southward following the shoreline to the 10-mile radius of the Chicago Midway International Airport at lat. 41°44'59" N, long. 087°32'06" W, thence clockwise along that 10-mile radius to the intersection with the 10.5-mile radius around a point centered at lat. 41°59'16" N, long. 087°54'17" W, thence counterclockwise along that 10.5-mile radius to the intersection with the 5-mile radius of the Chicago Midway International Airport, thence counterclockwise along that 5-mile radius to the intersection with the 10-mile radius around a point centered at lat. 41°59'16" N, long. 087°54'17" W; and that airspace

extending upward from 2,300 feet MSL to 3,600 feet MSL within an area beginning at a point on the Lake Michigan shoreline at lat. 41°52'09" N, long. 087°36'59" W, thence extending on a 090° bearing to the 10-mile radius of the Chicago Midway International Airport, thence clockwise along that 10-mile radius to the Lake Michigan shoreline at lat. 41°44'59" N, long. 087°32'06" W, thence northward following the shoreline to lat. 41°52'09" N, long. 087°36'59" W. This Class C airspace area excludes the airspace within the Chicago, IL, Class B airspace area.

* * * * *
BILLING CODE 4910-13-P

**PROPOSED MODIFICATION OF THE CHICAGO MIDWAY INTERNATIONAL AIRPORT
CLASS C AIRSPACE AREA
(Docket Number 22-AWA-2)**



Issued in Washington, DC, on October 17, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022-22779 Filed 10-25-22; 8:45 am]

BILLING CODE 4910-13-C

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Parts 780, 788, and 795

RIN 1235-AA43

Employee or Independent Contractor Classification Under the Fair Labor Standards Act; Extension of Comment Period

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the deadline for submitting written comments on the Notice of Proposed Rulemaking (NPRM), Employee or Independent Contractor Classification Under the Fair Labor Standards Act, to December 13, 2022. The U.S. Department of Labor (Department) is taking this action to provide interested parties additional time to submit comments.

DATES: The comment period for the NPRM that previously published on October 13, 2022, *see* 87 FR 62218, has been extended. The Department must now receive comments on or before December 13, 2022.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1235-AA43, by either of the following methods:

- *Electronic Comments:* Submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Address written submissions to Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue NW, Washington, DC 20210.

Instructions: Please submit your comment by only one method. Of the two methods, the Department strongly recommends that commenters submit their comments electronically via <https://www.regulations.gov> to ensure timely receipt prior to the close of the comment period, as the Department continues to experience delays in the receipt of mail. All comments must be received by 11:59 p.m. ET on December

13, 2022, for consideration in this rulemaking; comments received after the comment period closes will not be considered.

Commenters submitting file attachments on <https://www.regulations.gov> are advised that uploading text-recognized documents—*i.e.*, documents in a native file format or documents which have undergone optical character recognition (OCR)—enable staff at the Department to more easily search and retrieve specific content included in your comment for consideration. This recommendation applies particularly to mass comment submissions, when a single sponsoring individual or organization submits multiple comments on behalf of members or other affiliated third parties. The Wage and Hour Division (WHD) posts such comments as a group under a single document ID number on <https://www.regulations.gov>.

Anyone who submits a comment (including duplicate comments) should understand and expect that the comment will become a matter of public record and will be posted without change to <https://www.regulations.gov>, including any personal information provided. Accordingly, the Department requests that no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this NPRM.

Docket: For access to the docket to read background documents or comments, go to the Federal eRulemaking Portal at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Amy DeBisschop, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division (WHD), U.S. Department of Labor, Room S-3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693-0406 (this is not a toll-free number). Alternative formats are available upon request by calling 1-866-487-9243. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

Questions of interpretation and/or enforcement of the agency's regulations may be directed to the nearest WHD district office. Locate the nearest office by calling WHD's toll-free help line at (866) 4US-WAGE ((866) 487-9243) between 8 a.m. and 5 p.m. in your local time zone, or logging onto WHD's website for a nationwide listing of WHD district and area offices at <http://www.dol.gov/whd/america2.htm>.

SUPPLEMENTARY INFORMATION:

I. Electronic Access and Filing Comments

Public Participation: The NPRM is available through the **Federal Register** and the <http://www.regulations.gov> website. You may also access the NPRM through the Department's website at <http://www.dol.gov/federalregister>. To comment electronically on federal rulemakings, go to the Federal eRulemaking Portal at <http://www.regulations.gov>, which will allow you to find, review, and submit comments on federal documents that are published in the **Federal Register** and open for comment. Please identify all comments submitted in electronic form by the RIN 1235-AA43. Because of delays in receiving mail in the Washington, DC area, in order to ensure timely receipt prior to the close of the comment period, commenters should transmit their comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> or submit them by mail early. Please submit your comment by only one method.

II. Request for Comment

On October 11, 2022, the Department announced an NPRM intended to help businesses and workers determine whether a worker is an employee or an independent contractor under the Fair Labor Standards Act (FLSA). The Department published the NPRM in the **Federal Register** on October 13, 2022 (87 FR 62218), which instructed interested parties to submit comments on or before November 28, 2022, providing 46 days for comments.

Following publication of the NPRM, the Department received requests to extend the NPRM's comment period. After consideration of the extension requests, the Department has decided to extend the period for submitting public comment for 15 additional days (*i.e.*, until December 13, 2022), lengthening the comment period to 61 days total.

The Department takes seriously its obligation to consider any "written data, views, or arguments" submitted by commenters and looks forward to reviewing all feedback received on the NPRM before the close of the comment period. *See* 5 U.S.C. 553(c). The Department encourages all interested parties to submit comments electronically on www.regulations.gov (RIN 1235-AA43) by 11:59 p.m. ET on Tuesday, December 13, 2022.

Martin J. Walsh,
Secretary of Labor.

[FR Doc. 2022-23314 Filed 10-25-22; 8:45 am]

BILLING CODE 4510-27-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 25

[IB Docket No. 22–273, FCC 20–63; FR ID 107238]

Enable Non-Geostationary Orbit Fixed-Satellite Service (Space-to-Earth) Operations in the 17.3–17.8 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (FCC) seeks comment through a Notice of Proposed Rulemaking adopted on August 3, 2022, on amending its rules to enable non-geostationary (NGSO) fixed-satellite service (FSS) (space-to-Earth) operations in the 17.3–17.8 GHz frequency band, and on what technical rules would be necessary and appropriate to prevent harmful interference between NGSO FSS operations and other authorized operations in the band.

DATES: Comments are due December 27, 2022. Reply comments are due January 24, 2023.

ADDRESSES: You may submit comments, identified by IB Docket No. 22–273, by any of the following methods:

- *Federal Communications Commission's Website:* <http://apps.fcc.gov/ecfs/>. Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: FCC504@fcc.gov or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Sean O'More, International Bureau, Satellite Division, 202–418–2453, sean.omore@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, IB Docket No. 22–273, FCC 22–63, adopted August 3, 2022, and released August 3, 2022. The full text of the Notice of Proposed Rulemaking is available at <https://www.fcc.gov/edocs/search-results?t=quick&fccdaNo=22-63>. To request materials in accessible formats for people with disabilities, send an email to FCC504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Comment Filing Requirements

Interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section above. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).

- *Electronic Filers.* Comments may be filed electronically using the internet by accessing the ECFS, <http://apps.fcc.gov/ecfs>.
- *Paper Filers.* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

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

Ex Parte Presentations

The Commission will treat this proceeding as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in

the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Paperwork Reduction Act

This document contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we specifically seek comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Initial Regulatory Flexibility Analysis. As required by the Regulatory Flexibility Act of 1980 (RFA) the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) relating to this Notice of Proposed Rulemaking.

Synopsis

Notice of Proposed Rulemaking

In this Notice of Proposed Rulemaking, we seek comment on whether to allow operations of non-

geostationary satellite orbit (NGSO) in the FSS (space-to-Earth) in the 17.3–17.8 GHz band, similar to our action with regard to GSO FSS operations in these bands. We seek comment on whether such an action would serve the public interest, and, if adopted, what technical rules and standards we would need to prevent harmful interference between authorized services in these bands while increasing efficient and effective use of the spectrum.

Some commenters advocate allocating the 17.3–17.8 GHz band to both GSO and NGSO FSS (space-to-Earth) operations. Commenters point out that the demand for NGSO FSS (space-to-Earth) spectrum is growing, and that there is currently an imbalance between NGSO FSS (Earth-to-space) and NGSO FSS (space-to-Earth) spectrum in the Ka-band, which allocating the band to NGSO FSS would help to redress. Further, these commenters note that an NGSO FSS (space-to-Earth) allocation would align with the preparatory studies for the ITU 2023 World Radiocommunications Conference (WRC–23).

In the *17 GHz FSS Notice*, the Commission observed that the interference-mitigation regime it established for BSS and DBS feeder links in the 17.3–17.7 GHz band presupposed only GSO satellites. Further, the Commission noted that Article 22 of the ITU Radio Regulations does not include equivalent power flux density limits at the Earth's surface for the 17.3–17.8 GHz band that are necessary to protect earth stations receiving GSO transmissions from harmful interference from NGSO operations. Since the release of the *17 GHz FSS Notice*, some sharing and compatibility studies and preparatory work have been started by interested parties on FSS use of 17 GHz band and these studies are aiming to be completed in time for the next World Radio Conference in 2023 for any needed changes to the ITU Radio Regulations. These studies are expected to address certain sharing issues and the potential of the 17 GHz band for use by NGSO FSS satellites, including ESIMs.

We seek comment on commenters request to allocate the 17.3–17.7 GHz band to NGSO FSS (space-to-Earth), as well as on permitting unprotected NGSO FSS (space-to-Earth) operations in the 17.7–17.8 GHz band, similar to our action with regard to GSO FSS operations in these bands in the *Report and Order*. Kuiper, Mangata, SES and Telesat, SpaceX and OneWeb support an allocation to NGSO FSS in the band. Specifically, Kuiper observes that demand for internet services is growing,

particularly with more people working from home, and that at the same time, there is a 300-megahertz imbalance in spectrum available to NGSO providers, with 2,500 megahertz in 27.5–30.0 GHz of Earth-to-space spectrum and only 2,200 megahertz in 17.8–18.6 and 18.8–20.2 GHz in the Ka-band. Kuiper points out that in several recent rulemakings, the Commission has made spectrum available for both GSO and NGSO operations. Kuiper also states that nothing in the United States' positions for WRC–23 distinguishes between GSO and NGSO FSS satellite services, nor recommends any band for GSO only. SpaceX agrees with Kuiper, and states that timely access to the 17 GHz band is critical to enable satellite operators to meet the growing demand of American consumers for next-generation broadband connectivity wherever they are. SpaceX also states that because NGSO FSS operators such as SpaceX must share the spectrum allocated to their service, limited access to Ka-band spectrum presents a potential bottleneck that could reduce these operators' ability to provide high-capacity, low latency broadband services to underserved and unserved Americans—especially for critical downlink spectrum, where NGSO systems have access to 300 MHz less spectrum than on the uplink. Space X also states that the “lack of equivalent power flux-density (“EPFD”) limits in the band should not serve as a barrier to successful coexistence between NGSO and GSO operators in the 17 GHz band.” OneWeb adds that we have recognized the value of NGSO constellations in providing broadband services to the public, and that allowing NGSO FSS use would provide the same benefits of more spectrum, and particularly contiguous spectrum, to NGSO constellations as to GSO satellites and constellations.

Opposing the idea, AT&T points out that neither the Commission nor international bodies have studied the technical feasibility of NGSO operations in the 17.3–17.7 GHz band. AT&T reminds that the current interference prevention regime in the band and the technical rules proposed in the *17 GHz FSS Notice* are based on GSO systems sharing the band, and do not consider the technical characteristics nor interference potential of NGSO systems. Similarly, Hughes asserts that NGSO operations, if allowed at all, should be on a secondary basis, and SES and Telesat state only that we should provide an opportunity for NGSO proponents to demonstrate that they can share the band successfully with GSO

FSS (space-to-Earth) services. The FWCC agrees with AT&T that “the Commission should reject proposals to include non-geostationary satellite orbit (NGSO) FSS downlinks in this proceeding until technical studies can be produced demonstrating that NGSO FSS operations can share the 17.7–17.8 GHz band without causing harmful interference to incumbent services.”

We seek comment on NGSO FSS spectrum needs and permitting NGSO FSS (space-to-Earth) operations in the band, and ask commenters to support their views with technical data and studies to help us determine whether and how an allocation to NGSO FSS in the space-to-Earth direction in the band would serve the public interest while protecting incumbent users. If we were to allocate this spectrum for NGSO FSS, what are the appropriate technical rules vis-à-vis DBS/BSS, GSO FSS, or terrestrial services? What rules need to be adopted or modified to enable effective sharing while protecting the incumbent users? Are the EPFD limits in the adjacent bands sufficient to protect DBS/BSS stations and GSO FSS stations? Are there methods of protection other than EPFD limits that would be applicable? Would the addition of an NGSO allocation further degrade the reference situation for the DBS stations operating in accordance with the ITU Radio Regulations Appendix 30 plan? Are there any domestic and international coordination issues and/or other technical challenges that we need to address? All parties, whether advocating for an NGSO FSS (space-to-Earth) allocation in the band or against it, should support their views and requests with technical studies and data with quantitative and qualitative analyses.

Digital Equity and Inclusion. The Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

Procedural Matters

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). We request written public comments on this IRFA. Commenters must identify their comments as responses to the IRFA and must file the comments by the deadlines for comments on the NPRM provided above in section IV.B. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, summaries of the NPRM and IRFA will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

The NPRM seeks comment on several proposals relating to the Commission's allocation of frequency bands for use by the Fixed-Satellite Service (FSS) and technical rules and policies for preventing harmful interference between stations operating in the Fixed-Satellite Service and stations operating in the Digital Broadcasting Satellite (DBS) Service and the Broadcasting-Satellite Service (BSS). Adoption of the proposed changes would, among other things, permit the use of the 17.3–17.8 GHz band in the space-to-Earth direction by stations in the Fixed-Satellite Service.

B. Legal Basis

The proposed action is authorized under sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303(c), 303(f), 303(g), 303(r).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply

The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by adoption of proposed rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2)

is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Below, we describe and estimate the number of small entity licensees that may be affected by adoption of the proposed rules.

Satellite Telecommunications. This category comprises firms "primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of \$35 million or less in average annual receipts, under SBA rules. For this category, U.S. Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year. Of this total, 299 firms had annual receipts of less than \$25 million. Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

All Other Telecommunications. The "All Other Telecommunications" category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for "All Other Telecommunications", which consists of all such firms with annual receipts of \$35 million or less. For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than \$25 million and 15 firms had annual receipts of \$25 million to \$49,999,999. Thus, the Commission estimates that the majority of "All Other Telecommunications" firms potentially affected by our action can be considered small.

We anticipate that our proposed rule changes may have an impact on earth station and space station applicants and licensees. Space station applicants and licensees, however, rarely qualify under the definition of a small entity. Generally, space stations cost hundreds of millions of dollars to construct, launch, and operate. Consequently, we do not anticipate that any space station operators are small entities that would be affected by our proposed actions.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

The NPRM proposes and seeks comment on several rule changes that would affect compliance requirements for space station operators. As noted above, these parties rarely qualify as small entities.

For example, we propose to allow additional uses of the 17.3–17.8 GHz band, subject to compliance with technical limits designed to protect other users of the bands.

In total, the proposals and questions in the NPRM are designed to achieve the Commission's mandate to regulate in the public interest while imposing the lowest necessary burden on all affected parties, including small entities.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."0000000

The NPRM seeks comment from all interested parties. The Commission is aware that some of the proposals under consideration may impact small entities. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined in the NPRM.

The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the NPRM, in reaching its final conclusions and taking action in this proceeding.

In this NPRM, the Commission invites comment on adding an allocation in the 17.3–17.8 GHz band to permit the use of the band by the Fixed-Satellite Service in the space-to-Earth direction, along with technical rules to prevent harmful interference between the FSS, DBS, and BSS. Overall, the proposals in the NPRM seek to increase the use of the 17.3–17.8 GHz band by satellite services while maintaining adequate protections against interference.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Ordering Clauses

It is further ordered that, pursuant to Sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303(c), 303(f), 303(g), 303(r), this Notice of Proposed Rulemaking IS HEREBY ADOPTED.

It is further ordered that the Commission's Consumer and

Governmental Affairs Bureau, Reference Information Center will send a copy of this Report and Order and this Notice of Proposed Rulemaking, including the final and initial regulatory flexibility analyses, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Federal Communications Commission.

Marlene Dortch,
Secretary.

[FR Doc. 2022–22814 Filed 10–25–22; 8:45 am]

BILLING CODE 6712–01–P

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Agency Information Collection Activities; Request for Comments; Announcement of Customer Service Survey

AGENCY: U.S. Agency for International Development (USAID).

ACTION: Notice of information collection; request for comment.

SUMMARY: USAID's Performance Improvement Officer (PIO) will administer an annual, internal Customer Service Survey (CSS) and use staff feedback to improve customer service operations. USAID leadership uses CSS results to demonstrate their commitment to listening to customers, making data-informed decisions, and addressing customers' issues.

DATES: USAID intends to issue the survey in late winter/early spring 2023. Comments are due November 25, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Maggie Strong, mastrong@usaid.gov, 202-921-5104.

SUPPLEMENTARY INFORMATION: USAID, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on the proposed survey.

Title of Collection: USAID Internal Customer Service Survey (CSS).

OMB Control Number: 1840-NEW.

Type of Review: A new information collection.

Respondents/Affected Public: USAID institutional support contractors, personal support contractors.

Total Estimated Number of Annual Responses: 1922.

Total Estimated Number of Annual Burden Hours: 256.2.

Abstract: The Customer Service Survey will be administered to USAID staff, including contractors. USAID staff of all hiring mechanisms have the opportunity to take the survey; participation is not mandatory. USAID uses data for internal decision-making and data will not be made public.

Margaret Emery Strong,

Senior Analyst, USAID.

[FR Doc. 2022-23232 Filed 10-25-22; 8:45 am]

BILLING CODE 6116-01-P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS-2022-0027]

Notice of Request To Renew an Approved Information Collection: Specified Risk Materials

AGENCY: Food Safety and Inspection Service (FSIS), U.S. Department of Agriculture (USDA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, FSIS is announcing its intention to renew the approved information collection regarding specified risk materials in cattle. The approval for this information collection will expire on March 31, 2023. FSIS is making no changes to the information collection.

DATES: Submit comments on or before December 27, 2022.

ADDRESSES: FSIS invites interested persons to submit comments on this **Federal Register** notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides commenters the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Go to <https://www.regulations.gov>. Follow the on-line instructions at that site for submitting comments.

- *Mail:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Washington, DC 20250-3700.

- *Hand- or Courier-Delivered Submittals:* Deliver to 1400 Independence Avenue SW, Jamie L. Whitten Building, Room 350-E, Washington, DC 20250-3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS-2022-0027. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to <https://www.regulations.gov>.

Docket: For access to background documents or comments received, call (202) 205-0495 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Washington, DC 20250-3700.

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250-3700; (202) 720-5627.

SUPPLEMENTARY INFORMATION:

Title: Specified Risk Materials.

OMB Number: 0583-0129.

Type of Request: Renewal of an approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18, 2.53) as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat, poultry, and egg products are safe, wholesome, and properly labeled and packaged.

FSIS requires official establishments that slaughter cattle or process carcasses or parts of cattle to develop written procedures for the removal, segregation, and disposition of SRMs. The Agency requires that these establishments maintain daily records to document the implementation and monitoring of their procedures for the removal, segregation, and disposition of SRMs, as well as any corrective actions that they take to

ensure that the procedures are effective (9 CFR 310.22).

FSIS also requires official slaughter establishments that transport carcasses or parts of cattle 30 months of age and older and containing vertebral columns to other federally inspected establishments to maintain records verifying that the receiving establishments removed and properly disposed of the portions of the vertebral column designated as SRMs (9 CFR 310.22(g)).

This monitoring and recordkeeping is necessary for establishments to ensure, in a manner that can be verified by FSIS, that meat and meat products distributed in commerce for use as human food do not contain SRMs.

The approval for this information collection will expire on March 31, 2023. There are no changes to the existing information collection. FSIS has made the following estimates for the renewal information collection:

Estimate of Burden: FSIS estimates that it will take respondents an average of approximately .116 hours per response.

Respondents: Official establishments that slaughter cattle or process parts of cattle.

Estimated No. of Respondents: 3,512.

Estimated No. of Annual Responses per Respondent: 303.

Estimated Total Annual Burden on Respondents: 123,916 hours.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250-3700; (202) 720-5627.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of FSIS' functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of the method and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for

Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20253.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: <https://www.fsis.usda.gov/federal-register>.

FSIS will also announce and provide a link to this **Federal Register** publication through the FSIS *Constituent Update*, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: <https://www.fsis.usda.gov/subscribe>. Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language)

should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720-2600 (voice and TTY); or the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a complainant should complete a Form AD-3027, *USDA Program Discrimination Complaint Form*, which can be obtained online at <https://www.ocio.usda.gov/document/ad-3027>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410; or

(2) *Fax:* (833) 256-1665 or (202) 690-7442; or

(3) *Email:* program.intake@usda.gov.

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

Paul Kiecker,
Administrator.

[FR Doc. 2022-23265 Filed 10-25-22; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS-2022-0026]

Notice of Request To Renew an Approved Information Collection: Permit To Obtain Specimens of Condemned or Other Inedible Materials From Official Establishments

AGENCY: Food Safety and Inspection Service (FSIS), U.S. Department of Agriculture (USDA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, FSIS is announcing its intention to renew an approved information collection regarding applicants that want to obtain specimens of condemned or other inedible materials from official establishments. The approval for this information collection will expire on February 28, 2023. FSIS is making no changes to the information collection.

DATES: Submit comments on or before December 27, 2022.

ADDRESSES: FSIS invites interested persons to submit comments on this **Federal Register** notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides commenters the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Go to <https://www.regulations.gov>. Follow the on-line instructions at that site for submitting comments.

- *Mail:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Washington, DC 20250-3700.

- *Hand- or Courier-Delivered Submittals:* Deliver to 1400 Independence Avenue SW, Jamie L. Whitten Building, Room 350-E, Washington, DC 20250-3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS-2022-0026. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to <https://www.regulations.gov>.

Docket: For access to background documents or comments received, call (202) 205-0495 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Washington, DC 20250-3700.

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250-3700; (202) 720-5627.

SUPPLEMENTARY INFORMATION:

Title: Permit to Obtain Specimens of Condemned or Other Inedible Materials from Official Establishments.

OMB Number: 0583-0180.

Type of Request: Renewal of an approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18, 2.53) as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat, poultry, and egg products are safe, wholesome, and properly labeled and packaged.

FSIS is requesting a renewal for the approved information collection

regarding applicants that want to obtain specimens of condemned or other inedible materials from official establishments. The approval for this information collection will expire on February 28, 2023. FSIS is making no changes to the information collection.

FSIS requires any person desiring specimens of condemned or other inedible materials, including embryos and specimens of animal parasites, to file a written application on the FSIS Form 6700-2, *Application and Permit to Obtain Specimens from Official Establishments* (9 CFR 314.9(a)). The applicant must indicate the purpose for the specimens and arrange with and receive permission from the official establishment to obtain the specimens.

Under the regulations, official establishments may release specimens for educational, research or other nonfood purposes under the permit issued by the inspector in charge. The applicant agrees that the collection and handling of the specimens will be at such time and place and in such a manner as not to interfere with inspection or to cause any objectionable condition.

FSIS has made the following estimates as part of an information collection assessment.

Estimate of Burden: FSIS estimates that it takes respondents an average of 10 minutes to complete the form.

Respondents: Researchers.

Estimated Number of Respondents: 1,642.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 274 hours.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250-3700; (202) 720-5627.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of FSIS' functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of the method and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate

automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20253.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: <https://www.fsis.usda.gov/federal-register>.

FSIS will also announce and provide a link to this **Federal Register** publication through the FSIS *Constituent Update*, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: <https://www.fsis.usda.gov/subscribe>. Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotope, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720-2600 (voice and TTY); or the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a complainant should complete a Form AD-3027, *USDA Program Discrimination Complaint Form*, which can be obtained online at <https://www.ocio.usda.gov/document/ad-3027>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

(1) *Mail*: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410; or

(2) *Fax*: (833) 256-1665 or (202) 690-7442; or

(3) *Email*: program.intake@usda.gov.

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

Paul Kiecker,

Administrator.

[FR Doc. 2022-23266 Filed 10-25-22; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF AGRICULTURE

Forest Service

Northeast Oregon Forests Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Northeast Oregon Forests Resource Advisory Committee (RAC) will hold a public meeting according to the details shown below. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA).

DATES: The meeting will be held on November 18, 2022, from 10 a.m. to 4 p.m., Pacific Standard Time. All RAC

meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting is open to the public and will be held at the Whitman Ranger District Compound, 3825 11th St., Baker City, Oregon 97814. This location is dependant on County COVID-19 status at the time of the meeting. The public may also join virtually via telephone and/or video conference. Virtual meeting participation details can be found on the website listed under **SUMMARY** or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

FOR FURTHER INFORMATION CONTACT: Doug McKay, Designated Federal Officer (DFO), by phone at 541-576-7501 or email at douglas.mckay@usda.gov or Darcy Wesmen, RAC Coordinator at 541-278-3722 or email at darcy.weseman@usda.gov.

Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service (FRS) at 800-877-8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act, as well as make recommendations on recreation fee proposals for sites on the Malheur, Umatilla, and Wallowa-Whitman National Forests, consistent with the Federal Lands Recreation Enhancement Act. General information and meeting details can be found at the following website:

Malheur National Forest: <https://www.fs.usda.gov/main/malheur/workingtogether/advisorycommittees>.

Umatilla National Forest: <https://www.fs.usda.gov/main/umatilla/workingtogether/advisorycommittees>.

Wallowa-Whitman National Forest: <https://www.fs.usda.gov/main/wallowa-whitman/workingtogether/advisorycommittees>.

The purpose of the meeting is to:

1. Review recommendations of Title II proposals submitted to the Malheur, Umatilla and Wallowa-Whitman

National Forests on or before August 15, 2022.

2. Schedule the next meeting; and
3. Other.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Doug McKay, PO Box 7, 117 S Main St, Heppner, OR; or by email to douglas.mckay@usda.gov. Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotope, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at 202-720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at 800-877-8339. Additionally, program information may be made available in languages other than English.

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

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and person with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: October 19, 2022.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2022-23222 Filed 10-25-22; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE**Forest Service****Hood-Willamette Resource Advisory Committee**

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Hood-Willamette Resource Advisory Committee (RAC) will hold a public meeting according to the details shown below. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act, as well as make recommendations on recreation fee proposals for sites on the Willamette and Mt. Hood National Forests, and the Columbia River Gorge National Scenic Area, consistent with the Federal Lands Recreation Enhancement Act. General information and meeting details can be found at the following website: <https://tinyurl.com/bde3dkp8>.

DATES: The meeting will be held on December 12th, 2022, from 9 a.m.–3 p.m., Pacific Standard Time. All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: This meeting is open to the public and will be held at the Keizer Community Center, located at 930 Chemawa Road Northeast, Keizer, Oregon, 97303. The public may also join virtually via telephone and/or video conference. Virtual meeting participation details can be found on the website listed under Summary or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

FOR FURTHER INFORMATION CONTACT: Jennifer Sorensen, Resource Advisory Committee Coordinator, by phone at 541-510-1102 or email at jennifer.sorensen@usda.gov or Duane Bishop, Acting Deciding Federal

Official, by phone at 541 225-6311 or email at duane.bishop@usda.gov.

Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service (FRS) at 800-877-8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Hear updates and discuss status of Secure Rural Schools program, including recent Title II funding allocations for the Hood-Willamette region;
2. Discuss tentative schedule for solicitation of new Title II proposals and associated RAC meetings in 2023;
3. Discuss progress on recruitment and appointment for new Resource Advisory Committee members;
4. Hear from Mt. Hood National Forest and Columbia River Gorge National Scenic Area staff about recreation fee proposals;
5. Discuss and make recommendations on adoption of recreation fee proposals on the Mt. Hood National Forest and Columbia River Gorge National Scenic Area.

The meeting is open to the public. The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Jennifer Sorensen, 3106 Pierce Pkwy., Suite D, Springfield, Oregon 97477; or by email to jennifer.sorensen@usda.gov. Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at 202-720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at 800-877-8339. Additionally, program information may be made available in languages other than English.

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or

retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and person with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: October 19, 2022.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2022-23221 Filed 10-25-22; 8:45 am]

BILLING CODE 3411-15-P

AMERICAN BATTLE MONUMENTS COMMISSION**Performance Review Board Appointments**

AGENCY: American Battle Monuments Commission.

ACTION: Notice of performance review board appointments.

SUMMARY: This notice provides the names of individuals who have been appointed to serve as members of the American Battle Monuments Commission Performance Review Board. The publication of these appointments is required under the Civil Service Reform Act of 1978.

DATES: These appointments are effective as of October 1, 2022.

FOR FURTHER INFORMATION CONTACT: Jamilyn Smyser, Chief of Human Resources and Administration, American Battle Monuments Commission, Courthouse Plaza II Suite 500, 2300 Clarendon Boulevard, Arlington, Virginia 22201. Telephone number: (703) 584-1544.

American Battle Monument Commission SES Performance Review Board—2021/2022

Dr. Erin Mahan, Chief Historian, Office of the Secretary of Defense
Mr. Mark Averill, Deputy Administrative Assistant to the Secretary of the Army

Michael Conley, Chief of Staff, American Battle Monuments Commission

Jamilyn Smyser,

Chief, Human Resources and Administration.

[FR Doc. 2022–23336 Filed 10–25–22; 8:45 am]

BILLING CODE 6120–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Connecticut Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of 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 Connecticut Advisory Committee to the U.S. Commission on Civil Rights will hold a third briefing on the impact of algorithms on civil rights in Connecticut on Monday, November 7, 2022, at 12:00 p.m. (ET). The briefing will convene virtually. The purpose of the briefing is to hear from an expert on the topic of algorithms and civil rights in Connecticut.

DATES: Monday, November 7, 2022; 12:00 p.m. (ET)

ADDRESSES:

Zoom Link (audio/video): <https://tinyurl.com/39afhd6n>; passcode, if needed: USCCR–CT.

If Joining by Phone Only: 1–551–285–1373; Meeting ID: 160 503 5892#.

FOR FURTHER INFORMATION CONTACT:

Barbara Delaviez at ero@usccr.gov or by phone at 202–539–8246.

SUPPLEMENTARY INFORMATION: If other persons who plan to attend the meeting require other accommodations, please contact Evelyn Bohor at ebohor@usccr.gov at the Eastern Regional Office at least ten (10) working days before the scheduled date of the meeting.

Time will be set aside at the end of the meeting so that members of the public may address the Committee after the briefing during the open comment session. This meeting is available to the public by attendance in person.

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 may be emailed to Barbara de La Viez at ero@usccr.gov. Persons who desire additional information may contact the Regional

Programs Unit at (202) 539–8246. Records and documents discussed during the meeting will be available for public viewing as they become available at www.facadatabase.gov. Persons interested in the work of this advisory committee are advised to go to the Commission’s website, www.usccr.gov, or to contact the Regional Programs Unit at the above phone number or email address.

Agenda

Monday, November 7, 2022; 12:00 p.m. (ET)

- I. Welcome and Roll Call
- II. Briefing Panel III: The Impact of Algorithms on Civil Rights in Connecticut
- III. Question and Answer Between Panelist and Committee Members
- IV. Public Comment
- V. Briefing Planning
- VI. Adjournment

Dated: October 20, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–23255 Filed 10–25–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

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

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of Meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Georgia Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via web conference on Thursday, November 3, 2022, at 2:00 p.m. Eastern Time for the purpose of discussing and voting on final draft of their report on Civil Asset Forfeiture and its Impact on Communities of Color in Georgia.

DATES: The meeting will take place on Thursday, November 3, 2022, from 2:00 p.m.–3:00 p.m. ET.

Register to Join (audio/visual): <https://www.zoomgov.com/j/1613910481>.

Telephone (audio only): Dial (551) 285–1373 USA Toll Free; Meeting ID: 161 391 0481.

FOR FURTHER INFORMATION CONTACT:

Melissa Wojnaroski, DFO, at

mwojnaroski@usccr.gov or (202) 618–4158.

SUPPLEMENTARY INFORMATION:

Committee meetings are available to the public through the conference 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. 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. Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at (800) 877–8339 and providing the Service with the conference details found through registering at the web link above. To request additional accommodations, please email svillanueva@usccr.gov at least seven (7) business days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to *Liliana Schiller* at svillanueva@usccr.gov. Persons who desire additional information may contact the Regional Programs Coordination Unit at (202) 809–9618.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit, as they become available, both before and after the meeting. Records of the meeting will be available via www.facadatabase.gov under the Commission on Civil Rights, Georgia 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 the above phone number.

Agenda

- I. Welcome and Roll Call
- II. Approval of Minutes
- III. Announcements and Updates
- IV. Discussion: Report on Civil Asset Forfeiture in Georgia
- V. Next Steps
- VI. Public Comment
- VII. Adjournment

Dated: October 20, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–23252 Filed 10–25–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS**Notice of Public Meeting of the Kentucky Advisory Committee to the U.S. Commission on Civil Rights**

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of 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, that the Kentucky Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a business meeting on Wednesday, November 9, 2022, at 12:00 p.m. (ET). The purpose of the meeting is to discuss the Committee's project on Civil Asset Forfeiture in Kentucky.

DATES: The meeting will take place on Wednesday, November 9, 2022, at 12:00 p.m. (ET).

Meeting Link (Audio/Visual): <https://tinyurl.com/2nkz8p7f>.

Telephone (Audio Only): Dial 1-833-568-8864 USA Toll Free; Meeting ID: 161 094 2442.

FOR FURTHER INFORMATION CONTACT: Barbara Delaviez, DFO, at ero@usccr.gov or 1-202-529-8246.

SUPPLEMENTARY INFORMATION:

Committee meetings are available to the public through the conference 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. 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. Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1-800-877-8339 and providing the Service with the conference details found through registering at the web link above. To request additional accommodations, please email ero@usccr.gov at least ten (10) days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Evelyn Bohor at ero@usccr.gov. Persons who desire additional information may contact the Regional Programs Unit at 1-202-376-7533.

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 meeting will be available via www.facadatabase.gov under the Commission on Civil Rights, Kentucky 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 the above email or street address.

Agenda

- I. Welcome and Roll Call
- II. Discussion: Potential Panelists
- III. Other Business
- IV. Public Comment
- V. Next Steps
- VI. Adjournment

Dated: October 20, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022-23254 Filed 10-25-22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS**Notice of Public Meetings of the Arkansas Advisory Committee**

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Arkansas Advisory Committee (Committee) will hold a virtual (online) meeting Monday, November 7, 2022 at 12:00 p.m. Central Time. The purpose of the meeting is for the Committee to discuss civil rights concerns related to IDEA compliance and implementation in Arkansas schools.

DATES: The meeting will be held on Monday, November 7, 2022 at 12 pm Central time.

Web Access (audio/visual): Register at: <https://bit.ly/3TgM6Jg>.

Phone Access (audio only): 551 285 1373, Meeting ID 161 923 9990.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, Designated Federal Officer, at mwojnaroski@usccr.gov or (202) 618-4158.

SUPPLEMENTARY INFORMATION: Members of the public may join online or listen to this discussion through the above call-in number. An open comment period will be provided to allow

members of the public to make a statement as time allows. 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. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1-800-877-8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Melissa Wojnaroski at mwojnaroski@usccr.gov.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via www.facadatabase.gov under the Commission on Civil Rights, Arkansas 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 Unit at the above email or street address.

Agenda

- I. Welcome & Roll Call
- III. Committee Discussion: IDEA Compliance and Implementation in Arkansas Schools
- IV. Next Steps
- V. Public Comment
- VI. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102-3.150, the notice for this meeting is given fewer than 15 calendar days prior to the meeting because of the exceptional circumstances of the Committee's report completion timeline.

Dated: October 20, 2022

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022-23253 Filed 10-25-22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS**Notice of Public Meeting of the South Carolina Advisory Committee to the U.S. Commission on Civil Rights**

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of 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, that the South Carolina Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a business meeting on Friday, November 4, 2022, at 12:00 p.m. (ET). The purpose of the meeting is to discuss the final stage of the Committee's project on Civil Asset Forfeiture in South Carolina.

DATES: The meeting will take place on Friday, November 4, 2022, at 12:00 p.m. (ET).

ADDRESSES:

Meeting Link (Audio/Visual): <https://tinyurl.com/2s4bpzcx>.

Telephone (Audio Only): Dial 1-833-568-8864 USA Toll Free; Meeting ID: 161 985 8025.

FOR FURTHER INFORMATION CONTACT:

Barbara Delaviez, DFO, at ero@usccr.gov or 1-202-529-8246.

SUPPLEMENTARY INFORMATION:

Committee meetings are available to the public through the conference 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. 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. Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1-800-877-8339 and providing the Service with the conference details found through registering at the web link above. To request additional accommodations, please email ero@usccr.gov at least ten (10) days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Evelyn Bohor at ero@usccr.gov. Persons who desire additional information may contact the Regional Programs Unit at 1-202-376-7533.

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 meeting will be available via www.facadatabase.gov under the Commission on Civil Rights, South Carolina 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 the above email or street address.

www.usccr.gov, or may contact the Regional Programs Coordination Unit at the above email or street address.

Agenda

- I. Welcome and Roll Call
- II. Discussion: Gate Five—Post-Report Stage
- III. Other Business
- IV. Public Comment
- V. Next Steps
- VI. Adjournment

Dated: October 20, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022-23259 Filed 10-25-22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Texas Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of a 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 Texas Advisory Committee (Committee) will hold a meeting via ZoomGov on Wednesday, November 16, 2022, from 2:00 p.m. to 3:30 p.m. Central. The purpose of the meeting is for planning their upcoming panels with the Texas Juvenile Justice Department and other government officials.

DATES: The meeting will take place on:

- Wednesday, November 16, 2022, from 2:00 p.m.–3:30 p.m. Central Time

ADDRESSES: Registration Link: https://www.zoomgov.com/meeting/register/vJltf-6rqDgjGdXxPf62_7r6JaHQ4hSwSPY.

FOR FURTHER INFORMATION CONTACT:

Brooke Peery, Designated Federal Officer (DFO) at bpeery@usccr.gov or by phone at (202) 701-1376. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-877-8339 and providing the Service with the conference call number and conference ID number.

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 may be emailed to

Brooke Peery (DFO) at bpeery@usccr.gov.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at <https://www.facadatabase.gov/FACA/FACA/PublicViewCommitteeDetails?id=a10t000001gzkoAAA>.

Please click on the "Meeting Details" and "Documents" links. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, <https://www.usccr.gov>, or may contact the Regional Programs Unit at the above email or street address.

Agenda

- I. Welcome & Roll Call
- II. Approval of Minutes
- III. Committee Discussion
- IV. Public Comment
- V. Adjournment

Dated: October 20, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022-23258 Filed 10-25-22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Arizona Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of a 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 Arizona Advisory Committee (Committee) to the Commission will hold a virtual business meeting via ZoomGov on Friday, November 4, 2022, from 11:00 a.m. to 12:30 p.m. Arizona Time, for the purpose of discussing their project proposal draft.

DATES: The meeting will take place on:

- Friday, November 4, 2022, from 11:00 a.m.–12:30 p.m. Arizona Time.

ADDRESSES:

Access Information:
Link to Join (Audio/Visual) <https://tinyurl.com/mr2cycdf>.

Telephone (Audio Only) Dial +1-(551) 285-1373; Meeting ID: 161 809 7593#.

FOR FURTHER INFORMATION CONTACT:

Kayla Fajota, DFO, at kfajota@usccr.gov or (434) 515-2395.

SUPPLEMENTARY INFORMATION: Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-877-8339 and providing the Service with the conference call number and conference ID number.

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 may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012 or email Kayla Fajota (DFO) at kfajota@usccr.gov.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meetings at <https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzl2AAAA>. Please click on the "Committee Meetings" tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, <https://www.usccr.gov>, or may contact the Regional Programs Unit at the above email or street address.

Agenda

- I. Welcome and Roll Call
- II. Announcements and Updates
- III. Approval of October 7, 2022, Meeting Minutes
- IV. Discussion: Project Proposal Draft
- V. Next Steps
- VI. Public Comment
- VII. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102-3.150, the notice for this meeting is given fewer than 15 calendar days prior to the meeting because of the exceptional circumstances of staffing shortage.

Dated: October 20, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022-23256 Filed 10-25-22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS**Notice of Public Meeting of the Iowa Advisory Committee to the U.S. Commission on Civil Rights**

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Iowa Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a meeting on Monday, November 21, 2022 at 3:00 p.m.-4:30 p.m. Central Time. The purpose of the meeting is to continue reviewing their report on employment discrimination and administrative closures.

DATES: The meeting will take place on Monday, November 21, 2022, from 3:00 p.m.-4:30 p.m. Central Time.

ADDRESSES:

Online Registration (Audio/Visual): <https://tinyurl.com/47y2c779>.

Telephone (Audio Only): Dial 669-254-5252 USA Toll Free; Access code: 160 723 9956.

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

SUPPLEMENTARY INFORMATION: Members of the public can listen to these discussions. Committee meetings are available to the public through the above call in number. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1-800-877-8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Corrine Sanders at csanders@usccr.gov. Persons who desire additional information may contact the

Regional Programs Unit at (312) 353-8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via www.facadatabase.gov under the Commission on Civil Rights, Pennsylvania 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 Unit at the above email or street address.

Agenda

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

Dated: October 20, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022-23257 Filed 10-25-22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE**Bureau of Industry and Security****Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; License Exemptions and Exclusions.**

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on June 15, 2022, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: Bureau of Industry and Security, Commerce.

Title: License Exemptions and Exclusions.

OMB Control Number: 0694-0137.

Form Number(s): None.

Type of Request: Extension of a current information collection.

Number of Respondents: 24,411.

Average Hours per Response: 1.46 hours.

Burden Hours: 35,680.

Needs and Uses: Over the years, BIS has worked with other Government agencies and the affected public to identify areas where export licensing requirements may be relaxed without jeopardizing U.S. national security or foreign policy. Many of these relaxations have taken the form of licensing exceptions and exclusions. Some of these license exceptions and exclusions have a reporting or recordkeeping requirement to enable the Government to continue to monitor exports of these items. Exporters may choose to utilize the license exception and accept the reporting or recordkeeping burden in lieu of submitting a license application. These exceptions and exclusions have allowed exporters to ship items quickly, without having to wait for license approval.

Affected Public: Business or other for-profit organizations.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

Legal Authority: Export Control Reform Act (ECRA) of 2018 (Title XVII, Subtitle B of Pub. L. 115–232)

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function and entering either the title of the collection or the OMB Control Number 0694–0137.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–23315 Filed 10–25–22; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–837]

Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From Taiwan: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2020–2021

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

DATES: Applicable October 26, 2022.

SUMMARY: On June 28, 2022, the U.S. Department of Commerce (Commerce) published the preliminary results of the 2020–2021 administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET Film) from Taiwan. The period of review (POR) is July 1, 2020, through June 30, 2021. We continue to find that Nan Ya Plastics Corporation (Nan Ya) made no sales of subject merchandise to the United States at less than normal value during the POR. We also continue to find that Shinkong Materials Technology Corporation (SMTC)/Shinkong Synthetic Fibers Corporation (SSFC) had no shipments of subject merchandise to the United States during the POR.

FOR FURTHER INFORMATION CONTACT:

Charles DeFilippo or Jacqueline Arrowsmith, 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 or (202) 482–5255, respectively.

Background

On June 28, 2022, Commerce published the preliminary results for this administrative review.¹ We invited interested parties to comment on the *Preliminary Results*; however, no interested party submitted comments. Accordingly, we made no changes to the *Preliminary Results*.

Scope of the Order 2

The products covered by the *Order* are all gauges of raw, pretreated, or

¹ See *Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2020–2021*, 87 FR 38374 (June 28, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

² See *Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene*

primed PET film, whether extruded or coextruded. Excluded are metalized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00.90. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of *Order* is dispositive.

Final Determination of No Shipments

In the *Preliminary Results*, Commerce determined that SMTC and its affiliate SSFC had no shipments of PET film during the POR, based on a response of the U.S. Customs and Border Protection (CBP) to Commerce’s no-shipment inquiry, as well as certifications and supporting documentation provided by SMTC/SSFC.³ We received no comments from any interested party on our preliminary finding. As there is no information on the record that calls into question the finding in the *Preliminary Results*, we continue to find in the final results of this review that SMTC/SSFC had no shipments of subject merchandise during the POR.

Final Results of Review

As noted above, Commerce received no comments concerning the *Preliminary Results*. We continue to find that sales of subject merchandise by Nan Ya were not made at less than normal value during the POR. Accordingly, no decision memorandum accompanies this **Federal Register** notice.⁴ The final weighted-average dumping margin for the period July 1, 2020, through June 30, 2021, for Nan Ya is as follows:

| Producer/exporter | Weighted-average dumping margin (percent) |
|-----------------------------------|---|
| Nan Ya Plastics Corporation | 0.00 |

Assessment Rates

Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries in this review, in accordance with section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the

Terephthalate Film, Sheet, and Strip (PET Film) from Taiwan, 67 FR 44174 (July 1, 2002) (*Order*).

³ For a full discussion of this determination, see *Preliminary Results* PDM.

⁴ For further details, see *Preliminary Results* PDM.

Act) and 19 CFR 351.212(b)(1). Because we calculated a zero percent margin in the final results of this review for Nan Ya, in accordance with 19 CFR 351.212 we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. In addition, as Commerce continues to find that SMTC/SSFC did not have any shipments of subject merchandise during the POR, we will instruct CBP to liquidate any suspended entries of subject merchandise associated with SMTC/SSFC at the all-others rate.

Commerce intends to issue appropriate assessment instructions directly 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 upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Nan Ya will be zero, the rate established in the final results of this review; (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or any previous review or in the original less-than-fair-value (LTFV) investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the LTFV investigation, the cash deposit rate will continue to be the all-others rate of 2.40 percent, which is the

all-others rate established by Commerce in the LTFV investigation.⁵ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary'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/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation, which is subject to sanction.

Notification to Interested Parties

These results are being issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: October 20, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022-23320 Filed 10-25-22; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Rescission of Antidumping and Countervailing Duty Administrative Reviews

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

SUMMARY: Based upon the timely withdrawal of all review requests, the Department of Commerce (Commerce) is rescinding the administrative reviews covering the periods of review and the antidumping duty (AD) and countervailing duty (CVD) orders identified in the table below.

DATES: Applicable October 26, 2022.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482-4735.

SUPPLEMENTARY INFORMATION:

Background

Based upon timely requests for review, Commerce initiated administrative reviews of certain companies for the periods of review and the AD and CVD orders listed in the table below, pursuant to 19 CFR 351.221(c)(1)(i).¹ All requests for these reviews have been timely withdrawn.²

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested the review withdraw their review requests within 90 days of the date of publication of the notice of initiation for the requested review. All parties withdrew their requests for the reviews listed in the table below within the 90-day deadline. No other parties requested administrative reviews of these AD/CVD orders for the periods noted in the table. Therefore, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding, in their entirety, the administrative reviews listed in the table below.

Antidumping and Countervailing Duty Administrative Reviews, 87 FR 54463 (September 6, 2022); *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 87 FR 61278 (October 11, 2022).

² The letters withdrawing the review requests may be found in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>.

⁵ See *Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Taiwan*, 67 FR at 44175 (July 1, 2002), unchanged in *Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Taiwan* [*sic*], 67 FR at 46566 (July 15, 2002).

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 87 FR 21619 (April 12, 2022); see also *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 87 FR 29280 (May 13, 2022); *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 87 FR 35165 (June 9, 2022); *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 87 FR 42144 (July 14, 2022); *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 87 FR 48459 (August 9, 2022); *Initiation of*

| | Period of review |
|--|-----------------------|
| AD Proceedings | |
| Argentina: Biodiesel, A-357-820 | 4/1/2021-3/31/2022 |
| Belgium: Stainless Steel Plate in Coils, A-423-808 | 5/1/2021-4/30/2022 |
| Cambodia: Mattresses, A-555-001 | 11/3/2020-4/30/2022 |
| India: Certain Welded Carbon Steel Standard Pipes and Tubes, A-533-502 | 5/1/2021-4/30/2022 |
| Indonesia: | |
| Biodiesel, A-560-830 | 4/1/2021-3/31/2022 |
| Prestressed Concrete Steel Wire Strand, A-560-837 | 11/19/2020-5/31/2022 |
| Japan: Stainless Steel Sheet and Strip in Coils, A-588-845 | 7/1/2021-6/30/2022 |
| Republic of Korea: | |
| Certain Cut-To-Length Carbon-Quality Steel Plate, A-580-836 | 2/1/2021-1/31/2022 |
| Polyester Staple Fiber, A-580-839 | 5/1/2021-4/30/2022 |
| Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe, A-580-909 | 2/20/2021-7/31/2022 |
| Socialist Republic of Vietnam: | |
| Mattresses, A-552-827 | 11/3/2020-4/30/2022 |
| Steel Nails, A-552-818 | 7/1/2021-6/30/2022 |
| Serbia: Mattresses, A-801-002 | 11/3/2020-4/30/2022 |
| South Africa: Stainless Steel Plate in Coils, A-791-805 | 5/1/2021-4/30/2022 |
| Sultanate of Oman: Polyethylene Terephthalate Resin, A-523-810 | 5/1/2021-4/30/2022 |
| Taiwan: | |
| Certain Circular Welded Carbon Steel Pipes and Tubes, A-583-008 | 5/1/2021-4/30/2022 |
| Certain Crystalline Silicon Photovoltaic Products, A-583-853 | 2/1/2021-1/31/2022 |
| Stainless Steel Plate in Coils, A-583-830 | 5/1/2021-4/30/2022 |
| The People's Republic of China: | |
| Aluminum Extrusions, A-570-967 | 5/1/2021-4/30/2022 |
| Certain Plastic Decorative Ribbon, A-570-075 | 3/1/2021-2/28/2022 |
| Certain Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof, A-570-124 | 7/23/2020-4/30/2022 |
| Stainless Steel Sheet and Strip, A-570-042 | 4/1/2021-3/31/2022 |
| Turkey: Carbon and Alloy Steel Wire Rod, A-489-831 | 5/1/2021-4/30/2022 |
| CVD Proceedings | |
| India: Quartz Surface Products, C-533-890 | 1/1/2021-12/31/2021 |
| The Republic of Korea: Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe, C-580-910 | 12/11/2020-12/31/2021 |
| The Socialist Republic of Vietnam: Certain Steel Nails, C-552-819 | 1/1/2021-12/31/2021 |
| South Africa: Stainless Steel Plate in Coils, C-791-806 | 1/1/2021-12/31/2021 |
| The People's Republic of China: | |
| Certain Vertical Shaft Engines Between 99cc and up to 225 cc, and Parts Thereof, C-570-125 | 5/26/2020-12/31/2021 |
| Stainless Steel Sheet and Strip, C-570-043 | 1/1/2021-12/31/2021 |
| Mattresses, C-570-128 | 9/11/2020-12/31/2021 |
| Turkey: Large Diameter Welded Pipe, C-489-834 | 1/1/2021-12/31/2021 |

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping and/or countervailing duties on all appropriate entries during the periods of review noted above for each of the listed administrative reviews at rates equal to the cash deposit of estimated antidumping or countervailing duties, as applicable, required at the time of entry, or withdrawal of merchandise from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of this rescission notice in the **Federal Register** for rescinded administrative reviews of AD/CVD orders on countries other than Canada and Mexico. For rescinded administrative reviews of AD/CVD orders on Canada or Mexico, Commerce intends to issue assessment instructions to CBP no earlier than 41 days after the

date of publication of this rescission notice in the **Federal Register**.

Notification to Importers

This notice serves as the only reminder to importers of merchandise subject to AD orders of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties and/or countervailing duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping duties and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective orders (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 these segments of these proceedings. 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

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: October 20, 2022.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2022-23263 Filed 10-25-22; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648–XC485]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC's) Summer Flounder, Scup, and Black Sea Bass Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on Tuesday, November 15, 2022, from 9 a.m. to 4 p.m., EDT. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar. Connection information will be posted to the calendar at www.mafmc.org prior to the meeting.

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; www.mafmc.org.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Summer Flounder, Scup, and Black Sea Bass Monitoring Committee will meet to discuss 2023 recreational management measures for each species. The Monitoring Committee will consider how to apply the recently adopted Harvest Control Rule Percent Change Approach to these species in 2023, including the percent change in harvest the measures should achieve in 2023. The Monitoring Committee will also recommend the appropriate coastwide or federal waters recreational management measures (e.g., possession limits, fish size limits, seasons) for all three species.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shelley Spedden, (302) 526–5251 at least 5 days prior to the meeting date.

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

Dated: October 21, 2022.

Key Israel Marquez,

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

[FR Doc. 2022–23333 Filed 10–25–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648–XC457]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Floating Dry Dock Project at Naval Base San Diego in San Diego, California

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

ACTION: Notice; issuance of renewal incidental harassment authorization (IHA).

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued a renewal IHA to the U.S. Navy (Navy) to incidentally harass marine mammals incidental to the Floating Dry Dock Project at Naval Base San Diego in San Diego, California.

DATES: This renewal IHA is valid from October 19, 2022 through September 14, 2023.

FOR FURTHER INFORMATION CONTACT: Amy Fowler, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the original application, Renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:**Background**

The Marine Mammal Protection Act (MMPA) prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by

U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed incidental take authorization is provided to the public for review.

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

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

(1) A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date

cannot extend beyond 1 year from expiration of the initial IHA).

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

- An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (e.g., reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

- A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

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

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed renewal. A description of the renewal process may be found on our website at: www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.

History of Request

On May 27, 2020, NMFS issued an IHA to the Navy to take marine mammals incidental to in-water construction associated with the Floating Dry Dock Project at Naval Base San Diego in San Diego, California (85 FR 33129; June 1, 2020), effective from September 15, 2020 through September 14, 2021 (hereafter referred to as the 2020 IHA). On July 12, 2021, the Navy informed NMFS that the project had been delayed and none of the work identified in the initial IHA had occurred. The Navy requested an identical IHA be reissued with the effective dates one year later, in order to conduct the construction work that was analyzed and authorized through the previously issued IHA. On July 21, 2021, NMFS reissued the IHA to the Navy (86 FR 40468; July 28, 2021), effective from September 15, 2021 through September 14, 2022 (hereafter referred to as the initial IHA).

On July 15, 2022, the Navy notified NMFS that the project had been further delayed and none of the work identified in the initial IHA had occurred. In addition, the Navy had made minor changes to the project design plan, which would result in fewer proposed days of in-water construction than what was planned and analyzed in the 2020 IHA and initial IHA. As described in the Description of the Specified Activities and Anticipated Impacts section below, the activities for which incidental take is requested are nearly identical to those covered in the initial IHA. In order to consider an IHA renewal, NMFS requires the applicant provide a preliminary monitoring report which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted. However, as no construction activities have been conducted, the Navy has no monitoring results to report. NMFS has determined that the minor changes to the Navy's proposed pile driving activities would not affect the previous analyses, including the mitigation, monitoring, and reporting requirements, or take estimates (with the exception of reducing the amount of estimated take due to fewer days of construction). The notice of the proposed renewal IHA was published on September 20, 2022 (87 FR 57473).

Description of the Specified Activities and Anticipated Impacts

The Navy plans to construct a floating dry dock and associated pier-side access at Naval Base San Diego in the south-central portion of San Diego Bay. The floating dry dock is needed to ensure the Base's capability to conduct berth-side repair and maintenance of vessels. Implementation of the project requires installation of two mooring dolphins, including vertical and angled structural piles, as well as fender piles, installation of a concrete ramp wharf and vehicle bridge, and dredging at the proposed floating dry dock location. The planned in-water construction covered in the initial IHA included installation of a maximum of 56 24-inch concrete piles using impact pile driving and high-pressure water jetting and a maximum of 10 24-inch steel pipe piles using impact and vibratory pile driving. The Navy's revised construction design plan includes fewer 24-inch octagonal concrete piles and has eliminated all 24-inch steel pipe piles, while adding 18-inch square concrete piles, 18-inch octagonal concrete piles, and 14-inch steel H-piles (Table 1).

The anticipated impacts of the Navy's planned activities are identical to those described in the initial IHA. As in the initial IHA, NMFS anticipates that only the U.S. stock of California sea lions (*Zalophus californianus*) may be taken by Level B harassment incidental to underwater noise resulting from in-water construction associated with the proposed activities.

The following documents are referenced in this notice and include important supporting information:

- **Federal Register** notice of proposed IHA for the 2020 IHA (85 FR 21179; April 16, 2020);
- **Federal Register** notice of final IHA for the 2020 IHA (85 FR 33129; June 1, 2020);
- **Federal Register** notice of reissued IHA for the initial IHA (86 FR 40468; July 28, 2021); and
- The Navy's 2020 IHA application, references cited, request for reissued IHA, and request for IHA renewal (available at www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities).

Detailed Description of the Activity

The Navy plans to construct a floating dry dock and associated pier-side access in the south-central portion of San Diego Bay. The floating dry dock is needed in order to address current and projected shortfall of dry dock space required for maintenance of the Pacific Fleet, and ensure the Naval Base San Diego's capability to conduct berth-side repair and maintenance of vessels. The planned activities will allow for the emplacement and operation of a floating dry dock and associated pier-side access at Marine Group Boat Works (MGBW) Commercial Out Lease (COL) in the southern edge of Naval Base San Diego.

Up to 50 days of in-water pile driving were planned to occur under the initial IHA, which included installation of two mooring dolphins, including vertical and angled structural piles, as well as fender piles, and installation of a concrete ramp wharf and vehicle bridge. Two mooring dolphins would be located forward and aft of the proposed dry dock. The mooring dolphins would each be supported by up to 16 vertical 24-inch octagonal concrete piles (32 total) installed using impact pile driving and high-pressure water jetting. The aft mooring dolphin would also require approximately two 24-inch angled steel pipe piles. Up to eight additional 24-inch steel pipe piles are anticipated to be required for the forward and aft mooring dolphins. Cast-in-place reinforced concrete caps, 9.1 by 9.1 meter (m; 30 by 30 feet (ft)), would be

installed at each mooring dolphin location. Grippers would be secured to the dolphins' concrete pile caps and used to hold the floating dry dock in position. Construction materials would be delivered by truck and the piles would be installed using a floating crane and an impact or vibratory pile driver aided by jetting methods. Fender piles associated with the aft mooring dolphin would consist of two steel pipe piles, 24-inches in diameter or less. All steel pipe piles would initially be installed using vibratory pile driving, followed by the use of an impact pile driver. The concrete ramp wharf and vehicle bridge

would be supported by 24 24-inch octagonal concrete piles installed using vibratory pile driving and high-pressure water jetting.

The modified construction design plan that will occur under the renewal IHA includes the installation of a total of 55 concrete piles and 10 steel H-piles. Five concrete piles will also be removed (via dead pull with no vibratory hammer required) and 12 steel template H-piles will be installed and subsequently removed using a vibratory hammer. A total of 77 piles will be installed (65 permanent, 12 temporary) which is greater than the total number

of piles planned to be installed under the initial IHA (Table 1); however, the revised construction plan includes a reduction in diameter for the majority of piles as assessed in the initial IHA. Therefore, the modified construction plan is reasonably similar to the plan associated with the initial IHA. In addition, the Navy had estimated up to 50 days of in-water work would be required to complete the planned construction in the initial IHA, and the revised construction design will require only 40 days of construction, beginning in April 2023.

TABLE 1—SUMMARY OF PILE DRIVING ACTIVITIES IN INITIAL IHA COMPARED TO PLANNED PILE DRIVING ACTIVITIES IN IHA RENEWAL

| Pile type and size | Pile location | Number of piles planned | |
|--------------------------------------|---|-------------------------|-----------------|
| | | Initial IHA | IHA renewal |
| 24-inch octagonal concrete | Forward and aft mooring dolphins | 56 | ^a 22 |
| 24-inch steel pipe | Forward and aft mooring dolphins | 10 | 0 |
| 18-inch square concrete | Bulkhead | 0 | ^b 5 |
| 18-inch octagonal concrete | Ramp wharf and vehicle bridge | 0 | 33 |
| 14-inch steel H-piles | Fender system on the offshore dolphin | 0 | 10 |
| 14-inch template steel H-piles | Forward and aft mooring dolphins | 0 | ^c 12 |
| Total piles installed | | 66 | ^d 77 |
| Total maximum days of work | | 50 | 40 |

^a This includes 11 piles per dolphin.
^b Removed using direct pull only.
^c Installed and subsequently removed. Includes 6 piles per dolphin.
^d Includes 65 permanent piles and 12 temporary piles.

A detailed description of the construction activities for which authorization of take is authorized here may be found in the **Federal Register** notice of proposed IHA for the 2020 IHA (85 FR 21179; April 16, 2020). With the exception of some reduced pile sizes and change from steel pipe piles to steel H-piles, the methods of pile driving (*i.e.*, vibratory and impact hammers, high-pressure water jetting) proposed in the IHA renewal are identical to those analyzed in the initial IHA. Similarly, the location and timing (*e.g.*, seasonality) are identical to those analyzed in the initial IHA. The IHA renewal is valid from October 19, 2022 through September 14, 2023.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which take is authorized here, including information on abundance, status, distribution, and hearing, may be found in the **Federal Register** notice of the proposed IHA for the 2020 IHA (85 FR 21179; April 16, 2020). NMFS has reviewed recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other

scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is authorized here may be found in the **Federal Register** notice of the proposed IHA for the 2020 IHA (85 FR 21179; April 16, 2020). The Navy's revised construction design plan includes some pile sizes and types that were not included in the initial IHA (*e.g.*, addition of 18-inch octagonal piles and 14-inch steel H-piles). However, the estimated sound source levels for the smaller (18-inch) concrete piles and the steel H-piles are lower than the source levels for the larger (24-inch) concrete piles and the 24-inch steel pipe piles, respectively, that were planned to be used during the

activity described in the initial IHA (described in detail in the Navy's IHA renewal request, available at www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities). Therefore, NMFS has determined that the effects of the Navy's planned installation of these new pile sizes and types on marine mammals and their habitat are the same as those analyzed in the initial IHA. Additionally, NMFS has reviewed recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the **Federal Register** notices for the proposed and final 2020 IHA (85 FR 21179; April 16, 2020 and 85 FR 33129; June 1, 2020). The marine mammal occurrence data applicable to this authorization remain unchanged from

the previously issued IHA. Similarly, the stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA. The take calculation method also remains the same as for the initial IHA, with the exception of fewer days of activity than what was described in the initial IHA.

The initial IHA estimated the distances to the Level B harassment thresholds for each pile size and type that was planned to be included in the initial construction plan. In the initial IHA, the largest Level B harassment

zone resulted from vibratory installation of 24-inch steel pipe piles (1,848 m). However, since 24-inch steel pipe piles are no longer planned to be installed, the largest Level B harassment zone now results from vibratory installation of 14-inch steel H-piles (398 m).

Based on the number of piles to be installed, the Navy estimates that the planned pile driving activity will take 40 days (Table 1). As in the initial IHA, the Navy estimates four California sea lions could be present in the project area each day. Multiplication of the

above estimate of animals per day (4) times the days of work (40) results in an authorized 160 incidents of Level B harassment take of California sea lions (Table 2). The Navy intends to avoid Level A harassment take by shutting down activities if a California sea lion approaches within 25 m of the project site, which encompasses all estimated Level A harassment zones. Therefore, no take by Level A harassment is anticipated or authorized.

TABLE 2—AUTHORIZED TAKE AND PROPORTION OF STOCK POTENTIALLY AFFECTED

| Species | Days of activity | Estimated daily occurrence (# per day) | Authorized take by Level B harassment | Authorized take by Level A harassment | Percent of stock |
|--|------------------|--|---------------------------------------|---------------------------------------|------------------|
| California sea lion (<i>Zalophus californianus</i>) U.S. Stock | 40 | 4 | 160 | 0 | 0.06 |

Description of Mitigation, Monitoring and Reporting Measures

The mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the 2020 IHA (85 FR 33129; June 1, 2020), and the discussion of the least practicable adverse impact included in that document remains accurate. The following measures are included in this renewal:

Mitigation

The Navy must conduct briefings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all pile driving activity, and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

For in-water heavy machinery work other than pile driving (e.g., standard barges, etc.), if a marine mammal comes within 10 m, operations must cease and vessels must reduce speed to the

minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) movement of the barge to the pile location; or (2) positioning of the pile on the substrate via a crane (i.e., stabbing the pile).

Though not required, Navy has indicated that in-water pile driving would only be conducted at least 30 minutes after sunrise and up to 30 minutes before sunset, when visual monitoring of marine mammals can be conducted.

For those marine mammals for which Level B harassment take has not been requested, in-water pile driving must shut down immediately if such species are observed within or entering the monitoring zone (i.e., Level B harassment zone). If take reaches the authorized limit for an authorized species, pile installation must be stopped as these species approach the Level B harassment zone to avoid additional take.

Establishment of Shutdown Zone for Level A Harassment—For all pile driving activities, the Navy must establish a shutdown zone. The purpose

of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Conservative shutdown zones of 25 m for impact and vibratory pile driving activities must be implemented for California sea lions. The placement of protected species observers (PSOs) during all pile driving activities (described in detail in the Monitoring section below) must ensure shutdown zones are visible.

Establishment of Monitoring Zones for Level B Harassment—The Navy must establish monitoring zones corresponding with the estimated Level B harassment zones. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential cessation of activity should the animal enter the shutdown zone.

TABLE 3—MONITORING AND SHUTDOWN ZONES FOR EACH PROJECT ACTIVITY

| Source | Monitoring zone (m) | Shutdown zone (m) |
|--|---------------------|-------------------|
| Impact Pile Driving 24-inch octagonal concrete piles | 120 | 25 |
| Impact Pile Driving 18-inch octagonal concrete piles | 25 | 25 |
| Vibratory Pile Driving 14-inch steel H-piles | 400 | 25 |

Soft Start—The use of soft-start procedures is believed to provide additional protection to marine

mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer

operating at full capacity. For impact pile driving, contractors are required to provide an initial set of strikes from the

hammer at reduced energy, with each strike followed by a 30-second waiting period. This procedure must be conducted a total of three times before impact pile driving begins. Soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer. Soft start is not required during vibratory pile driving activities.

Pre-Activity Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, PSOs must observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone is considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start must not proceed until the animal has left the zone or has not been observed for 15 minutes. If the Level B harassment zone has been observed for 30 minutes and species with no take authorization are not present within the zone, soft start procedures can commence and work can continue even if visibility becomes impaired within the Level B harassment monitoring zone. When a marine mammal for which take by Level B harassment is authorized is present in the Level B harassment zone, activities may begin and Level B harassment take will be recorded. If work ceases for more than 30 minutes, the pre-activity monitoring of both the Level B harassment and shutdown zone must commence again.

Monitoring

Marine Mammal Visual Monitoring—Monitoring must be conducted by NMFS-approved observers. Trained observers must be placed from the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator. Observer training must be provided prior to project start, and must include instruction on species identification (sufficient to distinguish the species in the project area), description and categorization of observed behaviors and interpretation of behaviors that may be construed as being reactions to the specified activity, proper completion of data forms, and other basic components of biological monitoring, including tracking of observed animals or groups of animals such that repeat sound exposures may be attributed to individuals (to the extent possible).

Monitoring must be conducted 30 minutes before, during, and 30 minutes after pile driving activities. In addition, observers must record all incidents of marine mammal occurrence, regardless of distance from activity, and must document any behavioral reactions in concert with distance from piles being driven. Pile driving activities include the time to install a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

At least one land-based PSO must be located at the project site, and the Navy has indicated that when possible and appropriate during vibratory pile driving activities, one additional boat-based PSO will be located at the edge of the Level B harassment isopleth (see Figure 1–2 of the Marine Mammal Monitoring Plan dated March, 2020; available at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>).

PSOs must scan the waters using binoculars, and/or spotting scopes, and must use a handheld GPS or range-finder device to verify the distance to each sighting from the project site. All PSOs must be trained in marine mammal identification and behaviors and must have no other project-related tasks while conducting monitoring. In addition, monitoring must be conducted by qualified observers, who must be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. The Navy must adhere to the following PSO qualifications:

- (i) Independent observers (*i.e.*, not construction personnel) are required;
- (ii) At least one observer must have prior experience working as an observer;
- (iii) Other observers may substitute education (degree in biological science or related field) or training for experience;
- (iv) Where a team of three or more observers are required, one observer must be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer; and
- (v) The Navy must submit observer CVs for approval by NMFS.

Additional standard observer qualifications include:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals,

including the identification of behaviors;

- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including, but not limited to, the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Observers are required to use approved data forms (see data collection forms in the applicant's Marine Mammal Mitigation and Monitoring Plan). Among other pieces of information, the Navy must record detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any. In addition, the Navy must attempt to distinguish between the number of individual animals taken and the number of incidences of take.

Reporting

A draft report must be submitted to NMFS within 90 days of the completion of marine mammal monitoring, or 60 days prior to the requested date of issuance of any future IHA for projects at the same location, whichever comes first. The report must include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days (and associated PSO data sheets), and must also provide descriptions of any behavioral responses to construction activities by marine mammals and a complete description of all mitigation shutdowns and the results of those actions and an extrapolated total take estimate based on the number of marine mammals observed during the course of construction. A final report must be submitted within 30 days following resolution of comments on the draft report. At minimum, the following information must be collected on all sighting forms and included in the monitoring report:

- Dates and times (begin and end) of all marine mammal monitoring;

- Construction activities occurring during each daily observation period, including how many and what type of piles were driven or removed and by what method (*i.e.*, impact or vibratory);

- Weather parameters and water conditions during each monitoring period (*e.g.*, wind speed, percent cover, visibility, sea state);

- The number of marine mammals observed, by species, relative to the pile location and if pile driving or removal was occurring at time of sighting;

- Age and sex class, if possible, of all marine mammals observed;

- PSO locations during marine mammal monitoring;

- Distances and bearings of each marine mammal observed to the pile being driven or removed for each sighting (if pile driving or removal was occurring at time of sighting);

- Description of any marine mammal behavior patterns during observation, including direction of travel and estimated time spent within the Level A and Level B harassment zones while the source was active;

- Number of individuals of each species (differentiated by month as appropriate) detected within the monitoring zone, and estimates of number of marine mammals taken, by species (a correction factor may be applied to total take numbers, as appropriate);

- Detailed information about any implementation of any mitigation triggered (*e.g.*, shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal, if any;

- Description of attempts to distinguish between the number of individual animals taken and the number of incidences of take, such as ability to track groups or individuals;

- An extrapolation of the estimated takes by Level B harassment based on the number of observed exposures within the Level B harassment zone and the percentage of the Level B harassment zone that was not visible; and

- Submit all PSO datasheets and/or raw sighting data (in a separate file from the final report referenced immediately above).

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the Navy must report the incident to the Office of Protected Resources (OPR) (301-427-8401), NMFS and to the West Coast Region Stranding Coordinator (562-980-3230) as soon as feasible. If the death or injury was clearly caused by the specified activity, the Navy must immediately cease the specified

activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The Navy must not resume their activities until notified by NMFS. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

- Species identification (if known) or description of the animal(s) involved;

- Condition of the animal(s) (including carcass condition if the animal is dead);

- Observed behaviors of the animal(s), if alive;

- If available, photographs or video footage of the animal(s); and

- General circumstances under which the animal was discovered.

NMFS will work with the Navy to determine what, if anything, is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The Navy must not resume their activities until notified by NMFS.

Comments and Responses

A notice of NMFS' proposal to issue a renewal IHA to the Navy was published in the **Federal Register** on September 20, 2022 (87 FR 57473). That notice either described, or referenced descriptions of, the Navy's activity, the marine mammal species that may be affected by the activity, the anticipated effects on marine mammals and their habitat, estimated amount and manner of take, and proposed mitigation, monitoring and reporting measures. During the 30-day public comment period, NMFS received no public comments.

Determinations

The construction activities planned by the Navy are nearly identical to those analyzed in the initial IHA. Due to the construction design-plan changes, the planned number of days of activity are fewer than the initial IHA. The method of taking and effects of the action are identical to those analyzed in the initial IHA. The potential effects of the Navy's activities are limited to Level B harassment in the form of behavioral disturbance and temporary threshold shift. In analyzing the effects of the activities in the initial IHA, NMFS determined that the Navy's activities would have a negligible impact on the affected species or stocks and that the authorized take numbers of each species or stock were small relative to the

relevant stocks (*e.g.*, less than one-third of the abundance of all stocks). The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA.

NMFS has concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) the Navy's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action; and (5) appropriate monitoring and reporting requirements are included.

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 action (*i.e.*, the issuance of an IHA renewal) with respect to potential impacts on the human environment.

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

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. No incidental take of ESA-listed marine mammal species is expected to result

from this activity, and none would be authorized. Therefore, NMFS has determined that consultation under section 7 of the ESA is not required for this action.

Renewal

NMFS has issued a renewal IHA to the Navy for the take of marine mammals incidental to conducting the Floating Dry Dock Project at Naval Base San Diego in San Diego, California, effective October 19, 2022 through September 14, 2023.

Dated: October 21, 2022.

Kimberly Damon-Randall,

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

[FR Doc. 2022-23311 Filed 10-25-22; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XC492]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Protected Resources Committee will hold a public meeting via webinar.

DATES: The meeting will be held on Monday, November 14, 2022, from 9 a.m. to 12 p.m. See **SUPPLEMENTARY INFORMATION** for agenda details.

ADDRESSES: The meeting will be held via webinar. Details on the agenda, webinar listen-in access, and briefing materials will be posted at the MAFMC's website: www.mafmc.org.

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674-2331; www.mafmc.org.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526-5255.

SUPPLEMENTARY INFORMATION: The Mid-Atlantic Fishery Management Council's Protected Resources Committee will meet to review materials resulting from their data request to the Atlantic Large Whale Take Reduction Team (ALWTRT) and discuss potential sets of measures. The ALWTRT is tasked with reducing

the risk of entanglement to right whales in U.S. East Coast fixed gear fisheries including gillnet, mixed species trap/pot, and lobster and Jonah crab trap/pot fisheries. The measures developed by the ALWTRT have the potential to impact several Council managed fisheries and the Protected Resources Committee will develop recommendations and guidance for the Council's representation on the ALWTRT. The ALWTRT is currently scheduled to make final recommendations at their December 1-2 meeting, however this may be subject to change. The Committee may address other protected resources issues as they arise.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shelley Spedden at the Council Office, (302) 526-5251, at least 5 days prior to the meeting date.

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

Dated: October 21, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022-23332 Filed 10-25-22; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XC491]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of receipt of an application; for an enhancement of survival permit for a programmatic safe harbor agreement to enhance summer streamflow in Coastal California creeks and rivers.

SUMMARY: We, NMFS's West Coast Region (WCR), announce receipt of an application for an enhancement of survival permit (Number 25838) under the Endangered Species Act (ESA) of 1973, and proposed entry into an associated Programmatic Safe Harbor Agreement (PSHA) between the NOAA Restoration Center (Applicant) and NMFS-WCR. The proposed enhancement of survival permit, which is issued by NMFS-WCR, and PSHA is intended to improve habitat conditions

and promote the conservation and recovery of seven species of ESA-listed salmonids in Coastal California.

DATES: Comments or requests for a public hearing on the actions proposed in the application must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on November 25, 2022.

ADDRESSES: Written comments on the application should be submitted to the California Coastal Office, NMFS, 777 Sonoma Avenue, Santa Rosa, CA 95404. Comments may also be submitted via fax to (707) 578-3435, or by email to: programmaticflowsha.wcr@noaa.gov (include the permit numbers in the subject line of the fax or email).

FOR FURTHER INFORMATION CONTACT: Jodi Charrier, Santa Rosa, CA (ph.: 707-575-6069; Fax: 707-578-3435) email: programmaticflowsha.wcr@noaa.gov. The permit application is available upon request through the contact information above, or online at <https://apps.nmfs.noaa.gov>.

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following ESA-listed species (Covered Species) are covered in this notice:

- Coho salmon (*Oncorhynchus kisutch*)—Central California Coast (CCC) and Southern Oregon/Northern California Coast (SONCC)
- Chinook salmon (*O. tshawytscha*)—California Coastal (CC)
- Steelhead (*O. mykiss*)—Central California Coast (CCC), Northern California (NC), South-Central California Coast (S-CCC), and Southern California Coast (SCC)

Authority

Enhancement of survival permits are issued in accordance with Section 10(a)(1)(A) of the ESA (16 U.S.C. 1539(a)(1)(A)) and regulations governing listed fish and wildlife permits (50 CFR part 222, subpart C). NMFS-WCR issues permits based on findings that such permits: (1) are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; (3) are consistent with the purposes and policies of Section 2 of the ESA; (4) would further a bona fide and necessary or desirable scientific purpose or enhance the propagation or survival of the endangered species, taking into account the benefits anticipated to be derived on behalf of the endangered species; and additional issuance criteria (as listed at 50 CFR 222.308(c)(5) through (12)). The authority to take

listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Permit Application Received

The Applicant is requesting an enhancement of survival permit (ESP) and execution of an associated PSHA. The PSHA would have a term of 10 years and exclusively cover streamflow augmentation by local government or private landowners during the late spring, summer, and early fall utilizing off-channel water sources, such as storage ponds or groundwater wells. The covered area would include all California coastal waterways draining to the Pacific Ocean (excluding the Sacramento and San Joaquin rivers). The Applicant would receive the ESP, and extend a Certificate of Inclusion to interested landowners that qualify under the PSHA. To obtain a Certificate of Inclusion, a landowner would need to enter into a cooperative agreement with the Applicant and adopt an annual plan, monitoring regimes, and agree to provide post-project summaries. The issuance of a Certificate of Inclusion would not preclude the need for the landowners to abide by all other applicable Federal, State, and local laws and regulations. In order to be eligible for a Certificate of Inclusion, landowners must meet all criteria and agree to the terms outlined in the PSHA.

The ESP would authorize incidental take that may occur as a result of implementing the PSHA. Management activities outlined in Section 9 of the PSHA could harm, kill, or cause the capture of Covered Species through stranding caused by unanticipated interruptions in flow augmentation, or water quality degradation resulting from poor source water. Water Releases could cause take in the form of harassment, direct mortality, or injury to juvenile life stages of the Covered Species by disrupting feeding behavior or migration behavior, or stranding, or causing other behavior modifications. Also, when the landowner returns their property subject to the PSHA (Enrolled Property) to baseline conditions (defined as the natural streamflow without supplementation) as specified in the PSHA, dewatering and relocation activities could harm or kill individuals of the covered species. NMFS-WCR anticipates that incidental take will be unlikely and will only occur should

unforeseeable or unavoidable circumstances arise. The risk of such incidental take would be further avoided or minimized through implementation of the measures outlined in Section 12 of the PSHA.

This PSHA is expected to provide a net conservation benefit for the Covered Species and contribute, either directly or indirectly, to the recovery of the Covered Species, which supports the issuance of an ESP by NMFS-WCR pursuant to Section 10(a)(1)(A) of the ESA in accordance with 50 CFR 222.308. Management activities are expected to benefit the Covered Species by increasing smolt emigration, juvenile migration, and redistribution success, and improving juvenile rearing habitat. These benefits are expected to ultimately increase the population abundance and distribution of the Covered Species.

Under U.S. Fish and Wildlife Service and NMFS' joint Safe Harbor Policy (64 FR 32717, June 17, 1999), safe harbor agreements provide incentives to property owners to restore, enhance, or maintain habitats and/or populations of listed species that result in a net conservation benefit to these species. Under the policy, landowners are provided certainty relative to future property-use restrictions, even if their conservation efforts attract listed species onto enrolled properties or increase the numbers or distribution of listed species already present. Subject to specifications in the relevant documents, these regulatory assurances allow the landowners to alter or modify enrolled property, even if such alteration or modification results in the incidental take of a listed species to such an extent that it returns the species back to the originally agreed upon baseline conditions.

Upon approval of the PSHA and consistent with the safe harbor policy, NMFS-WCR will issue an ESP to the applicant. The ESP will authorize the Applicant (and, here, landowners approved for a Certificate of Inclusion) to take covered species incidental to the implementation of the activities specified in the cooperative agreements, annual plans, and PSHA, incidental to other lawful uses of the enrolled properties, and to return to present baseline and elevated baseline conditions, if specified. In addition to meeting other criteria, actions to be performed under the enhancement of survival permit must not jeopardize the existence of ESA-listed species.

National Environmental Policy Act

Issuance of an ESA section 10(a)(1)(A) permit constitutes a Federal action

requiring NMFS-WCR to comply with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) as implemented by 40 CFR parts 1500 through 1508 and NOAA Administrative Order 216-6, Environmental Review Procedures for Implementing the National Policy Act (1999). NMFS will evaluate the application(s) and determine the level of NEPA analysis needed for this action.

Public Comments Solicited

NMFS-WCR invites the public to comment, including any written data, views, or arguments, on the permit application during a 30-day public comment period beginning on the date of this notice. This notice is provided pursuant to Section 10(c) of the ESA (16 U.S.C. 1539(c)), 50 CFR 222.303. All comments and materials received, including names and addresses, will become part of the administrative record and may be released to the public. We provide this notice in order to allow the public, agencies, or other organizations to review and comment on these documents.

Next Steps

NMFS-WCR will evaluate the application, associated documents, and comments submitted to determine whether the application meets the requirements of Section 10(a)(1)(A) of the ESA and its implementing regulations. The final permit decision will not be made until after the end of the 30-day public comment period and after NMFS-WCR has fully considered all relevant comments received. NMFS-WCR will also meet other legal requirements prior to taking final action, including compliance with Section 7 of the ESA. NMFS-WCR will publish notice of its final action in the **Federal Register**.

Dated: October 20, 2022.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022-23242 Filed 10-25-22; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

U.S. Integrated Ocean Observing System (IOOS®) Advisory Committee Public Meeting

AGENCY: U.S. Integrated Ocean Observing System (IOOS®), National Ocean Service (NOS), National Oceanic

and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of open meeting.

SUMMARY: Notice is hereby given of a virtual meeting of the U.S. Integrated Ocean Observing System (IOOS®) Advisory Committee (Committee). The meeting is open to the public and an opportunity for oral and written comments will be provided.

DATES: The meeting will be held virtually November 30, 2022, and December 1, 2022, 11 a.m. to 5 p.m. Eastern Daylight Time and held in person December 6 and December 7, 2022, 10 a.m. to 5 p.m. Written public comments should be received by the Designated Federal Official by November 23, 2022.

ADDRESSES: The first two days of the meeting will be held virtually on November 30, 2022, and December 1, 2022. The final two days of the meeting will be held at 1201 New York Ave. NW, Washington, DC 20005, on December 6, 2022, and December 7, 2022. To register for the meeting and/or submit public comments, use this link <https://forms.gle/F2uWJrDUMZnFN8Gy7> or email

Laura.Gewain@noaa.gov. See

SUPPLEMENTARY INFORMATION for instructions and other information about public participation.

FOR FURTHER INFORMATION CONTACT: Krisa Arzayus, Designated Federal Official, U.S. IOOS Advisory Committee, U.S. IOOS Program, 1315 East-West Highway, Silver Spring, MD 20910; Phone 240-533-9455; Fax 301-713-3281; email krisa.arzayus@noaa.gov or visit the U.S. IOOS Advisory Committee website at <http://ioos.noaa.gov/community/u-s-ioos-advisory-committee/>.

SUPPLEMENTARY INFORMATION: The Committee was established by the NOAA Administrator as directed by section 12304 of the Integrated Coastal and Ocean Observation System Act, part of the Omnibus Public Land Management Act of 2009 (Pub. L. 111-11), and reauthorized under the Coordinated Ocean Observations and Research Act of 2020 (Pub. L. No. 116-271). The Committee advises the NOAA Administrator and the Interagency Ocean Observation Committee (IOOC) on matters related to the responsibilities and authorities set forth in section 12302 and section 12304 of the Integrated Coastal and Ocean Observation System Act of 2009 and other appropriate matters as the Under Secretary may refer to the Committee for review and advice.

The Committee will provide advice on:

(a) administration, operation, management, and maintenance of the Integrated Coastal and Ocean Observation System (the System);

(b) expansion and periodic modernization and upgrade of technology components of the System;

(c) identification of end-user communities, their needs for information provided by the System, and the System's effectiveness in disseminating information to end-user communities and to the general public; and

(d) additional priorities, including—
(1) a national surface current mapping network designed to improve fine scale sea surface mapping using high frequency radar technology and other emerging technologies to address national priorities, including Coast Guard search and rescue operation planning and harmful algal bloom forecasting and detection that—

(i) is comprised of existing high frequency radar and other sea surface current mapping infrastructure operated by national programs and regional coastal observing systems;

(ii) incorporates new high frequency radar assets or other fine scale sea surface mapping technology assets, and other assets needed to fill gaps in coverage on United States coastlines; and

(iii) follows a deployment plan that prioritizes closing gaps in high frequency radar infrastructure in the United States, starting with areas demonstrating significant sea surface current data needs, especially in areas where additional data will improve Coast Guard search and rescue models;
(2) fleet acquisition for unmanned maritime systems for deployment and data integration to fulfill the purposes of this subtitle;

(3) an integrative survey program for application of unmanned maritime systems to the real-time or near real-time collection and transmission of sea floor, water column, and sea surface data on biology, chemistry, geology, physics, and hydrography;

(4) remote sensing and data assimilation to develop new analytical methodologies to assimilate data from the System into hydrodynamic models;

(5) integrated, multi-State monitoring to assess sources, movement, and fate of sediments in coastal regions;

(6) a multi-region marine sound monitoring system to be—

(i) planned in consultation with the IOOC, NOAA, the Department of the Navy, and academic research institutions; and

(ii) developed, installed, and operated in coordination with NOAA, the Department of the Navy, and academic research institutions; and

(e) any other purpose identified by the Administrator or the Council.

Matters To Be Considered

The meeting will focus on: (1) finalizing phase one recommendations, and (2) beginning work on the phase 2 recommendations from the committee workplan. The latest version of the agenda will be posted at <http://ioos.noaa.gov/community/u-s-ioos-advisory-committee/>. The times and the agenda topics described here are subject to change.

Public Comment Instructions

The meeting will be open to public participation (check agenda on website to confirm time). The Committee expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three (3) minutes. Written comments should be received by the Designated Federal Official by November 23, 2022, to provide sufficient time for Committee review. Written comments received after November 23, 2022, will be distributed to the Committee, but may not be reviewed prior to the meeting date. To submit written comments, please fill out the brief form at <https://forms.gle/F2uWJrDUMZnFN8Gy7> or email your comments, your name as it appears on your driver's license, and the organization/company affiliation you represent to Laura Gewain, Laura.Gewain@noaa.gov.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Krisa Arzayus, Designated Federal Official by phone (240-533-9455) or email (Krisa.Arzayus@noaa.gov) or to Laura Gewain (Laura.Gewain@noaa.gov) by November 16, 2022.

Carl C. Gouldman,

Director, U.S. Integrated Ocean Observing System Office, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2022-23299 Filed 10-25-22; 8:45 am]

BILLING CODE 3510-JE-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2022–0072]

Agency Information Collection Activities: Comment Request**AGENCY:** Bureau of Consumer Financial Protection.**ACTION:** Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau) is requesting the extension of the Office of Management and Budget's (OMB's) approval for an existing information collection titled "Application for the Bureau's Advisory Committees" approved under OMB Control Number 3170–0037.

DATES: Written comments are encouraged and must be received on or before December 27, 2022 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* PRA_Comments@cfpb.gov. Include Docket No. CFPB–2022–0072 in the subject line of the email.
- *Mail/Hand Delivery/Courier:*

Comment Intake, Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552. Because paper mail in the Washington, DC, area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT:

Documentation prepared in support of this information collection request is available at www.regulations.gov. Requests for additional information should be directed to Anthony May, PRA Officer, at (202) 841–0544, or email: CFPB_PRA@cfpb.gov. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov. Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Application for the Bureau's Advisory Committees.

OMB Control Number: 3170–0037.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Individuals and households.

Estimated Number of Respondents: 425.

Estimated Total Annual Burden Hours: 491.

Abstract: The Director of the Bureau may invite individuals with special expertise to serve on the Bureau's advisory committees. The selection-related material will allow the Bureau to obtain information on the qualifications of individuals nominated to an advisory committee and will aid the Bureau in selecting members for service on an advisory committee. The selection-related information will also aid the Bureau in determining the appropriateness of participation in particular matters. The information collected from applicants will aid the Bureau in the exercise of its functions. The feedback collected will allow the Bureau to evaluate and improve its advisory committee program. The Bureau will use the information collected for vetting candidates, issuing travel orders, or providing reimbursement for travel expenses (as applicable).

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be 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. Comments submitted in response to this notice will be summarized and/or included in the request for OMB's approval. All comments will become a matter of public record.

Anthony May,

Paperwork Reduction Act Officer, Consumer Financial Protection Bureau.

[FR Doc. 2022–23331 Filed 10–25–22; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2022–0071]

Agency Information Collection Activities: Comment Request**AGENCY:** Bureau of Consumer Financial Protection.**ACTION:** Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau or CFPB) is requesting the extension of the Office of Management and Budget's (OMB's) approval for an existing information collection titled "Generic Information Collection Plan for Information on Compliance Costs and Other Effects of Regulations" approved under OMB Control Number 3170–0032.

DATES: Written comments are encouraged and must be received on or before December 27, 2022 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* PRA_Comments@cfpb.gov. Include Docket No. CFPB–2022–0071 in the subject line of the message.
- *Mail/Hand Delivery/Courier:*

Comment Intake, Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552. Because paper mail in the Washington, DC, area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT:

Documentation prepared in support of this information collection request is available at www.regulations.gov. Requests for additional information should be directed to Anthony May, PRA Officer, at (202) 435–7278, or email: CFPB_PRA@cfpb.gov. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov. Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Generic Information Collection Plan for Information on Compliance Costs and Other Effects of Regulations.

OMB Control Number: 3170-0032.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Private sector: businesses and other for-profit entities.

Estimated Number of Respondents: 75,000.

Estimated Total Annual Burden Hours: 77,994.

Abstract: The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) requires or authorizes the Bureau to implement new consumer protections in the offering or provision of certain consumer financial products and services. This information collection is required in order to effectively incorporate information from providers concerning compliance costs and other effects of regulations as part of the information base for potential rulemakings and prospective and retrospective regulatory burden analyses.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be 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. Comments submitted in response to this notice will be summarized and/or included in the request for OMB's approval. All comments will become a matter of public record.

Anthony May,

Paperwork Reduction Act Officer, Consumer Financial Protection Bureau.

[FR Doc. 2022-23330 Filed 10-25-22; 8:45 am]

BILLING CODE 4810-AM-P

DEPARTMENT OF DEFENSE**Office of the Secretary****Defense Health Board; Notice of Federal Advisory Committee Meeting**

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Health Board (DHB) will take place.

DATES: Open to the public Wednesday, November 30, 2022 from 9:00 a.m. to 4:00 p.m. Eastern time.

ADDRESSES: The address of the open meeting is Defense Health Headquarters (DHHQ), 7700 Arlington Blvd., Pavilion Salons B and C, Falls Church, VA 22042. The meeting will be held both in-person and virtually. To participate in the meeting, see the Meeting Accessibility section for instructions.

FOR FURTHER INFORMATION CONTACT: CAPT Gregory H. Gorman, Medical Corps, U.S. Navy, 703-275-6060 (voice), gregory.h.gorman.mil@health.mil (email). Mailing address is 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042. Website: <http://www.health.mil/dhb>. The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C.), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102-3.140 and 102-3.150.

Availability of Materials for the Meeting: Additional information, including the agenda, is available on the DHB website, <http://www.health.mil/dhb>. A copy of the agenda or any updates to the agenda for the November 30, 2022 meeting will be available on the DHB website. Any other materials presented in the meeting may be obtained at the meeting.

Purpose of the Meeting: The DHB provides independent advice and recommendations to maximize the safety and quality of, as well as access to, health care for DoD health care beneficiaries. The purpose of the meeting is to provide progress updates on specific tasks before the DHB. In addition, the DHB will receive information briefings on current issues related to military medicine.

Agenda: The DHB anticipates receiving information briefings on the

Warfighter Brain Health program and issues related to Military Health System health care delivery and state laws and regulations. The DHB also expects to receive progress updates from the Health Care Delivery Subcommittee on the Optimizing Virtual Health review, from the Health Systems Subcommittee on the Eliminating Racial and Ethnic Health Outcome Disparities review, and from the Neurological/Behavioral Health Subcommittee on the Beneficiary Mental Health Care Access review. Any changes to the agenda can be found at the link provided in this **SUPPLEMENTARY INFORMATION** section.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102-3.140 through 102-3.165 and subject to the availability of space, this meeting will be held in-person and virtually and is open to the public from 9:00 a.m. to 4:00 p.m. Seating and virtual participation is limited and is on a first-come basis. All members of the public who wish to participate must register by emailing their name, rank/title, and organization/company to dha.ncr.dhb.mbx.defense-health-board@health.mil or by contacting Mr. Rubens Lacerda at (703) 275-6012 no later than Tuesday, November 22, 2022. Additional details will be required from all members of the public attending in-person that do not have DHHQ access. Once registered, participant access information will be provided.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Mr. Rubens Lacerda at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Statements: Any member of the public wishing to provide comments to the DHB related to its current taskings or mission may do so at any time in accordance with section 10(a)(3) of the FACA, 41 CFR 102-3.105(j) and 102-3.140, and the procedures described in this notice. Written statements may be submitted to the DHB's Designated Federal Officer (DFO), Captain Gorman, at gregory.h.gorman.mil@health.mil. Supporting documentation may also be included, to establish the appropriate historical context and to provide any necessary background information. If the written statement is not received at least five (5) business days prior to the meeting, the DFO may choose to postpone consideration of the statement until the next open meeting. The DFO will review all timely submissions with the DHB President and ensure they are provided to members of the DHB before the meeting that is subject to this notice. After reviewing the written comments,

the President and the DFO may choose to invite the submitter to present their issue during an open portion of this meeting or at a future meeting.

Dated: October 20, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022-23250 Filed 10-25-22; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee for the Prevention of Sexual Misconduct; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Advisory Committee for the Prevention of Sexual Misconduct (DAC-PSM) will take place.

DATES: DAC-PSM will hold a meeting open to the public—Thursday, December 8, 2022 from 9:00 a.m. to 2:30 p.m. (EST).

ADDRESSES: The public may access the meeting by videoconference. Public access information will be provided after registering. (Pre-meeting registration is required. See guidance in **SUPPLEMENTARY INFORMATION**, “Meeting Accessibility”).

FOR FURTHER INFORMATION CONTACT: Dr. Suzanne Holroyd, (571) 372-2652 (voice), osd.mc-alex.ousd-p-r.mbx.DAC-PSM@mail.mil (email). Website: www.sapr.mil/DAC-PSM. The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.140 and 102-3.150.

Availability of Materials for the Meeting: Additional information, including the agenda or any updates to the agenda, is available on the DAC-PSM website (www.sapr.mil/DAC-PSM). Materials presented in the meeting may also be obtained on the DAC-PSM website.

Purpose of the Meeting: The purpose of the meeting is for the DAC-PSM to receive briefings and have discussions on topics related to the prevention of sexual misconduct within the Armed Forces of the United States.

Agenda: Thursday, December 8, 2022 from 9:00 a.m. to 2:30 p.m. (EST)—Meeting Opening, IRC Training Recommendations, Military Service Training Briefs, and DAC-PSM Discussion.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102-3.140 through 102-3.165, this meeting is open to the public from 9:00 a.m. to 2:30 p.m. (EST) on December 8, 2022. The public may access the meeting by videoconference. The number of participants is limited and is on a first-come basis. All members of the public who wish to participate must register by contacting DAC-PSM at osd.mc-alex.ousd-p-r.mbx.DAC-PSM@mail.mil or by contacting Dr. Suzanne Holroyd at (571) 372-2652 no later than Thursday, December 1, 2022 (by 5:00 p.m. EST). Once registered, the web address and/or audio number will be provided.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Dr. Suzanne Holroyd at osd.mc-alex.ousd-p-r.mbx.DAC-PSM@mail.mil or (571) 372-2652 no later than Thursday, December 1, 2022 (by 5:00 p.m. EST) so that appropriate arrangements can be made.

Written Statements: Pursuant to section 10(a)(3) of the FACA and 41 CFR 102-3.140, interested persons may submit a written statement to the DAC-PSM. Individuals submitting a written statement must submit their statement no later than Thursday, December 1, 2022 (by 5:00 p.m. EST) to Dr. Suzanne Holroyd at (571) 372-2652 (voice) or to osd.mc-alex.ousd-p-r.mbx.DAC-PSM@mail.mil (email). If a statement pertaining to a specific topic being discussed, at the planned meeting is not received by Thursday, December 1, 2022, prior to the meeting, then it may not be provided to, or considered by the DAC-PSM during the December 8, 2022 meeting. The Designated Federal Officer will review all timely submissions with the DAC-PSM's Chair and ensure such submissions are provided to the members of the DAC-PSM members before the meeting.

Dated: October 21, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022-23313 Filed 10-25-22; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD-2022-OS-0097]

Submission for OMB Review; Comment Request

AGENCY: Washington Headquarters Services (WHS), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by November 25, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571-372-7574, whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Confirmation of Request for Reasonable Accommodation; SD Form 827; OMB Control Number 0704-0498.

Type of Request: Extension without change.

Number of Respondents: 20.

Responses per Respondent: 1.

Annual Responses: 20.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 5.

Needs and Uses: The information collection requirement is necessary to obtain and record requests for reasonable accommodation, with the intent to measure and ensure agency compliance with the Rehabilitation Act of 1973, Public Law 93-112; Rehabilitation Act Amendments of 1992, Public Law 102-569; Americans with Disabilities Act Amendments Act of 2008.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Sehra.

You may also submit comments and recommendations, identified by Docket

ID number and title, by the following method:

- *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

Dated: October 20, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022-23237 Filed 10-25-22; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Regents, Uniformed Services University of the Health Sciences; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Board of Regents, Uniformed Services University of the Health Sciences (BoR USUHS) will take place.

DATES: Thursday, December 1, 2022, open to the public from 12 p.m. to 4 p.m.

ADDRESSES: Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Everett Alvarez Jr. Board of Regents Room (D3001), Bethesda, MD 20814. The meeting will be held both in-person and virtually. To participate in the meeting, see the Meeting Accessibility section for instructions.

FOR FURTHER INFORMATION CONTACT: Annette Askins-Roberts, Designated Federal Officer (DFO), at (301) 646-1656 or annette.asksins-roberts@usuhs.edu.

Mailing address is 4301 Jones Bridge Road, Bethesda, MD 20814. Website: <https://www.usuhs.edu/ao/board-of-regents>.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C., appendix), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102-3.140 and 102-3.150.

Purpose of the Meeting: The purpose of the meeting is to provide advice and recommendations to the Secretary of Defense, through the USD(P&R), on academic and administrative matters critical to the full accreditation and successful operation of Uniformed Services University (USU). These actions are necessary for USU to pursue its mission, which is to educate, train and comprehensively prepare uniformed services health professionals, officers, scientists, and leaders to support the Military and Public Health Systems, the National Security and National Defense Strategies of the United States, and the readiness of our Uniformed Services.

Agenda: The schedule includes opening comments from the Chair; an overview of the USU Strategic Plan; reports from School of Medicine, Graduate School of Nursing, Postgraduate Dental College, and College of Allied Health Sciences; overviews from the Office of the University Registrar, the Armed Forces Radiobiology Research Institute, and the Office of Vice President Finance and Administration; and an update on the accreditation process.

Meeting Accessibility: Pursuant to Federal statutes and regulations (5 U.S.C. appendix, 5 U.S.C. 552b, and 41 CFR 102-3.140 through 102.3.165), the meeting will be held in-person and virtually and is open to the public from 12 p.m. to 4 p.m. Seating is on a first-come basis. Members of the public wishing to attend the meeting in-person or virtually should contact Ms. Hermano via email at celestehermano.ctr@usuhs.edu no later than five business days prior to the meeting.

Written Statements: Pursuant to section 10(a)(3) of the FACA and 41 CFR 102-3.140, the public or interested organizations may submit written comments to the BoR USUHS about its approved agenda pertaining to this meeting or at any time regarding the BoR USUHS' mission. Individuals submitting a written statement must submit their statement to Ms. Askins-Roberts at the address noted in the **FOR FURTHER INFORMATION CONTACT** section. Written statements that do not pertain to

a scheduled meeting of the BoR USUHS may be submitted at any time. If individual comments pertain to a specific topic being discussed at the planned meeting, then these statements must be received at least five calendar days prior to the meeting. Otherwise, the comments may not be provided to or considered by the BoR USUHS until a later date. The DFO will compile all timely submissions with the BoR USUHS' Chair and ensure such submissions are provided to BoR USUHS members before the meeting.

Dated: October 21, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022-23325 Filed 10-25-22; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Committee Renewal of Department of Defense Federal Advisory Committees—Defense Advisory Committee on Diversity and Inclusion

AGENCY: Department of Defense (DoD).

ACTION: Committee renewal of Federal Advisory Committee.

SUMMARY: The DoD is publishing this notice to announce that it is renewing the Defense Advisory Committee on Diversity and Inclusion (DAC-DI).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703-697-1142.

SUPPLEMENTARY INFORMATION: The DAC-DI is being renewed in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. appendix) and 41 CFR 102-3.50(d), and as part of the renewal process, the DoD is filing a new DAC-DI charter along with its membership balance plan. The charter and contact information for the DAC-DI's Designated Federal Officer (DFO) are found at <https://www.facadatabase.gov/FACA/apex/FACAPublicAgencyNavigation>.

The DAC-DI shall examine and provide recommendations to improve racial/ethnic diversity, inclusion, and equal opportunity within the DoD, with a primary focus on military personnel. The DAC-DI shall conduct studies, make findings, and provide recommendations on matters and policies relating to improving racial/ethnic diversity, inclusion, and equal opportunity within the DoD, as determined by the Secretary of Defense and the Deputy Secretary of Defense

(“the DoD Appointing Authority”) or the Under Secretary of Defense for Personnel and Readiness (USD(P&R)). All DAC–DI work will be in response to written terms of reference (TOR) approved by the DoD Appointing Authority or the USD(P&R) unless otherwise provided by in statute or Presidential directive.

The DAC–DI shall be composed of no more than 20 members, who have distinguished backgrounds and experience in one or more of the following disciplines: defense or national security, organizational or human resources management, constitutional or employment law, and diversity and inclusion. These members will come from varied backgrounds including academia and the public and private sectors.

DAC–DI members who are not full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be appointed as experts or consultants, pursuant to 5 U.S.C. 3109, to serve as special government employee members. DAC–DI members who are full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services shall be designated pursuant to 41 CFR 102–3.130(a), to serve as regular government employee members. The DoD Appointing Authority shall appoint the DAC–DI’s leadership from among the membership previously appointed in accordance with DoD policy and procedures, for a term of service of one-to-two years, with annual renewal, which shall not exceed the member’s approved DAC–DI appointment.

All members of the DAC–DI are appointed to exercise their own best judgement on behalf of the DoD, without representing any particular point of view, and to discuss and deliberate in a manner that is free from conflicts of interest. With the exception of reimbursement of official DAC–DI-related travel and per diem, DAC–DI members serve without compensation.

The public or interested organizations may submit written statements to the DAC–DI membership about the DAC–DI’s mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the DAC–DI. All written statements shall be submitted to the DFO for the DAC–DI, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: October 21, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–23328 Filed 10–25–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Visitors of Marine Corps University

AGENCY: Department of the Navy (DoN), Department of Defense (DoD).

ACTION: Notice of open meeting.

SUMMARY: The Board of Visitors of the Marine Corps University (BOV MCU) will meet to review, develop and provide recommendations on all aspects of the academic and administrative policies of the University; examine all aspects of professional military education operations; and provide such oversight and advice, as is necessary, to facilitate high educational standards and cost effective operations. The Board will be focusing primarily on the internal procedures of Marine Corps University. All sessions of the meeting will be open to the public.

DATES: The meeting will be held on Thursday, 17 November 2022, from 8:00 a.m. to 4:30 p.m. Eastern Time Zone.

ADDRESSES: The meeting will be held at Marine Corps University in Quantico, Virginia. The address is: 2076 South Street, Quantico, VA 22134.

FOR FURTHER INFORMATION CONTACT: Dr. Kim Florich, Director of Faculty Development and Outreach, Marine Corps University Board of Visitors, 2076 South Street, Quantico, Virginia 22134, Telephone number 703–432–4682.

Dated: October 20, 2022.

B.F. Roach,

Commander, Judge Advocate General’s Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2022–23251 Filed 10–25–22; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID USN–2022–HQ–0030]

Proposed Collection; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Naval Sea Systems Command Shipping Industrial Base Task Force announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency’s estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 27, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Naval Sea Systems Command Shipping Industrial Base Task Force, 1333 Isaac Hull Ave SE, Washington Navy Yard, DC 20376; ATTN: Mr. Matthew Evans, or call 202–781–0000.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Shipbuilding Industrial Base Demographics Survey; OMB Control Number 0703–IDMS.

Needs and Uses: The Shipbuilding Industrial Base Demographic Survey is

necessary to ensure a complete data set is available to meet the intent of Executive Order No. 13985 and Section 1026 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, and provide actionable information on the Defense Industrial Base. The collected information will assist in drafting a biennial Report to Congress (RTC), as well as provide additional information and support Navy strategy for funding workforce development pilot programs and initiatives. This key demographic information will illustrate current trends, projected gaps in experience and age, and highlight additional areas of focus based on current workforce and skilled trade employment figures.

Affected Public: Businesses or other for-profit.

Annual Burden Hours: 6,075.

Number of Respondents: 1,263.

Responses per Respondent: 1.

Annual Responses: 1,263.

Average Burden per Response: 4.81 hours.

Frequency: Biennially.

The respondents for this survey are the suppliers in the shipbuilding industrial base (SIB). This includes private companies and industry organizations but is not inclusive of government shipyards and government organizations such as Naval Surface Warfare Centers. Suppliers in the SIB are key information holders on skilled workforce and are the only entities capable of answering the Congressional requirements set forth in the FY21 NDAA. Through the information provided, suppliers in the SIB will contribute to improving workforce enrollment and retention, assisting with targeting strategies and new programs aimed at expanding the skilled workforce available.

Dated: October 20, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022-23236 Filed 10-25-22; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF EDUCATION

National Assessment Governing Board

Meeting; National Assessment Governing Board

AGENCY: National Assessment Governing Board, Department of Education.

ACTION: Notice of open and closed meetings.

SUMMARY: This notice sets forth the agenda, time, and instructions to access or participate in the National Assessment Governing Board (hereafter referred to as Governing Board or Board) meetings scheduled for November 16–18, 2022 in Washington DC. This notice provides information about the meetings to members of the public who may be interested in attending the meetings and/or providing written comments related to the work of the Governing Board. Notice of the meetings is required under Section 10(a)(2) of the Federal Advisory Committee Act (FACA).

ADDRESSES: The Mayflower Hotel, 1127 Connecticut Ave. NW, Washington, DC 20036.

DATES: November 16–18, 2022.

FOR FURTHER INFORMATION CONTACT:

Munira Mwalimu, Executive Officer/ Designated Federal Official for the Governing Board, 800 North Capitol Street NW, Suite 825, Washington, DC 20002, telephone: (202) 357–6906, fax: (202) 357–6945, email: Munira.Mwalimu@ed.gov.

SUPPLEMENTARY INFORMATION:

Statutory Authority and Function: The Governing Board is established under the National Assessment of Educational Progress Authorization Act, Title III of Public Law 107–279 (20 U.S.C. 9621). Information on the Governing Board and its work can be found at www.nagb.gov. The Governing Board formulates policy for the National Assessment of Educational Progress (NAEP) administered by the National Center for Education Statistics (NCES). The Governing Board's responsibilities include:

“(1) selecting the subject areas to be assessed; (2) developing appropriate student achievement levels; (3) developing assessment objectives and testing specifications that produce an assessment that is valid and reliable, and are based on relevant widely accepted professional standards; (4) developing a process for review of the assessment which includes the active participation of teachers, curriculum specialists, local school administrators, parents, and concerned members of the public; (5) designing the methodology of the assessment to ensure that assessment items are valid and reliable, in consultation with appropriate technical experts in measurement and assessment, content and subject matter, sampling, and other technical experts who engage in large scale surveys; (6) measuring student academic achievement in grades 4, 8, and 12 in the authorized academic subjects; (7) developing guidelines for reporting and

disseminating results; (8) developing standards and procedures for regional and national comparisons; (9) taking appropriate actions needed to improve the form, content use, and reporting of results of an assessment; and (10) planning and executing the initial public release of NAEP reports.”

Orientation Meeting and Standing Committee Meetings

The Governing Board's standing committees will meet to conduct regularly scheduled work planned for the quarterly board meeting and any items undertaken by standing committees for consideration by the full Governing Board. (Please see committee meeting minutes for previous meetings, available at <https://www.nagb.gov/governing-board/quarterly-board-meetings.html>). Standing committee meeting agendas and meeting materials will be posted on the Governing Board's website, www.nagb.gov, no later than five business days prior to the meetings.

Standing Committee Meetings

Wednesday, November 16, 2022

New Member Orientation Meeting
(Closed Session)

12:30 p.m.–5:15 p.m.

A new member orientation meeting will convene in closed session on November 16, 2022, from 12:30 p.m. to 5:15 p.m. The meeting agenda will cover topics related to member onboarding and include presentations from the Governing Board and the National Center for Education Statistics (NCES). These discussions pertain solely to internal personnel rules and practices of an agency. As such, the discussions are protected by exemption 2 of the Government Sunshine Act, 5 U.S.C. 552b(c).

Thursday, November 17, 2022

Executive Committee Meeting

8:00 a.m.–8:35 a.m. (Open Session)
8:35 a.m.–9:30 a.m. (Closed Session)

The Executive Committee will meet in closed session on November 17, 2022, from 8:35 a.m. to 9:30 a.m. to receive two briefings. The first briefing will be led by Lesley Muldoon, the Governing Board Executive Director, on the Governing Board's budget. The second briefing will be led by Peggy Carr, Commissioner, National Center for Education Statistics (NCES) on the NAEP Budget and Assessment Schedule. These discussions must be kept confidential to maintain the integrity of the federal budgeting and acquisition processes. Public disclosure of this confidential information would

significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of the Government Sunshine Act, 5 U.S.C. 552b(c).

Thursday, November 17, 2022

Reporting and Dissemination Committee (R&D)

3:30 p.m.–5:30 p.m. (Open Session)

Thursday, November 17, 2022

Assessment Development Committee

3:30 p.m.–5:00 p.m. (Open Session)

5:00 p.m.–5:30 p.m. (Closed Session)

The Assessment Development Committee will meet in closed session on November 17, 2022, to preview initial results from pretesting of NAEP Mathematics and Reading Items assessment items. These items have not been released to the public. Public disclosure of this confidential information would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of the Government Sunshine Act, 5 U.S.C. 552b(c).

Thursday, November 17, 2022

Committee on Standards, Design and Methodology

3:30 p.m.–5:00 p.m. (Open Session)

5:00 p.m.–5:30 p.m. (Closed Session)

The Committee on Standards, Design and Methodology will meet in closed session on November 17, 2022, to receive an update on the Achievement Level Description Review Pilot Study for U.S. History, Civics, and Science. This session is closed because preliminary study data will be shared from a pilot study intended to inform an operational study. Results are not public; they are to inform the Committee on study procedures to include panelists' preparation to for understanding the secure data and performing assigned tasks. Public disclosure of this confidential information would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of the Government Sunshine Act, 5 U.S.C. 552b(c).

Friday, November 18, 2022

Nominations Committee Meeting (Closed Session)

7:30 a.m.–8:45 a.m.

The Nominations Committee will meet in closed session on November 18, 2022, from 7:30 a.m. to 8:45 a.m. to

review applications for Board vacancies for the 2023–2024 term and discuss the rating process and member assignments for the ratings. These discussions pertain solely to internal personnel rules and practices of an agency and information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of the Government Sunshine Act, 5 U.S.C. 552b(c).

Quarterly Governing Board Meeting

The plenary sessions of the Governing Board's November 2022 quarterly meeting will be held on the following dates and times:

Thursday, November 17, 2022

Open Meeting: 9:45 a.m.–3:30 p.m.

Friday, November 18, 2022

Open Meeting: 9:00 a.m.–3:30 p.m.

November 17, 2022, Meeting:

On Thursday, November 17, 2022, the plenary session of the Governing Board meeting will convene in open session from 9:45 a.m. to 3:30 p.m. The meeting will start with welcome remarks from Beverly Perdue, Chair of the Governing Board, followed by a motion to approve the November 17–18, 2022, quarterly Governing Board meeting agenda and minutes from the August 4–5, 2022, quarterly Governing Board meeting. Thereafter, from 10:00 a.m. to 10:15 a.m., Secretary Cardona will administer the Oath of Office to three new members and a reappointed member and provide remarks. From 10:15 a.m. to 10:45 a.m. new members and the reappointed member will introduce themselves and provide remarks.

Lesley Muldoon, Executive Director of the Governing Board, will update members on ongoing work from 11:00 a.m. to 11:30 a.m. followed by an update from Peggy Carr, Commissioner, NCES, on NAEP activities from 11:30 a.m. to 12:00 p.m.

From 12:00 p.m. to 12:30 p.m., members will engage in a discussion on the Governing Board's multi-pronged strategy to communicate key results from the 2022 Nation's Report Card for Grades 4 and 8 in reading and mathematics, followed by a 15-minute break. From 12:45 p.m. to 1:45 p.m. members will meet in small groups to discuss most effective next steps for communicating and disseminating NAEP findings and promoting the data's utility and value. The members will debrief on the small group discussions from 2:00 p.m. to 2:45 p.m.

The Institute of Education Sciences (IES) Director, Mark Schneider, will provide an IES update from 2:45 p.m. to 3:15 p.m. Thereafter members will convene in standing committee meetings from 3:30 p.m. to 5:30 p.m. The November 17, 2022, session of the Board meeting will adjourn at 5:30 p.m.

Friday, November 18, 2022

The November 18, 2022, plenary session will begin with a closed session briefing on the NAEP Budget and Assessment Schedule from 9:00 a.m. to 10:30 a.m. After a 15-minute break, members will receive a briefing on recommendations from the science assessment framework steering panel from 10:45 a.m. to 12:00 p.m. Members will then take a 15-minute break and hear from a State Panel on NAEP Results from 12:15 p.m. to 2:15 p.m. After a 15-minute break, members will have open discussion time from 2:30 p.m. to 3:00 p.m. The final session of the November 18, 2022, meeting will take place from 3:00 p.m. to 3:30 p.m. to receive briefings from committee meetings. The Board will take action on the selection of the TUDA District after the committee briefings. The November 18, 2022, session of the Governing Board meeting will adjourn at 3:30 p.m.

The quarterly board meeting and standing committee meeting agendas, along with the meeting materials, will be posted on the Governing Board's website at www.nagb.gov no later than five working days prior to each meeting.

Instructions for Participating in the Meetings

Registration: Members of the public may attend in-person to all open sessions of the Governing Board's November 17–18, 2022 meetings. A link to register for virtual attendance for the open sessions and instructions for how to register will be posted on the Governing Board's website at www.nagb.gov no later than 5 business days prior to the meeting. Registration is required to join the meeting virtually.

Public Comment: Written comments related to the work of the Governing Board and its committees may be submitted electronically or in hard copy to the attention of the Executive Officer/ Designated Federal Official (DFO) via email at Munira.Mwalimu@ed.gov no later than 10 business days prior to the meeting. Written comments should be directed to the DFO as they relate to committee and Board meeting work and should reference the relevant agenda item.

Access to Records of the Meeting: Pursuant to the FACA requirements, the public may inspect the meeting

materials at www.nagb.gov, which will be made available no later than five business days prior to each meeting. The public may also inspect the meeting materials 800 North Capitol Street NW, Suite 825, Washington, DC 20002, by emailing Munira.Mwalimu@ed.gov to schedule an appointment. The official verbatim transcripts of the open meeting sessions will be available for public inspection no later than 30 calendar days following each meeting and will be posted on the Governing Board's website. Requests for the verbatim transcriptions may be made via email to the DFO noted above.

Reasonable Accommodations: The meeting location is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format), notify the DFO listed in this notice no later than ten working days prior to each meeting date.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the Adobe website. You may also access documents of the Department 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.

Authority: Pub. L. 107–279, Title III, § 301—National Assessment of Educational Progress Authorization Act (20 U.S.C. 9621).

Lesley Muldoon,

Executive Director, National Assessment Governing Board (NAGB), U.S. Department of Education.

[FR Doc. 2022–23323 Filed 10–25–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Extension of a Currently Approved Information Collection for the Weatherization Assistance Program

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years a currently approved collection of information with the Office of Management and Budget (OMB). The information collection request, Weatherization Assistance Program (WAP), was previously approved on May 31, 2020, under OMB Control No. 1910–5127 and its current expiration date is May 31, 2023. This ICR will include WAP Annual Appropriations and Weatherization Readiness Funds, Infrastructure Investment and Jobs Act (IIJA), and Multi-Family Buildings. This ICR makes updates to the WAP reporting metrics to ensure the requested information can be shared on an annual basis with Congress.

DATES: Comments regarding this propose information collection must be received on or before November 25, 2022. If you anticipate that you will be submitting comments but find it difficult to do so within the period allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 881–8585.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Brittany Price, EE–5W, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585–0121 or by email or phone at brittany.price@ee.doe.gov, (240) 306–7252.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the extended 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 proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be 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.

This information collection request contains: (1) OMB No.: 1910–5127; (2) *Information Collection Request Title:* “Weatherization Assistance Program (WAP)”; (3) *Type of Review:* Extension of a Currently Approved Collection; (4) *Purpose:* To collect information on the status of grantee activities related to WAP Annual Appropriations/ Weatherization Readiness Fund, IIJA, and the multifamily buildings expansion—including but not limited to weatherized units, total people assisted with grant funds; expenditures; and results, to ensure that program funds are being used appropriately, effectively and expeditiously. *WAP Annual Appropriations and Weatherization Readiness Fund:* On March 15, 2022, the President signed the Consolidated Appropriations Act of 2021, which appropriated \$334,000,000 to the WAP, and included \$15,000,000 to be made available to establish a Weatherization Readiness Fund. As noted in WPN 22–6, WAP Grantees will be required to report metrics related to the expenditure of these funds. *Infrastructure Investments and Jobs Act (IIJA):* In addition to the reporting documents for the WAP's annual appropriations, this collection also includes reporting for the \$3.168 billion delivered by IIJA. IIJA was passed by Congress on November 6, 2021 “to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.” The Weatherization Assistance Program is listed as an IIJA recipient under the Subtitle E—Miscellaneous section within Title V: Energy Efficiency and Building Infrastructure. *Multifamily Buildings:* The Consolidated Appropriations Act, 2021 amended Section 421 of the Energy Conservation and Production Act by inserting: “the number of multifamily buildings in which individual dwelling units were weatherized during the previous year, the number of individual dwelling units in multifamily buildings weatherized during the previous year,” after “the

average size of the dwellings being weatherized.” (5) *Annual Estimated Number of Respondents*: 57; (6) *Annual Estimated Number of Total Responses*: 798; (8) *Annual Estimated Number of Burden Hours*: 7,752; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden*: \$366,824.64.

Statutory Authority: Title 42, Chapter 81, Subchapter III, Part A of the United States Code (U.S.C.), (42 U.S.C. 6867(a)).

Signing Authority

This document of the Department of Energy was signed on October 14, 2022, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, 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 October 20, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2022-23240 Filed 10-25-22; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: CP23-5-000.
Applicants: Northern Indiana Public Service Company, LLC.

Description: Application of Northern Indiana Public Service Company LLC for a Limited Jurisdiction Certificate of Public Convenience and Necessity.

Filed Date: 10/19/2022.
Accession Number: 20221019-5122.
Comment Date: 5 p.m. ET 11/9/22.
Docket Numbers: RP23-44-000.
Applicants: Southern LNG Company, L.L.C.

Description: § 4(d) Rate Filing: SLNG Electric Power Cost Adjustment—2022 to be effective 12/1/2022.

Filed Date: 10/19/22.
Accession Number: 20221019-5048.
Comment Date: 5 p.m. ET 10/31/22.
Docket Numbers: RP23-45-000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 10.20.22 Negotiated Rates—Twin Eagle Resource Management, LLC R-7300-25 to be effective 11/1/2022.

Filed Date: 10/20/22.
Accession Number: 20221020-5016.
Comment Date: 5 p.m. ET 11/1/22.
Docket Numbers: RP23-46-000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 10.20.22 Negotiated Rates—Twin Eagle Resource Management LLC R-7300-26 to be effective 11/1/2022.

Filed Date: 10/20/22.
Accession Number: 20221020-5017.
Comment Date: 5 p.m. ET 11/1/22.
Docket Numbers: RP23-47-000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 10.20.22 Negotiated Rates—Shell Energy North America (US), L.P. R-2170-20 to be effective 11/1/2022.

Filed Date: 10/20/22.
Accession Number: 20221020-5020.
Comment Date: 5 p.m. ET 11/1/22.
Docket Numbers: RP23-48-000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 10.20.22 Negotiated Rates—Shell Energy North America (US), L.P. R-2170-21 to be effective 11/1/2022.

Filed Date: 10/20/22.
Accession Number: 20221020-5023.
Comment Date: 5 p.m. ET 11/1/22.
Docket Numbers: RP23-49-000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 10.20.22 Negotiated Rates—Mercuria Energy America, LLC R-7540-23 to be effective 11/1/2022.

Filed Date: 10/20/22.
Accession Number: 20221020-5026.
Comment Date: 5 p.m. ET 11/1/22.
Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: PR22-65-001.
Applicants: Midland-Permian Pipeline LLC.

Description: § 284.123 Rate Filing: Midland-Permian Pipeline LLC Amended Statement of Operating Conditions to be effective 9/14/2022.
Filed Date: 10/19/22.
Accession Number: 20221019-5117.
Comment Date: 5 p.m. ET 11/2/22.
Docket Numbers: RP22-1065-000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: Refund Report: 10.20.22 Stipulation and Settlement Agreement Refund Report to be effective N/A.
Filed Date: 10/20/22.
Accession Number: 20221020-5067.
Comment Date: 5 p.m. ET 11/1/22.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: October 20, 2022.

Kimberly D. Bose,
Secretary.

[FR Doc. 2022-23292 Filed 10-25-22; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23-138-000]

Watlington Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Watlington Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice

and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 9, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<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. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

Dated: October 20, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022-23279 Filed 10-25-22; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL23-6-000.

Applicants: Hollow Road Solar, LLC v. Old Dominion Electric Cooperative.
Description: Petition for Enforcement.
Filed Date: 10/20/22.

Accession Number: 20221020-5070.

Comment Date: 5 p.m. ET 11/10/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10-2437-017.

Applicants: Arizona Public Service Company.

Description: Second Supplement to December 28, 2021 Triennial Market Power Analysis for Southwest Region of Arizona Public Service Company.

Filed Date: 10/19/22.

Accession Number: 20221019-5158.

Comment Date: 5 p.m. ET 11/9/22.

Docket Numbers: ER11-3377-009; ER11-3376-008; ER11-3378-009.

Applicants: South Hurlburt Wind, LLC, North Hurlburt Wind, LLC, Horseshoe Bend Wind, LLC.

Description: Notice of Non-Material Change in Status of Horseshoe Bend Wind, LLC, et al.

Filed Date: 10/20/22.

Accession Number: 20221020-5053.

Comment Date: 5 p.m. ET 11/10/22.

Docket Numbers: ER12-922-005; ER22-1272-001.

Applicants: Phillips 66 Company, Phillips 66 Energy Trading LLC.

Description: Notice of Change in Status of Phillips 66 Company, et al.

Filed Date: 10/19/22.

Accession Number: 20221019-5160.

Comment Date: 5 p.m. ET 11/9/22.

Docket Numbers: ER18-1639-000.

Applicants: Constellation Mystic Power, LLC.

Description: Formal Challenge of the New England States Committee on Electricity.

Filed Date: 10/17/22.

Accession Number: 20221017-5096.

Comment Date: 5 p.m. ET 11/16/22.

Docket Numbers: ER19-467-008.

Applicants: New York Independent System Operator, Inc.

Description: Compliance filing: NYISO Amendment to Compliance re: Technical Corrections to eTariff Records to be effective 8/26/2020.

Filed Date: 10/20/22.

Accession Number: 20221020-5015.

Comment Date: 5 p.m. ET 11/10/22.

Docket Numbers: ER22-2736-000.

Applicants: Moss Landing Energy Storage 3, LLC.

Description: Supplement to August 29, 2022, Application for Market-Based Rate Authorization to Moss Landing Energy Storage 3, LLC.

Filed Date: 10/18/22.

Accession Number: 20221018-5166.

Comment Date: 5 p.m. ET 10/28/22.

Docket Numbers: ER23-137-000.

Applicants: ZEP Grand Prairie Wind, LLC.

Description: Request for Prospective Tariff Waiver, et al. of ZEP Grand Prairie Wind, LLC.

Filed Date: 10/19/22.

Accession Number: 20221019-5093.

Comment Date: 5 p.m. ET 11/9/22.

Docket Numbers: ER23-140-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA No. 2382, Queue No. None, Essex (consent) to be effective 11/20/2012.

Filed Date: 10/19/22.

Accession Number: 20221019-5123.

Comment Date: 5 p.m. ET 11/9/22.

Docket Numbers: ER23-141-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original NSA, SA No. 6670; Queue No. AC1-033 to be effective 9/20/2022.

Filed Date: 10/20/22.

Accession Number: 20221020-5046.

Comment Date: 5 p.m. ET 11/10/22.

Docket Numbers: ER23-142-000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2022-10-20 SA 3920 Duke-IN Solar GIA (J1234 J1235) to be effective 12/20/2022.

Filed Date: 10/20/22.

Accession Number: 20221020-5058.

Comment Date: 5 p.m. ET 11/10/22.

Docket Numbers: ER23-143-000.

Applicants: Bruce Power Inc.

Description: Compliance filing: Request for Category 1 Seller Status in the Central Region & Revised MBR Tariff to be effective 10/21/2022.

Filed Date: 10/20/22.

Accession Number: 20221020-5091.

Comment Date: 5 p.m. ET 11/10/22.

Docket Numbers: ER23-144-000.

Applicants: New England Power Company.

Description: New England Power Company submits Notice of Cancellation of the Firm Local Generation Deliverability Service Agreement with Pawtucket Power Associates Limited Partnership.

Filed Date: 10/19/22.

Accession Number: 20221019–5164.

Comment Date: 5 p.m. ET 11/9/22.

Docket Numbers: ER23–145–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA No. 3669, Y3–051, Z1–058 Linden (amend) to be effective 8/29/2016.

Filed Date: 10/20/22.

Accession Number: 20221020–5116.

Comment Date: 5 p.m. ET 11/10/22.

Docket Numbers: ER23–146–000.

Applicants: Northern Indiana Public Service Company LLC.

Description: § 205(d) Rate Filing: Supplement to WVPA IA for New Delivery Point to be effective 11/23/2022.

Filed Date: 10/20/22.

Accession Number: 20221020–5135.

Comment Date: 5 p.m. ET 11/10/22.

Docket Numbers: ER23–147–000.

Applicants: Resurgence Solar I, LLC.

Description: Baseline eTariff Filing: Resurgence Solar I, LLC Application for Market-Based Rate Authorization to be effective 12/20/2022.

Filed Date: 10/20/22.

Accession Number: 20221020–5138.

Comment Date: 5 p.m. ET 11/10/22.

Docket Numbers: ER23–148–000.

Applicants: Resurgence Solar II, LLC.

Description: Baseline eTariff Filing: Resurgence Solar II, LLC Application for Market-Based Rate Authorization to be effective 12/20/2022.

Filed Date: 10/20/22.

Accession Number: 20221020–5141.

Comment Date: 5 p.m. ET 11/10/22.

Docket Numbers: ER23–149–000.

Applicants: Northern Indiana Public Service Company LLC.

Description: § 205(d) Rate Filing: Supplement to WVPA IA for New Delivery Point to be effective 11/30/2022.

Filed Date: 10/20/22.

Accession Number: 20221020–5142.

Comment Date: 5 p.m. ET 11/10/22.

Docket Numbers: ER23–150–000.

Applicants: Southern Power Company.

Description: § 205(d) Rate Filing: Request for Authorization of Affiliate Transactions to be effective 12/31/2022.

Filed Date: 10/20/22.

Accession Number: 20221020–5144.

Comment Date: 5 p.m. ET 11/10/22.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM23–1–000.

Applicants: Entergy Arkansas, LLC, Entergy Louisiana, LLC, Entergy Mississippi, LLC, Entergy New Orleans,

LLC, Entergy Texas, Inc., Entergy Services, LLC.

Description: Application of Entergy Arkansas, LLC, et al. to Terminate Its Mandatory Purchase Obligation under the Public Utility Regulatory Policies Act of 1978.

Filed Date: 10/19/22.

Accession Number: 20221019–5156.

Comment Date: 5 p.m. ET 11/16/22.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 20, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–23290 Filed 10–25–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2177–111]

Georgia Power Company; Notice of Application Accepted for Filing and 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:* Non-capacity Amendment of License.

b. *Project No:* 2177–111.

c. *Date Filed:* April 14, 2022, and supplemented October 17, 2022.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Middle Chattahoochee Project.

f. *Location:* The project is located on the Chattahoochee River in Harris and Muscogee counties, Georgia, and Lee and Russell counties, Alabama. The

project does not occupy federally owned lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Courtenay O'Mara, 241 Ralph McGill Boulevard, NE, BIN 10193, Atlanta, Georgia 30308–3374, 404–506–7219, cromara@southernco.com.

i. *FERC Contact:* Jeremy Jessup, (202) 502–6779, Jeremy.Jessup@ferc.gov.

j. *Deadline for filing comments, motions to intervene, and protests:* November 21, 2022.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. 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: 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 the docket number P–2177–111. 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.

k. *Description of Request:* The applicant proposes to replace the existing four-foot-high wooden flashboard spillway gates with Obermeyer gates at the Goat Rock Development of the project. The Obermeyer gates would allow the applicant to regulate the Goat Rock lake levels more effectively. The applicant

would raise and lower the Obermeyer gates to match inflows more closely during high flow events. The applicant would perform all work to install the Obermeyer gates behind a bulkhead that would be anchored on the upstream side of the dam. The Obermeyer gate installation is expected to last 18 to 24 months. This proposed action does not require a drawdown of Goat Rock Lake. The applicant proposes laydown areas in previously disturbed areas and to construct a temporary pier/platform for equipment. During construction and following the Obermeyer gate installation, the licensee would operate the Goat Rock Lake and powerhouse within the current project license range of 398–404 feet. The applicant states that the proposal does not change any of the project features or operations. The project will continue to operate under the terms of its current license and applicable Water Quality Certification.

l. *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.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *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.

o. *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.

Dated: October 20, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–23278 Filed 10–25–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–227–000]

Columbia Gas Transmission, LLC; Notice of Availability of the Environmental Assessment for the Proposed Coco B Wells Replacement Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Coco B Wells Replacement Project, proposed by Columbia Gas Transmission, LLC (Columbia) in the above-referenced docket. Columbia requests authorization to construct and operate two new Injection and Withdrawal Wells (I/W) wells and related pipeline and appurtenances in a new well pad, and plug and abandon four I/W wells and related pipeline and appurtenances within the Coco B Storage Field in Kanawha County, West Virginia.

The EA assesses the potential environmental effects of the construction and operation of the Coco B Wells Replacement Project in accordance with the requirements of the National Environmental Policy Act. The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The proposed Coco B Wells Replacement Project includes the following facilities:

- construct and operate two new I/W wells on a new well pad;

- construct 586 feet of related pipeline and appurtenances;
- plug and abandon four I/W wells;
- abandon by removal 251 feet of pipeline and appurtenances; and
- plug and abandon in place 4,927 feet of pipeline.

The Commission mailed a copy of the *Notice of Availability* of the EA to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (www.ferc.gov), on the natural gas environmental documents page (<https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents>). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (<https://elibrary.ferc.gov/eLibrary/search>), select "General Search" and enter the docket number in the "Docket Number" field, excluding the last three digits (*i.e.*, CP22–227). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The EA is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Any person wishing to comment on the EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before 5:00 p.m. Eastern Time on November 21, 2022.

For your convenience, there are three methods you can use to file your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or FercOnlineSupport@ferc.gov. Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (www.ferc.gov) under the link to FERC Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature 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 must select the type of filing you are making. If you are filing a comment on a particular project, please select "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 (CP22–227–000) on your letter. 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, MD 20852.

Filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. At this point in this proceeding, the timeframe for filing timely intervention requests has expired. Any person seeking to become a party to the proceeding must file a motion to intervene out-of-time pursuant to Rule 214(b)(3) and (d) of the Commission's Rules of Practice and Procedures (18 CFR 385.214(b)(3) and (d)) and show good cause why the time limitation should be waived. Motions to intervene are more fully described at <https://www.ferc.gov/how-intervene>.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (www.ferc.gov) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings

by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

Dated: October 20, 2022.

Kimberly D. Bose,
Secretary.

[FR Doc. 2022–23296 Filed 10–25–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI22–7–000]

Scott Sanicki; Notice of Declaration of Intention and Soliciting Comments, Protests, and Motions To Intervene

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI22–7–000.

c. *Date Filed:* May 2, 2022.

d. *Applicant:* Scott Sanicki.

e. *Name of Project:* Quiet Woods Water Wheel Project.

f. *Location:* The proposed project would be located on Pocotopaug Creek in East Hampton, Middlesex County, Connecticut.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Scott Sanicki; 102 Quiet Woods Road, East Hampton, CT 06424; telephone: (860) 267–2759; email: ssanicki@comcast.net.

i. *FERC Contact:* Ashish Desai, (202) 502–8370, or Ashish.Desai@ferc.gov.

j. *Deadline for filing comments, protests, and motions to intervene is* November 21, 2022.

The Commission strongly encourages electronic filing. Please file comments, protests, and motions to intervene using the Commission's eFiling at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. 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: 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 DI22–7–000. Comments emailed to Commission staff are not considered part of the Commission record.

k. *Description of Project:* The proposed Quiet Woods Water Wheel Project would consist of: (1) an approximately three to six-foot-diameter under shot poncelet water wheel and approximately two-kilowatt generator cantilevered to a concrete mount on the creek bank; (2) a 100-foot transmission line to a private residence; and (3) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the project would affect the interests of interstate or foreign commerce.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at <http://www.ferc.gov/docs-filing/elibrary.asp>. 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.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *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, and .214. 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.

o. *Filing and Service of Responsive Documents:* All filings must bear in all

capital letters the title “COMMENTS”, “PROTESTS”, and “MOTIONS TO INTERVENE”, as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any Motion to Intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*: Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency’s comments must also be sent to the Applicant’s representatives.

Dated: October 20, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–23291 Filed 10–25–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–139–000]

Pleasant Hill Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Pleasant Hill Solar, LLC’s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant’s request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 9, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>.

www.ferc.gov. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission’s Home Page (<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. At this time, the Commission has suspended access to the Commission’s Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Dated: October 20, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–23297 Filed 10–25–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2022–0041; FRL–10374–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Paints and Allied Products Manufacturing Area Source Category (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Paints and Allied Products

Manufacturing Area Source Category (EPA ICR Number 2348.06, OMB Control Number 2060–0633), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through December 31, 2022. Public comments were previously requested, via the **Federal Register**, on April 8, 2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor and a person is not required to respond to a collection of information unless it displays a currently-valid OMB control number.

DATES: Additional comments may be submitted on or before November 25, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2022–0041, to EPA online using <https://www.regulations.gov/> (our preferred method), or by email to docket@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA’s policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0833; email address: ali.muntasir@epa.gov.

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the

public docket for this ICR. The docket can be viewed online at <https://www.regulations.gov>, or in person, at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit: <http://www.epa.gov/dockets>.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Paints and Allied Products Manufacturing Area Source Category (40 CFR part 63, subpart CCCCCC) were proposed on June 1, 2009, and promulgated on December 3, 2009. These regulations apply to both existing facilities and new facilities that are an area source of hazardous air pollutants (HAP) emissions and that either use or have the potential to emit urban air toxics (*i.e.*, benzene; methylene chloride; cadmium, chromium, lead, and nickel compounds). New facilities include those that commenced either construction or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 63, subpart CCCCCC.

Form Numbers: None.

Respondents/affected entities: Paint and allied products manufacturing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart CCCCCC).

Estimated number of respondents: 219 (total).

Frequency of response: Annually.

Total estimated burden: 504 hours (per year). Burden is defined as 5 CFR 1320.3(b).

Total estimated cost: \$134,000 (per year), which includes no annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is no change in burden from the most-recently approved ICR as currently identified in the OMB Inventory of Approved Burdens.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022-23347 Filed 10-25-22; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Succession Plan for the FMCS

AGENCY: Federal Mediation and Conciliation Service (FMCS).

ACTION: Notice of Succession Plan for the FMCS.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS), is issuing this notice to inform the public of the succession plan for the Federal Mediation and Conciliation Service (FMCS) provided by the Director of FMCS. This notice supersedes all prior succession plans issued by the agency for officials performing the functions and duties of the Director of FMCS.

DATES: This Succession Plan for the FMCS is effective October 26, 2022.

FOR FURTHER INFORMATION CONTACT: For specific questions related to this Notice, please contact Gregory Goldstein, 202-606-8111, ggoldstein@fmcs.gov.

SUPPLEMENTARY INFORMATION: By the authority vested in the Director of the Federal Mediation and Conciliation Service (FMCS) by 29 U.S.C. 172, and to provide for the continuity of essential operations of the FMCS in all circumstances, this Notice provides the succession plan of officials authorized to perform the functions and duties of the Director of the Federal Mediation and Conciliation Service. The following is the succession plan of officials hereby ordered:

Order of Succession

During any period in which the Director has died, resigned, or otherwise become unable to perform the functions and duties of the Office of the Director, and there is no Acting Director serving under the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345-3349d, the following officers of the FMCS, in the order listed, are hereby delegated the authority to perform the functions and duties of the Director, to the extent permitted by law:

1. Principal Deputy, Chief Operating Officer;
2. Deputy Director, Field Operations; and
3. Deputy Director for Policy and Strategy.

No individual who is serving in an office listed in this order in an acting capacity, by virtue of so serving, shall be delegated the functions and duties of the Director.

Dated: October 20, 2022.

Gregory Goldstein,
FMCS Acting Director.

[FR Doc. 2022-23223 Filed 10-25-22; 8:45 am]

BILLING CODE 6732-01-P

FEDERAL TRADE COMMISSION

[File No. R811005]

Partial Rule Exemption for Gilbarco, Inc.

AGENCY: Federal Trade Commission.

ACTION: Grant of partial exemption from the Fuel Rating Rule.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") grants a partial exemption to Gilbarco, Inc. ("Gilbarco") from requirements of the Fuel Rating Rule related to label size, shape, font size, and letterspace specifications.

DATES: This partial exemption is effective October 26, 2022.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome (202-326-2889), Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Commission grants a partial exemption for Gilbarco to reduce the footprint and type size of fuel labels required under 16 CFR part 306.¹

I. Background

The Commission promulgated the Fuel Rating Rule (the "Rule") (16 CFR part 306) in accordance with the Petroleum Marketing Practices Act ("PMPA"), 15 U.S.C. 2821 *et seq.*, which requires the Commission to establish uniform automotive fuel rating and labeling standards.² The ratings and labels provide consumers information they need to choose the correct type or grade of fuel for their vehicles. As originally published in 1979, the Rule only required an octane rating for automotive gasoline.³ Subsequently, the Commission added labeling requirements for liquid alternative fuels, biodiesel, and ethanol flex fuel.⁴ Section 306.12 of the Rule details the label color scheme, shape, size, textual content, and font type/point size. For example, the octane label must display the fuel's octane number in 96-point font. In addition, ethanol labels must state "Use Only In Flex-Fuel Vehicles/May Harm Other Engines" in capital letters and black font, with the phrase "Flex-Fuel Vehicles" in 16-point font.

In the past, the Commission granted partial exemptions to allow Gilbarco to (1) post octane button labels with smaller label dimensions than allowed by the Rule (these changes did not alter font size), and (2) add the word "Press" on the label. In addition, the Commission allowed Gilbarco to make

¹ The petition is available online at <https://www.regulations.gov/document/FTC-2022-0041-0002>.

² See 15 U.S.C. 2823(c)(1).

³ See Octane Posting and Certification Rule, 44 FR 19160 (1979).

⁴ See 58 FR 41356 (Aug. 3, 1993) (alternative fuels); 73 FR 40154 (July 11, 2008) (biodiesel); and 81 FR 2054 (Jan. 14, 2016) (ethanol flex fuel).

the font size “slightly smaller” for the prominent octane (96-point font) number on the octane label.⁵

II. Gilbarco’s Requested Partial Exemption and Requests for Comments

In its new petition, Gilbarco requested a partial exemption to permit retailers to post narrower label dimensions for button labels, as well as to allow the use of smaller font size for certain text to accommodate such narrower labels. These changes would allow Gilbarco to fit more fuel labels on a single dispenser. Gilbarco explained the exemption is needed “so that retailers may adapt to the needs of consumers while continuing to ensure the clear and conspicuous disclosure of all information required by the Rule.” Given increases in fuel choices at retail pumps, Gilbarco proposed new button label specifications that would allow its dispensers to accommodate one additional fuel grade button, for a total of six buttons for selecting fuel on dispensers.

Specifically, Gilbarco requested the following changes to the fuel rating labels:

1. Permission to post fuel rating labels that deviate from the Rule’s requirements concerning the external dimensions of labels for gasoline, alternative liquid automotive fuels, ethanol flex fuels, biodiesel, biodiesel blends, and biomass-based diesel to allow for labels that are 2.20 inches wide (and the same length as previously permitted by the Commission in previous exemption requests).⁶

2. Permission for fuel retailers to post fuel rating labels that deviate from font size and letterspace specifications contained in the Rule in the following manner:

- a. 22-point font size for “XX% ETHANOL” instead of 24-point font as currently required on the ethanol label;

- b. 10-point font size and 10.5-point letterspace for “MINIMUM OCTANE RATING” instead of 12-point font and 12.5 point spacing as currently required on the octane label; and

- c. 14-point font size for “FLEX-FUEL VEHICLES” instead of 16-point currently required on the ethanol label.

As part of the request, Gilbarco proposed that the overall length of the labels remain as previously approved by

⁵ See Gilbarco exemptions at 60 FR 57584 (Nov. 16, 1995); 53 FR 29277 (Aug. 3, 1988); 81 FR 86914 (Dec. 2, 2016); see also similar exemptions granted to other companies including Sunoco, 44 FR 33740 (June 12, 1979) and 55 FR 1871 (Jan. 19, 1990); Dresser Industries, Inc., 56 FR 26821 (June 11, 1991); Exxon Corp., 54 FR 14072 (Apr. 7, 1989).

⁶ The Rule (16 CFR 306.12) requires labels that are 3 inches wide by 2.5 inches long.

the Commission, and their background and text insertions otherwise comply with the Rule’s color scheme, content, and font type and point size requirements.

III. Request for Comments

In a June 29, 2022, publication, the Commission proposed granting the requested exemption and sought comments on Gilbarco’s proposal.⁷ In response, the Commission received three brief comments, none of which addressed the proposal’s merits.⁸

IV. Discussion

The Commission concludes that Gilbarco’s proposed label modifications provide clear and conspicuous notice of the required information and are consistent with the objectives of the Rule’s color scheme, content, and font requirements. Additionally, the Commission’s experience with similar exemptions suggests the slight reductions in font size to several label disclosures are unlikely to materially affect consumers’ understanding of the labels at the pump. Accordingly, the Commission grants the requested partial exemption.

V. Paperwork Reduction Act

The Fuel Rating Rule contains recordkeeping, disclosure, testing, and reporting requirements that constitute information collection requirements as defined by 5 CFR 1320.3(c), the definitional provision within the Office of Management and Budget (OMB) regulations that implement the Paperwork Reduction Act (PRA). OMB has approved the Rule’s existing information collection requirements through September 30, 2023 (OMB Control No. 3084–0068). The partial exemption does not amend the Rule or change the substance or frequency of the Rule’s disclosure requirements and, therefore, does not require OMB clearance.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”), 5 U.S.C. 601–612, requires that the Commission conduct an analysis of the anticipated economic impact of the partial exemption on small entities. The RFA requires that the Commission provide an Initial Regulatory Flexibility Analysis (“IRFA”) with a rule unless the Commission certifies that the rule will not have a significant economic impact

⁷ 87 FR 38692.

⁸ The comments are available at <https://www.regulations.gov/docket/FTC-2022-0041/comments>. The comments either did not address the proposal or addressed issues that fell outside the purview of the Rule.

on a substantial number of small entities. 5 U.S.C. 605. The exemption does not amend the Rule or alter the substance or frequency of the Rule’s disclosure requirements. Thus, the Commission has concluded that a regulatory flexibility analysis is not necessary and certifies, under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the exemption will not have a significant economic impact on a substantial number of small entities.

Authority: 16 CFR 1.31(g); 16 CFR 306.12(a).

By direction of the Commission.

April J. Tabor,
Secretary.

Note: The following statement will not be included in the Code of Federal Regulations:

Concurring Statement of Commissioner Christine S. Wilson

The Commission has approved an exemption to the Fuel Rating Rule.¹ As I explained in my statement when the Commission sought comment on this proposed exemption,² the Commission promulgated this Rule pursuant to the Petroleum Marketing Practices Act (“PMPA”), which requires the Commission to establish “a uniform method of displaying the automotive fuel rating of automotive fuel at the point of sale to ultimate purchasers.”³ The Commission’s Rule details the label color scheme, shape, size, textual content, and font type/point size.⁴ Gilbarco, Inc., a manufacturer of fuel dispensers, requested a partial exemption to the Rule to permit retailers to post narrower label dimensions for button labels, as well as to allow the use of smaller font size for certain text to accommodate the narrower labels.

The partial exemption document indicates that the Commission has granted at least seven other exemptions to the Rule since 1979.⁵ I support the

¹ 16 CFR part 306.

² Christine S. Wilson, Concurring Statement of Commissioner Christine S. Wilson, Notice of Proposed Exemption to the Fuel Rating Rule (June 14, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/R811005FuelRatingWilsonConcurringStatement.pdf.

³ 15 U.S.C 2823(c)(1)(B).

⁴ See 16 CFR 306.12. As explained in the partial exemption document, for example, the octane label must display the fuel’s octane number in 96-point font. In addition, ethanol labels must state “Use Only In Flex-Fuel Vehicles/May Harm Other Engines” in capital letters and black font, with the phrase “Flex-Fuel Vehicles” in 16-point font.

⁵ See partial exemption document above at n.5. Notably the companies seeking these exemptions have been large companies, including Exxon and Sunoco. The document states that Gilbarco is one of the largest manufacturers of fuel dispensers in the U.S.

Commission's flexibility in granting exemptions that allow manufacturers to adapt the labels and, in several instances, to provide additional information to consumers. I also support the granting of this exemption. I continue to question, however, whether the highly prescriptive requirements in this Rule are needed to satisfy the PMPA's mandate to establish a uniform method of displaying fuel ratings. As I noted in my prior Concurring Statement, relaxation of the prescriptive requirements in the Commission's Rule potentially could obviate the need for repeated exemption petitions, which call to mind the familiar children's game of "Mother May I." Much has been said about permissionless innovation in the context of high-tech companies,⁶ but its benefits apply in this context, as well. For example, companies may have additional ideas about how to make labels more user-friendly but may choose to forgo acting on those initiatives due to the time and expense required to seek government approval, chilling beneficial innovation.

I again encourage the Commission to consider ways to streamline the Rule's prescriptive requirements, facilitating the conveyance of information to consumers uniformly while giving greater flexibility to manufacturers.⁷

[FR Doc. 2022-23288 Filed 10-25-22; 8:45 am]

BILLING CODE 6750-01-P

FEDERAL TRADE COMMISSION

[File No. 211 0083]

Tractor Supply Company and Orscheln Farm and Home LLC; Analysis of Agreement Containing Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of

⁶ See e.g., Adam D. Thierer, "Embracing a Culture of Permissionless Innovation" CATO Institute (Nov. 17, 2012) (explaining that "permissionless innovation refers to the notion that experimentation with new technologies and business models should generally be permitted by default" and that "[p]ermissionless innovation is not an absolutist position that rejects any role for government. Rather, it is an aspirational goal that stresses the benefit of 'innovation allowed' as the default position to begin policy debates.").

⁷ I have repeatedly suggested a similar review of the Energy Labeling Rule's even more highly prescriptive requirements. See Dissenting Statement of Commissioner Christine S. Wilson, Notice of Proposed Rulemaking to Energy Labeling Rule (May 11, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/Commission%20Wilson%20Dissenting%20Statement%20Energy%20Labeling%20Rule%205.11.22%20FINAL.pdf.

federal law prohibiting unfair methods of competition. The attached Analysis of Proposed Consent Orders to Aid Public Comment describes both the allegations in the complaint and the terms of the consent orders—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 25, 2022.

ADDRESSES: Interested parties may file comments online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write: "Tractor Supply Company and Orscheln Farm and Home LLC; File No. 211 0083" on your comment and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex D), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Laura Krachman (202-326-2895), Bureau of Competition, Federal Trade Commission, 400 7th Street SW, Washington, DC 20024.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule § 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of 30 days. The following Analysis of Agreement Containing Consent Orders to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC website at this web address: <https://www.ftc.gov/news-events/commission-actions>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before November 25, 2022. Write "Tractor Supply Company and Orscheln Farm and Home LLC; File No. 211 0083" on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the <https://www.regulations.gov> website.

Due to protective actions in response to the COVID-19 pandemic and the agency's heightened security screening,

postal mail addressed to the Commission will be delayed. We strongly encourage you to submit your comments online through the <https://www.regulations.gov> website.

If you prefer to file your comment on paper, write "Tractor Supply Company and Orscheln Farm and Home LLC; File No. 211 0083" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex D), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at <https://www.regulations.gov>, you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential"—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule § 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule § 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule § 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on <https://www.regulations.gov>—as legally required by FTC Rule § 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the

requirements for such treatment under FTC Rule § 4.9(c), and the General Counsel grants that request.

Visit the FTC website at <https://www.ftc.gov> to read this document and the news release describing this matter. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments it receives on or before November 25, 2022. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Analysis of Agreement Containing Consent Orders To Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") to be put on the public record for comment. The Consent Agreement is with Tractor Supply Company ("Tractor Supply") and Orscheln Farm and Home LLC ("Orscheln") (collectively, the "Respondents"). The proposed Decision and Order ("D&O"), included in the Consent Agreement and subject to final Commission approval, is designed to remedy the anticompetitive effects that would result from Tractor Supply's proposed acquisition of Orscheln.

On February 17, 2021, Tractor Supply and Orscheln entered into an agreement whereby Tractor Supply would acquire Orscheln for approximately \$320 million ("the Proposed Transaction"). The Commission's Complaint alleges that the Proposed Transaction, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, by removing a direct and substantial farm store competitor in 84 relevant markets. The elimination of this competition would result in significant competitive harm; specifically, absent a remedy, the Proposed Transaction would allow the combined entity to increase prices above competitive levels unilaterally. Similarly, absent a remedy, there is significant risk that the combined entity may decrease quality, selection, and service aspects of its stores below competitive levels in the relevant markets.

The Consent Agreement, which contains the proposed D&O and Order to Maintain Assets, would remedy the alleged violations by requiring

divestitures to replace competition that otherwise would be lost in the relevant markets because of the Proposed Transaction. Under the terms of the proposed D&O, Respondents are required to divest 84 stores and related assets in 84 local geographic markets (collectively, the "relevant markets") in 10 states (Arkansas, Indiana, Iowa, Kansas, Kentucky, Missouri, Nebraska, Ohio, Oklahoma, and Texas) to the Commission-approved buyers, Bomgaars Supply, Inc. ("Bomgaars") and Buchheit Enterprises, Inc. ("Buchheit"). The Commission and Respondents have agreed to an Order to Maintain Assets that requires Respondents to operate and maintain each divestiture store in the normal course of business through the date the store is ultimately divested to Bomgaars and Buchheit.

The Consent Agreement with the proposed D&O and the Order to Maintain Assets has been placed on the public record for 30 days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the D&O as well as any comments received, and decide whether it should withdraw, modify, or make the D&O final. The Commission is issuing the Order to Maintain Assets when the Consent Agreement is placed on the public record.

II. The Respondents

Respondent Tractor Supply operates over 2,000 farm stores, with stores located in every state except Alaska. Tractor Supply is the largest farm store chain, by store count, in the United States. Respondent Orscheln operates 166 farm stores under the Orscheln Farm & Home banner in Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Missouri, Nebraska, Ohio, Oklahoma, and Texas. Orscheln is the second largest farm store chain, by store count, in the United States.

III. Competition in the Relevant Markets

The Proposed Transaction presents substantial antitrust concerns for the products sold and services provided at brick-and-mortar farm stores. Farm stores offer their customers a broad, in-store assortment of products across multiple product categories to meet their farming, ranching, or other rural lifestyle needs, along with staff knowledgeable about the products. Farm stores sell a wide range of products, including, but not limited to, large animal and pet feed; supplies to care for horses, other livestock, and

pets; fencing; equipment and tools used for farm or lawn and garden maintenance; workwear; and home goods. This broad product mix enables customers to purchase products to meet substantially all their farm or rural lifestyle needs and to receive accompanying service from knowledgeable employees at a single store. The brick-and-mortar shopping environment also provides customers with the ability to touch and feel products before buying them, and in-person access to knowledgeable sales staff. The ability to offer consumers this in-person, one-stop shopping experience is a key difference between farm stores and other retailers.

Other types of brick-and-mortar retailers are not reasonable substitutes for farm stores. Retail stores other than farm stores, including big box general merchandisers, grocery stores, pet stores, and home improvement stores may sell some of the same products as farm stores, but they do not carry the same breadth and variety of rural lifestyle products as farm stores. Such retailers typically lack the breadth of rural lifestyle products that enables farm stores to meet substantially all their customers' rural lifestyle needs in one convenient stop.

Online retailers also are not reasonable substitutes for brick-and-mortar farm stores. Online retailers cannot provide their customers the ability to touch and feel products prior to purchase, nor can they offer in-person access to knowledgeable sales staff to learn about products best suited for their rural lifestyle needs. Additionally, online retailers require time to deliver their products to their customers, while farm stores provide their customers with immediate access to products that meet essential or immediate needs, such as animal feed when a customer runs out or components to fix broken farm equipment. Furthermore, many products sold at farm stores are not conducive to selling online, as they are large and heavy, and therefore impractical or expensive to ship.

The relevant geographic markets in which to analyze the effects of the Proposed Transaction are the areas within a reasonable drive of Orscheln's stores listed in Exhibit A, as these are areas in which Respondents' farm stores compete. When choosing between farm store competitors, a customer is typically choosing between farm stores within a reasonable driving distance of the customer's farm or home. The area within a reasonable drive of a farm store varies depending on a store's location, geography, population density, traffic conditions, and other local

characteristics. While individual markets may be significantly smaller, typically no relevant geographic market is broader than the area within a 60-mile drive of the stores.

The Proposed Transaction would eliminate direct and substantial competition between Respondents Tractor Supply and Orscheln to the detriment of their customers in the relevant markets. Respondents are close competitors and focus on the same types of customers. They compete on price and non-price factors, such as customer service and product selection, resulting in lower prices and other benefits to their customers. With this head-to-head competition removed, the Proposed Transaction would enable the combined entity to increase prices and decrease the quality and selection of products and services at their farm stores in the relevant markets.

Entry into the relevant markets that is timely and sufficient to prevent or counteract the expected anticompetitive effects of the Proposed Transaction is unlikely to occur. Entry barriers include the time and costs associated with conducting necessary market research, selecting an appropriate location for a farm store, obtaining necessary permits and approvals, constructing a new farm store or converting an existing structure to a farm store, and generating sufficient sales to have a meaningful impact on the market. As a result, new entry sufficient to achieve a significant market impact and act as a competitive constraint is unlikely to occur in a timely manner.

IV. The Proposed Order and the Order To Maintain Assets

The proposed D&O and the Order to Maintain Assets effectively remedy the likely anticompetitive effects in the relevant markets. The proposed D&O, which requires the divestiture of Orscheln stores in each of the 84 relevant markets to Commission-approved, upfront buyers, will restore competition that otherwise would be eliminated in these markets because of the Proposed Transaction. The proposed buyers, Buchheit and Bomgaars, appear to be suitable purchasers well-positioned to enter the relevant markets through the divested stores and prevent competitive harm that would otherwise likely result from the Potential Transaction.

The proposed D&O requires Respondents to divest 12 stores, as ongoing businesses, and related assets to Buchheit within 10 days of Respondents consummating the Proposed Transaction. For up to six months afterwards Respondents will provide

transitional assistance to Buchheit to ensure that Buchheit can operate the stores similarly to how the stores were operated prior to the Proposed Transaction.

Buchheit appears to be a suitable purchaser for the 12 divestiture stores it intends to acquire. Buchheit is a family-owned company that has operated retail stores since the 1930s. It currently operates eight farm stores in Missouri and Illinois and has over 650 employees. Buchheit also operates a warehousing and shipping service through Buchheit Logistics and a feed and fertilizer manufacturer through Buchheit Agriculture. Buchheit has sufficient financing to fund the acquisition and operate the newly acquired stores. Buchheit also appears to have sufficient distribution and supply capabilities for both the newly acquired stores and its currently operated stores.

The proposed D&O further requires Respondents to divest 72 stores, as ongoing businesses, and related assets to Bomgaars within 10 days of Respondents consummating the Proposed Transaction. For up to 15 months afterwards Respondents will provide transitional assistance to Bomgaars to ensure that Bomgaars can operate the stores similarly to how the stores were operated prior to the Proposed Transaction.

The proposed D&O also requires that the Respondents divest Orscheln's distribution center in Moberly, Missouri to Bomgaars. The Orscheln stores that Tractor Supply will be acquiring and keeping currently utilize the Moberly distribution center. The proposed D&O requires Tractor Supply to transition these Orscheln stores out of the Moberly distribution center and to permanently cease reliance on the Moberly distribution center no later than December 31, 2023. Bomgaars will take ownership of the distribution center within ten days thereafter.

Bomgaars appears to be a suitable purchaser for the 72 divestiture stores it intends to acquire and for Orscheln's distribution center in Moberly, Missouri. Bomgaars is a family-owned farm store operator with over 70 years of experience running farm stores in the Midwest. Bomgaars has over 100 farm stores located throughout eight midwestern states and approximately 3,000 employees. Bomgaars has sufficient financing to fund the acquisition and operate the newly acquired stores and distribution center. Also, with the addition of the divested distribution center, Bomgaars appears to have sufficient distribution and supply

capabilities for both the newly acquired stores and its currently operated stores.

The proposed D&O contains additional provisions designed to ensure the adequacy of the proposed relief. For example, the proposed D&O and the Order to Maintain Assets require Respondents to continue operating and maintaining the divestiture stores in the normal course of business until the date that each store is sold to the buyer. If, at any time before the proposed D&O is made final, the Commission determines that Bomgaars or Buchheit is not an acceptable buyer, Respondents must rescind the divestiture(s) and divest the assets to a different buyer that receives the Commission's prior approval. The proposed D&O imposes other terms, including the obligation to provide Transition Assistance and an obligation to facilitate the buyers interviewing and hiring employees.

Moreover, the proposed D&O sets a strict timeline by which the Respondents must separate the retained Orscheln stores from the Moberly distribution center, requiring separating 12 by April 30, 2023, 40 by July 31, 2023, 60 by October 31, 2023, and the remaining stores by December 31, 2023. Additionally, the proposed D&O includes some newer provisions to ensure its effectiveness, including provisions that appoint a Transition Manager for each buyer, who will be responsible for directing the provision of Transitional Assistance to that buyer, require physical separation of the employees providing assistance to each buyer, and increase the frequency of compliance reporting.

The proposed D&O also requires the appointment of Larry Appel as an independent Monitor to oversee the Respondents' compliance with the requirements of the proposed D&O and the Order to Maintain Assets, and to keep the Commission informed about the status of the transfer of the divested assets. Additionally, the proposed D&O requires the Respondents to receive the Commission's prior approval, for a period of 10 years, to acquire any interest in a farm store that has operated or is operating within a 60-mile radius of a divested store. Finally, the proposed D&O also prohibits the Respondents from entering into or enforcing agreements to restrict a new owner from operating a farm store at any store Respondents may sell in these areas.

The proposed D&O also contains a ten-year prior approval provision relating to the buyers, which prohibits them from selling acquired stores for a period of three years after the proposed

D&O is issued, except to an acquirer that receives the prior approval of the Commission. The initial three-year period is followed by an additional

seven-year period during which the buyers are required to receive prior approval from the Commission to sell an acquired store to a buyer that operates

one or more farm stores within a 60-mile radius of a divested store the respective buyer acquired.

Exhibit A

| State | City | Address | Store No. | Buyer |
|----------|------------------|---|---|-----------|
| Arkansas | Jonesboro | 1817 E Parker Road, Jonesboro, Arkansas 72404 | 163 | Buchheit. |
| | Paragould | 420 Highway 49 North, Paragould, Arkansas 72451 | 137 | Buchheit. |
| | Pocahontas | 1966 Highway 62 West, Pocahontas, Arkansas 72455 | 138 | Buchheit. |
| | Springdale | 211 N Maestri Road, Springdale, Arkansas 72762 | 44 | Bomgaars. |
| Indiana | Charlestown | 1085½ Market Street, Charlestown, Indiana 47111 | 112 | Bomgaars. |
| | Corydon | 1805 Gardner Lane, Corydon, Indiana 47112 | 111 | Bomgaars. |
| | Greenfield | 1875 East Main Street, Greenfield, Indiana 46140 | 107 | Bomgaars. |
| | Lawrenceburg | 181 South Tanners Creek Drive, Lawrenceburg, Indiana 47025. | 106 | Bomgaars. |
| | North Vernon | 2110 N State Highway 3, North Vernon, Indiana 47265 | 162 | Bomgaars. |
| | Richmond | 2100 National Road West, Richmond, Indiana 47374 | 108 | Bomgaars. |
| | Scottsburg | 1326 North Gardner Street, Scottsburg, Indiana 47170 | 126 | Bomgaars. |
| | Tell City | 212 East Highway 66, Tell City, Indiana 47586 | 134 | Bomgaars. |
| | Washington | 1 Cherry Tree Plaza, Washington, Indiana 47501 | 110 | Bomgaars. |
| | Winchester | 970 East Washington Street, Winchester, Indiana 47394. | 144 | Bomgaars. |
| Iowa | Fairfield | 2107 West Burlington Avenue, Fairfield, Iowa 52556 | 20 | Bomgaars. |
| Kansas | Ottumwa | 1331 Vaughn Drive, Ottumwa, Iowa 52501 | 99 | Bomgaars. |
| | Atchison | 605 S 10th Street, Atchison, Kansas 66002 | 80 | Bomgaars. |
| | Basehor | 15256 Wolf Creek Parkway, Basehor, Kansas 66007 | 157 | Bomgaars. |
| | Concordia | 1620 Lincoln Street, Concordia, Kansas 66901 | 127 | Bomgaars. |
| | Dodge City | 1701 North 14th Avenue, Dodge City, Kansas 67801 | 34 | Bomgaars. |
| | El Dorado | 2908 W Central Avenue, El Dorado, Kansas 67042 | 69 | Bomgaars. |
| | Garden City | 1309 North Taylor Avenue, Garden City, Kansas 67846. | 55 | Bomgaars. |
| | Gardner | 18710 South Gardner Road, Gardner, Kansas 66030 | 172 | Bomgaars. |
| | Goddard | 20200 West Kellogg Avenue, Goddard, Kansas 67052 | 161 | Bomgaars. |
| | Great Bend | 5320 10th Street, Great Bend, Kansas 67530 | 31 | Bomgaars. |
| | Hays | 2900 Broadway Avenue, Hays, Kansas 67601 | 58 | Bomgaars. |
| | Hutchinson | 1500 East 11th Street, Hutchinson, Kansas 67501 | 32 | Bomgaars. |
| | Iola | 1918 North State Street, Iola, Kansas 66749 | 148 | Bomgaars. |
| | Lawrence | 1541 E 23rd Street, Lawrence, Kansas 66046 | 48 | Bomgaars. |
| | Louisburg | 1160 West Amity Street, Louisburg, Kansas 66053 | 147 | Bomgaars. |
| | Manhattan | 427 Hummels Place, Manhattan, Kansas 66502 | 39 | Bomgaars. |
| | McPherson | 2204 East Kansas Avenue, McPherson, Kansas 67460 | 60 | Bomgaars. |
| | Newton | 321 Windward Drive, Newton, Kansas 67114 | 43 | Bomgaars. |
| | Parsons | 211 East Main Street, Parsons, Kansas 67357 | 21 | Bomgaars. |
| | Pratt | 1601 1st Street, Pratt, Kansas 67124 | 33 | Bomgaars. |
| | Salina | 360 North Ohio Street #57, Salina, Kansas 67401 | 57 | Bomgaars. |
| | Topeka | 1133 SW Wanamaker Road, Topeka, Kansas 66604 | 37 | Bomgaars. |
| | Kentucky | Murray | 700 A North 12th Street, Murray, Kentucky 42071 | 93 |
| Radcliff | | 135 East Lincoln Trail, Radcliff, Kentucky 40160 | 154 | Bomgaars. |
| Missouri | Blue Springs | 1100 S Hwy 7 Lot 1, Blue Springs, Missouri 64014 | 174 | Buchheit. |
| | Columbia | 3300 Paris Road, Columbia, Missouri 65202 | 9 | Buchheit. |
| | Columbia (South) | 3910 South Providence Road, Columbia, Missouri 65203. | 158 | Buchheit. |
| | Dexter | 1525 West Business Highway 60, Dexter, Missouri 63841. | 47 | Bomgaars. |
| | Fulton | 1310 Business 54 South, Fulton, Missouri 65251 | 11 | Buchheit. |
| | Holden | 1000 East 10th Street, Holden, Missouri 64040 | 120 | Bomgaars. |
| | Houston | 1476 South Sam Houston Blvd., Houston, Missouri 65483. | 118 | Bomgaars. |
| Missouri | Jane | 107 Gordon Hollow Road, Jane, Missouri 64856 | 160 | Bomgaars. |
| | Jefferson City | 2304 Missouri Boulevard, Jefferson City, Missouri 65109. | 41 | Buchheit. |
| | Kirkville | 2302 South Baltimore Street, Kirkville, Missouri 63501 | 153 | Buchheit. |
| | Marshfield | 1331 Spur Drive, Marshfield, Missouri 65706 | 135 | Bomgaars. |
| | Monroe City | 1110 Hwy. 24-36 East Unit #50, Monroe City, Missouri 63456. | 151 | Bomgaars. |
| | Poplar Bluff | 2235 N Westwood Blvd., Poplar Bluff, Missouri 63901 | 84 | Bomgaars. |
| | Republic | 1055 U.S. Highway 60 East Republic, Missouri 65738 | 117 | Bomgaars. |
| | Sedalia | 2424 South Limit Sedalia, Missouri 65301 | 1 | Bomgaars. |
| | St. Joseph | 137 North Belt Highway, St. Joseph, Missouri 64504 | 53 | Bomgaars. |
| | Sullivan | 124 East South Service Road, Sullivan, Missouri 63080. | 38 | Bomgaars. |
| | Troy | 1 Lincoln Center, Highway 47, Troy, Missouri 63379 | 45 | Bomgaars. |
| | Warsaw | 1551 Commercial Street, Warsaw, Missouri 65355 | 125 | Bomgaars. |
| | Washington | 860 Washington Corners, Washington, Missouri 63090 | 12 | Bomgaars. |

| State | City | Address | Store No. | Buyer |
|-------------|---|--|-----------|-----------|
| Nebraska | Waynesville | 110 C W Parker Lane, Waynesville, Missouri 65583 | 24 | Bomgaars. |
| | Beatrice | 2415 North 6th Street, Beatrice, Nebraska 68310 | 95 | Buchheit. |
| | Gothenburg | 716 4th Street, Gothenburg, Nebraska 69138 | 101 | Bomgaars. |
| | Grand Island | 515 South Webb Road, Grand Island, Nebraska 68803 | 115 | Bomgaars. |
| | Hastings | 1315 West J Street, Hastings, Nebraska 68901 | 42 | Bomgaars. |
| | Kearney | 910 Third Avenue, Kearney, Nebraska 68845 | 25 | Bomgaars. |
| | Lexington | 1701 Plumcreek Parkway, Lexington, Nebraska 68850 | 100 | Bomgaars. |
| | Lincoln | 5640 Cornhusker Highway, Lincoln, Nebraska 68507 | 63 | Bomgaars. |
| | McCook | 1602 North Highway 83, McCook, Nebraska 69001 | 70 | Bomgaars. |
| | Nebraska City | 2412 South 11th Street, Nebraska City, Nebraska 68410. | 67 | Bomgaars. |
| Ohio | North Platte | 2501 East 4th Street, North Platte, Nebraska 69101 | 102 | Buchheit. |
| | York | 518 S Lincoln Avenue, York, Nebraska 68467 | 27 | Bomgaars. |
| Oklahoma | Mount Orab | 206 Sterling Run Blvd., Mount Orab, Ohio 45154 | 173 | Bomgaars. |
| Texas | Ada | 724 Arlington Center, Ada, Oklahoma 74820 | 22 | Bomgaars. |
| | Ardmore | 1925 N Rockford Road, Ardmore, Oklahoma 73401 | 86 | Bomgaars. |
| | Duncan | 4800 N Highway 81, Duncan, Oklahoma 73533 | 85 | Bomgaars. |
| | Durant | 2424 West Main Street, Durant, Oklahoma 74701 | 83 | Bomgaars. |
| | Muskogee | 6 East Shawnee Road, Muskogee, Oklahoma 74403 | 56 | Bomgaars. |
| | Nowata | 329 South Ash Street, Nowata, Oklahoma 74048 | 156 | Bomgaars. |
| | Oklmulgee | 2000 South Wood Drive, Okmulgee, Oklahoma 74447 | 23 | Bomgaars. |
| | Pryor | 715 North Mill Street, Pryor, Oklahoma 74361 | 54 | Bomgaars. |
| | Decatur | 1200 W U.S. Business Hwy. 380, Decatur, Texas 76234. | 178 | Bomgaars. |
| | Sherman | 2725 Hwy. 75 North, Sherman, Texas 75090 | 175 | Bomgaars. |
| Waco | 2701 S Jack Kultgen Expressway, Waco, Texas 76706 | 177 | Bomgaars. | |
| Weatherford | 102 College Park Drive, Weatherford, Texas 76086 | 176 | Bomgaars. | |

The purpose of this analysis is to facilitate public comment on the Consent Agreement. It is not intended to constitute an official interpretation of the Consent Agreement or to modify its terms in any way.

By direction of the Commission.

April J. Tabor,
Secretary.

[FR Doc. 2022-23245 Filed 10-25-22; 8:45 am]

BILLING CODE 6750-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) re-approve the proposed information collection project “The Systematic Review Data Repository (SRDR) Platform”. This proposed information collection was previously published in the **Federal Register** on August 12, 2022 and allowed 60 days for public comment. AHRQ did not receive substantive comments during

public review period. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by November 25, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427-1477, or by email at doris.lefkowitz@AHRQ.hhs.gov.

SUPPLEMENTARY INFORMATION:

Proposed Project

“The Systematic Review Data Repository (SRDR) Platform”

Since 1997, the AHRQ Evidence-based Practice Center (EPC) Program has been reviewing relevant scientific information on a wide spectrum of clinical and health services topics to produce various types of evidence reports. A majority of these evidence reports are systematic reviews (SRs), which are used as evidence bases for clinical practice guidelines, research agendas, healthcare coverage, and other health related policies. Performing SRs is costly in time, labor, and money. Moreover, there is an increasing expectation of quicker turnaround in

producing SRs to accommodate the fast moving pace of innovations and new scientific discoveries in healthcare. Some SRs overlap or are duplicated; independent teams of SR producers often extract data from the same studies, resulting in replication of work. Current methodology makes it difficult to harness and reuse previous work when updating SRs.

In an effort to reduce the economic burden of conducting SRs, the EPC program undertook development of a collaborative, Web-based repository of systematic review data called the Systematic Review Data Repository (SRDR). The OMB Control Number for this data collection is 0935-0244, which was last approved by OMB on October 16, 2019.

This resource serves as both an archive and data extraction tool, shared among organizations and individuals producing SRs worldwide, enabling the creation of a central database of SR data. This database is collaboratively vetted, freely accessible, and integrates seamlessly with reviewers’ existing workflows, with the ultimate goal of facilitating the efficient generation and update of evidence reviews, and thus speeding and improving evidence-based policy-making with regards to health care.

Note that the SRDR system was upgraded during the last period of OMB clearance and is now designated as SRDR+. We will use the term “SRDR platform” to collectively denote the

various upgraded iterations of the platform.

The SRDR project aims to achieve the following goals:

- (1) Create online easy-to-use Web-based tools for conducting systematic reviews to facilitate extraction of data from primary studies;
 - (2) Develop an open-access searchable archive of key questions addressed in systematic reviews;
 - (3) Maintain a public repository of primary study data including provision of technical support for repository users; and
 - (4) Develop a process for making summary data from systematic reviews digitally shareable to end-users.
- This study is being conducted by AHRQ through its contractor, Brown University, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services, including database development. 42 U.S.C. 299a(a)(1) and (8).

Method of Collection

To achieve the goals of this project the following data collections are being implemented:

- (1) Collect registration information on SRs from SR producers who will populate the SRDR platform.
- The SRDR platform now uses a two-tiered categorization of users, and collection of registration data will depend on the type of user. "Contributors" are SR producers who use the SRDR platform as a tool to support production of the SR and share scientific data from their SRs. Registration data will be collected from these users. "General public" users only view scientific data publicly available in the SRDR platform. No data will be collected from these users. The "Commentator" category of users that were referenced in the last OMB clearance period has been eliminated in the updated system since no users have signed up to be commentators. All Contributors undergo a simple self-registration process by providing a password and an email address. Provision of username and institution information by registrants is now optional in the updated system. Collection of registration data from

Contributors is required due to the technical nature of using the SRDR platform both as a database and a tool for assisting in the production of a SR, including providing comments in the various sections of a particular project on the SRDR platform. In addition, provision of an email address and institution information allows the administrators of the SRDR platform to confirm that requests are being made by actual people and not potentially malicious software code such as bots and other cybersecurity threats.

User registration will be used for administrative purposes only including communication between SRDR platform administrators and registrant users. This type of information will not be made publicly available.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate/use the SRDR platform. In 2020, 1,029 users registered as Contributors. Registration will take approximately 1.5 minutes or 0.025 hours per user. We thus calculate the total burden hours required for registration for all users annually is 25.73 hours.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

| Form name | Number of respondents | Number of responses per respondent | Hours per response | Total burden hours |
|---|-----------------------|------------------------------------|--------------------|--------------------|
| Registration of users as Contributors | 1,029 | 1 | 0.025 | 25.73 |
| Total | 1,029 | | | 25.73 |

Exhibit 2 shows the estimated cost burden associated with the respondents' time to participate/use the SRDR platform. The total cost burden to respondents is estimated at an average of \$1,126.97 annually.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

| Form name | Number of respondents | Total burden hours | Average hourly wage rate ^a | Total cost burden |
|---|-----------------------|--------------------|---------------------------------------|-------------------|
| Registration of users as Commentators or Contributors | 1,029 | 25.73 | ^a \$43.80 | \$1,126.97 |
| Total | 1,029 | 25.73 | | 1,126.97 |

^a National Compensation Survey: Occupational wages in the United States May 2021, "U.S. Department of Labor, Bureau of Labor Statistics." Available at: <https://www.bls.gov/oes/current/oes290000.htm>.
^a Based on the mean wages for Healthcare Practitioners and Technical Occupations, 29-0000.

Request for Comments

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501-3520, comments on AHRQ's information collection are requested with regard to any of the following: (a) whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health

care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d)

ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the

proposed information collection. All comments will become a matter of public record.

Dated: October 21, 2022.

Marquita Cullom,
Associate Director.

[FR Doc. 2022-23334 Filed 10-25-22; 8:45 am]

BILLING CODE 4160-90-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Expedited Review and Public Comment: Monitoring and Compliance for Office of Refugee Resettlement Care Provider Facilities (OMB #: 0970-0564)

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), U.S. Department of Health and Human Services, is requesting expedited review of an information collection request from the Office of Management and Budget (OMB). This information collection will allow the ORR Unaccompanied Children (UC) Program to enhance monitoring efforts at care provider facilities that are not licensed by the state. A separate notice will be published inviting public comments on the proposed collection.

SUPPLEMENTARY INFORMATION:

Description: ACF is requesting emergency review and approval of this information collection by OMB, as authorized under 44 U.S.C. 3507 (subsection j). The proposed forms are necessary to allow the ORR UC Program to enhance monitoring efforts at care provider facilities that are not licensed by the state. The information collected is essential to the mission of the agency and an unanticipated event occurred that could reasonably result in public harm if normal Paperwork Reduction Act (PRA) clearance procedures are

followed. A recent proclamation in Texas (Proclamation by the Governor of the State of Texas, May 31, 2021) and recent emergency rule in Florida (Emergency Rule 65CER21-3, December 10, 2021) has resulted in a large number of ORR facilities no longer being licensed by the states. To help mitigate the issue, ORR plans to perform quarterly health and safety monitoring visits to Texas and Florida programs. The quarterly monitoring visits are in addition to and do not take the place of ORR’s existing monitoring activities as described in UC Policy Guide Section 5.5. In order to implement quarterly health and safety site visits for unlicensed programs, ORR is seeking emergency approval to begin use of instruments related to this effort as soon as possible. ORR plans to make minor edits to 15 existing forms in this information collection to create the following alternate versions:

- Unlicensed Facility Site Visit Guide (Form M-7A-UF)
- Unlicensed Facility Personnel File Checklist (Form M-10A-UF)
- Unlicensed Facility Program Director Questionnaire (Form M-11A-UF)
- Unlicensed Facility Clinician Questionnaire (Form M-11C-UF)
- Unlicensed Facility Case Manager Questionnaire (Form M-11E-UF)
- Unlicensed Facility Education Staff Questionnaire (Form M-11G-UF)
- Unlicensed Facility Medical Coordinator Questionnaire (Form M-11I-UF)
- Unlicensed Facility Youth Care Worker Questionnaire (Form M-11J-UF)
- Unlicensed Facility Prevention of Sexual Abuse Compliance Manager Staff Questionnaire (Form M-11K-UF)
- Unlicensed Facility Interpreter Questionnaire (Form M-11P-UK)
- Unlicensed Facility UC Questionnaire—Ages 6–12 Years Old (Forms M-12A-UF and M-12As-UF)
- Unlicensed Facility UC Questionnaire—Ages 13 and Older (Forms M-12B-UF and M-12Bs-UF)
- Unlicensed Facility UC Questionnaire—Ages 5 and Under (Form M-12E-UF and M-12Es-UF)

- Unlicensed Facility Legal Service Provider Questionnaire (Form M-13C-UF)
- Unlicensed Facility Case Coordinator Questionnaire (Form M-13E-UF)

Additionally, ORR plans to add the below form (currently approved under OMB #0970-0558) to this information collection as well as the alternate version listed above to facilitate the quarterly monitoring on unlicensed programs.

- Interpreter Questionnaire (Form M-11P)

Finally, ORR plans to use the following forms with more than nine respondents. These were previously approved by OMB but were removed from the information collection due to the number of respondents.

- Unlicensed Facility Monitoring Notes (Form M-6A-UF)
- Unlicensed Facility UC Case File Checklist (Form M-7A-UF)
- Unlicensed Facility Onsite Monitoring Checklist (M-9A-UF)

At this time, ACF is requesting that OMB grant a 180-day approval for this request under procedures for expedited processing. A request for review under normal procedures will be submitted within 180 days of the approval for this request. ACF will invite public comment through this process. The first comment period, which invites comments over a 60-day period, begins concurrently with the publication of this notice (see notice titled *Proposed Information Collection Activity; Monitoring and Compliance for Office of Refugee Resettlement Care Provider Facilities (Office of Management and Budget #: 0970-0564)* in this issue of the **Federal Register**).

Respondents: ORR grantee and contractor staff; and UC.

Annual Burden Estimates:

The following burden estimates are specific to the forms described above and the subject of this request for emergency approval. For information about all currently approved forms under this OMB number, see: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202108-0970-016.

ESTIMATED BURDEN HOURS FOR RESPONDENTS

| Information collection title | Annual number of respondents | Annual number of responses per respondent | Average burden hours per response | Annual total burden hours |
|---|------------------------------|---|-----------------------------------|---------------------------|
| Unlicensed Facility Site Visit Guide (Form M-7A-UF) | 56 | 4.0 | 1.00 | 224.00 |
| Unlicensed Facility UC Case File Checklist (Form M-8A-UF) | 56 | 20.0 | 1.00 | 1,120.00 |
| Interpreter Questionnaire (Form M-11P) | 115 | 2.0 | 0.50 | 115.00 |

ESTIMATED BURDEN HOURS FOR RESPONDENTS—Continued

| Information collection title | Annual number of respondents | Annual number of responses per respondent | Average burden hours per response | Annual total burden hours |
|---|------------------------------|---|-----------------------------------|---------------------------|
| Unlicensed Facility Program Staff Questionnaires (Forms M-11A-UF to M-11K-UF) | 56 | 32.0 | 1.00 | 1,792.00 |
| Unlicensed Facility Interpreter Questionnaire (Form M-11P-UF) | 56 | 4.0 | 0.50 | 112.00 |
| Unlicensed Facility UC Questionnaires (Forms M-12A-UF to M-12B-UF & M-12E-UF) | 1,120 | 1.0 | 0.50 | 560.00 |
| Unlicensed Facility Legal Service Provider Questionnaire (Form M-13C-UF) | 224 | 1.0 | 0.75 | 168.00 |
| Unlicensed Facility Case Coordinator Questionnaire (Form M-13E-UF) | 224 | 1.0 | 1.00 | 224.00 |
| Estimated Annual Burden Hours Total: | | | | 4,315.00 |

ESTIMATED BURDEN HOURS FOR CONTRACTOR MONITORS

| Information collection title | Annual number of respondents | Annual number of responses per respondent | Average burden hours per response | Annual total burden hours |
|---|------------------------------|---|-----------------------------------|---------------------------|
| Unlicensed Facility Monitoring Notes (Form M-6A-UF) | 18 | 12.0 | 12.00 | 2,592.00 |
| Unlicensed Facility Site Visit Guide (Form M-7A-UF) | 18 | 12.0 | 29.00 | 6,264.00 |
| Unlicensed Facility UC Case File Checklist (Form M-8A-UF) | 18 | 62.0 | 6.00 | 6,696.00 |
| Unlicensed Facility On-Site Monitoring Checklist (Form M-9A-UF) | 18 | 12.0 | 4.00 | 864.00 |
| Unlicensed Facility Personnel File Checklist (Form M-10A-UF) | 18 | 50.0 | 1.00 | 900.00 |
| Unlicensed Facility Program Staff Questionnaires (Forms M-11A-UF to M-11K-UF) | 18 | 100.0 | 1.00 | 1,800.00 |
| Unlicensed Facility Interpreter Questionnaire (Form M-11P-UF) | 18 | 12.0 | 0.50 | 108.00 |
| Unlicensed Facility UC Questionnaires (Forms M-12A-UF to M-12B-UF & M-12E-UF) | 18 | 62.0 | 0.50 | 558.00 |
| Unlicensed Facility Legal Service Provider Questionnaire (Form M-13C-UF) | 18 | 12.0 | 0.75 | 162.00 |
| Unlicensed Facility Case Coordinator Questionnaire (Form M-13E-UF) | 18 | 12.0 | 1.00 | 216.00 |
| Estimated Annual Burden Hours Total: | | | | 20,160.00 |

Comments: The Department specifically requests comments on (a) whether the proposed 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 proposed collection of information; (c) the quality, utility, and clarity of the information to be 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication. Comments will be considered and any necessary updates to materials made prior to, and responses provided in, the submission to OMB that will follow this public comment period.

Authority: 6 U.S.C. 279; 8 U.S.C. 1232; Flores v. Reno Settlement

Agreement, No. CV85-4544-RJK (C.D. Cal. 1996); 45 CFR part 411.

Mary B. Jones,
ACF/OPRE Certifying Officer.
 [FR Doc. 2022-23341 Filed 10-25-22; 8:45 am]
BILLING CODE 4184-45-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Monitoring and Compliance for Office of Refugee Resettlement Care Provider Facilities (Office of Management and Budget #: 0970-0564)

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), U.S. Department of Health and Human

Services, is inviting public comments on the proposed collection. The request consists of several forms that allow the ORR Unaccompanied Children (UC) Program to enhance monitoring efforts at care provider facilities that are not licensed by the state, as well as continue standard monitoring activities that ensure care provider facilities are in compliance with federal and state laws and regulations, licensing and accreditation standards, ORR policies and procedures, and child welfare standards. This notice invites comments on forms that were recently submitted for emergency review and approval, and additional proposed forms.

DATES: In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *infocollection@acf.hhs.gov*. Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:**Description***New Forms for Unlicensed Facility Monitoring Visits*

ORR is seeking expedited review from the Office of Management and Budget (OMB) (see notice titled *Expedited Office of Management and Budget (OMB) Review and Public Comment: Monitoring and Compliance for Office of Refugee Resettlement Care Provider Facilities (OMB #: 0970-0564)* in this issue of the **Federal Register**) for the below-described revisions to this information collection for the purpose of establishing quarterly health and safety monitoring visits for facilities located in states that are unwilling to license programs provider care to UC. This notice invites comments on these proposed changes and is the first step to extend approval by OMB.

1. Added Interpreter Questionnaire (Form M-11P), which is currently approved under OMB #0970-0558, to this information collection.

2. Added the following forms that were previously approved by OMB but were removed from the information collection due to the number of respondents. Differences between the previously approved versions and the current versions that will be used by contractor monitors are as noted below.

- Monitoring Notes (Form M-6A-UF)
 - Directions added to top of form.
- UC Case File Checklist (Form M-7A-UF)
 - Added a Read Me tab with directions.
 - Added a summary tab that auto-sums data from other tabs.
 - Revised the formatting of the UC Services tab.
- On Site Monitoring Checklist (M-9A-UF)
 - Removed section on mosquito control.
 - Under Documents that Should be Posted—Removed reference to two discontinued items.
 - Under Other—Removed reference to mosquito repellent.
 - Under Logs/Schedules—Removed reference to the discontinued UC Temperature Tracker.

3. Added the below-listed alternate versions of forms already approved under this information collection. Differences between the already approved versions and the alternate versions are as noted below. Unlicensed programs will continue to receive comprehensive biennial monitoring visits pursuant to UC Policy Guide Section 5.5.1 during which the full original versions of these forms will be

used. Quarterly monitoring visits will mainly focus on health and safety. To align with that purpose and help streamline forms that will be administered more often than their full version counterparts, adjustments made to the alternate versions removed some items related to program management. Other adjustments were made for clarity or to align with current ORR policy and procedures. Quarterly monitoring visits will continue to monitor the same areas related to child welfare practices and provision of services as biennial monitoring visits.

- Site Visit Guide (Form M-7A-UF)
 - Under Child Protection—Added requirement for program to provide link to mandatory reporting laws/rules and specify who is classified as a mandatory reported in the state in which the program is located.
 - Under Background Checks—Clarified that information on foster parents is also required.
 - Removed reference to mosquito control inspections.
- Personnel File Checklist (Form M-10A-UF)
 - Under General Documentation—Removed job description; employment application; personal and professional references; educational records; professional licensure; and I-9 documents.
- Program Director Questionnaire (Form M-11A-UF)
 - Removed question on what changes the program director envisions for the program in the next year.
 - Modified the question on how the program incorporates input from others to assess the program to only ask about how input from minors and staff is used. Previously, the question asked how input from minors, staff, program partners, legal services providers, and sponsor is used.
- Clinician Questionnaire (Form M-11C-UF)
 - Removed question on what system the clinician uses to document clinical sessions.
 - Removed question asking clinician to describe their relationship with their supervisor.
- Case Manager Questionnaire (Form M-11E-UF)
 - Removed question asking case manager to describe their relationship with their supervisor.
- Education Staff Questionnaire (Form M-11G-UF)
 - No modifications made.
- Medical Coordinator Questionnaire (Form M-11I-UF)
 - Removed question asking medical coordinator to describe their relationship with their supervisor.

- Youth Care Worker Questionnaire (Form M-11J-UF)
 - Removed question on access to UC Portal.
 - Removed question on how often staff meetings are held.
 - Removed question asking youth care worker to describe their relationship with their supervisor.
- Prevention of Sexual Abuse Compliance Manager Staff Questionnaire (Form M-11K-UF)
 - No modifications made.
- Interpreter Questionnaire (Form M-11P-UF)
 - No modifications made.
- UC Questionnaire—Ages 6–12 Years Old (Forms M-12A-UF and M-12As-UF)
 - Under Communication with Family—Added question on how often and how long the child speaks with their family.
 - Removed placeholder sections on meetings with case management and clinical staff, which are not asked of children ages 6–12.
- UC Questionnaire—Ages 13 and Older (Forms M-12B-UF and M-12Bs-UF)
 - Under Admission/Orientation—Removed question asking what the child remembers about documents signed/received during the first couple days.
 - Under Communication with Family—Added question on how often and how long the child speaks with their family. Removed question on sending/receiving mail and email.
- UC Questionnaire—Ages 5 and Under (Form M-12E-UF and M-12Es-UF)
 - No modifications made.
- Legal Service Provider Questionnaire (Form M-13C-UF)
 - Reworded questions on ability to perform Know Your Rights and legal screenings.
 - Removed question on with which program staff members legal service providers regularly interact.
 - Removed questions method used to inform legal service providers of incidents affecting the child's legal case.
- Case Coordinator Questionnaire (Form M-13E-UF)
 - No modifications made.

New Forms for Interim Final Rule (IFR) Audits

In addition to extending approval of the revisions described above, which were submitted for expedited review and approval, ORR is seeking approval to add eight new instruments that will allow ORR to audit its care provider programs for compliance with the IFR on Standards to Prevent, Detect, and Respond to Sexual Abuse and Sexual

Harassment Involving Unaccompanied Children (45 CFR Subpart L). These instruments are currently in use without OMB approval; this request will allow ORR to comply with the Paperwork Reduction Act requirements. The proposed new instruments are:

- Preaudit Questionnaire and Audit Documentation Requested Checklist (Form M–17A)
- Instructions for Site Visit and Facility Tour (Form M–17B)
- Interview Guide: Random Sample of Staff Interview (Form M–17C)
- Interview Guide: Program Director (Form M–17D)
- Interview Guide: Prevention of Sexual Abuse (PSA) Compliance Manager (Form M–17E)
- Interview Guide: Specialized Staff (Form M–17F)
- Interview Guide: Unaccompanied Child (Form M–17G)
- PSA Audit Corrective Action Report (Form M–17H)

Revisions to Existing Forms in This Information Collection

The below noted revisions were made to existing forms in this collection to better align with ORR policies and procedures and strengthen monitoring protocols.

- Site Visit Guide (Form M–7A)
 - Under Child Protection—Added requirement for program to provide link to mandatory reporting laws/rules and specify who is classified as a mandatory reported in the state in which the program is located.
 - Under Background Checks—Clarified that information on foster parents is also required.
 - Removed reference to mosquito control inspections.
- Long Term Foster Care (LTFC) Site Visit Guide (Form M–7C)
 - Under Program Management—Added requirement to describe internal policies and procedures related to referral and placement.
 - Under Case Management—Clarified what programs must provide related to their procedures on post-18 planning.

○ Under Problems Encountered—Removed requirement to provide list of commonly used partnerships and services.

○ Added a note clarifying that ORR will request foster parent documentation for foster homes that are visited during the site visit.

• LTFC Foster Parent Checklist (Form M–10D)

○ Under General Documentation—Added requirement for monitors to check for completed foster home study assessments/inspections.

For information about all currently approved forms under this OMB number, see: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202108-0970-016.

Respondents: ORR grantee and contractor staff; foster parents; and UC.

Annual Burden Estimates:

Note: These burden estimates include burden related to the revisions described above and currently approved forms for which we are not proposing any changes.

ESTIMATED BURDEN HOURS FOR RESPONDENTS

| Information collection title | Annual number of respondents | Annual number of responses per respondent | Average burden hours per response | Annual total burden hours |
|---|------------------------------|---|-----------------------------------|---------------------------|
| Corrective Action Report (Form M–1) | 262 | 0.4 | 5.00 | 524.00 |
| FFS Compliance and Safety Site Visit Report (Form M–3A) | 262 | 12.0 | 1.00 | 3,144.00 |
| Out-of-Network Site Visit Report (Form M–3B) | 24 | 5.0 | 1.00 | 120.00 |
| Checklist for a Child-Friendly Environment (Form M–4) | 262 | 12.0 | 0.25 | 786.00 |
| Incident Reviews (Forms M–5A to M–5B) | 262 | 0.3 | 1.50 | 117.90 |
| Site Visit and Remote Monitoring Site Visit Guides (Forms M–7A to M–7B) | 114 | 1.0 | 13.00 | 1,482.00 |
| LTFC Site Visit and LTFC Remote Monitoring Site Visit Guides (Forms M–7C to M–7D) | 18 | 1.0 | 6.00 | 108.00 |
| Home Study and Post-Release Services Site Visit Guide (Form M–7E) | 30 | 1.0 | 6.00 | 180.00 |
| Voluntary Agency Site Visit Guide (Form M–7F) | 5 | 1.0 | 8.00 | 40.00 |
| Unlicensed Facility Site Visit Guide (Form M–7A–UF) | 56 | 4.0 | 1.00 | 224.00 |
| Unlicensed Facility UC Case File Checklist (Form M–8A–UF) | 56 | 20.0 | 1.00 | 1,120.00 |
| Program Staff Questionnaires (Forms M–11A to M–11K) | 917 | 1.0 | 1.00 | 917.00 |
| Secure Detention Officer Questionnaire (Form M–11L) | 1 | 1.0 | 1.00 | 1.00 |
| Long Term Foster Care Home Finder Questionnaire (Form M–11M) | 18 | 1.0 | 1.00 | 18.00 |
| Long Term Foster Care Independent Living Life Skills Staff Questionnaire (Form M–11N) | 18 | 1.0 | 1.00 | 18.00 |
| Long Term Foster Care Foster Parent Questionnaire (form M–11O) | 35 | 1.0 | 0.75 | 26.25 |
| Interpreter Questionnaire (Form M–11P) | 115 | 2.0 | 0.50 | 115.00 |
| Unlicensed Facility Program Staff Questionnaires (Forms M–11A–UF to M–11K–UF) | 56 | 32.0 | 1.00 | 1,792.00 |
| Unlicensed Facility Interpreter Questionnaire (Form M–11P–UF) | 56 | 4.0 | 0.50 | 112.00 |
| UC Questionnaires (Forms M–12A to M–12B & M–12E) | 563 | 1.0 | 0.50 | 281.50 |
| Long Term Foster Care Client Questionnaire (M–12C) | 88 | 1.0 | 0.50 | 44.00 |
| Secure Client Questionnaire (Form M–12D) | 5 | 1.0 | 0.50 | 2.50 |
| Unlicensed Facility UC Questionnaires (Forms M–12A–UF to M–12B–UF & M–12E–UF) | 1,120 | 1.0 | 0.50 | 560.00 |
| Home Study and Post-Release Services Director Questionnaire (Form M–13A) | 30 | 1.0 | 1.00 | 30.00 |
| Home Study and Post-Release Services Caseworker Questionnaire (Form M–13B) | 90 | 1.0 | 1.00 | 90.00 |
| Legal Service Provider Questionnaire (Form M–13C) | 114 | 1.0 | 1.00 | 114.00 |
| Long Term Foster Care Legal Service Provider Questionnaire (Form M–13D) | 18 | 1.0 | 0.75 | 13.50 |
| Case Coordinator Questionnaire (Form M–13E) | 131 | 1.0 | 1.00 | 131.00 |
| Unlicensed Facility Legal Service Provider Questionnaire (Form M–13C–UF) | 224 | 1.0 | 0.75 | 168.00 |

ESTIMATED BURDEN HOURS FOR RESPONDENTS—Continued

| Information collection title | Annual number of respondents | Annual number of responses per respondent | Average burden hours per response | Annual total burden hours |
|---|------------------------------|---|-----------------------------------|---------------------------|
| Unlicensed Facility Case Coordinator Questionnaire (Form M-13E-UF) | 224 | 1.0 | 1.00 | 224.00 |
| Preaudit Questionnaire and Audit Documentation Requested Checklist (Form M-17A) | 78 | 1.0 | 4.00 | 312.00 |
| Instructions for Site Visit and Facility Tour (Form M-17B) | 78 | 1.0 | 2.00 | 156.00 |
| Interview Guide: Random Sample of Staff Interview (Form M-17C) | 312 | 1.0 | 1.00 | 312.00 |
| Interview Guide: Program Director (Form M-17D) | 78 | 1.0 | 1.00 | 78.00 |
| Interview Guide: PSA Compliance Manager (Form M-17E) | 78 | 1.0 | 1.00 | 78.00 |
| Interview Guide: Specialized Staff (Form M-17F) | 156 | 1.0 | 1.00 | 156.00 |
| Interview Guide: Unaccompanied Child (Form M-17G) | 780 | 1.0 | 0.50 | 390.00 |
| PSA Audit Corrective Action Report (Form M-17H) | 78 | 1.0 | 1.00 | 78.00 |
| Estimated Annual Burden Hours Total: | | | | 14,063.65 |

ESTIMATED BURDEN HOURS FOR CONTRACTOR MONITORS AND CONTRACTOR AUDITORS

| Information collection title | Annual number of respondents | Annual number of responses per respondent | Average burden hours per response | Annual total burden hours |
|---|------------------------------|---|-----------------------------------|---------------------------|
| Unlicensed Facility Monitoring Notes (Form M-6A-UF) | 18 | 12.0 | 12.00 | 2,592.00 |
| Unlicensed Facility Site Visit Guide (Form M-7A-UF) | 18 | 12.0 | 29.00 | 6,264.00 |
| Unlicensed Facility UC Case File Checklist (Form M-8A-UF) | 18 | 62.0 | 6.00 | 6,696.00 |
| Unlicensed Facility On-Site Monitoring Checklist (Form M-9A-UF) | 18 | 12.0 | 4.00 | 864.00 |
| Unlicensed Facility Personnel File Checklist (Form M-10A-UF) | 18 | 50.0 | 1.00 | 900.00 |
| Unlicensed Facility Program Staff Questionnaires (Forms M-11A-UF to M-11K-UF) | 18 | 100.0 | 1.00 | 1,800.00 |
| Unlicensed Facility Interpreter Questionnaire (Form M-11P-UF) | 18 | 12.0 | 0.50 | 108.00 |
| Unlicensed Facility UC Questionnaires (Forms M-12A-UF to M-12B-UF & M-12E-UF) | 18 | 62.0 | 0.50 | 558.00 |
| Unlicensed Facility Legal Service Provider Questionnaire (Form M-13C-UF) | 18 | 12.0 | 0.75 | 162.00 |
| Unlicensed Facility Case Coordinator Questionnaire (Form M-13E-UF) | 18 | 12.0 | 1.00 | 216.00 |
| Preaudit Questionnaire and Audit Documentation Requested Checklist (Form M-17A) | 8 | 48.0 | 3.00 | 1,152.00 |
| Instructions for Site Visit and Facility Tour (Form M-17B) | 8 | 48.0 | 1.00 | 384.00 |
| Interview Guide: Random Sample of Staff Interview (Form M-17C) | 8 | 48.0 | 1.00 | 384.00 |
| Interview Guide: Program Director (Form M-17D) | 8 | 48.0 | 1.00 | 384.00 |
| Interview Guide: PSA Compliance Manager (Form M-17E) | 8 | 48.0 | 1.00 | 384.00 |
| Interview Guide: Specialized Staff (Form M-17F) | 8 | 48.0 | 1.00 | 384.00 |
| Interview Guide: Unaccompanied Child (Form M-17G) | 8 | 48.0 | 0.50 | 192.00 |
| PSA Audit Corrective Action Report (Form M-17H) | 8 | 48.0 | 2.00 | 768.00 |
| Estimated Annual Burden Hours Total: | | | | 24,192.00 |

Comments: The Department specifically requests comments on (a) whether the proposed 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 proposed collection of information; (c) the quality, utility, and clarity of the information to be 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. Consideration will be given

to comments and suggestions submitted within 60 days of this publication.

Authority: 6 U.S.C. 279; 8 U.S.C. 1232; Flores v. Reno Settlement Agreement, No. CV85-4544-RJK (C.D. Cal. 1996); 45 CFR part 411

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022-23342 Filed 10-25-22; 8:45 am]

BILLING CODE 4184-45-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Tribal Maternal, Infant, and Early Childhood Home Visiting Program Guidance for Submitting Reports to the Secretary (Office of Management and Budget (OMB) #0970-0409)

AGENCY: Office of Early Childhood Development, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF), Office of Early Childhood Development (ECD) is requesting revisions to the Tribal Maternal, Infant, and Early Childhood Home Visiting Program (Tribal MIECHV) Guidance for Submitting Reports to the Secretary (Office of Management and Budget (OMB) #0970–0409; expiration September 30, 2024). Guidance under this OMB number includes that for an annual report and that for a final report. This request is for review of the final report guidance. There are no changes proposed to the guidance for the annual report.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act (PRA) of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing infocollection@acf.hhs.gov. Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: Section 511(e)(8)(A) of Title V of the Social Security Act requires that grantees under the MIECHV program for states and jurisdictions submit an annual and a final report to the Secretary of Health and Human Services regarding the

program and activities carried out under the program, including such data and information as the Secretary shall require. Section 511(h)(2)(A) further states that the requirements for the MIECHV grants to tribes, tribal organizations, and urban Indian organizations are to be consistent, to the greatest extent practicable, with the requirements for grantees under the MIECHV Program for states and jurisdictions.

ECD, in collaboration with the Health Resources and Services Administration, Maternal and Child Health Bureau awarded grants for the Tribal MIECHV Program (Tribal Home Visiting) to support cooperative agreements to conduct community needs assessments; plan for and implement high-quality, culturally relevant, evidence-based home visiting programs in at-risk tribal communities; establish, measure, and report on progress toward meeting performance measures in six legislatively mandated benchmark areas; and conduct rigorous evaluation activities to build the knowledge base on home visiting among Native populations.

After the first grant year, Tribal Home Visiting grantees must comply with the requirement to submit an annual report to the Secretary that should feature activities carried out under the program during the past reporting period, and a final report to the Secretary during the final year of their grant. To assist grantees with meeting these requirements, ACF created guidance for

grantees to use when writing their reports. The annual and final report guidance specifies that grantees must address the following:

- Update and reflections on meeting Home Visiting Program Goals and Objectives
- Update and reflections on Home Visiting Programs in Targeted Community(ies)
- Update and reflections on meeting Legislatively Mandated Benchmark Requirements
- Update and reflections on Rigorous Evaluation Activities
- Update and reflections on Home Visiting Program Continuous Quality Improvement (CQI) Efforts
- Update and reflections on Dissemination Activities
- Update and reflections on Administration of Home Visiting Program
- Update and reflections on Technical Assistance Needs

Previously, the guidance included information about both the annual and the final reports from grantees. In 2021, ECD separated out the annual report guidance and received OMB approval for that in September 2021. ECD is now requesting review of guidance specific to the final report.

Respondents: Tribal Home Visiting Managers (information collection does not include direct interaction with individuals or families that receive the services).

ANNUAL BURDEN ESTIMATES

| Instrument | Total number of respondents | Annual number of responses per respondent | Average burden hours per response | Annual burden hours |
|--|-----------------------------|---|-----------------------------------|---------------------|
| Annual Report to the Secretary | 30 | 1 | 25 | 750 |
| Final Report to the Secretary | 30 | *.33 | 25 | 248 |
| Estimated Total Annual Burden Hours: | | | | 998 |

* Note that this is estimated to be .33 because grantees provide one final report over the three-year approval period.

Comments: The Department specifically requests comments on (a) whether the proposed 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 proposed collection of information; (c) the quality, utility, and clarity of the information to be 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Title V of the Social Security Act, Sections 511(e)(8)(A) and 511(h)(2)(A).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–23337 Filed 10–25–22; 8:45 am]

BILLING CODE 4184–43–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.18 of the Department of Health and Human Services’ claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest, which is determined and fixed by the Secretary of the Treasury after considering private

consumer rates of interest on the date that the Department of Health and Human Services becomes entitled to recovery. The rate cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities" unless the Secretary waives interest in whole or part, or a different rate is prescribed by statute, contract, or repayment agreement. The Secretary of the Treasury may revise this rate quarterly. The Department of Health and Human Services publishes this rate in the **Federal Register**.

The current rate of 10 $\frac{1}{8}$ %, as fixed by the Secretary of the Treasury, is certified for the quarter ended September 30, 2022. This rate is based on the Interest Rates for Specific Legislation, "National Health Services Corps Scholarship Program (42 U.S.C. 254o(b)(1)(A))" and "National Research Service Award Program (42 U.S.C. 288(c)(4)(B))." This interest rate will be applied to overdue debt until the Department of Health and Human Services publishes a revision.

David C. Horn,

Director, Office of Financial Policy and Reporting.

[FR Doc. 2022-23308 Filed 10-25-22; 8:45 am]

BILLING CODE 4150-04-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

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

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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; Topics in Motor Function.

Date: November 8, 2022.

Time: 9:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Stephanie Christine Nagle Emmens, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594-6604, nagleemmenssc@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(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: October 20, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022-23270 Filed 10-25-22; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel RFA Panel: Tobacco Regulatory Science B, November 17, 2022, 9:30 a.m.-8:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on October 20, 2022, 87 FR 63790, Doc 2022-22763.

This notice is being amended to change the meeting end time from 8:00 p.m. to 8:30 p.m. The meeting is closed to the public.

Dated: October 20, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022-23228 Filed 10-25-22; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Advisory Committee to the Director, National Institutes of Health.

The meeting will be held as a virtual meeting and will be open to the public as indicated below. Individuals who

plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (<http://videocast.nih.gov>).

Name of Committee: Advisory Committee to the Director, National Institutes of Health.

Date: November 3, 2022.

Time: 5:00 p.m. to 6:00 p.m.

Agenda: New Framework for Peer Review Criteria, Consideration of Proposed Establishment of ACD Working Groups, and Other Business of the Committee.

Place: National Institutes of Health, Building 1, One Center Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Cyndi Burrus-Shaw, Staff Assistant, National Institutes of Health, Office of the Director, One Center Drive, Building 1, Room 126, Bethesda, MD 20892, 301-496-2433, shawwcy@od.nih.gov.

This notice is being published less than 15 days prior to the meeting due to scheduling difficulties.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: <http://acd.od.nih.gov>, where an agenda will be posted before the meeting date.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: October 20, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022-23229 Filed 10-25-22; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) 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: National Institute on Drug Abuse Special Emphasis Panel; Developing Regulated Therapeutic and Diagnostic Solutions for Patients Affected by Opioid and/or Stimulants use Disorders.

Date: November 30, 2022.

Time: 10:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Gerald L. McLaughlin, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827-5819, gm145a@nih.gov.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; High Priority HIV and Substance Use Research.

Date: November 30, 2022.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Trinh T. Tran, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827-5843, trinh.tran@nih.gov.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Pathogenic Mechanisms influencing Blood Brain Barrier function in HIV and Substance Use Disorders.

Date: December 6, 2022.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Gerald L. McLaughlin, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827-5819, gm145a@nih.gov. (Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist

Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: October 20, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022-23271 Filed 10-25-22; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

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

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

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Improved Drug Susceptibility Testing (DST) for Tuberculosis (R01 Clinical Trial Not Allowed).

Date: November 30–December 1, 2022.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases; National Institutes of Health, 5601 Fishers Lane, Room 3G13, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Brenda Lange-Gustafson, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases; National Institutes of Health, 5601 Fishers Lane, Room 3G13, Rockville, MD 20852, 240-669-5047, bgustafson@niaid.nih.gov.

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

Dated: October 20, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022-23272 Filed 10-25-22; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2023 Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of intent to award a single source cooperative agreement to the Mental Health Association of New York City, Inc. (DBA Vibrant Emotional Health).

SUMMARY: This notice is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA) intends to award \$47 million (total costs) for up to one year to Vibrant Emotional Health for the 988 Suicide and Crisis Lifeline Access Improvement Project. Funding for this program is from the Bipartisan Safer Communities Act, [Pub. L. 117-159, Division B, Title II]. Under this cooperative agreement, Vibrant Emotional Health will expand access to the local and national Lifeline backup centers, language services, system evaluation and data reporting, and access to specialized care for populations to be known at higher risk for suicide by: (1) expanding options for connection and support for individuals at higher risk of suicide, which includes but is not limited to LGBTQI+, American Indian/Alaska Native, rural individuals, individuals with mental illness and substance use disorders, Black/African-American youth and older men; (2) expanding current language access services to include Spanish chat and text, and videophone for those deaf and hard of hearing; and (3) improve access and capacity utilization of the nationwide backup system while maximizing state and territory response.

Funding Opportunity Title: 988 Suicide and Crisis Lifeline Access Improvement Project.

Assistance Listing Number: 93.243.

Authority: Section 520E-3 of the Public Health Service Act, as amended.

Justification: Eligibility for this award is limited to the Mental Health Association of New York City, Inc. (DBA Vibrant Emotional Health). Vibrant Emotional Health is the current Lifeline

system administrator and this award expand options for connection and support for individuals at higher risk of suicide, expand current language access services to include Spanish chat and text services, work to activate videophone for those deaf and hard of hearing, and improve access and capacity utilization of the nationwide backup system while maximizing state and territory response. Since 2005, Vibrant Emotional Health has provided oversight and management of the NSPL and its local call centers, backup centers, Spanish network, and chat/text functions with a network of over 200 centers in all fifty states. In FY 2021, SAMHSA issued a competitive Notice of Funding Opportunity for the NSPL, which was awarded to Vibrant Emotional Health for a 5-year project period (September 30, 2021, to September 29, 2026). Vibrant Emotional Health has the infrastructure, experience, and national reach to work with the backup centers, language services, and chat/text organizations to address the increased contact volumes expected in 2023. With the transition to 988 accomplished, greater services, such as expanding access to the local and national Lifeline backup centers, language services, system evaluation and data reporting, and access to specialized care for populations to be known at higher risk for suicide, are required for the 988 projected contacts in 2023 and beyond.

It would not be possible for any other organization to establish the relationships or technical systems with crisis centers that Vibrant Emotional Health has built over the last 15 years to accomplish the goals by December 2023. Any significant modification to the current 988 network, technology platform and/or administration would significantly delay operational outcomes and run the risk of significant numbers of unanswered calls, chats, and texts of individuals in crisis. Since the transition to 988, the Lifeline, under Vibrant's network administration and HHS funding, has seen call answer rates significantly improve and far greater numbers of individuals served in crisis. The impact of having administration disruption and splitting of network oversight significantly increases public safety risk now more than ever as 988 is quickly becoming transitioned to a greater utilized public service and an entry way into more centralized behavioral health crisis care. Oversight of the expanded back up, language services, and chat/text centers would be fragmented and run the risk of both inefficiencies and adverse outcomes, as

well as coordination, quality monitoring, and rapid response could be compromised. Vibrant has extensive engagement, including direct contractual obligations, with the Department of Veterans Affairs (VA), Veterans Crisis Line (VCL) that helps ensure call connectivity between Vibrant and VCL, backup services, and engagement across the Lifeline local crisis centers on Veteran identification, care, and linkage to VA. and is uniquely qualified to carry-out the requirements of this funding opportunity.

SUPPLEMENTARY INFORMATION: It is expected this program will: (1) increase operational transparency and improve data and workforce management; (2) increase language access services available to the nation, including adding chat and text Spanish services; and (3) further enhance access for high-risk populations. With this award, Vibrant Emotional Health will directly support the needed expansion of the national back-up system of Lifeline crisis centers, expand options for connection and support, including backup, chat, text, Spanish, and specialized centers; enhance operational administrative and data systems to ensure the Network can meet or exceed established metrics; expand Spanish and other languages chat and text services, and video services for those deaf or hard of hearing; ensure crisis centers across states, and territories are provided enhanced technical assistance for improving response rates for all phone, chat and text services and develop processes for enhanced analytic capability in the actual connection rates for center and state outcomes across all services; develop network operational dashboards to improve oversight of outcomes and enhance public data transparency of network service and response. In addition, this funding will also enhance workforce management solutions for the Lifeline crisis centers, helping to ensure effective workforce projection planning and utilization to meet network, state, and local key performance indicators; develop a plan to expand and/or provide support and response for populations at high risk for suicide; and provide expanded services for populations at higher risk of suicide, including but not limited to LGBTQI+, American Indian/Alaska Native, rural individuals, individuals with mental illness and substance use disorders, Black/African-American youth and older men by September 30, 2023.

This is not a formal request for application. Assistance will be provided only to Vibrant Emotional Health based on the receipt of a satisfactory

application that is approved by an independent review group.

Contact: James Wright, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, MD 20857; telephone: (240) 276-1615; email: james.wright@samhsa.hhs.gov.

Alicia Broadus,
Public Health Advisor.

[FR Doc. 2022-23274 Filed 10-25-22; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651-0076]

Customs and Border Protection Recordkeeping Requirements

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension without change of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. **DATES:** Comments are encouraged and must be submitted (no later than November 25, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to <http://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, telephone number 202-325-0056, or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this

notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (87 FR 35565) on June 10, 2022, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Customs and Border Protection Recordkeeping Requirements.

OMB Number: 1651-0076.

Form Number: N/A

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the recordkeeping requirements.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: The North American Free Trade Agreement Implementation Act, Title VI, known as the Customs Modernization Act (Mod Act) amended Title 19 U.S.C. 1508, 1509 and 1510 by revising Customs and Border Protection

(CBP) laws related to recordkeeping, examination of books and witnesses, regulatory audit procedures and judicial enforcement. Specifically, the Mod Act expanded the list of parties subject to CBP recordkeeping requirements; distinguished between records which pertain to the entry of merchandise and financial records needed to substantiate the correctness of information contained in entry documentation; and identified a list of records which must be maintained and produced upon request by CBP. The information and records are used by CBP to verify the accuracy of the claims made on the entry documents regarding the tariff status of imported merchandise, admissibility, classification/nomenclature, value, and rate of duty applicable to the entered goods. The Mod Act recordkeeping requirements are provided for by 19 CFR 163. Instructions are available at: <http://www.cbp.gov/document/publications/recordkeeping>.

The respondents to this information collection are members of the trade community who are familiar with CBP regulations.

Type of Information Collection: Mod. Act Recordkeeping.

Estimated Number of Respondents: 5,459.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 5,459.

Estimated Time per Response: 1,040 hours.

Estimated Total Annual Burden Hours: 5,677,360.

Dated: October 21, 2022.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2022-23293 Filed 10-25-22; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection [1651-0005]

Application-Permit-Special License Unlading-Lading-Overtime Services

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; revision of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request

to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than November 25, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email CBP_PRA@xsp0;cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (87 FR 31252) on May 23, 2022, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to

be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Application-Permit-Special License Unlading-Lading-Overtime Services.

OMB Number: 1651–0005.

Form Number: CBP Form 3171.

Current Actions: Revision.

Type of Review: Revision.

Affected Public: Businesses.

Abstract: The Application-Permit-Special License Unlading-Lading-Overtime Services (U.S. Customs and Border Protection (CBP) Form 3171) is used by commercial carriers and importers as a request for permission to unlade imported merchandise, baggage, or passengers. It is also used to request overtime services from CBP officers in connection with lading or unlading of merchandise, or the entry or clearance of a vessel, including the boarding of a vessel for preliminary supplies, ship's stores, sea stores, or equipment not to be re-laden. CBP Form 3171 is provided for by 19 CFR 4.10, 4.30, 4.39, 4.91, 10.60, 24.16, 122.38, 123.8, 146.32 and 146.34.

This form is accessible at: <http://www.cbp.gov/newsroom/publications/forms?title=3171>.

New Change

This form is anticipated to be submitted electronically as part of the maritime forms automation project through the Vessel Entrance and Clearance System (VECS), which will eliminate the need for any paper submission of any vessel entrance or clearance requirements under the above referenced statutes and regulations. VECS will still collect and maintain the same data but will automate the capture of data to reduce or eliminate redundancy with other data collected by CBP.

Type of Information Collection: Form 3171.

Estimated Number of Respondents: 2,624.

Estimated Number of Annual Responses per Respondent: 72.

Estimated Number of Total Annual Responses: 188,928.

Estimated Time per Response: 8 minutes.

Estimated Total Annual Burden Hours: 25,190 hours.

Dated: October 21, 2022.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2022–23294 Filed 10–25–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0035]

Holders or Containers Which Enter the United States Duty Free

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than November 25, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–

8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (87 FR 34283) on June 6, 2022, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Holders or Containers Which Enter the United States Duty Free.

OMB Number: 1651–0035.

Form Number: N/A.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: Subheading 9803.00.50 of the Harmonized Tariff Schedule of the United States (HTSUS), codified as 19 U.S.C. 1202, provide for the release without entry or the payment of duty of certain substantial holders or containers pursuant to the provisions of 19 CFR 10.41b.

Section 19 CFR 10.41b eliminates the need for an importer to file entry

documents by instead requiring, among other things, the marking of the containers or holders to indicate the HTSUS numbers that provide for duty-free treatment of the containers or holders.

For U.S. manufactured serially numbered holders or containers which may be released without entry or the payment of duty under 9801.00.10 HTSUS, 19 CFR 10.41b requires the owner to place the following markings on the holder or container: 9801.00.10, HTSUS (unless the holder or container has a permanently attached metal tag or plate showing, among other things, the name and address of the U.S. manufacturer); the name of the owner; and the serial number assigned by the owner. For serially numbered holders or containers of foreign manufacture for which may be released without entry or payment of duty under 9803.00.50 HTSUS, 19 CFR 10.41b requires the owner to place markings containing the following information: 9803.00.50 HTSUS; the district and port code numbers of the port of entry; the entry number; the last two digits of the fiscal year of entry covering the importation of the holders and containers on which duty was paid; the name of the owner; and the serial number assigned by the owner.

This collection of information applies to the importing and trade community which is familiar with import procedures and with the CBP regulations.

Type of Information Collection: Holders/Containers Entering U.S. Duty-Free

Estimated Number of Respondents: 20.

Estimated Number of Annual Responses per Respondent: 18.

Estimated Number of Total Annual Responses: 360.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 90.

Dated: October 21, 2022.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2022-23295 Filed 10-25-22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection [1651-0057]

Country of Origin Marking Requirements for Containers or Holders

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; Extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than November 25, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information

collection was previously published in the **Federal Register** (Volume 87 FR Page 39108) on June 30, 2022, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Country of Origin Marking Requirements for Containers or Holders.

OMB Number: 1651-0057.

Form Number: N/A.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: Section 304 of the Tariff Act of 1930, as amended, 19 U.S.C. 1304, requires each imported article of foreign origin, or its container, to be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article or container permits, with the English name of the country of origin. The marking informs the ultimate purchaser in the United States of the country of origin of the article or its container. The marking requirements for containers or holders of imported merchandise are provided for by 19 CFR 134.22(b).

The respondents to these requirements collection are members of the trade community who are familiar with CBP requirements and regulations.

Type of Information Collection:
Country of Origin Marking.
Estimated Number of Respondents:
250.
Estimated Number of Annual Responses per Respondent: 40.
Estimated Number of Total Annual Responses: 10,000.
Estimated Time per Response: 15 seconds.
Estimated Total Annual Burden Hours: 41.

Dated: October 21, 2022.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2022-23285 Filed 10-25-22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection
[1651-0081]

Delivery Ticket

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than November 25, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177,

Telephone number 202-325-0056 or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (87 FR 36867) on June 21, 2022, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Delivery Ticket.

OMB Number: 1651-0081.

Form Number: CBP Form 6043.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: CBP Form 6043, *Delivery Ticket*, is used to document transfers of

imported merchandise between parties. This form collects information such as the name and address of the consignee; the name of the importing carrier; lien information; the location of where the goods originated and where they were delivered; and information about the imported merchandise. CBP Form 6043 is completed by warehouse proprietors, carriers, Foreign Trade Zone operators and other trade entities involved in transfers of imported merchandise. This form is authorized by 19 U.S.C. 1551a and 1565, and provided for by 19 CFR 4.34, 4.37 and 19.9. It is accessible at: <https://www.cbp.gov/newsroom/publications/forms>.

The respondents to this information collection are members of the trade community who are familiar with CBP regulations.

Type of Information Collection:
Delivery Ticket (Form 6043).

Estimated Number of Respondents:
1,156.

Estimated Number of Annual Responses per Respondent: 200.

Estimated Number of Total Annual Responses: 231,200.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 57,800.

Dated: October 21, 2022.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2022-23289 Filed 10-25-22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6352-N-01]

Manufactured Housing Consensus Committee: Notice Inviting Nominations of Individuals To Serve on the Committee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of request for nominations to serve on the Manufactured Housing Consensus Committee.

SUMMARY: The Department of Housing and Urban Development (HUD or the Department) invites the public to nominate individuals for appointment, with the approval of the Secretary, to the Manufactured Housing Consensus Committee (MHCC), a federal advisory committee established by the National Manufactured Housing Construction and Safety Standards Act of 1974, as

amended by the Manufactured Housing Improvement Act of 2000. HUD will make appointments from nominations submitted in response to this notice. Individuals that applied previously must re-apply; prior applications on file will not be considered for appointments. Current MHCC members whose first term ends on December 31, 2022, are eligible for reappointment but will need to submit their nomination application to be considered.

DATES: The Department will accept nominations until December 27, 2022.

ADDRESSES: Nominations must be submitted through the following website: <http://mhcc.homeinnovation.com/Application.aspx>. The submitted nominations are addressed to: Teresa B. Payne, Administrator, Office of Manufactured Housing Programs, Department of Housing and Urban Development, c/o Home Innovation Research Labs; Attention: Kevin Kauffman, 400 Prince Georges Blvd., Upper Marlboro, MD 20774.

FOR FURTHER INFORMATION CONTACT: Teresa B. Payne, Administrator, Office of Manufactured Housing Programs, Department of Housing and Urban Development, 451 7th Street SW, Room 9166, Washington, DC 20410; telephone 202-402-2698 (this is not a toll-free number), email mhcc@hud.gov. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and 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:

Background

Section 604 of the Manufactured Housing Improvement Act of 2000 (Pub. L. 106-569) amended the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401-5426) (the Act) to require the establishment of the Manufactured Housing Consensus Committee (MHCC), a federal advisory committee, to: (1) provide periodic recommendations to the Secretary to adopt, revise, and interpret the manufactured housing construction and safety standards; and (2) provide periodic recommendations to the Secretary to adopt, revise, and interpret the procedural and enforcement manufactured housing regulations. The Act authorizes the Secretary to appoint a total of twenty-two members to the MHCC. Twenty-one members have voting rights; the twenty-second member represents the Secretary

and is a non-voting position. Service on the MHCC is voluntary. Travel and per diem for meetings is provided in accordance with federal travel policy pursuant to 5 U.S.C. 5703.

HUD encourages nominations of highly qualified and motivated individuals of diverse backgrounds, interests, and experience, who meet the requirements set forth in the Act to serve as voting members of the MHCC for up to two terms of three years. The MHCC expects to meet at least one to two times annually. Meetings may take place by conference call, virtually, or in person. Members of the MHCC undertake additional work commitments on subcommittees and task forces regarding issues under deliberation.

Nominee Selection and Appointment

Members of the MHCC are appointed to serve in one of three member categories. Nominees will be appointed to fill voting member vacancies in the following categories:

1. *Producers*—Seven individuals from producers or retailers of manufactured housing.
2. *Users*—Seven individuals representing consumer interests, such as consumer organizations, recognized consumer leaders, and owners who are residents of manufactured homes.
3. *General Interest and Public Officials*—Seven general interest and public official members.

The Act provides that the Secretary shall ensure that all interests directly and materially affected by the work of the MHCC have the opportunity for fair and equitable participation without dominance by any single interest. The Secretary may reject the appointment of any one or more individuals to ensure that there is not dominance by any single interest. For purposes of this determination, dominance is defined as a position or exercise of dominant authority, leadership, or influence by reason of superior leverage, strength, or representation.

Additional requirements governing appointment and member service include:

- (1) Nominees appointed to the User category and three of the individuals appointed to the General Interest and Public Official category shall not have a significant financial interest in any segment of the manufactured housing industry or a significant relationship to any person engaged in the manufactured housing industry.
- (2) Each member serving in the User category shall be subject to a ban disallowing compensation from the manufactured housing industry during

the period of, and during the one year following, his or her membership on the MHCC.

(3) Nominees selected for appointment to the MHCC shall be required to provide disclosures and certifications regarding conflict-of-interest and eligibility for membership prior to finalizing an appointment.

All selected nominees will be required to submit certifications of eligibility under the foregoing criteria as a prerequisite to final appointment.

Consensus Committee—Advisory Role

The MHCC's role is solely to advise the Secretary on the subject matter described above.

Federal Advisory Committee Act

The MHCC is subject to the requirements of the Federal Advisory Committee Act (5 U.S.C. Appendix), 41 CFR parts 101-6 and 102-3 (the FACA Final Rule), and to the Presidential Memorandum, dated June 18, 2010, directing all heads of executive departments and agencies not to make any new appointments or reappointments of federally registered lobbyists to advisory committees and other boards and commissions. The June 18, 2010, Presidential Memorandum authorized the Director of the Office of Management and Budget (OMB) to issue guidance to implement this policy. On August 13, 2014, OMB issued guidance (79 FR 47482) regarding the prohibition against appointing or re-appointing federally registered lobbyists to clarify that the ban applies to persons serving on advisory committees, boards, and commissions in their individual capacity and does not apply if they are specifically appointed to represent the interests of a nongovernmental entity, a recognizable group of persons or nongovernmental entities (an industry sector, labor unions, environmental groups, etc.), or state or local governments.¹

Term of Office

MHCC members serve at the discretion of the Secretary or for a three-year term, up to two terms.

Nominee Information

Individuals seeking nomination to the MHCC should submit detailed information documenting their qualifications as addressed in the Act and this notice. In furtherance of Executive Order 14035, *Executive Order on Diversity, Equity, and Inclusion, and Accessibility in the Federal Workforce* (E.O. 14035, 86 FR 34593), HUD seeks

¹ 79 FR 47482.

for the MHCC to reflect the diversity of stakeholders in the housing market. The application website listed above, therefore, contains questions to elicit demographic information. Applicants may briefly summarize why they want to be a member of the MHCC and include unique skills, knowledge, and experiences that they would bring to inform the work of the committee. Individuals may nominate themselves. HUD recommends that the application be accompanied by a resume.

Additional Information

The Department will make appointments and reappointments from nominations submitted in response to this notice. To be considered for appointment to a position of an MHCC member whose term will expire in December of 2022 or to fill any MHCC vacancy that currently exists, the nomination must be submitted by December 27, 2022. Appointments will be made at the discretion of the Secretary.

Julia R. Gordon,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2022-23307 Filed 10-25-22; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7061-N-17]

60-Day Notice of Proposed Information Collection: Housing Choice Voucher Program and Tribal HUD-VASH, OMB No.: 2577-0169

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* December 27, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street

SW, Room 4176, Washington, DC 20410-5000; telephone 202-402-0306 (this is not a toll-free number) or email at Colette.Pollard@hud.gov for a copy of the proposed forms or other available information. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and 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>.

FOR FURTHER INFORMATION CONTACT: Leea Thornton, Office of Policy, Program and Legislative Initiatives, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW, Room 3178, Washington, DC 20410; telephone 202-402-6455. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

Copies of available documents submitted to OMB may be obtained from Ms. Thornton.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Housing Choice Voucher (HCV) Program, Project-based Voucher (PBV) Program and Tribal HUD-VASH.

OMB Approval Number: 2577-0169.

Type of Request: Reinstatement, with change of previously approved collection for which approval has expired.

Form Numbers: HUD-50164, HUD-52515, HUD-52517, HUD-52530A Part 1, HUD-52530A Part 2, HUD-52530B Part 1, HUD-52530B Part 2, HUD-52530C, HUD-52531A, HUD-52531B, HUD-52578B, HUD-52580, HUD-52580A, HUD-52641, HUD-52641A, HUD-52642, HUD-52646, HUD-52649, HUD-52665, HUD-52667, HUD-5980.

Description of the need for the information and proposed use:

Public housing agencies (PHAs) assist very low-income families to lease housing on the private rental market. PHAs maintain records on participant eligibility, unit acceptability, housing assistance payments, and budget and payment documentation. PHAs may also project-base a portion of their

vouchers or use their vouchers under the Homeownership option.

When new funding is available, PHAs provide information on their qualifications and experience to administer additional vouchers or provide specific funded services and HUD scores applications based on the information required in the funding notice. The PHAs must establish a utility allowance schedule for all utilities and other services. Units must be inspected using HUD-prescribed forms to determine if the units meet the Housing Quality Standards (HQS) of the Housing Choice Voucher (HCV) program. After the PHA provides a briefing and information packet to the family, the PHA issues the family a voucher to search for a unit. When the family finds a unit, they submit a Request for Tenancy Approval when it finds a suitable unit for its needs. With approval from the PHA, the family may move to another unit with continued assistance using the same forms and process already described. If the family exercises their right to transfer and “port” out of the PHA’s jurisdiction, the initial PHA will use a standardized form to submit portability information to the receiving PHA who will also use the form for monthly portability billing. PHAs and owners will enter into a Housing Assistance Payment (HAP) contract that provides information on rents, payments, certifications, notifications, and other HCV requirements. A Tenancy Addendum for the HCV program is included in the HAP contract as well as incorporated in the lease between the owner and the family. Families that participate in the Homeownership option will execute a statement regarding their responsibilities and execute contracts of sale including an additional contract of sale for new construction units.

PHAs participating in the Project Based Voucher (PBV) program will enter into Agreements with owners for developing projects, HAP contracts with owners of existing housing and new construction/rehabilitation projects, and a Statement of Family Responsibilities with the family. A lease addendum is executed between the family and the owner of a PBV project.

This information collection also includes the Tribal HUD-VA Supportive Housing Program (Tribal HUD-VASH), which provides rental assistance and supportive services to Native American veterans who are homeless or at risk of homelessness living on or near a reservation or other Indian areas. Housing assistance under this program is made available by grants to tribes and Tribally Designated

Housing Entities (TDHEs) that are eligible to receive Indian Housing Block Grant (IHBG) funding under the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4101) (NAHASDA). Tribes request tenant-based and/or project-based rental assistance by the number of bedrooms in a rental unit. Grants and renewal funds are awarded based on the number rental units (Tenant-Based and Project-Based Rental Assistance) approved by HUD. Grants include an additional amount for administrative costs and eligible homeless veterans receive case management services through the Department of Veterans Affairs. Information collection requirements for this demonstration program are based on the **Federal Register** Notice, “Implementation of the Tribal HUD-VA Supportive Housing Program” (FR 6091-N-01) and renewal funding criteria established in PIH Notice 2018-10, “Procedural Guidance for Tribal HUD-VA Supportive Housing Renewal Grant Applications.”

The following changes were made to comply with current laws and to fix typos:

(1) HUD-52641 Housing Assistance Payment (HAP) Contract and the HUD-52641A Tenancy Addendum were updated to reflect requirements in the Permanently Protecting Tenants at

Foreclosure Act of 2017 (Pub. L. 115-174).

(2) HUD-52649 Statement of Homeownership Obligations was updated to reflect the requirement in *Housing Counseling: New Certification Requirements* (81 FR 90632 (Dec 14, 2016)).

(3) HUD-52531A Part 1: PBV Agreement to Enter into HAP Contract for New Construction and Rehabilitation was updated to fix a typo.

(4) HUD-52530A Part 1 and HUD-52530B Part 1 were updated to reflect changes made in the *Implementation of the Fostering Stable Housing Opportunities Amendments* (87 FR 3570 (Jan. 24, 2022)). The term “designated” was changed to “contracted” per PIH Notice 2017-21 Implementation Guidance: Housing Opportunity Through Modernization Act 2016 (HOTMA)—Housing Choice Voucher (HCV) and Project-Based Voucher (PBV) Provisions, Attachment E. A few typos were also corrected.

(5) When referring to discrimination based on sex, added “including sexual orientation and gender identity” in parentheses to clarify that protections are provided under the Fair Housing Act. This change was made to the following forms: HUD-52641 HAP Contract, HUD-52641A Tenancy Addendum, HUD-52642 Manufactured

Home Space Rental HAP Contract, HUD-52530A PBV HAP Contract New Construction Part 2, HUD-52530B PBV HAP Contract Existing Housing Part 2, HUD-52530C PBV Tenancy Addendum, HUD-52531B Agreement to Enter in a HAP Contract Part 1, HUD-52578B PBV Statement of Family Responsibilities.

(6) Reformatted the HUD-52646 Voucher and the HUD-5980 Tribal HUD-VASH Leasing Performance Report to ensure the forms are 508 compliant.

(7) Updated PRA Burden Statements and the Privacy Act Statements to ensure inclusion of required components.

(8) Added language near the signature line on several forms to notify those signing the forms of the penalty for providing false information.

(9) Added required language related to the Violence Against Women Act to the HUD-52642 Manufactured Home Space Rental HAP Contract.

Respondents (i.e. affected public): State and Local Governments, Tribes and TDHEs, owners of rental housing.

Estimated Number of Respondents: 2,244 PHAs and Tribal HUD-VASH grantees.

Estimated Number of Responses: 5,762,595.

Frequency of Response: Varies by form.

| Description | Number of respondents | Responses per respondent | Total annual responses | Hours per response | Total hours |
|---|-----------------------|--------------------------|------------------------|--------------------|--------------|
| Application (HUD-52515) | 300.00 | 1.00 | 300.00 | 5.00 | 1,500.00 |
| Application for Federal Assistance (SF-424) ¹ | 300.00 | 1.00 | 300.00 | 0.75 | 225.00 |
| Applicant/Recipient Disclosure/Update Report (HUD-2880) ² | 300.00 | 1.00 | 300.00 | 0.08 | 24.00 |
| Acknowledgement of Application Receipt (HUD-2993) ³ | 300.00 | 1.00 | 300.00 | 0.08 | 24.00 |
| Certification of Consistency with the Consolidated Plan (HUD-2991) ⁴ | 300.00 | 1.00 | 300.00 | 0.08 | 24.00 |
| Disclosure of Lobbying Activities (SF-LLL) | 300.00 | 1.00 | 300.00 | 0.08 | 24.00 |
| Tenant-Furnished Utilities (HUD-52667) | 2,192.00 | 350.00 | 767,200.00 | 0.25 | 191,800.00 |
| Inspection Checklist (HUD-52580 and 52580-A) | 2,192.00 | 950.00 | 2,082,400.00 | 0.50 | 1,041,200.00 |
| Inspection Form (HUD-52580A) | 2,192.00 | 950.00 | 2,082,400.00 | 0.25 | 520,600.00 |
| Request for Tenancy Approval (HUD-52517) | 2,192.00 | 55.00 | 120,560.00 | 0.50 | 60,280.00 |
| Notice of Unit Approval/Denial | 2,192.00 | 55.00 | 120,560.00 | 0.50 | 60,280.00 |
| Voucher (HUD-52646) | 2,192.00 | 60.00 | 131,520.00 | 0.05 | 6,576.00 |
| Information Packet | 2,192.00 | 55.00 | 120,560.00 | 1.00 | 120,560.00 |
| PHA Information to Owner about tenant | 2,192.00 | 55.00 | 120,560.00 | 0.50 | 60,280.00 |
| Portability Information (HUD-52665) | 2,192.00 | 10.00 | 21,920.00 | 0.50 | 10,960.00 |
| PHA Notification to Field Office of Insufficient Funds for portability moves | 400.00 | 1.00 | 400.00 | 0.50 | 200.00 |
| HAP Contracts (HUD-52641, 52641-A, 52642, 52642) | 2,192.00 | 65.00 | 142,480.00 | 0.50 | 71,240.00 |
| Statement of Homeowner Obligation (HUD-52649) | 100.00 | 10.00 | 1,000.00 | 0.25 | 250.00 |
| Homeownership: Required Contract of Sale Provisions | 100.00 | 10.00 | 1,000.00 | 0.25 | 250.00 |
| PHA PBV Public Notice of RFP | 200.00 | 1.00 | 200.00 | 1.00 | 200.00 |
| PHA PBV Notice of Owner Selection | 200.00 | 1.00 | 200.00 | 0.50 | 100.00 |
| PBV Agreement to enter into a HAP Contract (HUD-52531A and B) | 100.00 | 1.00 | 100.00 | 0.50 | 50.00 |
| PBV NC/R HAP Contract (HUD-52530A, Part 1 & 2) | 100.00 | 1.00 | 100.00 | 2.00 | 200.00 |
| PBV Existing HAP Contract (HUD-52530B, Part 1 & 2) | 100.00 | 1.00 | 100.00 | 2.00 | 200.00 |
| PBV Tenancy Addendum (HUD-52530C) | 650.00 | 33.00 | 21,450.00 | 0.25 | 5,362.50 |
| PBV Statement of Family Responsibilities (HUD-52578B) | 650.00 | 33.00 | 21,450.00 | 0.25 | 5,362.50 |
| PHA Notice of Intent to Project-Base Vouchers to FO | 218.00 | 1.00 | 218.00 | 1.00 | 218.00 |

| Description | Number of respondents | Responses per respondent | Total annual responses | Hours per response | Total hours |
|--|-----------------------|--------------------------|------------------------|--------------------|---------------------|
| Owner Request to HUD FO for Approval to Terminate PBV HAP Contract | 20.00 | 1.00 | 20.00 | 1.00 | 20.00 |
| Owner Notice to FO and tenants to Terminate PBV HAP Contract | 20.00 | 30.00 | 600.00 | 0.25 | 150.00 |
| Legal Opinion that PHA's unit/project is no longer PHA-owned | 350.00 | 1.00 | 350.00 | 1.00 | 350.00 |
| Notification to Field Office of change in ownership if project becomes PHA-owned | 500.00 | 1.00 | 500.00 | 1.00 | 500.00 |
| Joint PHA/Independent entity certification regarding no legal, financial, other ties | 90.00 | 1.00 | 90.00 | 0.50 | 45.00 |
| Certification regarding previously approved independent entity | 800.00 | 1.00 | 800.00 | 0.50 | 400.00 |
| Notice of Rent reasonableness determinations completed by independent entity | 150.00 | 3.00 | 450.00 | 2.00 | 900.00 |
| Notice of Review of PBV selection process by independent entity | 90.00 | 2.00 | 180.00 | 3.00 | 540.00 |
| Waikoloa Maneuver Area public notice (HUD-50164) | 100.00 | 1.00 | 100.00 | 0.30 | 30.00 |
| FUP Statement of Need | 300.00 | 1.00 | 300.00 | 2.00 | 600.00 |
| FUP Memorandum of Understanding | 300.00 | 1.00 | 300.00 | 5.00 | 1,500.00 |
| FUP Evidence of a self-sufficiency program | 175.00 | 1.00 | 175.00 | 0.50 | 88.00 |
| HUD-VASH VAMC letter of support | 50.00 | 1.00 | 50.00 | 5.00 | 250.00 |
| HUD-VASH signed formal agreement | 50.00 | 1.00 | 50.00 | 6.00 | 300.00 |
| HUD-VASH boundary description | 50.00 | 1.00 | 50.00 | 0.50 | 25.00 |
| New Inspection Protocol | 350.00 | 1.00 | 350.00 | 0.50 | 175.00 |
| Tribal HUD-VASH application materials | 26.00 | 1.00 | 26.00 | 8.00 | 208.00 |
| Tribal HUD-VASH Leasing Performance Report (HUD-5980) | 26.00 | 1.00 | 26.00 | 1.00 | 26.00 |
| Totals | 2,244 | 1,853.00 | 5,762,595.00 | 57.17 | 2,164,096.50 |

¹ This form is included in another PRA (OMB 2501-0032). The additional burden hours for the voucher program are included in this application (4040-0004).

² This form is included in another PRA (OMB 2501-0032). The additional burden hours for the voucher program are included in this application (2510-0011).

³ This form is included in another PRA (OMB 2501-0032). The additional burden hours for the voucher program are included in this application (2577-0259).

⁴ This form is included in another PRA (OMB 2501-0032). The additional burden hours for the voucher program are included in this application (2506-0112).

Average Hours per Response: 1.24.

Total Estimated Burdens Hours: 2,164,096.50.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Laura Miller-Pittman,
Chief Office of Policy, Programs and
Legislative Initiatives.

[FR Doc. 2022-23357 Filed 10-25-22; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[XXXD5198NI DS6110000
DNINR0000.000000 DX61104]

Notice of Teleconference Meeting of the Exxon Valdez Oil Spill Public Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Meeting notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, the

Department of the Interior, Office of the Secretary, is announcing that the *Exxon Valdez Oil Spill (EVOS) Public Advisory Committee (PAC)* will meet by video teleconference as noted below.

DATES: The virtual meeting will be held on November 29, 2022, at 9 a.m. to 12 p.m. Alaska time (AKT).

ADDRESSES: The meeting will be virtual only using the Zoom meeting platform. To view a tutorial on how to join a Zoom meeting, please go to <https://support.zoom.us/hc/en-us/articles/201362193-How-Do-I-Join-A-Meeting->.

The video feature will be turned off for all attendees except for the EVOS PAC, EVOS Trustee Council staff, presenters, and speakers during public comment to limit bandwidth use and maximize connectivity during the meeting. Please remain muted until you are called upon to speak.

Connect to meeting using Zoom link (video and audio): <https://us06web.zoom.us/j/82974590878>.

Meeting ID: 829 7459 0878.

Follow the prompts; you will be asked if you would like to join audio with internet (your device microphone/

speaker) or use a telephone (follow the prompts accordingly).

Connect to the meeting via telephone (audio only, no video):

Dial any of the following numbers:

(253) 215-8782
 (669) 900-6833
 (719) 359-4580
 (346) 248-7799
 (669) 444-9171
 (386) 347-5053
 (564) 217-2000
 (646) 931-3860
 (929) 205-6099
 (301) 715-8592
 (309) 205-3325
 (312) 626-6799

Enter the Meeting ID 829 7459 0878 #; there is no participant code, and use *6 to mute. Please check the EVOS Trustee Council website for updates regarding the virtual meeting at <http://evostc.state.ak.us/>.

FOR FURTHER INFORMATION CONTACT: Grace Cochon, Department of the Interior, Office of Environmental Policy and Compliance, telephone number: (907) 786-3620; email: grace_cochon@ios.doi.gov.

SUPPLEMENTARY INFORMATION: The EVOS PAC was created pursuant to paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America v. State of Alaska*, Civil Action No. A91-081 CV. The EVOS PAC advises the EVOS Trustee Council on decisions relating to the allocation of settlement funds for restoration, monitoring, and other activities related to the oil spill.

The EVOS PAC meeting agenda will include discussion of the Delta Plan to close the research funding gap through FY26. An opportunity for public comments will be provided. The final agenda and materials for the meeting will be posted on the EVOS Trustee Council website at <http://evostc.state.ak.us>. All EVOS PAC meetings are open to the public.

Public Input

Interested persons may choose to make oral comments at the meeting during the designated time. Depending on the number of people wishing to comment and the time available, the amount of time for oral comments may be limited. Interested parties should contact the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**) for advance placement on the public speaker list for this meeting.

Meeting Accessibility/Special Accommodations: Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the (see **FOR FURTHER INFORMATION CONTACT**) section of this notice at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

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.

Submitting Written Information or Questions

Interested members of the public may submit relevant information or questions for the EVOS PAC to consider during the public meeting. Written statements must be received by November 21, 2022, so that the information may be made available to the EVOS PAC for their consideration prior to this meeting. Written statements must be supplied to the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**) and/or in writing in the following formats: A hard copy with original signature and/or an electronic copy (acceptable file formats are Adobe Acrobat PDF, MS Word, or rich text file).

Public Disclosure of Comments

Before including your address, phone number, email address, or other personal identifying information in your comments, please be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. appendix 2.

Laura A. Fleming,

Deputy Director, Office of Environmental Policy and Compliance.

[FR Doc. 2022-23310 Filed 10-25-22; 8:45 am]

BILLING CODE 4334-63-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[212.LLIDT02000.L12200000.JX0000.241A0.4500154358]

Notice of Availability of the Cedar Fields Proposed Resource Management Plan Amendment and Final Environmental Impact Statement for the Monument Resource Management Plan, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared the Cedar Fields Proposed Resource Management Plan (RMP) Amendment and Final Environmental Impact Statement (EIS) for the Monument Resource Management Plan, and by this notice is announcing the start of a 30-day protest period of the Proposed RMP Amendment.

DATES: This notice announces the beginning of a 30-day protest period to the BLM on the Proposed RMP Amendment. Protests must be postmarked or electronically submitted on the BLM's ePlanning site by November 25, 2022.

ADDRESSES: The Proposed RMP Amendment/Final EIS is available on the BLM ePlanning project website at <https://eplanning.blm.gov/eplanning-ui/project/36660/510>. Documents pertinent to this proposal may be examined online at <https://eplanning.blm.gov/eplanning-ui/project/36660/510> and at the Burley Field Office 15 East 200 South, Burley ID, 83318.

Instructions for filing a protest with the BLM for the Cedar Fields Proposed RMP Amendment and Final EIS for the Monument RMP can be found at: <https://www.blm.gov/programs/planning-and-nepa/public-participation/filing-a-plan-protest> and at 43 CFR 1610.5-2.

FOR FURTHER INFORMATION CONTACT: Terrell Dobis, Planning and Environmental Coordinator, Twin Falls District Office, telephone (208) 735-2075; address BLM Twin Falls District Office, 2878 Addison Ave. E, Twin Falls, ID 83301; email tdobis@blm.gov. Individuals in the United States who are deaf, deaf, blind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for

contacting Ms. Dobis. 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 Cedar Fields Proposed RMP Amendment would change the existing Monument RMP.

The Cedar Fields Proposed RMP Amendment/Final EIS analyzes management options for the BLM-managed portions of the Cedar Fields Project Area (Project Area) that were not evaluated in the EIS for the 1985 Monument RMP. Its purpose is to consider a range of reasonable alternatives for managing recreation use while providing cultural resource protection on BLM-managed lands and adjacent U.S. Bureau of Reclamation-managed lands in the Project Area. This will be done in a manner that maintains the values identified in the 1985 Monument RMP and the 1999 American Falls Archaeological District (AFAD) listing on the National Register of Historic Places. The five alternatives range from reducing the area available for rock climbing and off-highway vehicle use to limiting the type of rock climbing allowed in the AFAD.

The BLM initiated the land use planning process on August 23, 2011, through a Notice of Intent published in the **Federal Register** (76 FR 52687), which notified the public of a formal scoping period and solicited public participation in the planning process. The BLM held three scoping meetings in September and October 2011 in Pocatello, Burley, and American Falls, Idaho. Based on public input gathered during initial scoping and from stakeholders throughout the process, the BLM formulated the five alternatives considered and analyzed in the Cedar Fields Proposed RMP Amendment/Final EIS.

Comments received on the Cedar Fields Draft RMP Amendment/Draft EIS were considered and incorporated as appropriate into the Proposed RMP Amendment/Final EIS. Public comments resulted in the addition of clarifying text but did not significantly change proposed decisions.

Protest of the Proposed RMP Amendment

BLM planning regulations state that any person who participated in the preparation of the RMP and has an interest that will or might be adversely affected by approval of the Proposed RMP Amendment may protest its approval to the BLM. Protest on the

Proposed RMP Amendment constitutes the final opportunity for administrative review of the proposed land use planning decisions prior to the BLM adopting an approved RMP Amendment. Instructions for filing a protest with the BLM regarding the Proposed RMP Amendment may be found online (see **ADDRESSES**). All protests must be in writing and mailed to the appropriate address or submitted electronically through the BLM ePlanning project website (see **ADDRESSES**). Protests submitted electronically by any means other than the ePlanning project website or by fax will be invalid unless a hard copy of the protest is also submitted. The BLM will render a written decision on each protest. The protest decision shall be the final decision of the Department of the Interior. Responses to valid protest issues will be compiled and documented in a Protest Resolution Report made available following the protest resolution online at: <https://www.blm.gov/programs/planning-and-nepa/public-participation/protest-resolution-reports>. Upon resolution of protests, the BLM will issue a Record of Decision and Approved RMP.

Before including your phone number, email address, or other personal identifying information in your protest, you should 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 protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2; 43 CFR 1610.5)

Karen Kelleher,
BLM Idaho State Director.

[FR Doc. 2022–23241 Filed 10–25–22; 8:45 am]

BILLING CODE 4310-GG-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1320]

Certain Universal Golf Club Shaft and Golf Club Head Connection Adaptors, Certain Components Thereof, and Products Containing the Same; Notice of a Commission Determination Not to Review an Initial Determination Finding Respondent Top Golf in Default; Request for Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined not to review an initial determination (“ID”) (Order No. 7) of the presiding administrative law judge (“ALJ”), finding respondent Top Golf Equipment Co. Limited (“Top Golf”) in default. The Commission requests written submissions from the parties, interested government agencies, and other interested persons on the issues of remedy, the public interest, and bonding, under the schedule set forth below.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2392. 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 June 27, 2022, based on a complaint filed on behalf of Club-Conex, LLC of Scottsdale, Arizona. 87 FR 38179 (Jun. 27, 2022). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain universal golf club shaft and golf club head connection adaptors, certain components thereof, and products containing the same by reason of the infringement of certain claims of U.S. Patent No. 7,857,709 (“the ’709 patent”) and U.S. Patent No. 8,562,454 (“the ’454 patent”). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The Commission’s notice of investigation named Top Golf of China as the sole respondent. *Id.* The Office of Unfair Import Investigations (“OUII”) is participating in the investigation. *Id.*

On August 16, 2022, the ALJ issued Order No. 6 pursuant to Commission Rule 210.16, 19 CFR 210.16, directing respondent Top Golf to show cause why it should not be found in default and

why judgment should not be rendered against it for failing to respond to the complaint and notice of investigation. Order No. 6 directed Top Golf to make any showing of good cause by no later than August 31, 2022. No party responded to Order No. 6.

On September 26, 2022, the ALJ issued the subject ID finding Top Golf in default pursuant to Commission Rule 210.16. No petitions for review were filed.

The Commission has determined not to review the subject ID. Respondent Top Golf has been found in default.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia*, (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States; and/or (2) a cease and desist order that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (Dec. 1994).

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and a cease and desist order would have on: (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. See Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United

States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding.

In its initial submission, Complainant is also requested to identify the remedy sought and Complainant and OUII are requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to provide the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on November 3, 2022. Reply submissions must be filed no later than the close of business on November 10, 2022. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1320) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary, (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable

Administrative Protective Order. A redacted non-confidential version of the document must also be filed with the Commission and served on any parties to the investigation within two business days of any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on October 20, 2022.

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: October 20, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022-23243 Filed 10-25-22; 8:45 am]

BILLING CODE 7020-02-P

NATIONAL CREDIT UNION ADMINISTRATION

Submission for OMB Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The National Credit Union Administration (NCUA) will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice.

DATES: Comments should be received on or before November 25, 2022 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Copies of the submission may be obtained by contacting Dawn Wolfgang at (703) 548–2279, emailing PRAComments@ncua.gov, or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0182.

Type of Review: Extension of a currently approved collection.

Title: Bank Conversions and Mergers, 12 CFR part 708a.

Abstract: Part 708a of NCUA’s Rules and Regulations covers the conversion of federally insured credit unions (credit unions) to mutual savings banks (MSBs) and mergers of credit unions into both mutual and stock banks (banks). Part 708a requires credit unions that intend to convert to MSBs or merge into banks to provide notice and disclosure of their intent to convert or merge to their members and NCUA, and to conduct a membership vote. In addition, Subpart C requires credit unions that intend to merge into banks to determine the merger value of the credit union. The information collection allows NCUA to ensure compliance with statutory and regulatory requirements for conversions and mergers and ensures that members of credit unions have sufficient and accurate information to exercise an informed vote concerning a proposed conversion or merger.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 391.

By Melane Conyers-Ausbrooks, Secretary of the Board, the National Credit Union Administration, on October 20, 2022.

Dated: October 21, 2022.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2022–23268 Filed 10–25–22; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collections

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The National Credit Union Administration (NCUA), as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the following extensions of a currently approved collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before December 27, 2022 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Suite 6032, Alexandria, Virginia 22314; email at PRAComments@NCUA.gov. Given the limited in-house staff because of the COVID–19 pandemic, email comments are preferred.

FOR FURTHER INFORMATION CONTACT:

Address requests for additional information to Dawn Wolfgang at the address above or telephone 703–548–2279.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0032.

Type of Review: Extension currently approved collection.

Title: Records Preservation, 12 CFR part 749.

Abstract: Part 749 of the NCUA regulations directs each credit union to have a vital records preservation program that includes procedures for maintaining duplicate vital records at a location far enough from the credit union’s offices to avoid the simultaneous loss of both sets of records in the event of disaster. Part 749 also requires the program be in writing and include emergency contact information for employees, officials, regulatory offices, and vendors used to support vital records.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated No. of Respondents: 4,853.

Estimated No. of Responses per

Respondent: 12.

Estimated Total Annual Responses: 58,236.

Estimated Hours per Response: 2.

Estimated Total Annual Burden

Hours: 116,472.

Reason for Change: The number of respondents have been updated to reflect the current number of FICUs of the June call report to 4,853.

OMB Number: 3133–0052.

Title: Federal Credit Union Bylaws, Appendix A to Part 701.

Type of Review: Extension of a currently approved collection.

Abstract: The FCU Act and Bylaws require new and current FCU to prepare and maintain documents, such as organization certificate, charter, notices, meeting minutes, and election results, and notify the NCUA Board of certain changes. FCU’s use the information they collect and maintain pursuant to their bylaws in their operations and to provide services to members. NCUA uses the information both to regulate the safety and soundness of FCU and protect the National Credit Union Share Insurance Fund.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated No. of Respondents: 3,235.

Estimated No. of Responses per

Respondent: 355.

Estimated Total Annual Responses:

1,147,877.

Estimated Burden Hours per

Response: 0.35.

Estimated Total Annual Burden

Hours: 399,298.

Reason for change: Adjustments have been made to remove the one-time burden for the initial posting of their bylaws by FCU’s to their website, for a reduction of 3,235 burden hours.

OMB Number: 3133–0114.

Title: Payments on Shares by Public Units and Nonmembers, 12 CFR 701.32.

Type of Review: Extension of a currently approved collection.

Abstract: Section 107(6) of the Federal Credit Union Act (Act) and § 701.32 of the NCUA Rules and Regulations (12 CFR part 701) may receive from public units and political subdivisions and nonmember credit unions, payments on shares. Limitations on nonmember and public unit deposits in federal credit unions (FCUs) is 50 percent of the difference of paid-in and unimpaired capital and surplus and any public unit and nonmember shares, as measured at the time of acceptance of each public unit or nonmember share. This collection of information is necessary to protect the National Credit Union Share Insurance Fund (NCUSIF).

Affected Public: Private Sector: Not-for-profit institutions.

Estimated No. of Respondents: 50.

Estimated No. of Responses per

Respondent: 1.

Estimated Total Annual Responses:

50.

Estimated Burden Hours per

Response: 2.

Estimated Total Annual Burden

Hours: 100.

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. The

public is invited to submit comments concerning: (a) whether the collection of information is necessary for the proper execution of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Melane Conyers-Ausbrooks, Secretary of the Board, the National Credit Union Administration, on October 20, 2022.

Dated: October 21, 2022.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2022-23267 Filed 10-25-22; 8:45 am]

BILLING CODE 7535-01-P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register**, and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAmain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf

(TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Copies of the submission may be obtained by calling 703-292-7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number, and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: "National Science Foundation Proposal/Award Information—NSF Proposal and Award Policies and Procedures Guide."

OMB Approval Number: 3145-0080.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to reinstate with revisions an information collection for three years. The primary purpose of this reinstatement is outlined below.

Proposed Project: The National Science Foundation Act of 1950 at 42 U.S.C. 1862(a)(1) allows the National Science Foundation to issue "other arrangements" to ". . . support scientific, engineering, and educational activities and to appraise the impact of research upon industrial development and upon the general welfare." Issuing other arrangements necessarily includes preparing and issuing requests for other arrangement proposals. Because these are unique to NSF's mission, we are seeking to reinstate this information collection.

Use of the Information: Requests for Other Arrangement Proposals (RFOAPs) are used to competitively solicit proposals in response to NSF science and engineering needs. Impact will be on those individuals or organizations who elect to submit proposals in response to an RFOAP. Information gathered will be evaluated in light of NSF other arrangement requirements to determine who will be awarded an "other arrangement."

The NSF Act of 1950, as amended, 42 U.S.C. 1870, Sec. II, states that NSF has the authority to:

"(c) enter into contracts or *other arrangements*, or modifications thereof, for the carrying on, by organizations or individuals in the United States and foreign countries, including other government agencies of the United States and of foreign countries, of such

scientific or engineering activities as the Foundation deems necessary to carry out the purposes of this Act, and, at the request of the Secretary of Defense, specific scientific or engineering activities in connection with matter relating to international cooperation or national security, and, when deemed appropriate by the Foundation, such contracts or other arrangements or modifications thereof, may be entered into without legal consideration, without performance or other bonds and without regard to section 5 of title 41, U.S.C."

Where NSF chooses to issue an "other arrangement," NSF must receive and evaluate proposals to support NSF's program requirements.

Burden on the Public: The Foundation estimates that an average of 250 hours will be expended for each proposal submitted. An estimated 70 respondents are expected to answer a request for "other arrangements" during the course of one year for a total of 17,500 burden hours annually.

Comments: Comments are invited on (a) whether the proposed 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 proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: October 17, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2022-23305 Filed 10-25-22; 8:45 am]

BILLING CODE 7555-01-P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following meeting:

NAME AND COMMITTEE CODE: Advisory Committee for Polar Programs (1130).

DATE AND TIME: November 21, 2022; 1 p.m. to 2 p.m. EST.

PLACE: National Science Foundation, 2415, Eisenhower Avenue, Alexandria, VA 22314 | Virtual via Zoom.

A virtual link will be posted on the AC OPP website at: <https://nsf.gov/geo/opp/advisory.jsp>.

TYPE OF MEETING: Open.

CONTACT PERSON: Sara Eckert, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Ave., Alexandria, VA 22314; Contact: (703) 292-7899, seckert@nsf.gov.

PURPOSE OF MEETING: OPP advisory committee review of Antarctic Research Vessel (ARV) Science Advisory Subcommittee (SASC) report following the ARV's Interim Design Review #3.

AGENDA: Review and evaluate the SASC report, and vote on whether the report should be forwarded to the NSF Office of Polar Programs.

Dated: October 20, 2022.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2022-23235 Filed 10-25-22; 8:45 am]

BILLING CODE 7555-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023-22 and CP2023-21; MC2023-23 and CP2023-22; MC2023-24 and CP2023-23]

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:* October 28, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each 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 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

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

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), 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 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s):* MC2023-22 and CP2023-21; *Filing Title:* USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 9 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 20, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130

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).

through 3040.135, and 39 CFR 3035.105; *Public Representative:* Nikki Brendemuehl; *Comments Due:* October 28, 2022.

2. *Docket No(s):* MC2023-23 and CP2023-22; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 72 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 20, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jethro Dely; *Comments Due:* October 28, 2022.

3. *Docket No(s):* MC2023-24 and CP2023-23; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 222 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 20, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jethro Dely; *Comments Due:* October 28, 2022

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2022-23287 Filed 10-25-22; 8:45 am]

BILLING CODE 7710-FW-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023-21 and CP2023-20]

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:* October 27, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION: Table of Contents

- I. Introduction

II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each 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 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

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

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), 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 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s)*: MC2023–21 and CP2023–20; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 71 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 19, 2022; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130

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).

through 3040.135, and 39 CFR 3035.105; *Public Representative*: Jethro Dely; *Comments Due*: October 27, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–23224 Filed 10–25–22; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 26, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 21, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 73 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2023–25, CP2023–24.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–23321 Filed 10–25–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 26, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 20, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 222 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2023–24, CP2023–23.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–23324 Filed 10–25–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 26, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 19, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 71 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2023–21, CP2023–20.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–23317 Filed 10–25–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 26, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 20, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 72 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2023–23, CP2023–22.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–23319 Filed 10–25–22; 8:45 am]

BILLING CODE 7710–12–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Request for Information; Clinical Research Infrastructure and Emergency Clinical Trials

AGENCY: Office of Science and Technology Policy (OSTP).

ACTION: Notice of Request for Information (RFI) on clinical research infrastructure and emergency clinical trials.

SUMMARY: In accordance with the 2022 National Biodefense Strategy for Countering Biological Threats, Enhancing Pandemic Preparedness, and Achieving Global Health Security (National Biodefense Strategy) and the American Pandemic Preparedness Plan (AP3), the White House Office of Science and Technology Policy (OSTP), in partnership with the National Security Council (NSC), is leading efforts to ensure that coordinated and large-scale clinical trials can be efficiently carried out across a range of institutions and sites to address outbreaks of disease and other emergencies. Efforts in this area could include the establishment of a U.S.-level governance structure and outreach to a wide range of institutions, clinical trial networks, and other potential trial sites that can participate in emergency research, both domestically and internationally. A further goal of this emergency clinical trials initiative is to

support the expansion of clinical research into underserved communities, and increase diversity among both trial participants and clinical trial investigators. Building U.S. capacity to carry out emergency clinical trials will enlarge and strengthen the U.S. clinical trials infrastructure overall.

DATES: Interested persons and organizations are invited to submit comments on or before 5 p.m. ET on December 27, 2022.

ADDRESSES: Interested individuals and organizations should submit comments electronically to emergencyclinicaltrials@ostp.eop.gov and include “Emergency Clinical Trials RFI” in the subject line of the email. Due to time constraints, mailed paper submissions will not be accepted, and electronic submissions received after the deadline cannot be ensured to be incorporated or taken into consideration.

Instructions

Response to this RFI is voluntary. Each responding entity (individual or organization) is requested to submit only one response. Please feel free to respond to one or as many prompts as you choose.

Please be concise with your submissions, which must not exceed 8 pages in 12-point or larger font, with a page number on each page. Responses should include the name of the person(s) or organization(s) filing the comment.

OSTP invites input from all stakeholders, including members of the public, representing all backgrounds and perspectives. In particular, OSTP is interested in input from research institutions, clinical trialists, health care providers interested in clinical research, contract research organizations (CROs) and other clinical trial service providers, pharmaceutical and biotechnology companies, and community health care organizations. *Please indicate which of these stakeholder types, or what other description, best fits you as a respondent.* If a comment is submitted on behalf of an organization, the individual respondent's role in the organization may also be provided on a voluntary basis.

Comments containing references, studies, research, and other empirical data that are not widely published should include copies or electronic links of the referenced materials. No business proprietary information, copyrighted information, or personally identifiable information should be submitted in response to this RFI. Please

be aware that comments submitted in response to this RFI may be posted on OSTP's website or otherwise released publicly.

In accordance with FAR 15.202(3), responses to this notice are not offers and cannot be accepted by the Federal Government to form a binding contract. Additionally, those submitting responses are solely responsible for all expenses associated with response preparation.

FOR FURTHER INFORMATION CONTACT: For additional information, please direct questions to Grail Sipes at 202–456–4444 or emergencyclinicaltrials@ostp.eop.gov.

SUPPLEMENTARY INFORMATION:

Background: Currently, the U.S. clinical trials infrastructure is not well prepared to carry out coordinated, large-scale clinical research in the event of an outbreak of infectious disease or other public health emergency. As was seen in the initial stages of the COVID–19 outbreak, different institutions and networks tend to implement their own research protocols and capture and store their own data. The lack of a coordinated approach to clinical trials research in emergency settings has slowed the development of actionable information, which has in turn delayed the availability of vaccines, therapeutics, and diagnostics; and may also impede the tracking of the outbreaks themselves. Without some mechanism to coordinate and organize research on a larger scale in an emergency setting, researchers and decisionmakers are left with a series of relatively small, often inconclusive studies, and assembling data for larger-scale analysis is challenging. In addition, and very significantly, our current approach to clinical research in the emergency setting excludes many patients and health care providers in underserved areas, and has contributed to a lack of diversity among clinical trial participants and among the investigators who lead clinical trials.

The National Biodefense Strategy calls for the U.S. government to maintain and build upon the domestic clinical trials infrastructure, with the addition of international sites as appropriate, to ensure readiness to “expedite the evaluation of safe and effective vaccines, therapeutics, and diagnostics for all segments of the population during a nationally or internationally significant biological incident.”¹ In addition, establishing an

¹ 2022 National Biodefense Strategy for Countering Biological Threats, Enhancing Pandemic Preparedness, and Achieving Global Health Security. Continued

emergency clinical trials governance structure, developing the terms of an Emergency Master Agreement to accelerate response, and identifying a network of available sites are among the key goals towards implementation of AP3.² In line with these provisions, OSTP (in partnership with the NSC and other EOP components) is leading an effort to ensure that the U.S. can carry out more coordinated and potentially larger-scale clinical trials in emergency situations. These emergency situations could include emerging outbreaks with epidemic or pandemic potential, even in advance of any declaration of a public health emergency (PHE) under section 319 of the Public Health Services Act. By strengthening U.S. capacity to address such outbreaks and other biological incidents, OSTP's emergency clinical trials effort also aims to build and enhance U.S. clinical research capacity overall.

We seek comment below on potential governance models for the emergency clinical trials effort. One possible approach would include a centralized U.S.-level structure drawing membership from Federal agencies with relevant expertise. Governance functions might include determining when coordinated and potentially large-scale clinical research is needed, including research on countermeasures, to address outbreaks of disease or other biological incidents. As noted above, research on an outbreak or incident may sometimes be needed in advance of any section 319 PHE declaration; we solicit comments below on the criteria that should be applied to determine when emergency clinical research may be needed, and how that determination might be communicated to institutions and clinical trial networks that can participate in carrying out the research.

Another governance function might be to oversee the development of emergency clinical trial protocols, in coordination with stakeholders external to the U.S. government. The trials and other studies needed in emergency settings could vary in complexity. Some might be relatively simple studies designed to measure the scope of an outbreak or the course of a disease, in which the data captured from patients might overlap to a large extent with the data that would be gathered in the course of treatment. Other studies, including those designed to evaluate the efficacy and safety of investigational

vaccines, therapeutics or diagnostics, would be more complex and could require more or different data elements from those that would be captured in the course of standard medical treatment. In some cases, study designs used in connection with prior outbreaks could provide useful models for developing protocols to address a new emergency. We request comment below on how a governing entity could best work with stakeholders to develop emergency clinical trial protocols.

We also seek comment below on how emergency clinical trial data should be managed to facilitate researchers' access to data and the analysis of results across a range of participating sites. One potential model would be to collect data from emergency clinical trials in a centralized data repository or small set of repositories, with a central biorepository for biospecimens collected during trials.

In order to ensure that coordinated, large-scale clinical trials can be carried out in the event of an emergency, OSTP seeks comment on how best to identify institutions and networks that have an interest in participating in these studies, and how to create or enhance incentives for them to participate wherever possible. In particular, OSTP seeks comment on how to ensure that trial sites in underserved areas are included, and how to increase diversity both among study participants and among the investigators who lead trials to completion. We also solicit feedback below on how to identify an adequate number and distribution of clinical trial sites, including trial sites located outside of the U.S. This could include sites that may currently be affiliated with a U.S.-based trial network, as well as other international sites. We would appreciate receiving comments on how the domestic emergency clinical trials effort overall can be designed to coordinate with international research and preparedness initiatives.

We are aware that in advance of an outbreak or other emergency, there may be value in having networks and sites begin carrying out clinical trials to create a "warm base" of clinical research capacity. "Warm base" is a term used to refer to studies that not only gather data under a particular clinical research protocol, but also serve the function of keeping trial sites in a state of readiness to undertake additional or future research. "Warm base" studies could address infectious diseases such as influenza, or other medical conditions that are of interest to researchers and communities, such as cancer and heart disease.

To participate in a clinical trial, a site needs to have staff familiar with applicable regulatory requirements and with the appropriate procedures for collecting data and submitting it to a study sponsor. When "warm base" research is initiated, site staff have an opportunity to gain familiarity with these procedures. "Warm base" research is a way to expand the number of sites that are able to participate in clinical trial research, which builds U.S. clinical trial capacity overall while enlarging the network of sites that can be available to carry out emergency clinical trial research when the need arises. We request comment below on a variety of issues related to "warm base" research, including disease areas that might be targeted and how "warm base" research can be implemented to provide targeted training for trial sites, as appropriate to staff roles. Given OSTP's goals of increasing diversity among clinical trial participants and among investigators, and of increasing capacity for clinical research in underserved areas, we are particularly interested in how those goals might be served through the implementation of "warm base" research.

In recent emergency settings, we have seen that the launch of clinical trials across separate institutions or networks can be delayed by the process of coming to agreement on certain key issues, such as data sharing and the publication of results. We seek comment below on the possibility of developing a framework of key terms that can be developed in advance of an emergency and integrated into clinical trial agreements for emergency clinical trials when needed. For purposes of this RFI, we refer to such a framework as an "Emergency Master Agreement." The goal of an Emergency Master Agreement would be to shorten the time it takes to get emergency clinical trial research started across a range of sites, by facilitating agreement on key terms in advance. Certain basic terms could be relevant for any coordinated or large-scale emergency clinical trial, such as provisions that allow data gathered under common protocols from a range of sites to be collected and made readily accessible to researchers beyond the institutions where the trial was conducted. Other basic terms might include central management of biospecimens and the use of a single Institutional Review Board (IRB). In addition to these basic, core terms, an Emergency Master Agreement could include additional terms that might only be needed for certain types of study protocols (e.g., if an investigational

Preparedness, and Achieving Global Health Security (October 2022), section 4.1.4.

²First Annual Report on Progress Towards Implementation of the American Pandemic Preparedness Plan (September 2022), at 22–23.

agent is being tested). We solicit input below on a range of issues related to the potential creation of an Emergency Master Agreement.

From a technical perspective, OSTP is also seeking input on how best to operationalize both protocol distribution and data capture in a forthcoming RFI.

Information Requested: Respondents may provide information for one or as many topics below as they choose.

1. Governance for emergency clinical trials response.

a. Descriptions of models that could be used to establish a U.S.-level governance structure for emergency clinical trials. As noted above, one possible approach would be a centralized U.S.-level structure drawing membership from Federal agencies with relevant expertise.

b. Criteria that should be applied in determining when coordinated and potentially large-scale clinical research is needed to address an outbreak of disease or other biological incident, including signals or indicators that should be taken into account.

c. Once a need for emergency clinical research is determined, factors relating to the outbreak or incident (*e.g.*, scope, location, severity) that should be considered in determining what types of studies are needed.

d. Methods for communicating the decision to begin emergency clinical research to institutions and clinical trial networks that can participate in carrying out the research.

e. Mechanisms for tracking institutions, networks and sites that might be able to participate in emergency research, to ensure adequate potential for enrollment and adequate geographic coverage, domestically and internationally.

i. Criteria for establishing a target number and location of sites needed to support clinical trials in case of emergency.

f. Procedures whereby the U.S. Government, together with external stakeholders, could oversee the development of clinical trial protocols and, where appropriate, the selection of investigational agents. It would be particularly helpful to get input on whether there is a role for public-private partnerships in this context.

g. Best practices, including “quality by design” principles, for designing trials so that they capture the data needed without unnecessary complexity that can complicate execution.

h. Best practices for designing trials that can enroll vulnerable populations, such as the pediatric population, as needed in particular circumstances.

i. Optimal ways to manage interactions with domestic and international regulatory bodies.

j. Appropriate entities to handle projecting and tracking enrollment at study sites, monitoring the progress of clinical trials, and data management; whether existing entities could be engaged or adapted to carry out these functions for coordinated, large-scale emergency clinical trials.

k. Appropriate ways to structure a data repository and a biorepository for emergency clinical trial data and specimens. As noted above, one potential model would be to collect data and biospecimens in centralized repositories. We would also appreciate input on whether existing entities could be engaged or adapted to handle these repository functions.

l. Criteria that should be applied to govern researchers’ access to emergency clinical trial research data.

2. Identifying and Incentivizing Research Institutions and Networks; Building Diversity and Equity.

a. Methods for identifying institutions and sites that may have an existing interest in or familiarity with emergency clinical trial research. This might include those that currently receive government funding, those with a focus on infectious disease research, and/or those that have worked with CROs.

b. Effective ways to increase diversity among study participants and investigators, and to expand clinical research sites into underserved areas. It would be helpful to get input on whether and how the following approaches could be useful:

i. Community outreach.

ii. Use of decentralized clinical trial (DCT) design elements, or other innovative approaches such as trials conducted at the point of care.

iii. Use of technological innovations, such as digital health technologies (DHTs), that would allow remote participation or otherwise limit the need for participants to travel.

iv. Building on existing programs that target diversity in clinical research, including initiatives within research institutions and public-private collaborations.

v. Leveraging the networks and community access of retail chains, including retail pharmacy chains.

vi. Leveraging community-based care networks such as Practice-Based Research Networks (PBRNs) and Federally Qualified Health Centers (FQHCs).

c. Incentives that can be identified or enhanced to encourage participation in emergency clinical trial research.

i. As described above and in the forthcoming RFI on data capture for Emergency Clinical Trials and Data Collection Pilot, we are seeking information on how to create a pilot program enabling clinical trial data collection across a wide variety of trial sites that is easy for health care providers to use and can be scaled up for use in emergency research settings. It would be helpful to receive comments on whether the opportunity to participate in such a pilot could create an incentive for institutions and sites to participate in emergency clinical research studies.

d. Once interested institutions or networks are identified,

i. Effective ways to recognize and communicate their commitment to emergency clinical research to the health care community and to the public.

ii. Information that should be collected from interested sites, for example by means of a short questionnaire to assess characteristics of patient population, level of training that would be required, etc.

e. The best ways to provide training in clinical trial practice (including regulatory requirements such as Good Clinical Practice (GCP)) where needed, targeted as appropriate to staffs’ roles, including staff at sites that may not have participated in clinical trials previously.

3. “Warm Base” Research.

a. Disease areas that should be targeted in protocols for “warm base” clinical research. It would be helpful to get comments on:

i. Disease areas that are most relevant to communities, including underserved communities and those that may have little experience with participating in clinical research.

ii. The extent to which “warm base” research should target infectious disease, versus other conditions such as cancer, heart disease, or rare disease; and the size or scope of site networks that would be needed to study various conditions.

b. How “warm base” research could best be implemented to provide training to sites that are inexperienced with clinical trial research, and to create a basic level of surge capacity at the staff level for emergency clinical trial research. We would appreciate input on other training mechanisms that could be used as well.

c. Whether “warm base” research could be appropriately supported as

i. A demonstration project with commercial partnership.

ii. A public-private partnership.

iii. An agency-funded program.

4. Emergency Master Agreement.

a. Basic terms that might form part of an Emergency Master Agreement, including the following.

i. *Data collection and use*, including ownership of the study data and biospecimens; entities that have the right to collect, store, and use the data and specimens; banking of biospecimens for further research.

ii. *Publication/accessibility of trial data*, including availability of data prior to publication and publication rights.

iii. *Use of a single IRB* across all participating trial sites. As a related point, it would be helpful to get feedback on whether an IRB should be established that is primarily devoted to emergency clinical trials.

b. Additional terms for an Emergency Master Agreement that could be added or modified depending on the complexity of the protocol, and on other factors such as whether a private sector sponsor or an investigational agent is involved. It would be helpful to have input on terms such as the following:

- i. Confidentiality.
- ii. Patents/intellectual property.
- iii. Control of study drug.
- iv. Indemnification.
- v. Compensation for injury.

c. The best ways to get the input of research institutions, clinical researchers, community groups, and other key stakeholders on the content of Emergency Master Agreement terms.

d. Approaches to facilitating stakeholders' understanding and adoption of the Emergency Master Agreement framework.

i. Any models for such adoption in related areas, such as the NCATS SMART IRB Platform.

5. *Identifying viable technical strategies for data capture; gathering information about a potential data capture pilot*. This topic will be the subject of a separate RFI on data capture.

6. *International coordination and capacity*.

a. Designing the overall domestic emergency clinical trials effort in a way that coordinates with international clinical research efforts. It would be helpful to receive comments on how to facilitate the participation of foreign-run clinical trial networks and other foreign bodies in coordinated, large-scale emergency clinical trial protocols initiated by the U.S.

b. Methods for identifying international sites that might be available to participate in emergency clinical trials, including international sites associated with U.S.-run networks as well as foreign-run international sites.

c. Overcoming regulatory barriers that delay expansion of U.S. trials into

international sites, or otherwise interfere with clinical research across borders.

d. The best way to track the clinical trial research initiatives being pursued under the G7 Trials Charter and Quad leaders' commitment to pandemic preparedness, and to harmonize U.S. emergency clinical trials efforts with these international initiatives.

Dated: October 19, 2022.

Stacy Murphy,

Operations Manager.

[FR Doc. 2022-23110 Filed 10-25-22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96113; File No. SR-OCC-2021-802]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Partial Amendments No. 1, 2, 3, and 4 and Notice of No Objection to Advance Notice, as Modified by Partial Amendments No. 1, 2, 3, and 4 Relating to OCC's Adoption of Cloud Infrastructure for New Clearing, Risk Management, and Data Management Applications

October 20, 2022.

I. Introduction

On October 8, 2021, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") advance notice SR-OCC-2021-802 ("Advance Notice") pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 ("Clearing Supervision Act"),¹ and Rule 19b-4(n)(1)(i)² under the Securities Exchange Act of 1934 ("Exchange Act"),³ in connection with a proposed adoption of third-party-hosted cloud infrastructure (also generally referred to as the "Cloud") for OCC's new clearing, risk management, and data management applications. On November 2, 2021, the Commission published notice of the Advance Notice in the **Federal Register** to solicit public comment and to extend the review period for the Advance Notice.⁴ The Commission has received

¹ 12 U.S.C. 5465(e)(1).

² 17 CFR 240.19b-4(n)(1)(i).

³ 15 U.S.C. 78a et seq.

⁴ Securities Exchange Act Release No. 93433 (Oct. 27, 2021), 86 FR 60503 (Nov. 2, 2021) (File No. SR-OCC-2021-802) ("Notice of Filing").

no comments regarding the changes proposed in the Advance Notice.

On November 16, 2021, OCC filed Partial Amendment No. 1 to the Advance Notice.⁵ On December 13, 2021, OCC filed Partial Amendment No. 2 to the Advance Notice.⁶ On July 1, 2022, OCC filed Partial Amendment No. 3 to the Advance Notice.⁷ On September 12, 2022, OCC filed Partial Amendment No. 4 to the Advance Notice.⁸

On January 27, 2022, the Commission requested that OCC provide it with additional information regarding the Advance Notice, pursuant to Section 806(e)(1)(D) of the Clearing Supervision Act,⁹ which tolled the Commission's period of review of the Advance Notice until 120 days¹⁰ from the date the requested information was received by the Commission.¹¹ The Commission received OCC's response to the Commission's request for additional information on March 3, 2022.¹² On

⁵ Partial Amendment No. 1 appended an Exhibit 2 to documents previously filed as part of the Advance Notice on October 8, 2021. The Exhibit 2 consists of a communication from OCC to its Clearing Members concerning the changes discussed in the Advance Notice. Partial Amendment No. 1 did not change the purpose of or basis for the Advance Notice.

⁶ Partial Amendment No. 2 replaced confidential Exhibits 3f and 3g previously filed as part of the Advance Notice on October 8, 2021 with revised confidential Exhibits 3f and 3g and added new confidential Exhibit 3gg to the Advance Notice. Exhibits 3f and 3gg are two of the documents that collectively comprise the agreement with the Cloud service provider ("CSP") and were updated as OCC further negotiated and modified the terms of that agreement. Exhibit 3g provides a summary of the terms and conditions of OCC's agreement with the CSP designed to enable OCC to comply with Regulation SCI. Partial Amendment No. 2 did not change the purpose of or basis for the Advance Notice.

⁷ Partial Amendment No. 3 replaced the revised confidential Exhibits 3f and 3g that were previously filed in connection with Partial Amendment No. 2 with further revised confidential Exhibits 3f and 3g and added new confidential Exhibit 3hh to the Advance Notice. Exhibit 3hh is a Gantt chart regarding OCC's Cloud transition plan. Partial Amendment No. 3 did not change the purpose of or basis for the Advance Notice.

⁸ Partial Amendment No. 4 again replaced confidential Exhibit 3f filed as part of the Advance Notice, as modified by Partial Amendments Nos. 2 and 3, with revised confidential Exhibit 3f. Partial Amendment No. 4 did not change the purpose of or basis for the Advance Notice.

⁹ 12 U.S.C. 5465(e)(1)(D).

¹⁰ The Commission may extend the review period for an additional 60 days (to 120 days total) for proposed changes that raise novel or complex issues. See 12 U.S.C. 5465(e)(1)(H).

¹¹ See 12 U.S.C. 5465(e)(1)(E)(ii) and (G)(ii); Memorandum from Office of Clearance and Settlement, Division of Trading and Markets, titled "Commission's Request for Additional Information" (Jan. 27, 2022), available at <https://www.sec.gov/comments/sr-occ-2021-802/srocc2021802-20113044-265605.pdf>.

¹² See Memorandum from Office of Clearance and Settlement, Division of Trading and Markets, titled "Response to the Commission's Request for

June 14, 2022, the Commission made a second request for OCC to provide additional information regarding the Advance Notice, which tolled the Commission's period of review of the Advance Notice until 120 days¹³ from the date the requested information was received by the Commission.¹⁴ OCC responded to the request, and the Commission received the information on June 22, 2022.¹⁵

The Commission is publishing this notice to solicit comments on Partial Amendments No. 1, 2, 3, and 4 from interested persons and, for the reasons discussed below, is hereby providing notice of no objection to the Advance Notice.¹⁶

II. Background¹⁷

OCC is the only clearing agency for standardized U.S. securities options listed on Commission-registered national securities exchanges ("listed options"). In addition to clearing and settling listed options, OCC serves other financial markets, including the commodity futures, commodity options, security futures, securities lending, and the over-the-counter options markets. Further, OCC provides central counterparty ("CCP") clearing services for all of these markets and performs critical functions in the clearance and settlement process. OCC's role as the sole CCP for these markets is operationally complex and makes OCC an integral part of the national system for clearance and settlement.

The current iterations of OCC's core clearing, risk management, and data management applications ("ENCORE") were launched in 2000 and designed to operate in on-premises data centers.¹⁸

Additional Information" (Mar. 4, 2022), available at <https://www.sec.gov/comments/sr-occ-2021-802/srocc2021802-20118637-271511.pdf>.

¹³ See *supra* note 10.

¹⁴ See 12 U.S.C. 5465(e)(1)(E)(ii) and (G)(ii); Memorandum from Office of Clearance and Settlement, Division of Trading and Markets, titled "Commission's Second Request for Additional Information" (June 14, 2022), available at <https://www.sec.gov/comments/sr-occ-2021-802/srocc2021802-20132534-303027.pdf>.

¹⁵ See Memorandum from Office of Clearance and Settlement, Division of Trading and Markets, titled "Response to the Commission's Request for Additional Information" (June 23, 2022), available at <https://www.sec.gov/comments/sr-occ-2021-802/srocc2021802-20138832-308537.pdf>.

¹⁶ References to the Advance Notice from this point forward refer to the Advance Notice as modified by Partial Amendments Nos. 1, 2, 3, and 4.

¹⁷ Capitalized terms used but not defined herein have the meanings specified in OCC's Rules and By-Laws, available at <https://www.theocc.com/about/publications/bylaws.jsp>.

¹⁸ See Notice of Filing, 86 FR at 60504. ENCORE receives trade and post-trade data from various sources on a transaction-by-transaction basis; maintains clearing member positions; calculates

As part of a larger technology initiative it calls "Renaissance," OCC now proposes essentially to migrate ENCORE's functions to the virtual equivalent of a traditional on-premises data center (a "Virtual Private Cloud") hosted by a third party CSP by utilizing Cloud-based hardware and systems software instead of its current on-premises hardware and systems software. OCC refers to the migration of ENCORE's functionality to a Virtual Private Cloud as the adoption of a "Cloud Infrastructure." OCC's proposed adoption of a Cloud Infrastructure would offer more resiliency,¹⁹ security, and scalability than OCC's current on-premises infrastructure, in part, because the on-premises data centers require the acquisition and installation of additional hardware and systems software to accommodate scaled resources or new applications, while the Virtual Private Cloud does not. Although OCC is not proposing changes to ENCORE's *functionality* at this time (only to migrate that functionality to a Virtual Private Cloud, utilizing cloud-based hardware and systems software), OCC's goal is to eventually retire ENCORE and implement new, improved clearing, risk management, and data management applications to replace ENCORE. In part because of the improved resiliency, security, and scalability noted above, the adoption of Cloud Infrastructure is a necessary building block for that goal.

The proposed migration of ENCORE's functions to a Virtual Private Cloud would include scalable resources that would: (i) handle various computationally intensive applications with load-balancing and resource management ("Compute"); (ii) provide configurable storage ("Storage"); and (iii) host network resources and services ("Network"). At the same time, reliance on a single CSP for OCC's core clearing, risk management, and data management applications also introduces certain risks. To mitigate those risks, OCC also proposes to retain a physical on-premises data center as a backup to the primary Cloud system, which would be utilized in the unlikely event of a multi-region outage of the Compute, Storage, and Network services at the CSP that affect OCC operations. Taken together,

margin and clearing fund requirements; and provides reporting to OCC staff, regulators, and clearing members.

¹⁹ In this context, "resiliency" is the "ability to anticipate, withstand, recover from, and adapt to adverse conditions, stresses, attacks, or compromises on systems that include cyber resources." *Systems Security Engineering: Cyber Resiliency Considerations for Engineering of Trustworthy Secure Systems*, Spec. Publ. NIST SP No. 800-160, vol. 2 (2018).

the move to a Cloud Infrastructure combined with the proposed backup on-premises data center would affect various aspects of OCC's operations including (i) resiliency, (ii) security, and (iii) scalability while mitigating one of the primary risks associated with relying on a single CSP. The move to a Cloud Infrastructure also would introduce additional risks associated with a migration to a Cloud Infrastructure, which OCC has identified and addressed through various controls, mitigation efforts, and policies and procedures. A summary of each of these aspects of OCC's operations, as well as the primary attendant risks associated with the proposed migration to a Cloud Infrastructure, is provided below.

A. Resiliency

OCC currently operates ENCORE in two on-premises data centers located in Texas and Illinois. OCC proposes to provision Compute, Storage, and Network resources in two separate, logically isolated Virtual Private Clouds that are capable of operating autonomously from each other and are located in geographically diverse regions.²⁰ Specifically, OCC would operate in three availability zones within each region, effectively providing for six levels of redundancy within a Cloud Infrastructure. The two Virtual Private Clouds would run in a "hot/warm" configuration. The "hot" Virtual Private Cloud would be operational and accept data traffic, while the "warm" Virtual Private Cloud would have applications on stand-by while simultaneously receiving the same incoming data and receiving replicated data from the "hot" Virtual Private Cloud. OCC believes that this proposed systems architecture would significantly reduce operational complexity, mitigate the risk of human error, and provide increased resiliency and assured capacity.²¹

In addition to the Virtual Private Clouds, OCC would operate an on-premises backup data center that would be separate from the Cloud Infrastructure. Like the "warm" Virtual

²⁰ In this context, "separate" refers to the physical separation of the hardware housing the Virtual Private Clouds. "Logically isolated" is a similar concept from a network perspective, where the Virtual Private Clouds are virtually "separated" from each other on the network. The purpose of physically and logically separating the Virtual Private Clouds is to minimize the degree to which one event could impair both Clouds at the same time. This is similar to the concept of locating OCC's current data centers far enough apart that a natural or manmade disaster affecting one data center is unlikely to affect the other.

²¹ Notice of Filing, 86 FR at 60505.

Private Cloud, the on-premises data center would receive the same incoming data and replicated data from the “hot” Virtual Private Cloud. The on-premises data center would provide continuity of operations in the event that OCC loses access to its Cloud Infrastructure. For example, OCC might rely on the on-premises data center to maintain continuity of services in response to either a brief operational disruption of OCC’s Virtual Private Clouds or a longer outage resulting from termination of OCC’s relationship with the CSP.²²

B. Security

OCC has developed a Cloud security program to allow OCC to manage the security of the core applications that would run on the Cloud Infrastructure. OCC’s Cloud security program also would provide OCC with tools to assess and monitor the CSP’s management of the Cloud Infrastructure’s security.²³ As described below, the proposed Cloud security program focuses on four elements: (i) access controls; (ii) data governance; (iii) configuration management; and (iv) testing.

OCC is also proposing to implement tools provided by the CSP and selected third parties that are not currently available for use in OCC’s on-premises data centers.²⁴

1. Access Controls

OCC proposes to enforce a strict separation of duties and least-privileged access²⁵ for infrastructure, applications, and data to protect the confidentiality,

²² In the Notice of Filing, OCC specifically addresses the potential risk of its CSP terminating its relationship with OCC. *See id.* at 60511. The CSP may not unilaterally terminate the relationship with OCC absent good cause or without sufficient notice to allow OCC to transition to an alternate CSP or to the on-premises solution for its Compute, Storage, and Network needs. In the additional information it provided on March 3, 2022, OCC represents that, in the event the CSP ceases to support OCC’s proposed Cloud Infrastructure, the on-premises data center would be capable of independently operating OCC’s core clearing, risk management, and data management applications until such time as OCC is able to implement a new Cloud Infrastructure with another CSP.

²³ OCC is not proposing to change or remove its current physical and cyber security standards, which OCC states are designed to align with the National Institute of Standards and Technology (“NIST”), Cyber Security Framework, and Center for Internet Security benchmarks. *See* Notice of Filing, 86 FR at 60505.

²⁴ For example, OCC intends to implement Cloud security capabilities designed to automate and standardize how OCC deploys and monitors IT system configurations as well as how OCC encrypts data. The proposed Cloud Infrastructure would also allow OCC to take advantage of services for setting up credentials and end-to-end configuration change management and scanning.

²⁵ “Least-privileged access” means users will have only the permissions needed to perform their work, and no more.

availability, and integrity of the data. Using third-party tools, OCC would automate appropriate role-based access to the core applications running in the Cloud. For the on-premises data center, OCC would implement additional risk management measures. Specifically, OCC would explicitly set up the infrastructure for all connectivity to and from the on-premises data center and rely on heavily monitored “jump hosts” (e.g., data feeds in and out, mechanisms for the delivery of the software, and a minimum management interface that requires multi-factor authentication for access). OCC would also limit access to approved users of the on-premises data center via dedicated private circuits.

2. Data Governance

OCC’s Enterprise Security Standards describe the data governance framework applicable to OCC’s proposed Cloud Infrastructure, such as data moving between systems within the Cloud.²⁶ For example, the Enterprise Security Standards require any system related to the Cloud Infrastructure to: (i) store data and information in the United States throughout its lifecycle; (ii) be able to retrieve and access the data and information throughout its lifecycle; (iii) encrypt data in the Cloud with key pairs kept and owned by OCC; (iv) comply with United States federal and applicable state data regulations regarding data location; and (v) enable secure disposition of non-records. Other OCC policies, such as its existing Information Classification and Handling Policy,²⁷ establish the overall data governance framework applied to the management, use, and governance of OCC information accessed, stored, or transmitted through the Cloud Infrastructure.

3. Configuration Management

To improve configuration management, OCC proposes to rely on pre-established system configurations, specifically the use of automated delivery of business and security capability via “Infrastructure as Code,”²⁸ to consistently and transparently deploy security controls on demand. OCC would also employ continuous configuration monitoring and periodic vulnerability scanning.

²⁶ OCC provided its Enterprise Security Standards in a confidential exhibit to File No. SR–OCC–2021–802.

²⁷ OCC provided its Information Classification and Handling Policy in a confidential exhibit to File No. SR–OCC–2021–802.

²⁸ “Infrastructure as Code” is the process of managing and setting up computer data centers through machine-readable definition files, rather than through physical hardware configuration or interactive configuration tools.

Further, OCC would perform regular reviews and testing of its systems running in the Cloud while also relying on regular reviews and testing reports provided by the CSP.²⁹ OCC also proposes to use third-party solutions and CSP tools to track metrics, monitor log files, set alarms, and act on changes to OCC’s core applications and the environment in which they operate.

4. Testing

OCC proposes the use of various security testing techniques for the Cloud Infrastructure. Through a risk-based analysis, an OCC team dedicated to security testing would determine what types of security testing techniques are appropriate for new assets and applications. Such techniques include automated security testing;³⁰ manual penetration testing;³¹ and Blue Team testing.³² OCC would employ processes for managing and remediating the results of its security testing.

Moving to a third-party-hosted Cloud infrastructure does present the risk that OCC would be overly reliant on the CSP to provide test results reliably and consistently. However, as indicated in confidential information provided by OCC, the CSP agreement provides assurances that the CSP would provide OCC with test cases, test planning, and auditable evidence of testing execution, including test results.³³ These test results would allow OCC to work with the CSP to make any changes, as needed, to rectify any technical issues that arise. Additionally, the CSP agreement includes provisions related to business continuity testing and intrusion reporting to facilitate the flow of security information to OCC.

²⁹ As confidential exhibits to File No. SR–OCC–2021–802, OCC provided documents governing the CSP’s obligations to provide such information to OCC. *See supra* note 6.

³⁰ Automated security testing uses industry standard security testing tools and/or other security engineering techniques specifically configured for each test.

³¹ Manual penetration testing uses information gathered from automated testing or other sources to identify vulnerabilities and deliver payloads with the intent to break, change, or gain access to the unauthorized area within a system.

³² Blue Team testing identifies security threats and risks in the operating environment and analyzes the network, system, and Software-as-a-Service environments and their current state of security readiness to ensure that they are as secure as possible before deploying to a production environment. Software-as-a-Service is a software licensing and delivery model in which software is licensed on a subscription basis and is centrally hosted.

³³ As confidential exhibits to File No. SR–OCC–2021–802, OCC provided documents governing the CSP’s obligations to provide such information to OCC. *See supra* note 6.

C. Scalability

OCC's proposal to migrate from their current on-premises infrastructure to the Cloud represents a tradeoff in risk management. Accommodating scaled resources or new applications in OCC's current on-premises data centers would require OCC to acquire and install additional hardware and software. The availability of on-demand scaling in a Virtual Private Cloud could present a risk if OCC were not to receive resources from the CSP when requested. However, based on the confidential information provided by OCC in connection with the Advance Notice, OCC will contract with the CSP for at least as much capacity as it maintains in its current on-premises facilities, as well as for a plan to provide additional capacity.

Increasing the capability of OCC's current on-premises data centers, which are designed to handle a capacity in excess of prior peak transaction volumes, would require the acquisition and installation of additional hardware and software. In contrast, operating in a Cloud Infrastructure would allow OCC to quickly provision or de-provision Compute, Storage, or Network resources to meet demands, including elevated trade volumes. Moving to a third-party-hosted Cloud Infrastructure does not present a novel risk: that the CSP does not deliver the additional capacity that OCC might need at a moment's notice. However, OCC asserts that the fact that it will contract with the CSP for at least as much capacity as OCC currently maintains in its current on-premises facilities, combined with the CSP's contractual obligation to provide additional capacity to OCC on demand, would mitigate this risk significantly.³⁴

The Cloud Infrastructure would also provide more flexibility for OCC to model and create development and test environments for backtesting and stress testing, as well as other systems development needs because of OCC's ability to increase capacity on demand under the express terms of the contract with the CSP. OCC also states that the increased scalability of the Cloud Infrastructure would allow OCC to run certain backtesting processes at a fraction of the time currently required.³⁵

III. Discussion and Notice of No Objection

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, the stated

purpose of the Clearing Supervision Act is instructive: to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities ("SIFMUs") and strengthening the liquidity of SIFMUs.³⁶

Section 805(a)(2) of the Clearing Supervision Act authorizes the Commission to prescribe regulations containing risk management standards for the payment, clearing, and settlement activities of designated clearing entities engaged in designated activities for which the Commission is the supervisory agency.³⁷ Section 805(b) of the Clearing Supervision Act provides the following objectives and principles for the Commission's risk management standards prescribed under Section 805(a):³⁸

- to promote robust risk management;
- to promote safety and soundness;
- to reduce systemic risks; and
- to support the stability of the broader financial system.

Section 805(c) provides, in addition, that the Commission's risk management standards may address such areas as risk management and default policies and procedures, among other areas.³⁹

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and Section 17A of the Exchange Act (the "Clearing Agency Rules").⁴⁰ The Clearing Agency Rules require, among other things, each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for its operations and risk management practices on an ongoing basis.⁴¹ As such, it is appropriate for the Commission to review advance notices against the Clearing Agency Rules and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act. As discussed below, the Commission believes the changes proposed in the Advance Notice are consistent with the objectives and principles described in Section 805(b) of

the Clearing Supervision Act,⁴² and in the Clearing Agency Rules, in particular Rule 17Ad-22(e)(17)(ii).⁴³

A. Consistency With Section 805(b) of the Clearing Supervision Act

The Commission believes that the proposal contained in OCC's Advance Notice is consistent with the stated objectives and principles of Section 805(b) of the Clearing Supervision Act. Specifically, as discussed below, the Commission believes that the changes proposed in the Advance Notice are consistent with promoting robust risk management, promoting safety and soundness, reducing systemic risks, and supporting the stability of the broader financial system.⁴⁴

The Commission believes that OCC's proposal to host its core clearing, risk management, and data management applications in a Cloud Infrastructure is consistent with robust risk management, specifically operational risk management, and the promotion of safety and soundness. The Commission believes that, when supported by the appropriate legal agreements and system configurations, OCC's proposed Cloud Infrastructure may provide opportunities for improvements in resiliency, security, and scalability compared to infrastructures in traditional, on-premises data centers. Based on a careful review of the complete record, including the confidential information provided by OCC, the Commission believes the proposed systems architecture—comprising of a virtual multi-zone Cloud Infrastructure, with an on-premises data center as a physical backup—would provide a level of security and resiliency to the OCC's applications beyond that provided by OCC's current on-premises-only infrastructure. The Commission further believes that the legal agreements underlying the relationship between OCC and the CSP are designed to support OCC's ability to comply with its regulatory obligations related to the management of operational risk. Additionally, the inclusion of an on-premises backup provides an additional layer of redundancy to mitigate the low-probability risk of a multi-region outage at a single CSP.

Moreover, the Commission believes that, to the extent the proposed changes are consistent with promoting OCC's robust risk management as well as safety and soundness, they are also consistent with supporting the stability of the

³⁴ As confidential exhibits to File No. SR-OCC-2021-802, OCC provided documents governing the CSP's obligations to provide capacity to OCC. See *supra* note 6.

³⁵ See Notice of Filing, 86 FR at 60505.

³⁶ See 12 U.S.C. 5461(b).

³⁷ 12 U.S.C. 5464(a)(2).

³⁸ 12 U.S.C. 5464(b).

³⁹ 12 U.S.C. 5464(c).

⁴⁰ 17 CFR 240.17Ad-22. See Exchange Act Release No. 68080 (Oct. 22, 2012), 77 FR 66220 (Nov. 2, 2012) (S7-08-11). See also Exchange Act Release No. 78961 (Sep. 28, 2016), 81 FR 70786, 70806 (Oct. 13, 2016) (S7-03-14) ("Covered Clearing Agency Standards"). OCC is a "covered clearing agency" as defined in Rule 17Ad-22(a)(5).

⁴¹ 17 CFR 240.17Ad-22.

⁴² 12 U.S.C. 5464(b).

⁴³ 17 CFR 240.17Ad-22(e)(17)(ii).

⁴⁴ 12 U.S.C. 5464(b).

broader financial system. OCC has been designated as a SIFMU, in part, because its failure or disruption could increase the risk of significant liquidity or credit problems spreading among financial institutions or markets.⁴⁵ The Commission believes that the proposed changes would support OCC's ability to continue providing services to the U.S. options markets by establishing multiple backup systems across the proposed Cloud Infrastructure and an on-premises backup while also allowing OCC to quickly set up additional capacity or applications as necessary. OCC's continued operations would, in turn, help support the stability of the financial system by reducing the risk of significant operational problems spreading among market participants that rely on OCC's central role in the options market.

Accordingly, and for the reasons stated above, the Commission believes the changes proposed in the Advance Notice are consistent with Section 805(b) of the Clearing Supervision Act.⁴⁶

B. Consistency With Rule 17Ad-22(e)(17)(ii) Under the Exchange Act

Rule 17Ad-22(e)(17)(ii) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to manage the covered clearing agency's operational risks by ensuring that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity.⁴⁷

As described in Section II.A. above, OCC proposes to increase the resiliency of its systems by migrating from two on-premises data centers to two separate, logically isolated Virtual Private Clouds with an on-premises backup data center. As described in Section II.B. above, OCC proposes to expand its existing physical and cyber security program with a focus on: (i) access controls; (ii) data governance; (iii) configuration management; and (iv) testing, as well as the implementation of additional tools not currently available for use in OCC's on-premises data centers. As described in Section II.C. above, operating in a Cloud Infrastructure would allow OCC to quickly scale resources to meet elevated trade volumes as well as run risk management processes, such as backtesting, more quickly than is currently possible.

⁴⁵ See Financial Stability Oversight Council ("FSOC") 2012 Annual Report, Appendix A, <https://home.treasury.gov/system/files/261/here.pdf> (last visited Feb. 17, 2022).

⁴⁶ 12 U.S.C. 5464(b).

⁴⁷ 17 CFR 240.17Ad-22(e)(17)(ii).

Accordingly, the Commission believes that the changes proposed in the Advance Notice are consistent with Rule 17Ad-22(e)(17)(ii) under the Exchange Act.⁴⁸

IV. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act, that the Commission *does not object* to Advance Notice (SR-OCC-2021-802), as modified by Partial Amendments No. 1, 2, 3, and 4 and that OCC is *authorized* to implement the proposed change as of the date of this notice.

By the Commission.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022-23230 Filed 10-25-22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96118; File No. SR-ICEEU-2022-019]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice and Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the Investment Management Procedures

October 20, 2022.

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 October 11, 2022, ICE Clear Europe Limited ("ICE Clear Europe" or the "Clearing House") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(1) thereunder,⁴ such that the proposed rule change was immediately effective upon filing with the Commission. 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

ICE Clear Europe Limited ("ICE Clear Europe" or the "Clearing House")

proposes to modify its Investment Management Procedures (the "Investment Management Procedures" or the "Procedures") to clarify certain permitted investments and related limits for the Clearing House when managing cash received from Clearing Members as margin or from the Clearing House's contribution to the guaranty fund.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe 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

(a) Purpose

ICE Clear Europe is proposing to update the Table of Authorised Investments and Concentration Limits for Cash from CMs and from Skin In The Game (the "Table") in the Procedures to make certain clarifications that reflect limitations on investments that can be made with customer funds provided by FCM Clearing Members under applicable law. The amendments reflect restrictions that ICE Clear Europe currently observes (and are described elsewhere in the existing Procedures), and accordingly will not constitute a change in practice. Specifically, the amendment would provide that the reference in the Table to there being "no limit" for counterparty concentration in respect to investments in (i) US government agency bonds and (ii) UK government agency bonds, as well as the 15% concentration limit specified for the purchase of EU government agency bonds each applies to cash provided by non-FCM Clearing Members. The amendments would also state explicitly in the Table that FCM customer funds may not be invested in such assets. The proposed changes reflect limitations under CFTC regulations.⁵ Such updates

⁵ Consistent with ICE Clear Europe's current practice, certain limitations in the amendments are more restrictive than required under CFTC regulations. For example, investment of FCM customer funds in U.S. agency securities is not permitted, as described in the amendments, although CFTC Rule 1.25(b)(3)(i)(B) would permit investment in U.S. agency obligations up to a

⁴⁸ *Id.*

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)(1).

are intended to provide greater clarity in the Table as to the permissible investment of customer cash provided by Clearing Members and accurately document existing practices, consistent with legal requirements.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to the Investment Management Procedures are consistent with the requirements of Section 17A of the Act⁶ and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act⁷ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest.

The proposed changes to the Investment Management Procedures are designed to reflect the Clearing House's practices with respect to the management of investments, in light of existing CFTC regulations relating to the investment of customer funds provided by FCM Clearing Members. The amendments would reflect certain limitations under CFTC Rule 1.25, as discussed above, on investments of FCM customer cash in agency securities, consistent with the Clearing House's current practice. The proposed amendments thus promote the accuracy and clarity of the Clearing House's policies and procedures and are consistent with the prompt and accurate clearing and settlement of cleared contracts. The amendments are thus also generally consistent with the protection of investors and the public interest in the safe operation of the Clearing House. The updates will also facilitate management of the cash held by the Clearing House from Clearing Members and their customers in accordance with applicable law, and thus enhance the safeguarding of securities and funds in ICE Clear Europe's custody or control or for which it is responsible. Accordingly, the amendments are consistent with the requirements of Section 17A(b)(3)(F).⁸

maximum of 50 percent of the total assets held in segregation by the futures commission merchant or derivatives clearing organization. 17 CFR 1.25(b)(3)(i)(B). A footnote referencing this rule would be included in the Table.

⁶ 15 U.S.C. 78q-1.

⁷ 15 U.S.C. 78q-1(b)(3)(F).

⁸ 15 U.S.C. 78q-1(b)(3)(F).

Rule 17A-22(e)(16) requires clearing agencies to safeguard their own and their "participants' assets, minimize the risk of loss and delay in access to these assets, and invest such assets in instruments with minimal credit, market and liquidity risks."⁹ As discussed above, the amendments to the Investment Management Procedures are intended to more clearly document investment limitations in connection with the investment of cash assets provided by Clearing Members to reflect current practice and applicable law, including the requirements of CFTC regulations. As such, the revised Investment Management Procedures will help enable the Clearing House to safeguard such assets and minimize the risk of loss from liquidity and investment risks, consistent with the requirements of Rule 17Ad-22(e)(16).¹⁰

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The changes are being proposed in order to update the Investment Management Procedures to provide clarifications and additional details where necessary in order to reflect existing practices and are not intended to impose new requirements on Clearing Members. The terms of clearing are not otherwise changing. ICE Clear Europe does not believe that proposed amendments would adversely affect competition among Clearing Members or other market participants or affect the ability of market participants to access clearing generally. Therefore, ICE Clear Europe does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed amendment has not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any comments received with respect to the proposed rule change.

⁹ 17 CFR 240.17Ad-22(e)(16).

¹⁰ 17 CFR 240.17Ad-22(e)(16).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and paragraph (f) of Rule 19b-4¹² 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-ICEEU-2022-019 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-ICEEU-2022-019. 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 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f).

inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at <https://www.theice.com/clear-europe/regulation>.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICEEU-2022-019 and should be submitted on or before November 16, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2022-23234 Filed 10-25-22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96111; File No. SR-NYSEARCA-2022-70]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Rule 7.44-E

October 20, 2022.

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 October 11, 2022, 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 modify Rule 7.44-E relating to the Retail Liquidity Program. 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.

¹³ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 to modify Rule 7.44-E, which sets forth the Exchange's Retail Liquidity Program (the "Program").⁴ The purpose of the Program is to attract retail order flow to the Exchange and allow such order flow to receive potential price improvement. Rule 7.44-E provides for a class of market participant called Retail Liquidity Providers ("RLPs"), and non-RLP ETP Holders are able to provide potential price improvement to retail investor orders in the form of a non-displayed order that is priced better than the best protected bid or offer, called a Retail Price Improvement Order ("RPI Order").⁵ When there is an RPI Order in a particular security, the Exchange disseminates an indicator, known as the Retail Liquidity Identifier, that such interest exists.⁶ Retail Member Organizations ("RMOs") can submit a Retail Order to the Exchange, which interacts, to the extent possible, with available contra-side RPI Orders and

⁴ The Program was established on a pilot basis in 2013 and was approved by the Commission to operate on a permanent basis in 2019. See Securities Exchange Act Release No. 87350 (October 18, 2019), 84 FR 57106 (October 24, 2019) (SR-NYSEArca-2019-63). In connection with the Commission's approval of the Program on a pilot basis, the Commission granted the Exchange's request for exemptive relief from Rule 612 of Regulation NMS, 17 CFR 242.612 (the "Sub-Penny Rule"), which, among other things, prohibits a national securities exchange from accepting or ranking orders priced greater than \$1.00 per share in an increment smaller than \$0.01. See Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR-NYSEArca-2013-107). The Exchange notes that the change proposed in this filing has no substantive impact under the Sub-Penny Rule and thus does not require an update or revision to the exemptive relief previously granted by the Commission.

⁵ See Rules 7.44-E(a)(1) (defining an RLP) and 7.44-E(a)(4) (defining RPI Order).

⁶ See Rule 7.44-E(j).

then may interact with other liquidity on the Exchange or elsewhere, depending on the Retail Order's instructions.⁷ The segmentation in the Program allows retail order flow to receive potential price improvement as a result of their order flow being deemed more desirable by liquidity providers. The Program is currently limited to trades in NYSE Arca-listed securities and securities traded on the Exchange pursuant to unlisted trading privileges ("UTP Securities"), except for NYSE-listed securities.⁸

The Exchange now proposes to modify Rule 7.44-E to expand the Program's availability to all securities traded on the Exchange. Rule 7.44-E(a)(4) currently defines an RPI Order as consisting of "non-displayed interest in NYSE Arca-listed securities and UTP Securities, excluding NYSE-listed (Tape A) securities, that would trade at prices better than the PBB or PBO by at least \$0.001 and that is identified as such." To expand the program to permit RPI Orders in all securities traded on the Exchange (including NYSE-listed securities), the Exchange proposes to modify Rule 7.44-E(a)(4) such that the rule would provide that an RPI Order is "non-displayed interest that would trade at prices better than the PBB or PBO by at least \$0.001 and that is identified as such."

Subject to the effectiveness of this proposed rule change, the Exchange will implement this change in the fourth quarter of 2022 and announce the implementation date by Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5),¹⁰ in particular, because 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 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 expanding the Program's availability to all securities traded on the Exchange would remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in

⁷ See Rule 7.44-E(a)(2) (defining RMO); Rules 7.44-E(a)(3) and 7.44-E(k) (describing Retail Orders).

⁸ See Rule 7.44-E(a)(4).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

general, protect investors and the public interest by enabling RPI Orders in all securities to participate in the Program and receive potential price improvement. The Exchange believes that this expansion of the Program would benefit retail investors by providing increased opportunities for price improvement in all securities traded on the Exchange, including NYSE-listed securities. The Exchange also believes that the proposed change would allow it to compete with other exchanges that operate retail price improvement programs that are available to all securities traded on such exchanges.¹¹

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 believes that the proposed change could promote competition by permitting RPI Orders in all securities traded on the Exchange, thereby supporting price improvement opportunities for retail investors. The Exchange further believes that the proposed expansion of the Program to include all securities traded on the Exchange would promote competition between the Exchange and other exchanges that offer retail price improvement programs for which all securities traded on such exchanges are eligible to participate.¹²

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 Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴ 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 Act and Rule 19b-4(f)(6)(iii) thereunder.

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)¹⁵ 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEARCA-2022-70 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-2022-70. 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEARCA-2022-70 and should be submitted on or before November 16, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022-23238 Filed 10-25-22; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96112; File No. SR-NYSE-2022-47]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Rule 7.44

October 20, 2022.

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 October 11, 2022, New York Stock Exchange LLC ("NYSE" 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.

¹¹ See, e.g., Cboe BYX Exchange, Inc. ("BYX") Rule 11.24 (setting forth BYX's Retail Price Improvement Program, with Retail Price Improvement Order defined in Rule 11.24(a)(3)); Nasdaq BX, Inc. ("BX") Rules 4702(b)(5)(A) (defining "Retail Price Improving Order") and 4780 (setting forth BX's Retail Price Improvement Program); Investors Exchange LLC ("IEX") Rule 11.232 (setting forth IEX's Retail Price Improvement Program).

¹² See *id.*

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 15 U.S.C. 78s(b)(2)(B).

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Rule 7.44 relating to the Retail Liquidity Program. 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 to modify Rule 7.44, which sets forth the Exchange's Retail Liquidity Program (the "Program").⁴ The purpose of the Program is to attract retail order flow to the Exchange and allow such order flow to receive potential price improvement. Rule 7.44 provides for a class of market participant called Retail Liquidity Providers ("RLPs"), and non-RLP member organizations are able to provide potential price improvement to retail investor orders in the form of a non-displayed order that is priced better than the best protected bid or offer, called a Retail Price Improvement Order

⁴ The Program was established on a pilot basis in 2012 and was approved by the Commission to operate on a permanent basis in 2019. See Securities Exchange Act Release No. 85160 (February 15, 2019), 84 FR 5754 (February 22, 2019) (SR-NYSE-2018-28). In connection with the Commission's approval of the Program on a pilot basis, the Commission granted the Exchange's request for exemptive relief from Rule 612 of Regulation NMS, 17 CFR 242.612 (the "Sub-Penny Rule"), which, among other things, prohibits a national securities exchange from accepting or ranking orders priced greater than \$1.00 per share in an increment smaller than \$0.01. See Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (SR-NYSE-2011-55). The Exchange notes that the change proposed in this filing has no substantive impact under the Sub-Penny Rule and thus does not require an update or revision to the exemptive relief previously granted by the Commission.

("RPI Order").⁵ When there is an RPI Order in a particular security, the Exchange disseminates an indicator, known as the Retail Liquidity Identifier, that such interest exists.⁶ Retail Member Organizations ("RMOs") can submit a Retail Order to the Exchange, which interacts, to the extent possible, with available contra-side RPI Orders and then may interact with other liquidity on the Exchange or elsewhere, depending on the Retail Order's instructions.⁷ The segmentation in the Program allows retail order flow to receive potential price improvement as a result of their order flow being deemed more desirable by liquidity providers. The Program is currently limited to trades in NYSE-listed securities.⁸

The Exchange now proposes to modify Rule 7.44 to expand the Program's availability to all securities traded on the Exchange. Rule 7.44(a)(4) currently defines an RPI Order as consisting of "non-displayed interest in NYSE-listed securities that would trade at prices better than the PBB or PBO by at least \$0.001 and that is identified as such." To expand the program to permit RPI Orders in all securities on the Exchange (*i.e.*, both NYSE-listed securities and securities traded on the Exchange pursuant to unlisted trading privileges), the Exchange proposes to modify Rule 7.44(a)(4) to delete the reference to "NYSE-listed securities," such that the rule would provide that an RPI Order is "non-displayed interest that would trade at prices better than the PBB or PBO by at least \$0.001 and that is identified as such."

The Exchange also proposes a conforming change to Rule 7.44(j), which describes the Retail Liquidity Identifier disseminated when RPI interest priced at least \$0.001 better than the PBB or PBO for a particular security is available in Exchange systems. Rule 7.44(j) currently provides that the Retail Liquidity Identifier will be disseminated through proprietary data feeds and through the Consolidated Quotation System.⁹ Because the Exchange proposes to permit RPI Orders in all securities, the Exchange proposes to update Rule 7.44(j) to provide that the Retail Liquidity Identifier would also be

⁵ See Rules 7.44(a)(1) (defining an RLP) and 7.44(a)(4) (defining RPI Order).

⁶ See Rule 7.44(j).

⁷ See Rule 7.44(a)(2) (defining RMO); Rules 7.44(a)(3) and 7.44(k) (describing Retail Orders).

⁸ See Rule 7.44(a)(4).

⁹ The Exchange also proposes a non-substantive change to correct a typographical error in Rule 7.44(j) and replace "Consolidation Quotation System" with "Consolidated Quotation System."

disseminated through the UTP Quote Data Feed, as applicable.¹⁰

Subject to the effectiveness of this proposed rule change, the Exchange will implement this change in the fourth quarter of 2022 and announce the implementation date by Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5),¹² in particular, because 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 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 expanding the Program's availability to all securities traded on the Exchange would remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, protect investors and the public interest by enabling RPI Orders in all securities to participate in the Program and receive potential price improvement. The Exchange believes that this expansion of the Program would benefit retail investors by providing increased opportunities for price improvement in all securities traded on the Exchange, rather than limiting the Program to NYSE-listed securities only. The Exchange also believes that the proposed change would allow it to compete with other exchanges that operate retail price improvement programs that are available to all securities traded on such exchanges.¹³ The Exchange believes that the proposed conforming change to Rule 7.44(j) would also remove impediments to, and perfect the mechanism of, a free

¹⁰ The Exchange notes that this proposed change would align Rule 7.44(j) with the comparable rule of its affiliated exchange, NYSE Arca, Inc. ("NYSE Arca"). NYSE Arca currently operates a retail price improvement program that includes securities that trade on that exchange pursuant to unlisted trading privileges. See NYSE Arca Rule 7.44-E(j).

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ See, e.g., Cboe BYX Exchange, Inc. ("BYX") Rule 11.24 (setting forth BYX's Retail Price Improvement Program, with Retail Price Improvement Order defined in Rule 11.24(a)(3)); Nasdaq BX, Inc. ("BX") Rules 4702(b)(5)(A) (defining "Retail Price Improving Order") and 4780 (setting forth BX's Retail Price Improvement Program); Investors Exchange LLC ("IEX") Rule 11.232 (setting forth IEX's Retail Price Improvement Program).

and open market and a national market system and, in general, protect investors and the public interest by updating Rule 7.44(j) to provide for the dissemination of the Retail Liquidity Identifier for RPI Orders on the UTP Quote Data Feed. The proposed change would ensure that the Retail Liquidity Identifier would also be disseminated as appropriate for RPI Orders in securities traded on the Exchange pursuant to unlisted trading privileges.

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 believes that the proposed change could promote competition by permitting RPI Orders in all securities traded on the Exchange, thereby supporting price improvement opportunities for retail investors. The Exchange further believes that the proposed expansion of the Program to include all securities traded on the Exchange would promote competition between the Exchange and other exchanges that offer retail price improvement programs for which all securities traded on such exchanges are eligible to participate.¹⁴

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 Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶ 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)(iii) of the Act¹⁷ and Rule 19b-4(f)(6)(iii) thereunder.¹⁸

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)¹⁹ 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSE-2022-47 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSE-2022-47. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<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

¹⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

¹⁹ 15 U.S.C. 78s(b)(2)(B).

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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2022-47 and should be submitted on or before November 16, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2022-23239 Filed 10-25-22; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17686 and #17687; Virginia Disaster Number VA-00100]

Administrative Declaration of a Disaster for the Commonwealth of Virginia

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Virginia dated 10/20/2022.

Incident: Flooding.

Incident Period: 07/13/2022 through 07/14/2022.

DATES: Issued on 10/20/2022.

Physical Loan Application Deadline Date: 12/19/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 07/20/2023.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

²⁰ 17 CFR 200.30-3(a)(12).

¹⁴ See *id.*

¹⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁶ 17 CFR 240.19b-4(f)(6).

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator’s disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Buchanan

Contiguous Counties:

Virginia: Dickenson, Russell, Tazewell.

Kentucky: Pike.

West Virginia: McDowell, Mingo.

The Interest Rates are:

| | Percent |
|---|---------|
| <i>For Physical Damage:</i> | |
| Homeowners with Credit Available Elsewhere | 3.375 |
| Homeowners without Credit Available Elsewhere | 1.688 |
| Businesses with Credit Available Elsewhere | 5.870 |
| Businesses without Credit Available Elsewhere | 2.935 |
| Non-Profit Organizations with Credit Available Elsewhere ... | 1.875 |
| Non-Profit Organizations without Credit Available Elsewhere | 1.875 |
| <i>For Economic Injury:</i> | |
| Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere | 2.935 |
| Non-Profit Organizations without Credit Available Elsewhere | 1.875 |

The number assigned to this disaster for physical damage is 17686 6 and for economic injury is 17687 0.

The States which received an EIDL Declaration # are Virginia, Kentucky, West Virginia.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,
Administrator.

[FR Doc. 2022–23273 Filed 10–25–22; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice 11898]

Notification of Meetings of The United States-Peru Environmental Affairs Council, Environmental Cooperation Commission, and Sub-Committee on Forest Sector Governance

ACTION: Notice of meetings and request for comments; invitation to public session.

SUMMARY: The U.S. Department of State and the Office of the United States

Trade Representative (USTR) are providing notice that on November 30–December 1, 2022, the United States and Peru will hold the eighth meeting of the Environmental Affairs Council (the “Council”), the tenth meeting of the Sub-Committee on Forest Sector Governance (the “Sub-Committee”), and the sixth meeting of the Environmental Cooperation Commission (the “Commission”).

DATES: The public sessions of the Council, Commission, and Sub-Committee meetings will be held on December 1, 2022. Please contact Elizabeth Linske and Sigrid Simpson for the location of this meeting and information for virtual participation. Confirmations of attendance and comments or suggestions are requested in writing no later than November 21, 2022.

Addresses and Confirmations of Attendance: Written comments or suggestions should be submitted to both:

- (1) Elizabeth Linske, U.S. Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, Office of Environmental Quality, by email at LinskeE@state.gov with the subject line “UNITED STATES–PERU EAC/ECC MEETING” and
- (2) Sigrid Simpson, Office of the United States Trade Representative, Office of Environment and Natural Resources, by email at Sigrid.A.Simpson@ustr.eop.gov with the subject line “UNITED STATES–PERU EAC/ECC MEETING.”

In your email, please include your full name and affiliation.

If you have access to the internet, you can view and comment on this notice by going to: <http://www.regulations.gov/#/home> and searching for docket number DOS–2022–0041.

FOR FURTHER INFORMATION CONTACT: Elizabeth Linske, (202) 344–9852, or Sigrid Simpson, (202) 881–6592.

SUPPLEMENTARY INFORMATION: The purpose of the three meetings, respectively, is to review implementation of Chapter 18 (Environment) of the United States-Peru Trade Promotion Agreement (PTPA); the PTPA Annex on Forest Sector Governance (Annex 18.3.4); and the United States-Peru Environmental Cooperation Agreement (ECA).

All interested persons are invited to attend the public session and to submit written comments or to ask questions regarding implementation of Chapter 18, Annex 18.3.4, and the ECA, and to raise any issues that should be discussed at

the meetings consistent with their respective purposes.

In preparing comments, submitters are encouraged to refer to Chapter 18 of the PTPA, including Annex 18.3.4, and the ECA (available at <https://www.state.gov/key-topics-office-of-environmental-quality-and-transboundary-issues/current-trade-agreements-with-environmental-chapters/#peru>). Instructions on how to submit comments are under the heading “ADDRESSES AND CONFIRMATIONS OF ATTENDANCE.”

The PTPA entered into force on February 1, 2009. Article 18.6 of the PTPA establishes an Environmental Affairs Council, which is required to meet once a year unless otherwise agreed by the Parties to discuss the implementation of Chapter 18. Annex 18.3.4 to the PTPA establishes a Sub-Committee on Forest Sector Governance. The Sub-Committee is a specific forum for the Parties to share views and information on any matter arising under the PTPA Annex on Forest Sector Governance. The ECA entered into force on August 23, 2009. Article III of the ECA establishes an Environmental Cooperation Commission and makes the Commission responsible for developing a Work Program. Article 18.6 of the PTPA and Article VI of the ECA provide that meetings of the Council and Commission respectively include a public session, unless the Parties otherwise agree. At its first meeting, the Sub-Committee on Forest Sector Governance committed to hold a public session after each Sub-Committee meeting.

Sherry Zalika Sykes,

Director, Office of Environmental Quality, Department of State.

[FR Doc. 2022–23303 Filed 10–25–22; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice: 11889]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: “Bill Brandt | Henry Moore” 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 “Bill Brandt | Henry Moore” at the Yale Center for British Art, New Haven, Connecticut, 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: Elliot Chiu, Attorney-Adviser, 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/PD, 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), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236-3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022-23248 Filed 10-25-22; 8:45 am]

BILLING CODE 4710-05-P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 771]

Report: Alternatives to URCS

AGENCY: Surface Transportation Board.

ACTION: Notice and request for comments.

SUMMARY: The Surface Transportation Board (Board) seeks written public comments on the independent report prepared by Laurits R. Christensen Associates, Inc. (Christensen Associates), entitled, *Alternatives to URCS*. The report may be accessed via the Board's website at www.stb.gov.

DATES: Comments are due by February 23, 2023. Replies to comments are due by May 24, 2023.

ADDRESSES: Comments and replies may be filed with the Board either via e-filing on the Board's website at www.stb.gov, or in writing addressed to: Surface Transportation Board, Attn: Docket No. EP 771, 395 E Street SW, Washington, DC 20423-0001. Filings will be posted to the Board's website.

FOR FURTHER INFORMATION CONTACT: Michael Boyles at (202) 245-0336.

Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: The Board is authorized, under 49 U.S.C. 11161, to maintain cost accounting rules for rail carriers. In 1989, the Board's predecessor, the Interstate Commerce Commission, adopted the Uniform Railroad Costing System (URCS) as its general purpose costing system.

Adoption of the Unif. R.R. Costing Sys. as a Gen. Purpose Costing Sys. for All Regul. Costing Purposes, 5 I.C.C.2d 894 (1989). The Board uses URCS for a variety of regulatory functions. URCS is used in rate reasonableness proceedings as part of the initial market dominance determination, and at later stages is used in parts of the Board's determination as to whether the challenged rate is reasonable, and, when warranted, the maximum rate prescription. URCS is also used to, among other things, develop variable costs for making cost determinations in abandonment proceedings, to provide the railroad industry and shippers with a standardized costing model, to cost the Board's Carload Waybill Sample to develop industry cost information, and to provide interested parties with basic cost information regarding railroad industry operations.

In 2020 the Board commissioned Christensen Associates to perform a study and write a report to identify and evaluate alternatives to URCS that could be used as a replacement general purpose costing methodology to generate railroad-specific variable costs for regulatory purposes. That report has been completed and is posted on the Board's website at <https://www.stb.gov/reports-data/reports-studies/> and in this docket. The Board now seeks public comments and replies from all interested persons on the report's recommendations. The Board has not made any determinations on whether it will propose changes to its general purpose costing system. Given the preliminary and exploratory nature of this request for comments, the Board will not release supporting materials, such as the Confidential Carload Waybill Sample data or underlying workpapers developed by Christensen Associates, at this time. Should the Board move forward with a proposal to modify its general purpose costing system, a further opportunity for comment will be provided.

It is ordered:

1. Comments are due by February 23, 2023; reply comments are due by May 24, 2023.

2. Notice of this decision will be published in the **Federal Register**.

3. This decision is effective on its service date.

Decided: October 21, 2022.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. 2022-23322 Filed 10-25-22; 8:45 am]

BILLING CODE 4915-01-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR-2022-0015]

Applications for Inclusion on the Binational Panels Roster Under the United States-Mexico-Canada Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Invitation for applications.

SUMMARY: The United States-Mexico-Canada Agreement (USMCA) provides for the establishment of a roster of individuals to serve on binational panels convened to review final determinations in antidumping or countervailing duty (AD/CVD) proceedings and amendments to AD/CVD statutes of a USMCA Party. The United States annually renews its selections for the roster. The Office of the United States Trade Representative (USTR) invites applications from eligible individuals wishing to be included on the roster for the period April 1, 2023, through March 31, 2024.

DATES: USTR must receive your application by November 30, 2022.

ADDRESSES: You should submit your application through the Federal eRulemaking Portal: <http://www.regulations.gov> (*regs.gov*), using docket number USTR-2022-0015. Follow the instructions for submitting comments below.

FOR FURTHER INFORMATION CONTACT: Philip Butler, Associate General Counsel, Philip.A.Butler@ustr.eop.gov, (202) 395-5804.

SUPPLEMENTARY INFORMATION:

A. Binational Panel AD/CVD Reviews Under the USMCA

Article 10.12 of the USMCA provides that a party involved in an AD/CVD proceeding may obtain review by a binational panel of a final AD/CVD determination of one USMCA Party with respect to the products of another USMCA Party. Binational panels decide whether AD/CVD determinations are in accordance with the domestic laws of the importing USMCA Party using the

standard of review that would have been applied by a domestic court of the importing USMCA Party. A panel may uphold the AD/CVD determination, or may remand it to the national administering authority for action not inconsistent with the panel's decision. Panel decisions may be reviewed in specific circumstances by a three-member extraordinary challenge committee, selected from a separate roster composed of fifteen current or former judges.

Article 10.11 of the USMCA provides that a USMCA Party may refer an amendment to the AD/CVD statutes of another USMCA Party to a binational panel for a declaratory opinion as to whether the amendment is inconsistent with the General Agreement on Tariffs and Trade (GATT), the GATT Antidumping or Subsidies Codes, successor agreements, or the object and purpose of the USMCA with regard to the establishment of fair and predictable conditions for the liberalization of trade. If the panel finds that the amendment is inconsistent, the two USMCA Parties must consult and seek to achieve a mutually satisfactory solution.

B. Roster and Composition of Binational Panels

Annex 10–B.1 of the USMCA provides for the maintenance of a roster of at least 75 individuals for service on Chapter 10 binational panels, with each USMCA Party selecting at least 25 individuals. A separate five-person panel is formed for each review of a final AD/CVD determination or statutory amendment. To form a panel, the two USMCA Parties involved each appoint two panelists, normally by drawing upon individuals from the roster. If the Parties cannot agree upon the fifth panelist, one of the Parties, decided by lot, selects the fifth panelist from the roster. The majority of individuals on each panel must consist of lawyers in good standing, and the chair of the panel must be a lawyer.

When there is a request to establish a panel, roster members from the two involved USMCA Parties will complete a disclosure form that is used to identify possible conflicts of interest or appearances thereof. The disclosure form requests information regarding financial interests and affiliations, including information regarding the identity of clients of the roster member and, if applicable, clients of the roster member's firm.

C. Criteria for Eligibility for Inclusion on Roster

The United States bases the selection of individuals for inclusion on the

Chapter 10 roster on the eligibility criteria set out in Annex 10–B.1 of the USMCA. Annex 10–B.1 provides that Chapter 10 roster members must be citizens of a USMCA Party, must be of good character and of high standing and repute, and are to be chosen strictly on the basis of their objectivity, reliability, sound judgment, and general familiarity with international trade law. Aside from judges, roster members may not be affiliated with the governments of any of the three USMCA Parties. Annex 10–B.1 also provides that, to the fullest extent practicable, the roster shall include judges and former judges.

USTR is committed to diversity, equity, inclusion, and accessibility, and encourages all qualified individuals to apply.

D. Adherence to the USMCA Code of Conduct for Binational Panelists

The Code of Conduct under Chapter 10 and Chapter 31 (Dispute Settlement) (see <https://can-mex-usa-sec.org/secretariat/agreement-accord-acuerdo/usmca-aceum-tmec/code-code-codigo.aspx?lang=eng>), which was established pursuant to Article 10.17 of the USMCA, provides that current and former Chapter 10 roster members “shall avoid impropriety and the appearance of impropriety and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement process is preserved.” The Code of Conduct also provides that candidates to serve on Chapter 10 panels, as well as those who ultimately are selected to serve as panelists, have an obligation to “disclose any interest, relationship or matter that is likely to affect [their] impartiality or independence, or that might reasonably create an appearance of impropriety or an apprehension of bias.” Annex 10–B.1 of the USMCA provides that roster members may engage in other business while serving as panelists, subject to the Code of Conduct and provided that such business does not interfere with the performance of the panelist's duties. In particular, Annex 10–B.1 states that “[w]hile acting as a panelist, a panelist may not appear as counsel before another panel.”

E. Procedures for Selection of Roster Members

Section 412 of the United States-Mexico-Canada Agreement Implementation Act (Pub. L. 116–113 (19 U.S.C. 4582)), establishes procedures for the selection by USTR of the individuals chosen by the United States for inclusion on the Chapter 10 roster. The roster is renewed annually,

and applies during the one-year period beginning April 1st of each calendar year.

Under Section 412, an interagency committee chaired by USTR prepares a preliminary list of candidates eligible for inclusion on the Chapter 10 roster. After consultation with the Senate Committee on Finance and the House Committee on Ways and Means, the U.S. Trade Representative selects the final list of individuals chosen by the United States for inclusion on the Chapter 10 roster.

F. Applications

USTR invites eligible individuals who wish to be included on the Chapter 10 roster for the period April 1, 2023, through March 31, 2024, to submit applications. In order to be assured of consideration, USTR must receive your application by November 30, 2022. Submit applications electronically to regs.gov, using docket number USTR–2022–0015. For technical questions on submitting comments on regs.gov, please contact the regs.gov help desk at 1–877–378–5457. If you need an alternative to online submission, please contact Sandy McKinzy at (202) 395–9483 before transmitting your application and in advance of the deadline.

In order to ensure the timely receipt and consideration of applications, USTR strongly encourages applicants to make on-line submissions, using regs.gov. To apply via regs.gov, enter docket number USTR–2022–0015 on the home page and click ‘search.’ The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ‘notice’ under ‘document type’ on the left side of the search-results page, and click on the ‘comment now’ link. For further information on using the regs.gov website, please consult the resources provided on the website by clicking on ‘How to Use [Regulations.gov](https://regs.gov)’ on the bottom of the page.

[Regs.gov](https://regs.gov) allows users to provide comments by filling in a ‘type comment’ field, or by attaching a document using an ‘upload file’ field. USTR prefers that applications be provided in an attached document. If a document is attached, please type “Application for Inclusion on USMCA Chapter 10 Roster” in the ‘upload file’ field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the ‘type comment’ field.

Applications must be typewritten, and should be headed “Application for

Inclusion on USMCA Chapter 10 Roster.” Applications should include the following information, and each section of the application should be numbered as indicated:

1. Name of the applicant.
2. Business address, telephone number, fax number, and email address.
3. Citizenship(s).
4. Current employment, including title, description of responsibility, and name and address of employer.
5. Relevant education and professional training.
6. Spanish language fluency, written and spoken.
7. Post-education employment history, including the dates and addresses of each prior position and a summary of responsibilities.
8. Relevant professional affiliations and certifications, including, if any, current bar memberships in good standing.
9. A list and copies of publications, testimony, and speeches, if any, concerning AD/CVD law. Judges or former judges should list relevant judicial decisions. Submit only one copy of publications, testimony, speeches, and decisions.
10. Summary of any current and past employment by, or consulting or other work for, the Governments of the United States, Canada, or Mexico.
11. The names and nationalities of all foreign principals for whom the applicant is currently or has previously been registered pursuant to the Foreign Agents Registration Act, 22 U.S.C. 611 *et seq.*, and the dates of all registration periods.
12. List of proceedings brought under U.S., Canadian, or Mexican AD/CVD law regarding imports of U.S., Canadian, or Mexican products in which the applicant advised or represented (for example, as consultant or attorney) any U.S., Canadian, or Mexican party to such proceeding and, for each such proceeding listed, the name and country of incorporation of such party.
13. A short statement of qualifications and availability for service on Chapter 10 panels, including information relevant to the applicant’s familiarity with international trade law and willingness and ability to make time commitments necessary for service on panels.
14. On a separate page, the names, addresses, telephone and fax numbers of three individuals willing to provide information concerning the applicant’s qualifications for service, including the applicant’s character, reputation, reliability, judgment, and familiarity with international trade law.

G. Current Roster Members and Prior Applicants

Current members of the Chapter 10 roster who remain interested in inclusion on the Chapter 10 roster only need to indicate that they are reapplying and submit updates (if any) to their applications on file. Current members do not need to resubmit their applications. Individuals who previously have applied but have not been selected must submit new applications to reapply. If an applicant, including a current or former roster member, has previously submitted materials referred to in item 9, such materials need not be resubmitted.

H. Public Disclosure

Applications are covered by a Privacy Act System of Records Notice and are not subject to public disclosure and will not be posted publicly on *regs.gov*. They may be referred to other federal agencies and Congressional committees in the course of determining eligibility for the roster, and shared with foreign governments and the USMCA Secretariat in the course of panel selection.

I. False Statements

False statements by applicants regarding their personal or professional qualifications, or financial or other relevant interests that bear on the applicants’ suitability for placement on the Chapter 10 roster or for appointment to binational panels, are subject to criminal sanctions under 18 U.S.C. 1001.

Juan Millan,

Assistant United States Trade Representative for Monitoring and Enforcement, Office of the United States Trade Representative.

[FR Doc. 2022–23261 Filed 10–25–22; 8:45 am]

BILLING CODE 3390–F3–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2017–0054]

Hours of Service; United Parcel Service Inc.; Application for Exemption Renewal

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of provisional renewal of exemption; request for comments.

SUMMARY: FMCSA announces its decision to provisionally renew a United Parcel Service, Inc. (UPS) exemption from various provisions of

the mandate to use electronic logging devices (ELD). FMCSA previously granted the exemption to allow (1) all motor carriers and drivers that use portable, driver-based ELDs to record engine data only when the driver is in a commercial motor vehicle (CMV) and the engine is powered, and (2) all motor carriers to configure an ELD with a yard-move mode that does not require a driver to re-input yard-move status every time the tractor is powered off. The Agency has determined that renewal of the temporary exemption would not have an adverse impact on safety, and that a level of safety equivalent to or greater than that provided by the regulation would be maintained. The exemption renewal is for 5 years.

DATES: This renewed exemption is effective October 21, 2022 and expires on October 21, 2027. Comments must be received on or before November 25, 2022.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2017–0054 by any of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. See the Public Participation and Request for Comments section below for further information.

- *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

- *Fax:* (202) 493–2251.

Each submission must include the Agency name and the docket number (FMCSA–2017–0054) for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

Privacy Act: In accordance with 49 U.S.C. 31315(b), DOT solicits comments

from the public to better inform its exemption process. 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>, the comments are searchable by the name of the submitter.

FOR FURTHER INFORMATION CONTACT: Mr. Luke Loy, Vehicle and Roadside Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA, at (202) 366-0676 or by email at luke.loy@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2017-0054), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov and enter the docket number (“FMCSA-2017-0054”) in the “Keyword” box, then click “Search.” When the new screen appears, click on the “Comment” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b)(2) and 49 CFR 381.300(b) to renew an exemption from the Federal Motor Carrier Safety Regulations (FMCSRs) for a 5-year period if it finds “such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.” UPS has requested a five-year extension of the current exemption in Docket No. FMCSA-2017-0054.

III. Background

Current Regulatory Requirements

Section 395.26(b) of title 49 of the Code of Federal Regulations requires an ELD to automatically record the following data elements; (1) Date; (2) Time; (3) CMV geographic location information; (4) Engine hours; (5) Vehicle miles; (6) Driver or authenticated user identification; (7) Vehicle identification data; and (8) Motor carrier identification data. In addition, an ELD is required to automatically record a number of the data elements specified above at certain events, to include (1) when a driver indicates a change of duty status under section 395.24(b) (see section 395.26(c)), and (2) when an authorized user logs into or out of an ELD (see section 395.26(g)).

Section 395.28(a) of title 49 of the Code of Federal Regulations permits a motor carrier to configure an ELD to authorize a driver to indicate that the driver is operating a CMV under certain special driving categories, including (1) authorized personal use, and (2) yard moves. Section 395.28(a)(2) requires a driver to select the applicable special driving category on the ELD before starting operations in that status, and to deselect it when the indicated status ends. Section 4.3.2.2.2(e) of appendix A to subpart B of part 395 requires a driver to select the applicable special driving category on the ELD before starting operations in that status, and to deselect it when the indicated status ends. Section 4.3.2.2.2(e) of appendix A to subpart B of part 395 requires a driver to reset the yard-move status to “none” if the ELD or CMV’s engine goes through a power-off cycle (ELD or CMV’s engine turns off and then on).

Original Exemption and Application for Renewal of Exemption

In 2017, FMCSA granted a five-year exemption to UPS and all motor carriers and drivers from two provisions of the FMCSRs under specified terms and conditions (82 FR 48883, Oct. 20, 2017).

The exemption expires on October 20, 2022. The exemption allows CMV drivers using portable electronic ELDs to manually record data that would otherwise be required to be automatically recorded when a driver indicates a change of duty status or logs in or out of an ELD (49 CFR 395.26(c) and 395.26(g)). Under the exemption, those requirements do not apply to a driver using a portable ELD unless the driver is in the CMV with the engine powered. The exemption also allows motor carriers to configure their ELD devices so that a driver can enter yard moves under 49 CFR 395.38(a)(1)(ii) without complying with section 4.3.2.2.2(e) of appendix A to subpart B of part 395 which requires a driver’s yard move status to re-set to “none” if the ELD or CMV’s engine goes through a power-off cycle or the CMV’s engine turns off then on.

UPS requested renewal of the exemption on the same basis as stated in its original application, noting that the conditions which necessitated the exemption still exist, and that it has safeguards in place to ensure an equivalent level of safety. For example, regarding the automatic recording of data elements portion of the exemption, UPS stated that its drivers are generally hourly drivers and use portable ELD devices and perform a significant amount of work outside of the CMV. UPS also noted that drivers generally use the ELD device to “punch in” while they are still in the building and then remain on the clock and logged in after they leave the CMV until they return to the dispatch office. Automatic logging of events is not practicable for drivers using portable ELDs because the ELD device is not synchronized to the engine’s electronic control module (ECM) when the driver is outside the CMV. UPS notes that renewal of the exemption would provide an equivalent level of safety because there will be no impact on recording driving time and the data elements that will not be automatically recorded by the ELD at a change in duty status or log on/log out while away from the CMV are not critical provided the driver properly annotates the ELD record to indicate the proper duty status as required by the regulation and the exemption.

Regarding the yard moves portion of the exemption, UPS noted that its feeder drivers are required to complete yard moves as part of their scheduled work and that the drivers can be assigned yard duty for a portion of their shift which may require moving as many as 10 loads per hour within the yard. UPS noted that as a safety precaution its drivers are required to remove the keys

from the CMV each time they exit and that the driver will power the tractor down to couple and uncouple a trailer. UPS stated that an average UPS site has over 90 drivers with the majority completing several yard moves a day. Complying with the specifications in 4.3.2.2.2(d) of appendix A to subpart B of part 395, would require them to enter manual changes of duty status as many as 20 times in an hour. UPS estimated that use of the current exemption has resulted in significant cost savings to it without any degradation in safety. It notes that by continuing to comply with the conditions of the original exemption motor carriers using this exemption will ensure that the “yard move” mode is properly reserved for yard moves and that an equivalent level of safety will be achieved. A copy of UPS’ application to renew the exemption is included in the docket referenced at the beginning of this notice.

IV. Equivalent Level of Safety

In its 2017 decision approving the original exemption application, FMCSA noted that the December 2015 ELD final rule (80 FR 78292) provides a performance-based standard for ELDs and that motor carriers may select from a wide variety of ELDs within the marketplace of ELD providers. This includes the type of portable ELD units used by UPS.

The ELD functions required by the ELD rule are limited to automatically recording all driving time, and intermittently recording certain other information—including recording specified data elements when a driver changes duty status (section 395.26(c)) and logs in/logs out of an ELD (section 395.26(g)). For ELDs that are physically installed in a vehicle, drivers typically log in/log out of the ELD or change duty status while the vehicle is powered, and the required data elements in section 395.26 are readily recorded by the ELD because the ELD is synchronized with the engine’s ECM.

However, in situations where a driver is using a portable, driver-based ELD, a driver will typically log in/log out or change duty status in the ELD at a location away from the vehicle (*i.e.*, in the dispatch office as described by UPS), prior to preparing to drive the vehicle and without the vehicle being powered. In these situations, FMCSA determined that it is not practicable for the ELD to automatically record the data elements required by section 395.26(c) and section 395.26(g), as the ELD is not synchronized with the engine’s ECM at that point. In the final ELD rule, FMCSA stated “FMCSA clarifies that the ECM data or ECM connectivity data must

only be captured when the engine is powered, but the ELD is not prohibited from recording information, if desired, when the engine is off.”

Based on the above, FMCSA determines that it is not necessary for portable, driver-based ELDs to record the data elements required in section 395.26(c) and section 395.26(g) when the driver is not in the CMV, with the engine powered. In instances where a driver using a portable, driver-based ELD logs in/logs out or changes duty status away from the vehicle and without the vehicle powered, the driver will simply annotate the ELD record to indicate the appropriate duty status in accordance with section 395.30. Any time the driver is in the vehicle and the vehicle is powered, the portable, driver-based ELD is required to automatically record the data elements specified in section 395.26. FMCSA agreed that safety would not be diminished because (1) there will be no impact on the recordation of driving time, and (2) the data elements that will not be recorded by the ELD at a change of duty status or log on/log out of the ELD while away from the vehicle are not critical if the driver properly annotates the ELD record to indicate the proper duty status as required.

FMCSA agrees that permitting all motor carriers to configure ELDs with a yard-move mode that does not require a driver to re-input yard move status every time the tractor is powered off will ensure that drivers operating under the yard-move status will achieve a level of safety that is equivalent to or greater than the level that would be obtained under the regulation. Allowing multiple power-off cycles for yard moves is consistent with what is currently permitted for the other special driving category, personal conveyance.

In its application for renewal, UPS states that it has not discovered any safety issues while operating under the exemption and that it will continue to monitor its safety data. FMCSA is unaware of any evidence of a degradation of safety attributable to the current exemption for UPS or any other motor carriers and drivers. FMCSA concludes that provisionally extending the exemption granted on October 20, 2017, for another five years, under the terms and conditions in this exemption renewal, will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

V. Exemption Renewal Decision

A. Grant of Exemption Renewal

FMCSA provisionally renews the exemption for a period of five years subject to the terms and conditions of this decision and the absence of public comments that would cause the Agency to terminate the exemption under section V.F. below. This exemption renewal is otherwise effective October 21, 2022, through October 21, 2027, 11:59 p.m. local time, unless renewed or rescinded.

B. Applicability of Exemption

The exemption allows (1) all motor carriers and drivers that use portable, driver-based ELDs to record engine data only when the driver is in a CMV and the engine is powered, and (2) all motor carriers to configure an ELD with a yard-move mode that does not require a driver to re-input yard-move status every time the tractor is powered off.

C. Terms and Conditions

When operating under this exemption, motor carriers and drivers are subject to the following terms and conditions:

(1.) All motor carriers and drivers using portable, driver-based ELDs are exempt from the requirements of section 395.26(c) and section 395.26(g) unless the driver is in the CMV with the engine powered. When a driver using a portable, driver-based ELD changes duty status or logs in/logs out of the ELD away from the vehicle and without the vehicle powered, the driver is required to annotate the ELD record to indicate the appropriate duty status in accordance with section 395.30. When the driver is in the CMV, and the CMV is powered, the portable, driver-based ELD is required to automatically record the data elements specified in section 395.26.

(2.) A motor carrier is permitted to configure an ELD so that a driver can select “yard moves” in accordance with section 395.28(a)(1)(ii) without complying with section 4.3.2.2.2(e) of appendix A to subpart B of part 395, which requires a driver’s yard-move status to reset to none if the ELD or CMV’s engine goes through a power-off cycle (ELD or CMV’s engine turns off and then on).

However, the ELD must switch from “yard move” status to “driving” status if (1) the driver inputs the “driving” mode; (2) the vehicle exceeds a speed of 20 mph; or (3) the vehicle exits a geofenced motor carrier facility. For the reasons discussed above, FMCSA believes that the level of safety that will be achieved with the exemptions will

likely be equivalent to, or greater than, the level of safety achieved without the exemptions.

(3.) Motor carriers and drivers must comply with all other applicable Federal Motor Carrier Safety Regulations (49 CFR part 350–399).

(4.) The drivers must provide this exemption document to enforcement officials upon request.

D. Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

E. Notification to FMCSA

All motor carriers and drivers must notify FMCSA within 5 business days of any crash (as defined in 49 CFR 390.5) involving any of its CMVs operating under the terms of this exemption. The notification must include the following information:

- (a) Name of the exemption: “UPS Renewal 2022”;
 - (b) Date of the crash;
 - (c) City or town, and State, in which the crash occurred, or closest to the crash scene;
 - (d) Driver’s name and license number;
 - (e) Vehicle number and State license number;
 - (f) Number of individuals suffering physical injury;
 - (g) Number of fatalities;
 - (h) The police-reported cause of the crash;
 - (i) Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations;
 - (j) A copy of the accident report, if available; and
 - (k) The driver’s total driving time and total on-duty time prior to the crash.
- Reports filed under this provision shall be emailed to MCPSV@DOT.GOV.

F. Termination

FMCSA does not believe that UPS and other motor carriers and drivers covered by this exemption renewal will experience any deterioration of their safety record. The exemption will be rescinded if: (1) motor carriers and drivers operating under the exemption fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the

exemption would not be consistent with the goals and objects of 49 U.S.C. 31136(e) and 31315.

VI. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on UPS, Inc.’s application for renewal of the exemption to allow (1) all motor carriers and drivers that use portable, driver-based ELDs to record engine data only when the driver is in a CMV and the engine is powered, and (2) all motor carriers to configure an ELD with a yard-move mode that does not require a driver to re-input yard-move status every time the tractor is powered off. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the Addresses section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Robin Hutcheson,

Administrator.

[FR Doc. 2022–23312 Filed 10–25–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0209]

Women of Trucking Advisory Board (WOTAB); Notice of Public Meeting

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: The FMCSA announces a meeting of the WOTAB.

DATES: The meeting will be held on Wednesday, November 9, 2022, from 9:30 a.m. to 4:30 p.m. ET. Requests for accommodations for a disability must be received by Wednesday, November 2, 2022. Requests to submit written materials for consideration during the meeting must be received no later than Wednesday, November 2, 2022.

ADDRESSES: The meeting will be held virtually for its entirety. Please register

in advance of the meeting at www.fmcsa.dot.gov/wotab. Copies of WOTAB task statements and an agenda for the entire meeting will be made available at www.fmcsa.dot.gov/wotab at least 1 week in advance of the meeting. Once approved, copies of the meeting minutes will be available at the website following the meeting. You may visit the WOTAB website at www.fmcsa.dot.gov/wotab for further information on the committee and its activities.

FOR FURTHER INFORMATION CONTACT: Ms. Shannon L. Watson, Designated Federal Officer, WOTAB, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 360–2925, wotab@dot.gov. Any committee-related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

WOTAB was created under the Federal Advisory Committee Act (FACA) in accordance with section 23007(d)(1) of the Bipartisan Infrastructure Law (BIL) (Pub. L. 117–58), which requires FMCSA to establish WOTAB. WOTAB will review and report on policies that provide education, training, mentorship, and outreach to women in the trucking industry and identify barriers and industry trends that directly or indirectly discourage women from pursuing and retaining careers in trucking.

WOTAB operates in accordance with FACA under the terms of the WOTAB charter, filed February 11, 2022.

II. Agenda

The agenda will cover the following topics:

- An ethics briefing for WOTAB members;
- A report by FMCSA’s Office of Research on the results of “Crime Prevention for Truckers”, a study of women and other CMV drivers and their safety on the road, followed by a discussion;
- Other speakers who may share insights into what WOTAB’s establishment means to them.

III. Public Participation

The meeting will be open to the public via virtual platform. Advance registration via the website is encouraged.

DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services due to a disability, such as sign language interpretation or

other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by Wednesday, November 2, 2022.

Oral comments from the public will be heard during designated comment periods at the discretion of the WOTAB Chair and Designated Federal Officer. To accommodate as many speakers as possible, the time for each commenter may be limited. Speakers are requested to submit a written copy of their remarks for inclusion in the meeting records and for circulation to WOTAB members. All prepared remarks submitted on time will be accepted and considered as part of the record. Any member of the public may present a written statement to the committee at any time.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022-23318 Filed 10-25-22; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Annual Stress Test Rule

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). An agency may not conduct or sponsor, and respondents are 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 the renewal of its information collection titled “Annual Stress Test Rule.” The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be submitted on or before November 25, 2022.

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, 1557–0343, Office of the Comptroller of the

Currency, 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 “1557–0343” 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.

Written comments and recommendations for the proposed information collection should also be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. You can find this information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

On June 30, 2022, the OCC published a 60-day notice for this information collection, 87 FR 39159. You may review comments and other related materials that pertain to this information collection following the close of the 30-day comment period for this notice 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 by OMB control number “1557–0343” or “Annual Stress Test Rule.” 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, OCC 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 disclose information to a third party. The OCC asks that OMB extend its approval of the collection in this notice.

Title: Annual Stress Test Rule.

OMB Control No.: 1557–0343.

Type of Review: Regular review.

Abstract: The annual stress test rule¹ implemented Section 165(i) of the Dodd-Frank Wall Street Reform and Consumer Protection Act² (“Dodd-Frank Act”) which requires certain companies to conduct stress tests. As enacted by the Dodd-Frank Act, national banks and Federal savings associations with total consolidated assets of more than \$10 billion were required to conduct annual stress tests and comply with reporting and disclosure requirements under the rule. The reporting templates for institutions with total consolidated assets of over \$50 billion were finalized in 2012.³

Section 165(i)(2) of the Dodd-Frank Act required certain financial companies, including national banks and Federal savings associations, to conduct annual stress tests⁴ and requires the primary financial regulatory agency⁵ of those financial companies to issue regulations implementing the stress test requirements.⁶

Under section 165(i)(2), a covered institution was required to submit to the Board of Governors of the Federal Reserve System (Board) and to its primary financial regulatory agency a report at such time, in such form, and containing such information as the primary financial regulatory agency may require.⁷

The Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), enacted on May 24, 2018, amended certain aspects of the

¹ 77 FR 61238 (October 9, 2012).

² Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

³ 77 FR 49485 (August 16, 2012); 77 FR 66663 (November 6, 2012).

⁴ 12 U.S.C. 5365(i)(2)(A).

⁵ 12 U.S.C. 5301(12).

⁶ 12 U.S.C. 5365(i)(2)(C).

⁷ 12 U.S.C. 5365(i)(2)(B).

company-run stress testing requirement in section 165(i)(2) of the Dodd-Frank Act.⁸ Specifically, section 401 of EGRRCPA raises the minimum asset threshold for financial companies covered by the company-run stress testing requirement from \$10 billion to \$250 billion in total consolidated assets; revises the requirement for banks to conduct stress tests “annually” and instead requires them to conduct stress tests “periodically”; and no longer requires the OCC to provide an “adverse” stress-testing scenario, thus reducing the number of required stress test scenarios from three to two.

The OCC uses the information to assess the reasonableness of the stress test results and provide forward-looking information to the OCC regarding a covered institution’s capital adequacy. The OCC also may use stress test results to determine whether additional analytical techniques and exercises could be appropriate to identify, measure, and monitor risks at the covered institution. The stress test results support ongoing improvement in a covered institution’s stress testing practices with respect to its internal assessments of capital adequacy and overall capital planning.

Under 12 CFR 46.6(c), each covered institution is required to establish and maintain a system of controls, oversight, and documentation, including policies and procedures, describing the covered institution’s stress test practices and methodologies, and processes for validating and updating the covered institution’s stress test practices. The board of directors of the covered

institution must approve and review these policies at least annually. Section 46.7(a) requires each covered institution to report the results of their stress tests to the OCC annually. Section 46.8(a) requires that a covered institution publish a summary of the results of its annual stress tests on its website or in any other forum that is reasonably accessible to the public.

The 2019 increase in the applicability threshold for these requirements⁹ reduced the estimated number of respondents. In addition, the frequency of these reporting, recordkeeping, and disclosure requirements for some institutions were scaled back to biennial.

Affected Public: Businesses or other for-profit.

Estimated Annual Burden: 6,240 Hours.

Frequency of Response: Annual or biannual.

Comments: On June 30, 2022, the OCC published a 60-day notice for this information collection, 87 FR 39159. No comments were received. Comments continue to be solicited on:

(a) Whether the collections of information are 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 estimates 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 operation, maintenance, and purchase of services to provide information.

Patrick T. Tierney,

Assistant Director, Bank Advisory, Office of the Comptroller of the Currency.

[FR Doc. 2022–23246 Filed 10–25–22; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

This notice is provided in accordance with IRC section 6039G of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as amended. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a) or 877A) with respect to whom the Secretary received information during the quarter ending September 30, 2022. For purposes of this listing, long-term residents, as defined in section 877(e)(2), are treated as if they were citizens of the United States who lost citizenship.

| Last name | First name | Middle name/initials |
|------------------------|------------------|----------------------|
| ABRAHMS | PAUL | C. |
| ABROMAITIS | JONAS JOHN | |
| ADOLFSSON | JESSICA | CAROL |
| AGRATI | PAOLA | |
| AHLUND | MIKAEL | C. |
| AHMED | FAIZ | |
| AKINS | FIONA | MARY |
| AL HAJRI | GHANEM | JABER GHASSAB |
| AL MUKHTAR | RASHA | A. |
| ALEXANDER | GAIUS | MAXIMILIAN ST JOHN |
| ALEXANDER | MICHAEL | DAVID |
| ALLEN | ALEXANDER | RICHARD |
| ALTHAKAFI | SHEIKHA | M. |
| AMANO | TAKAYUKI | |
| AMIRI | NOHAMMD | RAFAEL |
| AMOEDO CASQUEIRO | NOELIA | |
| ANDERSON | DAVID | J. |
| ANDERSON | KATIE | JEAN |
| ANEMA | WALTER | JULIUS |
| ANGEHRN | ISABELLE | SABINE |
| ARAKAWA | KAZUYA | |
| ARAKI | HIRONORI | |
| ARBOLEDA | AMADIO | ANTONIO |
| ARNOLD | ROBERT | FOX |

⁸Public Law 115–174, 132 Stat. 1296–1368 (2018).

⁹84 FR 54472 (October 10, 2019).

| Last name | First name | Middle name/initials |
|-----------------------------|------------------|----------------------|
| ASHRAFI | ALI | |
| ATKINS | MATTHEW | A. |
| AVRILLON JIM | SYLVIE | |
| BAKER | YOKO | SASANO |
| BAKKER | KEES | |
| BALDARI | HILARY | M. |
| BALTUS | ALEX | SIMON |
| BALZER | NOAH | DANIEL |
| BARKLEY | JANET | LYNN |
| BARRETT | JOSEPH | SAMUEL |
| BARTELING | CHERYL | JANITA |
| BASELGA | NICOLAS | ALBERTO |
| BAUME | CHRISTINE | MONIKA |
| BEAGLEY | NIGEL | ROBERT |
| BECERRA VALDIVIA | LORENA | ALEJANDRA |
| BEIJLEVELD | FREDERICK | JOHN |
| BELL | SUSAN | KOCHEVAR |
| BELL | THOMAS | WILLIAM WESLEY |
| BENJAMIN | LORELEI | DEL |
| BENTHUYSEN | JESSICA | ANN |
| BERAUD | JACQUES | DANIEL BERNARD |
| BEWERNICK | RYOKO | |
| BIBOLLET | JULIEN | |
| BIEHN | TRISTAN | P. |
| BINT | ANDREW | K. |
| BISWAS | RAJIT | |
| BJORN | RYAN | LANE |
| BLACKWELL | NINA | MARGUERITE |
| BLACKWELL | PETER | ANTONY |
| BLACKWELL | ROBERT | OSWALD |
| BLAKE | LOGAN | R. |
| BLIN | STEPHANE | JEAN MAURICE |
| BLOCH | ERIC | |
| BLUM | SEBASTIAN | |
| BODEN | HILARY | ALICE |
| BOGGS | JOSHUA | DAVID |
| BONADURER | GAIN | RETO |
| BONGAERTS | BIANCA | ELINE |
| BOOK | GARRET | RICHARD |
| BOTHA | MARK | LEE |
| BOTOSAN | JOHN | |
| BOUKAMP | HESTER | JOHANNA |
| BOY | STACEY-LEE | |
| BRADLEY | CYNTHIA | JANE |
| BRADY | SPENCER | JOSEPH |
| BREST | JEREMY | LEONARD |
| BREWER | GARY | ARTHUR |
| BREWER | JONATHAN | MICHAEL |
| BRICKMAN | YARDENAH | GAIL |
| BRIER | KENNETH | JOHN |
| BROTHERS | KAREN | M. |
| BROWN | ADAM | NICHOLAS |
| BROWN | ALEXANDRA | |
| BROWN | AMANDA | ASHLIE |
| BROWN-FROSSARD | ROBIN | LEE |
| BRUIN | MARIE-LOUISE | |
| BRUINSMA | PIET | H. |
| BUCHBERGER | JENNIFER | MARGARET |
| BUETLER | GABRIEL | |
| BULLARD | JACQUELINE | MARIE |
| BUNTEN | HELEN | MARGARET |
| BURCH JR | JAMES | MARVIN |
| BURISCHEK | FERDINAND | WOLFGANG |
| BUS | ALBERDINA | HENDRIKA |
| BUSH | SANDY | JANE |
| BUTLER BUETLER-DELPHA | THERESA | M. |
| CALLINICOS | ANNEMARIE | C. |
| CALLOW | MARK | SIMON |
| CAMPAGNA | FABIO | |
| CAO | NAIQU | QIU |
| CAPLING | BECKY | LOUISE |
| CARRASQUERO B | ALBERO | JOSE |
| CARVEY | JASON | CHARLES |
| CASLICK | ASHLEY | TAYLOR |

| Last name | First name | Middle name/initials |
|------------|------------|----------------------|
| CASTILLO | PETER | ANDREW |
| CAVAGNARO | VANESSA | LYNNE |
| CHAN | BRYAN | WEI-HEUNG |
| CHAO | SIMONE | CHI MA |
| CHAPMAN | ROBERT | ALBERT |
| CHARBIN | ANASTASIA | MARIE |
| CHARBIN | CEDRIC | PAUL |
| CHEDRAWY | EDGAR | G. |
| CHEN | TERENCE | B. N. |
| CHEN | WEI-MIN | |
| CHENG | HSIU-FEN | |
| CHEUK | HEIDE | OIL GEI |
| CHIANG | HARVEY | YI-MIN |
| CHIEW | JUN | LEONG |
| CHOI | JIN | HEE |
| CHOI | YUEN | CHING |
| CHRUSCH | ASHLEY | D. |
| CHU | WEI-PENG | |
| CLARE | DENNIS | BARRY |
| CLARK | JONATHAN | CAMERON |
| CLARK | ROBIN | JEAN |
| CLARKE | MELISANDE | MARION |
| CLEMENT | CHRISTINE | GEORGIA |
| COCHRANE | JOHN | MICHAEL |
| COHEN | NICHOLAS | NORTHBROOK |
| COHEN | RONEN | |
| COIL | KAREN | LEANNE |
| COLLINS | REED | |
| COMBET | VIRGINIE | CHARLOTTE |
| CONITZER | RUBEN | |
| CONWAY | DON | JOSEPH |
| COOK | DAVID | |
| COTE | CHARLES | MARC |
| COUCH | SANDER | SEBASTIAN |
| COWEN | CHARLES | EDWARD HUXLLEY |
| CRAVEN | LUCIA | |
| CRAWSHAW | SALLY | MARIE GERALDINE |
| CRESSWELL | DARYL | JACQUES |
| CRONHEIM | ALEXANDER | PAUL ALBERT |
| CROSS | SEAN | MICHAEL |
| CROWDIS | MARJORIE | |
| CUNNINGHAM | JOSHUA | HAYDEN |
| DA SILVA | FELIPE | DO NASCIMENTO VIEI |
| DANIELS | MICHAEL | |
| DANILCZUK | ANDRZEJ | |
| DARLING | PATRICK | JOSEPH |
| DAVID | JOHNATHAN | |
| DAVIDSON | FREDERICK | REDMOND |
| DAVIDSON | JOHANNA | ELISABETH |
| DAVIES | STEPHEN | |
| DE BELAY | PAUL | BERNARD |
| DE LU | MAXWELL | JOSEPH |
| DE VEER | RICHARD | |
| DE VRIES | ROY | ARTHUR ERWIN |
| DEACON | ALAN | JOHN |
| DEGRAFF | BARBARA | HARRIETT |
| DELL | GARY | IAN |
| DITTMANN | PETER | FRANCIS |
| DODGE | ANDREW | JAMES |
| DONNAY | FRANCE | ANNE |
| DOUGHTY | PAUL | EDWARD |
| DOUGLAS | SARAH | ELIZABETH |
| DUBE | CHRISTINE | LOUISE |
| DUCLOS | LOLA | |
| DUGGAN | PETER | WILLIAM |
| DUNCAN | BRITTA | |
| DUNSFORD | ANNE | |
| DURANTON | GAELE | GERMAINE |
| ECKERT | MICHAEL | PATRICK |
| EDGEWORTH | ROBERT | MAYER |
| EDWARDS | NICOLA | LOUISE |
| EICHEL | ERNST | PHILIP |
| EICHEL | HELEN | MARIE |
| EKBLOM | JONAS | GORAN |

| Last name | First name | Middle name/initials |
|--------------------|-------------------|----------------------|
| ELIAS | JOCELYN | CORNELIA |
| ENGLISH | DENNIS-JOHN | HENRICUS |
| ENRICH ROBERT | MARIA | C. |
| ENSSLIN | HEATHER | MAE |
| ERNE | JEAN-CLAUDE | |
| ESTEGASSY | GUILLAUME | ARNAUD |
| EVANS | LYNDA | BARBARA |
| EVAS | SUZANNE | LEIGH |
| FAN | ZHENHONG | |
| FARLOW | CHRISTINE | JUNE |
| FIGORE | ADAM | MCCREIGHT |
| FISCHER | ERICH | WILHELM |
| FISHER | SALLY | A. |
| FLANAGAN | DOROTHY | LYNNE |
| FLOYD | JACQUELINE | MARIE |
| FOCKETIJJN | KELLY | ELIZABETH |
| FOK | CHARLES | CHAK LEUK |
| FONG | CLARENCE | KING YUE |
| FORD | ERIK | EUGENE |
| FRANCIS-BRUCE | RICHARD | LESLIE |
| FRAUSING | MICHAEL | |
| FREGARD | ANNETTE | LOIS |
| FREGNI | MARCO | |
| FRIEND | ANDREW | JOHN |
| FUKAO | MOMOE | |
| FUKAO | TAKESHI | |
| FUKUOKA | NAOKO | |
| FUKUOKA | NORITAKA | |
| FUNT | MALCOLM | BRIAN |
| FURAN | GREGORY | ALLEN |
| GALBREATH | JEREMY | THOMAS |
| GALGUT | RUTH | SARAH |
| GARDNER | HARRIET | INDIA |
| GARNER | GRAHAM | L. |
| GARRETT | FLOYD | BRUCE |
| GARRETT | JAMIE | LYN |
| GAUDINO | SIOBHAN | JULIA |
| GEERDINK | KEVIN | TOM |
| GELLNER | NOAH | JOHN |
| GERBIER | BENJAMIN | O. |
| GHAEMAGHAMY | JEFF | SCOTT |
| GHYSELS | CHRISTINE | ANN |
| GIESEN | LOUISE | MARIE |
| GILL | AMYROSE | JOY MCCUE |
| GODDARD | HELEN | BARBARA |
| GODDARD | PETER | |
| GOEDEGEBUURE | DENNIS | A. |
| GOEDEGEBUURE-BROWN | FIONA | G. |
| GOMEZ JR | MARCELO | |
| GONZALEZ | DIEGO | |
| GOODMAN | AMANDA | |
| GORDIS | ALEXANDER | PHILIP |
| GORDIS | BEATRICE | MCCLAM |
| GOTOH | SHIGEKO | |
| GOVINDASAMY | VISVANATHAMOORTHY | |
| GRAFF | RILEY | BRADSHAW |
| GREEN | KRISTINA | VANESSA |
| GREGIORE | WAYNE | ALLAN |
| GREGORY | JAYNE | LOUISE |
| GREGORY | JOHN | |
| GRENIER | ANITA | |
| GUDEWILL | FELICIA | DEWEY |
| GUO | ZHANHE | |
| GUSTAFSON | GRETHEN | M. |
| GUTIERREZ GARCIA | GLORIA | IRMA |
| GWILYM | TOMMY | CARADOC |
| GYGLI | DUSTIN | JAMES |
| HACK | YVONNE | DOROTHY BEWICK |
| HAGEN | ONELLA | KILAGI |
| HALATA | TANYA | CECILIA |
| HALL | DARREN | JOHN |
| HALLIWELL | HANAKO | |
| HALT | FREDERIC | LIONEL |
| HALVERSON | ELSPETH | MARGARET |

| Last name | First name | Middle name/initials |
|--------------|----------------|----------------------|
| HAMMOND | CHAUNCEY | CRAIG |
| HAN | JINSOO | |
| HANES | CARISSA | ANN |
| HANNEY | PATRICIA | |
| HANSON | SABINE | |
| HARKNESS | JOHN | NEWELL |
| HARMON | COLBY | ROGNIER |
| HARPER-SMITH | JANICE | FAY |
| HARRIS | GLENNA | CATHERINE. |
| HARRIS | MARTHA | LYNN |
| HARVIE | PATRICIA | LEA |
| HASSANEIN | MEDHAT | SEIFALLA |
| HASSANEIN | SEIFALLA | MOHAMED |
| HATANO | EMI | |
| HATZIS | HARRY HARRISON | A. |
| HAUPTLI | DANIEL | MANUEL |
| HAYAKAWA | MEGUMI | |
| HAYAKAWA | TAKEHIKO | |
| HEDSTROM | CHERISH | ELAINE |
| HEIJNING | STEPHANIE | ANNE |
| HELGESEN | MARC | ERBECK |
| HENDERSON | LISA | |
| HERBERT | HENRY | JOHN |
| HIBIKI | KANAKO | |
| HIBIKI | TAKASHI | |
| HILL | PAUL | MATTHEW |
| HO | SING-JU | |
| HO | SUZANNA | OI-PENG |
| HOEKSEMA | ERICK | RICHARD |
| HOEKSTRA | JEROEN | PIETER |
| HOLLINGER | MICHAEL | PRADOS |
| HONG | JONGWON | |
| HSIA | SOPHIE | EMMANUELLE SU AN |
| HSU | CHUNG-CHIA | |
| HUANG | AIHUA | |
| HUANG | CHRISTINE | |
| HUANG | JIAN | |
| HUEBNER | ADA | GABRIELA |
| HUEG | ALAN | KIM |
| HUI | PAK | KONG |
| HUIJNEN | JOELLE | |
| HUNZIKER | ROBERT | L. |
| HUR | CHRISTOPHER | |
| HUR | MI | YAE |
| HUTCHINS | DANA | LEE |
| HUYBENS | JOSEPH | RAFFAELLO |
| ICHIKAWA | KATSUHIKO | |
| ICHIKAWA | KUMIKO | |
| IMAGAWA | KENJI | |
| INGEN-HOUSZ | HYLKIA | ANNA |
| INGRAM | AMY | JOYCE |
| ISHIHARA | CHISA | |
| JACKA | SUSAN | FRANCES |
| JACKSON | JAMES | DOUGLAS |
| JAEGER | KLAUS | R. |
| JAIN | MARK | ANDREW |
| JAMES | GILLIAN | BARBARA |
| JEAN | PATRICK | WILLIAM DANIEL |
| JEI | ANN | EUNHE |
| JENSSEN | HILDE | N. |
| JEON | JUN | HO |
| JOHNSON | THOMAS | JAMES JOSEPH |
| JORY | IAN | PHILIP DUNSTAN |
| JORY | JOSEPHINE | CLARE |
| JOURNET | DAVID | FRANCOIS |
| JUDGE | MADELEINE | MINORE |
| KAINE | KENNETH | GEORGE |
| KAJIWARA | YOSHIKI | |
| KAMLER | BARBARA | RUTH |
| KAMP | DONALD | J. |
| KARREN | JOSEPH | CHARLES NICKLAUS |
| KATO | EIJI | |
| KEAN | JANICE | MURIEL |
| KEENAN | BARBARA | DIANE |

| Last name | First name | Middle name/initials |
|-------------|------------|----------------------|
| KEHELA | KAREN | JEAN |
| KELLY | JUSTIN | JOHN |
| KELLY | SARAH | ROSE |
| KEMNA | BRAD | MAKOTO |
| KERTTU | NILS | ERIK MIKAEL |
| KERTU | JELIZAVETA | |
| KIM | CHANG | HON |
| KIM | JINILL | |
| KIM | JONG | HEON |
| KIM | MIN | KYUNG |
| KIM | SEUNG | MIN |
| KIMURA | YURIKO | |
| KING | MASAKO | SUGIMOTO |
| KIRK | MORGAN | HAILEY |
| KIRK | PETER | JEROME |
| KITTSOON | ELLEN | MAE |
| KNOTTENBELT | FEMKE | LOUISE |
| KNUDSEN | KAJA | SKALNES |
| KODAMA | YUJI | |
| KODERA | TSUYOSHI | |
| KORTUM | JAMES | DOUGLAS |
| KREHAN | ASTRID | JOHANNA |
| KRICHBAUM | EVERETT | VAN |
| KROUMOVA | STELA | IVANOVA |
| KUMAR | CYNTHIA | J. |
| KUMAUCHI | MASATO | |
| KUNG | JAMES | JEN |
| KUNZE-BUSCH | MARTINA | CHRISTINE |
| KURAHASHI | YURIKO | |
| KUROIWA | SHINOBU | |
| KUROIWA | YOSHIMI | |
| KUROKI | MACHIKO | |
| KURTZ | MOEGI | |
| KUTZNER | SUSANNE | |
| KWIATKOWSKI | WILLIAM | H. |
| KYLSTRA | MAAIKE | TAUN |
| LACAL | VIRGINIA | |
| LAI | WENDY | |
| LAM | DENISE | LING FUNG |
| LAMBKIN | GRAHAM | MARK |
| LANGLOIS | WILLIAM | JAMES |
| LARSEN | RAINER | ELLIOTT |
| LARSON | HIROE | OTSUKA |
| LAVAU | CATHERINE | PRAXEDE |
| LAZZER | BARRY | NEIL |
| LEE | CHIEN-YI | |
| LEE | FRANCES | SHI HUI. |
| LEE | HO | SONG |
| LEE | JONATHAN | |
| LEE | MASON | SHAO HONG |
| LEE | SEUNG | HYUNG. |
| LEE | YONG | SUN |
| LEMANN | JACOB | MOSES |
| LESLIE | PAULA | M. |
| LEVISON | JAKOB | RANK |
| LEVY | BARBARA | J. |
| LI | YONGCHUAN | |
| LIE | ANNE | CHRISTINE |
| LIE | THOMAS | SCOTT |
| LIEOU | NICHOLAS | |
| LILLEY | KAREN | ANNE |
| LILLEY | RUSSELL | DAVID |
| LIM | HYUNYANG | KIM |
| LIN | KAREN | RUBY |
| LIN | TA | CHUN |
| LISITSINA | NADEZHDA | |
| LITTAUR | MICHAEL | |
| LIU | CHEN-YIN | JESSIE |
| LIU | FRANK | KENG-HUNG |
| LIU | JIE | |
| LIU | NA | |
| LIU | YAOXUN | |
| LIU | ZHIMIN | |
| LLULL | CARLOS | JOSE |

| Last name | First name | Middle name/initials |
|------------------|------------|----------------------|
| LOHACHITKUL | SUPOL | |
| LOO | SWEE-CHIN | |
| LOUIE | DARREN | GLEN |
| LOWBEER-LEWIS | NATHANIEL | NICHOLAS |
| LU | I-LING | |
| LUNDGREN | ANDERS | NILS ERIK |
| LYNCH | JANICE | PAULETTE |
| MA | JIE | |
| MACAULAY | DUNCAN | D. |
| MACDONALD | MARGARET | |
| MACEWAN | ELWOOD | ARTHUR |
| MACHUCA LUQUE | MARIA | DELORES |
| MAI | GAWIN | |
| MALIBORSKI | RAFAL | |
| MAMAI | JOHN | DAVIS |
| MANSUR | DREW | TYLER |
| MARSTON | MARY | ANNE |
| MARTINDALE | KENNETH | T. |
| MARYNOWSKI | THEODORE | JOHN |
| MASSARENTI | SIMONE | ELDRIDGE |
| MATHURA | PREEMCHAND | |
| MATTHEWS | FELIX | HECTOR |
| MATTHEWS | PAUL | RICHARD |
| MATTSON | DAVID | LEE |
| MAYER | DAGMAR | R. |
| MAYORGA | DIANE | MICHELLE |
| MCCALL | PHYLLIS | JEAN |
| MCCARTHY | CHRISTINE | M. |
| MCCGWIRE | PATRICK | CONOR |
| MCCRACKEN | SUSAN | C. |
| MCCREADY | WENDY | A. |
| MCCULLOCH | CRAIG | SHAW |
| MCELVOGUE | GREGOR | IAIN |
| MCFARLANE | TURI | ROBIN |
| MCGRATH | CLARE | M. |
| MCGREGOR | ROBIN | DE ETTE |
| MCINTOSH | ALEXANDRA | JANE |
| MCNEIL | ALISON | |
| MCPHERSON | TASHI | WONG SHEE |
| MEADUS | GREGORY | K. |
| MEINCKE CAMBEROS | MARIA | PATRICIA |
| MERCURIO | MARIA | ANN |
| MILNER | DAPHNE | LEA |
| MIURA | TOMOYO | |
| MOE | STEVEN | HAROLD |
| MOK | KATHY | |
| MORI | NAOKI | |
| MORREY | MICHAEL | DAVID |
| MORREY | SARAH | ANNE |
| MORSE | VALERIE | |
| MOSCATO | SAYOKO | I. |
| MOSSMAN | CAROL | MAXON |
| MOUILLIER | THOMAS | |
| MURPHY | NICOLE | LEANNE |
| MURRAY | PETER | ALEXANDER SCOTT |
| MUSHENKO | MICHAEL | JAMES |
| NABAVI | MANI | |
| NAGATA | MISAKO | |
| NAKAGAWA | ASUKA | JENNY |
| NAKAI | EMILY | |
| NAKAMURA | TOMOKO | |
| NAKAMURA | YUKIKO | |
| NEEDHAM | DIONNE | MARY |
| NEHRING | TYLER | STANLEY |
| NEILSON | REBECCA | MARIE |
| NEUBRAND | MARKUS | |
| NEWLIN | ALBERT | ALLEN |
| NG | WEI CHOON | |
| NGUYEN | ANTHONY | THUONG KHIEM |
| NICCOLLS | JANE | |
| NICCOLLS | PHILIP | LLOYD |
| NISHIMURA | AIMI | ELIZABETH AKIKO |
| NOJIMA | SADAYOSHI | |
| NUSANTORO | CYNTHIA | H. |

| Last name | First name | Middle name/initials |
|---------------------|-----------------|----------------------|
| OBRIEN DRIESSEN | ELIZABETH | LOUISE |
| OBWEGESER | KEVIN | NORMAN |
| OKADA | JUNICHI | |
| OKAMURA | DAISUKE | |
| OLIPHANT | BRIAN | ROBERT |
| OLVERA | JUAN | ANTONIO |
| OMI | AYANO | |
| OSADA | KENICHI | |
| OSULLIVAN | CORNELIUS | BENEDICT |
| PALENSTEIN | OLIVIA | |
| PALMER | AMBER | ORION |
| PALMER | ERIN | OLIVER |
| PAMEIJER | SABRINA | ROANNE MARITIEN |
| PANTER | STEPHANIE | SUE |
| PANTER | STEPHEN | NEIL |
| PARISON | BIANCA | MARIE |
| PARK | CHAN | HEE |
| PARK | CHEOL | YONG |
| PARK | JAE | HOON |
| PARK | JUNYOUNG | |
| PARK | MI | HYUN |
| PATEL | SAHIR | |
| PATHAK | SAURABH | MANOHAR |
| PATTERSON | KEVIN | CARL |
| PEDERSEN | SARAH | JANE |
| PERDRIZET | KIRSTEN | A. |
| PEREIRA | ERIC | SHELDON |
| PERLMAN | JEFFREY | CHAIM |
| PERNBLAD | NICKLAS | DALTON |
| PERNG | JANE | |
| PERRON | JENNY | MARIE |
| PERRON | MARC | HENRI |
| PETER | CHERYL | DAWN |
| PETERS | DOERTE | |
| PETERSON | NICHOLAS | MATTHEW |
| PETERSON | SEBASTIEN | STEVEN |
| PHANG | MONICA | LI-LING |
| PHIELIX | TESS | ANNE |
| PINTUSOONTORN | FLORA | |
| PISANI | DIANA | JEAN |
| PITCHER | MICHAEL | REED |
| PITTS | GREENFIELD | SPENCELEY |
| POLLOCK | BLAINE | DAVID |
| POMERANTZ | BENJAMIN | GERRIT |
| PONG | JEANIE | |
| PORTMANN | THOMAS | |
| POWERS | TOMMY | WAYNE |
| POZZOBON | SUSAN | ELIZABETH |
| PRATLEY | NICHOLAS | JOHN |
| PRESTON | JULIE | ANNA |
| PRINCE | STEPHANE | JEAN CHRISTOPHE |
| PRIOR | ROBIN | STEPHEN |
| PROCUTA | ELENA | MARGARITA |
| PROVOOST | ANNEMARIE | |
| PUETZ | SIMONE | |
| QIU | SHIXUN | |
| QUATTROCLOCCHI | JENNIFER | ANNE |
| QUERENGESSER | BLANCHE | MARLENE |
| QUERENGESSER | WILLIAM | LEROY |
| QUINN | STEVEN | MARK |
| QUINT | ERIC | NICOLAAS JACQUES O |
| RADER | DANA | SUE |
| REDA | MOHAMMED | ASSER |
| REEVE | JOHN | EDWARD CHRISTEN |
| REGAUD | CHRISTIAN | OLIVIER |
| RESTREPO ECHEVERRIA | LINA | MARIA |
| REUSCH | HELEN | ANN |
| REYNOLDS | SHERRIE | DENISE |
| REYNOLDS | SUSAN | E. |
| RHODES | RUBIN | PETER VINCENT JAMES |
| RICHARDS | JOSEPHINE | ALVINA |
| RICKMANN | CHRISTINE | GISELA |
| RIGAS | MARIE-MADELEINE | |
| RIGGERS | ANJA | |

| Last name | First name | Middle name/initials |
|-----------------|------------|----------------------|
| ROBERTSON | JOHN | SCOTT |
| ROBERTSON | LESLIE | CHRISTINE |
| ROBINSON | DARIA | MICHELE |
| ROHRBACK | JENEAL | LINN |
| ROJAS | VALENTINA | |
| ROM | ELISABETH | MARIA |
| ROM | FRANZ | WERNER |
| ROMER | FELICIA | |
| ROTH | VICTOR | ALBAN KARL |
| ROWE | STEPHEN | BOLITHO |
| RUBIN | ZACHARY | |
| RUEEDE | BERNADETTE | CATHERINE |
| RUOL | MICHELE | |
| SAARY | LINDA | ERICA |
| SACHS | HOWARD | CRAIG |
| SADANAND | SIDDHARTH | |
| SAKAMOTO | WAKAKO | |
| SAKAMOTO-TAYLOR | TOMOKO | |
| SALCE | YASMIN | PUI |
| SALUSBURY | PETER | HOWE |
| SALVADOR | AIMEE | LYN |
| SANCHEZ HERRERA | EZEQUIEL | |
| SANDERS | JONATHAN | M. |
| SANDERSON | JANET | ELAINE BOOTH |
| SASSEVILLE | JOSEE | MARTINE |
| SCHENKENFELDER | YOSHIKO | |
| SCHINAZI | ILAN | ERIC |
| SCHMEDER | NATICA | TANYA |
| SCURR | JOHN | LEWIS |
| SCURRAH-EHRHART | CECILIA | ANA |
| SEYBERTH | JAN | OLIVER |
| SHAH | AMINA | SAYYADA |
| SHEN | BIN | |
| SHIN | JIWON | |
| SICARD | ALAIN | MARIUS |
| SIEBERT | ANNA | MARIE |
| SIMON | DOMINIQUE | LEONARD |
| SINGLETON | ANIQUE | DENISE LYNETTE |
| SIPKO | OLGA | |
| SIRACUSA | JOSEPH | MARCUS |
| SLAVOV | GEORGE | BOJIN |
| SMITH | BRIAN | PATRICK |
| SMITH | ROBERT | DEAN |
| SMITH | SACHIKO | |
| SMITHIE | MICHAEL | WILLIAM ANTHONY |
| SMOOLE | DONNA | LEE |
| SNOW | IAN | NIELS |
| SOERENSEN | JEANETTE | ELFVING |
| SOLLMANN | RAHEL | |
| SOORTY | ANUM | SHAHID |
| SOVINE | RHAIAN | KRISTA |
| SPARACIO | MARY | |
| SPATAFORE | JAMES | DAVID |
| SPEER | JORDAN | ELIZABETH |
| SPENCE | JUDITH | A. |
| ST JOHN | ANN | FENWICK |
| STADNYK | CRAIG | WALTER BASHAK |
| STAM | MAILE | ALANA |
| STANLEY | STEPHEN | NEIL |
| STANLEY | TONY | JONATHAN |
| STEPHENS | ROBERT | LEE |
| STERN | CAROLINE | NICOLE |
| STEWART | ANDREW | IAN |
| STILKENBOOM | MARK | DANIEL SOREN |
| STONE | PAULA | EVELYN |
| STORK | MAARTEN | A. |
| STOUT | RANDALL | EDWARD |
| STRAUSS | CRISTINA | ELISABETH |
| STRAUSS | MELANIE | |
| STRONG | WILLIAM | RICHARD |
| SUGIURA | MOTOYUKI | |
| SUGIURA | SATOKO | |
| SULLIVAN | WAYNE | RAOUL |
| SULLIVAN | LUCILE | |

| Last name | First name | Middle name/initials |
|------------------------|------------------|----------------------|
| SUNG | SHIWOO | |
| SUSSER | BERNARD | |
| SUZUKI | SEIGO | |
| SWIFT | SELINA | JANE |
| SZE YAN LAU | ALLISON | |
| TAK | ANNE-LOTTE | |
| TAKAHASHI | MJIKA | |
| TAKANO | YUKIYA | |
| TAKASHIMA | TEIKO | |
| TAKEDA | FUMIKO | |
| TAKEDA | MASAAKI | |
| TAKEUCHI | TAKAYO | |
| TALLING SMITH | AGNES | ULRIKA |
| TALLING SMITH | SIMON | DAVID |
| TANAKA | YUKA | |
| TANG | YUANMIN | |
| TANNIRANDORN | PUNTRIKA | |
| TATLOCK | JOE | MICHAEL |
| TAYLOR | ETHEL | ROSE |
| TAYLOR | LYNN | ELIZABETH |
| TAYLOR | MARK | ANTHONY |
| TAYLOR BOARDMANN | CASEY | SARAH |
| TEMPLE | TREVOR | |
| TERMIJTELEN | FLEUR | WILLEMIJN |
| THEVES | MATHILDE | SOPHIE |
| THIBAULT | FRANCOIS | JEAN MAURICE |
| THOMAS | MIA | LEE |
| THOMPSON | SIMON | E. |
| THYSSEN | HEIDI | A. |
| THYSSEN | JUERGEN | HANNS |
| TODD | DIANE | LOUISE |
| TOHAMA | FUSAKO | |
| TOHAMA | TAKESHI | |
| TOKUSUMI | TSUYOSHI | |
| TOKUSUMI | YUMIKO | |
| TOMIDA | YOSHIHARU | |
| TOMIDA | YUMIKO | |
| TOYAMA | ISAO | |
| TRIAY | JESSICA | MEGAN |
| TSUTSUMI | KAZUKI | |
| TSUTSUMI | TOKIKO | |
| TULLOH | DONNA | MARIE |
| TURCHET | GIOVANNI | |
| UBOLDI | CYRIL | HENRI EMILE |
| UDAGAWA | SAWA | |
| UDAGAWA | SATOSHI | |
| ULLRICH | JILL | ANN |
| UMEBAYASHI | KOZUE | |
| UMEBAYASHI | MITSUNORI | |
| USUI | MARIKO | |
| VALSECCHI | ISABELLA | MARIA |
| VAN DER WAL | CH.RISTINA | S. |
| VAN DIJK | ERIC | |
| VAN DRUMPT | SUSANNE | CORNELIA ELAINE |
| VAN HELLEPUTTE | EMILIE | MECHTILDE HENDRIQUE |
| VAN MEEUWEN | LYDIA | JOHANNA PAULINA |
| VAN TEYLINGEN | GERHARD | ARTHUR |
| VAN TEYLINGEN | HANNAH | |
| VAN TEYLINGEN | JENNIFER | GALE |
| VAN VELZEN | JOHANNA | CATHARINA |
| VANCOLLIE | GUY | MARIE FRANCOIS |
| VILLEDROUIN | REGIS | MARCEL |
| VILLINGER | VERONICA | |
| VINK | ANDREW | WILLY |
| VITACCO | JACQUELINE | ANN |
| VOLDOIRE | ALINE | CECILE |
| VOLLERING | STEFANIE | PAULINE MARIE |
| VON BIEL | WIHELM | ANDREAS |
| VORONOFF | GEORGE | |
| VORONOFF | KERRY | ANNE |
| VOS | ADRIAN | WILLEM FLORIS |
| WADE | STEVEN | WILLIAM |
| WANG | DANDAN | |
| WANG | TONGYAN | |

| Last name | First name | Middle name/initials |
|-------------|-------------|----------------------|
| WANG | XIAOMING | |
| WARD | CLAIRE | LOUISE |
| WARITANI | NANAKO | |
| WATERS | PAUL | MARTIN |
| WATKINS | SARAH | JANE |
| WEGENER | JUERGEN | T. |
| WEISHEIT | MATTHIAS | HERMANN |
| WELCH | BRETT | RONALD |
| WELLS | TODD | IAN |
| WEN | TAO | CHIH |
| WESBONK | FELIPE | ALEXANDER |
| WEYERS | ALBERT | |
| WHEELER | PHILIPPA | MARY HARRIETT |
| WICHMANN | CATHERINE | KELLY |
| WIEDEMANN | WIEBKE | |
| WIEGMAN | MARTIN | DANIEL |
| WIGET—BLOCH | IRENE | HELENE |
| WIGHT | SCOTT | B. |
| WILLIAMS | FOSTER | CHARLES |
| WILLIAMSON | THOMAS | D. |
| WILSON | WAYNE | C. |
| WINE | AARON | MITCHELL |
| WINGATE | GREGORY | DEARBORN |
| WINTER | KEVIN | W. |
| WIRTH | RACHEL | ELIZABETH |
| WITTE | DANIELA | |
| WOLF | AMANDA | MARIE |
| WOO | WEI-LI | |
| WOOD | CHRISTOPHER | JAMES |
| WOODS | DAVID | CHARLES |
| WU | AN-FUNG | |
| WU | ANNE | |
| WU | CHIEN-HUNG | |
| WU | JING | |
| WYLER | LAURE | MURIEL |
| XIAO | HUIYU | |
| XIAO | PENG | |
| YAGI | KIMI | |
| YAGI | MOTOKO | |
| YAMAGUCHI | KIMIAKI | |
| YAMANE | KEIKO | |
| YAMASHITA | TETSUJI | |
| YANO | SEIICHI | |
| YANO | YOKO | |
| YAP | AURORA | W. M. |
| YEUNG | DEBORAH | MEW LING |
| YIN | XIAMING | |
| YOO | CHEOL | HYO |
| YOSHINO | JUN | |
| YOUNG | GEORGE | ROBERT TODD |
| YU | ALAN | ALBERT |
| YUAN | LIN | |
| ZAIDEL | GRAYSON | A. |
| ZENG | EDDY | YONGPING |
| ZHANG | CHENYAN | |
| ZHOU | JINGFEN | |
| ZHU | JINGYAN | |
| ZIEGLER | JOSHUA | MICHAEL |
| ZOCHODNE | JULIA | KRISTEN |
| ZWAHLEN | MICHAEL | JOHN |

Dated: October 20, 2022.

Steven B. Levine,

Manager, Team 1940, CSDC—Compliance Support, Development & Communications, LB&I:WEIIC:IC:T4.

[FR Doc. 2022-23233 Filed 10-25-22; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Internal Revenue Service (IRS) Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The

public is invited to submit comments on these requests.

DATES: Comments should be received on or before November 25, 2022 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. Copies of the submissions may be obtained from Melody Braswell by emailing PRA@treasury.gov, calling (202) 622-1035, or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

1. *Title:* Application of tentative refund.

OMB Number: 1545-0098.

Form Number: 1045.

Abstract: Form 1045 is used by individuals, estates, and trusts to apply for a quick refund of taxes due to carryback of a net operating loss, unused general business credit, or claim of right adjustment under Internal Revenue Code section 1341(b). The information obtained is used to determine the validity of the application.

Current Actions: Form 1045 has been revised to comply with updates in current laws and regulatory requirements.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 17,503.

Estimated Time per Respondent: 24 hours 29 min.

Estimated Total Annual Burden Hours: 428,649.

2. *Title:* Application for Approval of Prototype or Employer Sponsored Individual Retirement Account.

OMB Number: 1545-0390.

Form Number: 5306.

Abstract: This application is used by employers who want to establish an individual retirement account trust to be used by their employees. The application is also used by banks and insurance companies that want to establish approved prototype individual retirement accounts or annuities. The data collected is used to determine if the individual retirement account trust or annuity contract meets the requirements

of Code section 408(a), 408(b), or 408(c) so that the IRS may issue an approval letter.

Current Actions: There is no change to the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 600.

Estimated Time per Respondent: 13 hours, 44 minutes.

Estimated Total Annual Burden Hours: 8,244 hours.

3. *Title:* Gains and Losses From Section 1256 Contracts and Straddles.

OMB Number: 1545-0644.

Form Number: 6781.

Abstract: Form 6781 is used by taxpayers in computing their gains and losses on Internal Revenue Code section 1256 contracts under the marked-to-market rules and gains and losses under Code section 1092 from straddle positions. The data is used to verify that the tax reported accurately reflects any such gains and losses.

Current Actions: There is no change to the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals.

Estimated Number of Respondents: 5,684.

Estimated Time Per Respondent: 13.95 hours.

Estimated Total Annual Burden Hours: 79,292 hours.

4. *Title:* Application for Renewal of Enrollment to Practice Before the Internal Revenue Service.

OMB Number: 1545-0946.

Form Number: 8554.

Abstract: The information obtained from Form 8554 relates to the approval of continuing professional education programs and the renewal of the enrollment status for those individuals admitted (enrolled) to practice before the Internal Revenue Service. The information will be used by the Director of Practice to determine the qualifications of individuals who apply for renewal of enrollment.

Current Actions: There are no changes to the form since last renewal of this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 62,000.

Estimated Number of Responses: 21,000.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 7,000.

Title: Application for Renewal of Enrollment to Practice Before the Internal Revenue Service as an Enrolled Retirement Plan Agent (ERPA).

OMB Number: 1545-0946.

Form: 8554-EP.

Abstract: This form is used to renew your Enrolled Retirement Plan Agent (ERPA) status. You must renew your enrollment status every 3 years as determined by the last digit of your Tax Identification Number (TIN).

Current Actions: There are no changes being made to the form at this time. However, there are changes to the burden estimates due to the most current filing data.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 750.

Estimated Number of Responses: 250.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 83.

5. *Title:* Application for Enrollment to Practice Before the Internal Revenue Service.

OMB Number: 1545-0950.

Form Number: Form 23.

Abstract: Form 23 must be completed by those who desire to practice before the Internal Revenue Service. The information on the form will be used by the Director of Practice to determine the qualifications and eligibility of applicants for enrollment.

Current Actions: There are no changes to Form 23.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 5,429.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 2,715 hrs.

6. *Title:* Generation-Skipping Transfer Tax Return For Terminations.

OMB Number: 1545-1145.

Form Number: 706-GS(T).

Abstract: Form 706-GS(T) is used by trustees to compute and report the tax due on generation-skipping transfers that result from the termination of interests in a trust. The IRS uses the information to verify that the tax has been properly computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 500.

Estimated Number of Responses: 1 hour, 22 minutes.

Estimated Total Annual Burden Hours: 684 hours.

7. Title: Real Estate Mortgage Investment Conduits.

OMB Number: 1545–1276.

Regulation Project: TD 8458.

Abstract: Internal Revenue Code (IRC) section 860G provides definitions and special rules pertaining to real estate mortgage investment conduits (REMIC). IRC section 860E outlines the treatment of income in excess of daily accruals on residual interests and imposes an excise tax on the transfer of a residual interest in a REMIC to a disqualified organization. Treasury Regulations section 1.860E–2(a)(5) requires the REMIC to furnish, on request of the party responsible for the tax and to the Internal Revenue Service (IRS), information sufficient to compute the present value of the anticipated excess inclusions. Treasury Regulations sections 1.860E–2(a)(7) and 1.860E–2(b)(2) provide that the tax will not be imposed on the party otherwise liable for the tax if the transferee or record holder with interest in a pass-thru entity furnishes an affidavit stating that they are not a disqualified organization.

Current Actions: There is no change to the existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 1,600.

Estimated Time per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 525.

8. Title: U.S. Income Tax Return for Qualified Funeral Trusts.

OMB Number: 1545–1593.

Form Number: 1041–QFT.

Abstract: Internal Revenue Code section 685 allows the trustee of a qualified funeral trust to elect to report and pay the tax for the trust. Form 1041–QFT is used for this purpose. The IRS uses the information on the form to determine that the trustee filed the proper return and paid the correct tax.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Responses: 15,000.

Estimated Time per Response: 18.5 hours.

Estimated Total Annual Burden Hours: 277,500.

9. Title: Aid of Construction Under Section 118(c).

OMB Number: 1545–1639.

Regulation Project Number: TD 8936.

Abstract: This regulation provides guidance with respect to section 118(c), which provides that a contribution in aid of construction received by a regulated public water or sewage utility is treated as a contribution to the capital of the utility and excluded from gross income.

Current Actions: There is no change to the burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 300.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 300 hrs.

Title: Employee Plans Compliance Resolution System (EPCRS).

OMB Number: 1545–1673.

Regulation Project Number: RP 2021–30.

Form Number: Forms 8950, 8951, 14568, 14568–A thru I.

Abstract: The information requested in Revenue Procedure 2021–30 is required to enable the Internal Revenue Service to make determinations on the issuance of various types of closing agreements and compliance statements. The issuance of the agreements and statements allow individual plans to maintain their tax-qualified status. As a result, the favorable tax treatment of the benefits of the eligible employees is retained. Applicants under the Voluntary Correction Program (VCP) must file Forms 8950 and 8951, and the appropriate scheduled(s) to the applicable part of the model compliance statement, in order to request written approval from the IRS for a correction of a qualified plan that has failed to comply with the requirements of the Internal Revenue Code.

Current Actions: There is no change to the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and business or other for-profit organizations, not-for profit institutions, and state, local or tribal governments.

Estimated Number of Respondents: 15,375.

Estimated Time per Respondent: 12 hours, 25 minutes.

Estimated Total Annual Burden Hours: 190,941 hours.

11. Title: New Markets Credit.

OMB Number: 1545–1804.

Form Number: 8874.

Abstract: Investors to claim a credit for equity investments made in Qualified Community Development Entities use Form 8874.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 101.

Estimated Time per Respondent: 4 hours, 52 minutes.

Estimated Total Annual Burden Hours: 492 hours.

12. Title: Health Coverage Tax Credit (HCTC) Monthly Registration and Update.

OMB Number: 1545–1842.

Form Number: 13441–A.

Abstract: The health coverage tax credit monthly registration and update Form will be directly mailed to all individuals who are potentially eligible for the HCTC. Potentially eligible individuals will use this form to determine if they are eligible for the Health Coverage Tax Credit and to register for the HCTC program. Participation in this program is voluntary. This form will be submitted by the individual to the HCTC program office in a postage-paid, return envelope. We will accept faxed forms, if necessary. Additionally, recipients may call the HCTC call center for help in completing this form.

Current Actions: The HCTC expired in 2021 and is unavailable to be claimed in 2022. IRS is keeping the OMB approval active on the collection, in case, Congress reauthorizes the credit for future tax years.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 5,146.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 2,573.

13. Title: TEFAC Compliance Check Report.

OMB Number: 1545–2026.

Form Number: 13797.

Abstract: This form will be provided to tribes who elect to perform a self-compliance check on any or all their entities. This is a VOLUNTARY

program, and the entity is not penalized for non-completion of forms or withdrawal from the program. Upon completion, the information will be used by the Tribe and ITG to develop training needs, compliance strategies, and corrective actions.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations and State, Local, or Tribal Government.

Estimated Number of Respondents: 20.

Estimated Time per Respondent: 22 hours 20 min.

Estimated Total Annual Burden Hours: 447.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2022-23309 Filed 10-25-22; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Bureau of Fiscal Service Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before November 25, 2022 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Melody Braswell by

emailing PRA@treasury.gov, calling (202) 622-1035, or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

Bureau of the Fiscal Service (BFS)

Title: Notice of Reclamation—Electronic Funds Transfer, Federal Recurring Payment.

OMB Number: 1530-0003.

Form Number: FS Form 133.

Abstract: FS Form 133 is utilized to notify financial institutions of an obligation to repay payments erroneously issued to a deceased Federal benefit payment recipient. The information collected from the financial institutions is used by Treasury to close out the request from a program agency to collect an EFT payment from the financial institution to which a beneficiary was not entitled.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 223,128.

Estimated Time per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 29,750.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2022-23301 Filed 10-25-22; 8:45 am]

BILLING CODE 4810-AS-P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Alcohol and Tobacco Tax and Trade Bureau Information Collection Request

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before November 25, 2022 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent

within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Copies of the submissions may be obtained from Melody Braswell by emailing PRA@treasury.gov, calling (202) 622-1035, or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

1. *OMB Control No.* 1513-0011.

Title: Formula and/or Process for Article Made with Specially Denatured Spirits.

TTB Form Number: TTB F 5150.19.

Abstract: In general, under the Internal Revenue Code (IRC) at 26 U.S.C. 5214, distilled spirits used in the manufacture of nonbeverage articles are not subject to Federal excise tax, and, under the IRC at 26 U.S.C. 5273, persons who intend to produce such articles using specially denatured distilled spirits (SDS) must obtain prior approval of their formulas and manufacturing processes. For medicinal preparations and flavoring extracts intended for internal human use, that section also prohibits SDS from remaining in the finished articles. Under those IRC authorities, the Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations in 27 CFR part 20 require persons to file formula and process approval requests for articles made with SDS using form TTB F 5150.19. TTB uses the collected information to ensure that the relevant provisions of the IRC are appropriately applied.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is decreasing the estimated number of annual respondents, responses, and burden hours associated with this collection, but is increasing the average number of responses per respondent.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

Number of Respondents: 110.

Average Responses per Respondent: 1.6.

Number of Responses: 176.

Average Per-response Burden: 44 minutes.

Total Burden: 129 hours.

2. *OMB Control No.* 1513-0024.

Title: Report—Export Warehouse Proprietor.

TTB Form Number: TTB F 5220.4.

Abstract: In general, under chapter 52 of the IRC, tobacco products and cigarette papers and tubes manufactured in, or imported into, the United States are subject to excise tax, while such products removed for export are not subject to that tax. The IRC provides for the establishment of export warehouses, which are bonded warehouses for the storage of tobacco products or cigarette papers or tubes, upon which the internal revenue tax has not been paid, and processed tobacco, for subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States. See 26 U.S.C. 5702(h). To account for the receipt, storage, and disposition of untaxed tobacco products and processed tobacco, the IRC at 26 U.S.C. 5722 requires export warehouse proprietors to provide reports as prescribed by regulation. Under that authority, the TTB regulations in 27 CFR part 44 require such proprietors to file a monthly report using TTB F 5220.4, listing the amount of tobacco products, cigarette papers and tubes, and processed tobacco received, removed, lost, or unaccounted for during a given month. TTB uses the collected information to ensure that the relevant provisions of the IRC are appropriately applied and to detect diversion of untaxed products.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is decreasing the number of annual respondents, responses, and burden hours associated with this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Number of Respondents: 70.

Average Responses per Respondent: 12 (one per month).

Number of Responses: 840.

Average Per-response Burden: 1 hour.

Total Burden: 840 hours.

3. OMB Control No. 1513–0035.

Title: Inventory—Export Warehouse Proprietor.

TTB Form Number: TTB F 5220.3.

Abstract: In general, under chapter 52 of the IRC, tobacco products and cigarette papers and tubes manufactured in, or imported into, the United States are subject to excise tax, while such products removed for export are not. The IRC provides for the establishment of export warehouses, which are bonded

warehouses for the storage of tobacco products or cigarette papers or tubes, upon which the internal revenue tax has not been paid, and processed tobacco, for subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States. See 26 U.S.C. 5702(h). To account for such products, the IRC, at 26 U.S.C. 5721, requires export warehouse proprietors to take an inventory of all tobacco products, cigarette papers and tubes, and processed tobacco on hand at the commencement of business, the conclusion of business, and at other times as prescribed by regulation. Under that authority, the TTB regulations in 27 CFR part 44 require such proprietors to make opening and closing inventories, and to make inventories when certain changes in ownership and control of the business occur and when directed by TTB. Such inventories must be made using TTB F 5220.3. TTB uses the collected information to ensure that the relevant provisions of the IRC are appropriately applied, to establish a contingent excise tax liability on products not yet exported, and to detect diversion of untaxed articles.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is decreasing the number of annual respondents, responses, and burden hours associated with this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

Number of Respondents: 70.

Average Responses per Respondent: 1 (one).

Number of Responses: 70.

Average Per-response Burden: 5 hours.

Total Burden: 350 hours.

4. OMB Control No. 1513–0039.

Title: Distilled Spirits Plants Warehousing Records (TTB REC 5110/02), and Monthly Report of Storage Operations.

TTB Form Number: TTB F 5110.11.

TTB Recordkeeping Number: TTB REC 5110/02.

Abstract: The IRC at 26 U.S.C. 5207 requires distilled spirits plant (DSP) proprietors to maintain records and submit reports of production, storage, denaturation, and processing activities as the Secretary of the Treasury (the Secretary) requires by regulation. Under that IRC authority, the TTB regulations in 27 CFR part 19 require DSP

proprietors to keep certain records regarding their warehousing operations. The regulations also require DSP proprietors to submit a summary report of their storage operations to TTB on a monthly basis using form TTB F 5110.11. Under the IRC at 26 U.S.C. 5005(c), DSP proprietors remain liable for the excise tax for all stored distilled spirits, and, as such, TTB uses the collected information to ensure that the relevant provisions of the IRC are appropriately applied.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates resulting from continued growth in the number of distilled spirits plants in the United States, TTB is increasing the number of annual respondents, responses, and total burden hours associated with this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Number of Respondents: 4,800.

Average Responses per Respondent: 12 (one per month).

Number of Responses: 57,600.

Average Per-response Burden: 2 hours.

Total Burden: 115,200 hours.

5. OMB Control No. 1513–0045.

Title: Distilled Spirits Plants—Excise Taxes (TTB REC 5110/06).

TTB Recordkeeping Number: TTB REC 5110/06.

Abstract: Under chapter 51 of the IRC, distilled spirits produced or imported into the United States are subject to Federal excise tax, which is determined at the time the spirits are withdrawn from bond and which is paid by return, subject to regulations prescribed by the Secretary. In addition, a credit may be taken against that tax for the portion of a distilled spirits product's alcohol content derived from wine or flavors. The TTB regulations in 27 CFR parts 19 and 26 require distilled spirits excise taxpayers to keep certain records in support of the information provided on their excise tax returns, including information on the distilled spirits removed from their premises and the products' applicable tax rates, as well as records related to nontaxable removals, shortages, and losses. TTB uses the collected information to ensure that the relevant provisions of the IRC are appropriately applied, verify claims for refunds or remission of tax, and account for the transfer of certain distilled spirits excise taxes to the governments of Puerto Rico and the U.S. Virgin Islands.

Current Actions: There are no program changes associated with this information collection at this time, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates resulting from continued growth in the number of distilled spirits plants in the United States, TTB is increasing the number of annual respondents, responses, and total burden hours associated with this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

Estimated Annual Burden

Number of Respondents: 4,800.

Average Responses per Respondent: 14.

Number of Responses: 67,200.

Average Per-response Burden: 1 hour.

Total Burden: 67,200.

7. OMB Control No. 1513–0046.

Title: Formula for Distilled Spirits under the Federal Alcohol Administration Act.

TTB Form Number: TTB F 5110.38.

Abstract: The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) authorizes the Secretary to issue regulations regarding the labeling of alcohol beverages to prevent consumer deception and provide the consumer with adequate information as to the identity and quality of such products, which, for certain distilled spirits beverage products, may require a statement of composition. Additionally, the IRC at 26 U.S.C. 5222(c), 5223, and 5232, authorizes the Secretary to issue regulations regarding the removal and addition of extraneous substances to distilling materials or the redistillation of domestic and imported spirits. Under those statutory authorities, the TTB regulations in 27 CFR parts 5, 19, and 26 require proprietors to obtain approval of formulas for distilled spirits beverage products when operations such as blending, mixing, purifying, refining, compounding, or treating change the character, composition, class, or type of the spirits. In place of TTB's general alcohol beverage formula form, approved under control number OMB No. 1513–0122, respondents may use TTB F 5110.38 to list ingredients, and, if required, the process used to produce the distilled spirits product in question. TTB uses the collected information to determine if such products meet the applicable statutory and regulatory requirements.

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Number of Respondents: 50.

Average Responses per Respondent: 1 (one).

Number of Responses: 50.

Average Per-response Burden: 1 hour.

Total Burden: 50 hours.

7. OMB Control No. 1513–0063.

Title: Stills—Notices, Registration, and Records (TTB REC 5150/8).

TTB Recordkeeping Number: TTB REC 5150/8.

Abstract: The IRC, at 26 U.S.C. 5101 and 5179, allows the Secretary to issue regulations to require manufacturers of stills to submit notices regarding the manufacture and setup of stills, and it requires all persons who possess or have custody of a still to register it with the Secretary and provide information as to its location, type, capacity, ownership, and the purpose for which it will be used. Under those authorities, the TTB regulations in 27 CFR part 29 require still manufacturers to provide certain notices and keep certain records regarding the manufacture and setup of stills. Those regulations also require still owners to register their stills with TTB and provide certain notices and keep certain records regarding such registrations and changes in ownership or location of stills. Respondents may meet the prescribed record requirements by keeping usual and customary business records. TTB uses the required information to ensure that the relevant provisions of the IRC are appropriately applied.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is increasing the number of annual respondents, responses, and burden hours for this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Number of Respondents: 20.

Average Responses per Respondent: 4 (on occasion).

Number of Responses: 80.

Average Per-response Burden: 1 hour.

Total Burden: 80 hours.

8. OMB Control No. 1513–0066.

Title: Retail Liquor Dealers Records of Receipts of Alcoholic Beverages and Commercial Invoices (TTB REC 5170/03).

TTB Recordkeeping Number: TTB REC 5170/03.

Abstract: Under the authority of the IRC at 26 U.S.C. 5122, the TTB

regulations in 27 CFR part 31 require retail alcohol beverage dealers to keep records showing the quantities of all distilled spirits, wines, and beer received, including information on from whom and when the products were received. Those regulations also require dealers to keep records of all alcohol beverage sales of 20 or more wine gallons made to the same person at the same time. At the respondent's discretion, those records may consist of usual and customary business records such as commercial invoices or a book containing the required information, maintained at their place of business or at an alternate location under the dealer's control approved by TTB. Additionally, under the IRC at 26 U.S.C. 5123, the TTB regulations require retail dealers to maintain those records for at least 3 years, available for TTB inspection during business hours. TTB uses the required information to ensure that the relevant provisions of the IRC are appropriately applied.

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Number of Respondents: 455,000.

Average Responses per Respondent: 1 (one).

Number of Responses: 455,000.

Average Per-response and Total Burden: None. Per the Office of Management and Budget (OMB) regulations at 5 CFR 1320.3(b)(2), regulatory requirements to keep usual and customary business records impose no added burden on respondents.

9. OMB Control No. 1513–0068.

Title: Records of Operations—Manufacturer of Tobacco Products or Processed Tobacco (TTB REC 5210/1).

TTB Recordkeeping Number: TTB REC 5210/1.

Abstract: The IRC at 26 U.S.C. 5741 requires manufacturers of tobacco products, cigarette papers or tubes, or processed tobacco to keep records as the Secretary prescribes by regulation. Under that authority, the TTB regulations in 27 CFR part 40 require such manufacturers to keep daily records regarding materials received and products manufactured, removed, returned, consumed, transferred, destroyed, lost, or disclosed as shortages. Those regulations provide that manufacturers may use usual and customary commercial records, where possible, to keep and maintain the required data, which must be

maintained for 3 years, subject to TTB inspection upon request. TTB uses the required information to ensure that industry members comply with the tax provisions of the IRC regarding tobacco products and processed tobacco.

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits; and Individuals or households.

Number of Respondents: 235.

Average Responses per Respondent: 1 (one).

Number of Responses: 235.

Average Per-response Burden: 2 hours.

Total Burden: 470 hours.

10. OMB Control No. 1513–0070.

Title: Tobacco Export Warehouse—Records of Operations (TTB REC 5220/1).

TTB Recordkeeping Number: TTB REC 5220/1.

Abstract: In general, chapter 52 of the IRC imposes Federal excise tax on all tobacco products and cigarette papers and tubes manufactured in, or imported into, the United States, while exempting such products removed for export, as well as all processed tobacco, from that tax. Export warehouses receive and store such non-taxpaid products until they are removed without payment of tax for export to a foreign country, Puerto Rico, or the U.S. Virgin Islands, or for consumption beyond the internal revenue laws of the United States. As authorized by the IRC at 26 U.S.C. 5741, the TTB regulations in 27 CFR part 44 require export warehouse proprietors to keep usual and customary business records showing the date, kind, quantity, and manufacturer of all tobacco products, cigarette papers and tubes, and processed tobacco received, removed, transferred, destroyed, lost, or returned to the manufacturer or to a customs bonded warehouse proprietor. TTB uses the collected information to ensure untaxed products are accounted for and tracked, and to detect diversion of untaxed products.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is decreasing the number of annual respondents, responses, and burden hours associated with this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

Number of Respondents: 70.

Average Responses per Respondent: 1 (one).

Number of Responses: 70.

Average Per-response and Total

Burden: None. Per the OMB regulations at 5 CFR 1320.3(b)(2), regulatory requirements to keep usual and customary business records impose no additional burden on respondents.

11. OMB Control No. 1513–0072.

Title: Applications and Notices—Manufacturers of Nonbeverage Products (TTB REC 5530/1).

TTB Recordkeeping Number: TTB REC 5530/1.

Abstract: In general, the IRC at 26 U.S.C. 5001 imposes Federal excise tax on each proof gallon of distilled spirits produced in or imported into the United States. However, under the IRC at 26 U.S.C. 5111–5114, persons using distilled spirits to produce certain nonbeverage products (medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume) may claim drawback (refund) of all but \$1.00 per proof gallon of the Federal excise tax paid on the distilled spirits used to make such products, subject to regulations issued by the Secretary “to secure the Treasury against frauds.” Under those IRC authorities, the TTB regulations in 27 CFR part 17 require manufacturers to submit certain applications and notices to TTB regarding their use of distilled spirits in the production of nonbeverage products eligible for drawback. Such applications, which require TTB approval, cover nonbeverage activities that present significant jeopardy to the revenue, while notices, which do not require TTB approval, cover activities that present less jeopardy to the revenue. TTB uses the collected information to ensure that TTB provides drawback of tax only to industry members eligible for such drawback under the IRC.

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits; and Individuals or households.

Number of Respondents: 350.

Average Responses per Respondent: 2.

Number of Responses: 700.

Average Per-response Burden: 0.5 hour.

Total Burden: 350 hours.

12. OMB Control No. 1513–0077.

Title: Records of Things of Value to Retailers, and Occasional Letter Reports from Industry Members Regarding Information on Sponsorships, Advertisements, Promotions, Etc., under the FAA Act.

Abstract: The FAA Act at 27 U.S.C. 205 generally prohibits alcohol beverage producers, importers, or wholesalers from offering inducements to alcohol retailers—giving things of value or conducting certain types of advertisements, promotions, or sponsorships—unless such an action is specifically exempted by regulation. Under that authority, the TTB regulations in 27 CFR part 6, “Tied-House,” describe exceptions to the general FAA Act inducement prohibition and also describe things that are considered to be “of value” for purposes of determining whether an inducement has been offered. In general, those regulations require alcohol beverage industry members to keep records of the cost and recipients of any things of value furnished to retailers. Industry members may use usual and customary business records for this purpose. Additionally, the part 6 regulations provide that TTB may require, as part of a trade practice investigation, a letterhead report from an alcohol industry member regarding any advertisements, promotions, sponsorships, or other activities conducted by, on behalf of, or benefiting the industry member. TTB uses the collected information to ensure compliance with the FAA Act’s trade practice prohibitions and exceptions.

Current Actions: There are no program changes to this collection, and TTB is submitting it for extension purposes only. However, as for adjustments, due to changes in agency estimates resulting from an increase in the number of alcohol industry members, TTB is increasing this collection’s estimated number of annual recordkeeping respondents and responses, but there is no corresponding increase in burden hours as respondents keep the required information using usual and customary business records.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

Number of Respondents: 83,000.

Average Responses per Respondent: 1 (one response per respondent for ongoing recordkeeping, and 1 response for 10 respondents for reporting).

Number of Responses: 83,010.

Average Per-response Burden: For recordkeeping, under the OMB regulations at 5 CFR 1320.3(b)(2), there is no per-respondent burden for the

keeping of the usual of customary business records required under this collection. For the 10 respondents required by TTB to submit letterhead reports, the estimated burden is 8 hours per response.

Total Burden: 80 hours.

13. OMB Control No. 1513–0078.

Title: Applications for Permit to Manufacture or Import Tobacco Products or Processed Tobacco or to Operate an Export Warehouse and Applications to Amend Such Permits.

TTB Form Numbers: TTB F 5200.3, TTB F 5200.16, TTB F 5230.3, and TTB F 5230.5.

Abstract: The IRC at 26 U.S.C. 5712 and 5713 requires that importers and manufacturers of tobacco products or processed tobacco and export warehouse proprietors apply for and obtain a permit before engaging in such operations, or at such other times, as the Secretary may prescribe by regulation. In addition, 26 U.S.C. 5712 sets forth certain circumstances under which a permit application may be denied, such as circumstances in which an applicant is determined to be not likely to maintain operations in compliance with the IRC by reason of business experience, financial standing, or trade connections or by reason of previous or current legal proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes. Under those authorities, the TTB regulations in 27 CFR parts 40, 41, and 44 require tobacco industry members to submit applications using the prescribed TTB forms for new permits or, under certain circumstances, amended permits. Applicants use those forms and any required supporting documents to provide information about themselves and their business, including its location, organization, financing, and investors. Once TTB issues a permit, the permittee must retain a copy of the application package for as long as they continue in business, available for TTB inspection upon request. TTB uses the collected information to ensure that only applicants eligible for a TTB permit obtain one.

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits. State, local, or tribal governments.

Number of Respondents: 470.

Average Responses per Respondent: 1 (one).

Number of Responses: 470.

Average Per-response Burden: 1.34 hours.

Total Burden: 630 hours.

14. OMB Control No. 1513–0080.

Title: Distilled Spirits Plant

Equipment and Structures (TTB REC 5110/12).

TTB Recordkeeping Number: TTB REC 5110/12.

Abstract: The IRC at 26 U.S.C. 5178 and 5180 authorizes the Secretary to issue regulations regarding the location, construction, and arrangement of distilled spirits plants (DSPs), the identification of DSP structures, equipment, pipes, and tanks, and the posting of an exterior sign at their place of business. The IRC at 26 U.S.C. 5206 also requires DSP proprietors to mark containers of distilled spirits, subject to regulations prescribed by the Secretary. The TTB regulations concerning the identification of DSP plants, equipment, structures, and bulk containers are contained in 27 CFR part 19. Those regulations describe the required exterior identification sign, and the identification signs or marks required on DSP structures, cookers, fermenters, stills, tanks, and other major equipment. The regulations also require tank cars and trucks used by DSPs as bulk conveyances for distilled spirits to be permanently and legibly marked with identifying information and capacity. The information set forth under this information collection is necessary to protect the revenue and facilitate inspections, as TTB uses the required signs and marks to identify the location, use, and capacity of a DSP's structures, equipment, and conveyances.

Current Actions: There are no program changes associated with this information collection at this time, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates resulting from continued growth in the number of distilled spirits plants in the United States, TTB is increasing the number of annual respondents, responses, and total burden hours associated with this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

Estimated Annual Burden

Number of Respondents: 4,800.

Average Responses per Respondent: 1 (one).

Number of Responses: 4,800.

Average Per-response and Total Burden: None. The placing of the required signs and marks by DSP

proprietors is a usual and customary business practice undertaken regardless of any regulatory requirement to do so. As such, under the OMB regulations at 5 CFR 1320.3(b)(2), there is no additional respondent burden associated with this information collection.

15. OMB Control No. 1513–0084.

Title: Labeling of Sulfites in Alcohol Beverages.

Abstract: The U.S. Food and Drug Administration (FDA) has determined that sulfating agents are human allergens, which can have serious health implications for persons who are allergic to sulfites. As a result, FDA regulations require food labels to declare the presence of sulfites if there are 10 parts per million (ppm) or more of a sulfating agent in a finished food product. Under the FAA Act at 27 U.S.C. 205(e), the Secretary is authorized to issue regulations requiring alcohol beverage labels to provide “adequate information” to consumers regarding the identity and quality of such products. Under that FAA Act authority and consistent with FDA’s food labeling requirements, the TTB alcohol beverage labeling regulations in 27 CFR part 4 (wine), part 5 (distilled spirits), and part 7 (malt beverages) require a declaration of sulfites on the labels of domestic and imported alcohol beverages when sulfites are present in such products at levels of 10 or more ppm. This label disclosure is necessary to protect sulfite-sensitive consumers from products that potentially could be harmful to them.

Current Actions: There are no program changes to this information collection, and TTB is submitting it for extension purposes only. As for adjustments, TTB is increasing the number of respondents, responses, and burden hours associated with this information collection due changes in agency estimates resulting from growth in the number of alcohol beverage producers and importers, as well as growth in the number of alcohol products subject to this information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Number of Respondents: 30,570.

Average Responses per Respondent: 1 (one).

Number of Responses: 30,570.

Average Per-response Burden: 40 minutes.

Total Burden: 20,380.

16. OMB Control No. 1513–0097.

Title: Notices Relating to Payment of Firearms and Ammunition Excise Tax by Electronic Funds Transfer.

Abstract: Under the IRC at 26 U.S.C. 6302, TTB collects the firearms and ammunition excise tax imposed by 26 U.S.C. 4181 on the basis of a return that taxpayers file on a quarterly basis. That section also authorizes the Secretary to issue regulations concerning the payment of taxes by electronic funds transfer (EFT). Under the TTB regulations in 27 CFR part 53, persons who elect to begin or discontinue payment of firearms and ammunition excise taxes by EFT must submit a written notice to TTB regarding such actions. TTB uses those notifications to anticipate and monitor firearms and ammunition excise tax payments to ensure compliance with Federal law.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to a change in agency estimates, TTB is increasing the per-response and total burden for this collection. The number of respondents and responses remain the same as previously reported.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Number of Respondents: 10.

Average Responses per Respondent: 1 (one).

Number of Responses: 10.

Average Per-response Burden: 24 minutes.

Total Burden: 4 hours.

17. OMB Control No. 1513–0098.

Title: Supporting Data for Nonbeverage Drawback Claims.

TTB Form Number: TTB F 5154.2.

Abstract: Under the IRC at 26 U.S.C. 5111–5114 and 7652(g), persons using distilled spirits to produce medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume may claim drawback (refund) of all but \$1.00 per proof gallon of the Federal excise tax paid on the distilled spirits used to make such nonbeverage products, subject to regulations prescribed by the Secretary. As required by the TTB regulations in 27 CFR parts 17 and 26, when submitting nonbeverage product drawback claims to TTB, respondents are required to report certain supporting data regarding the distilled spirits used and the products produced, using form TTB F 5154.2. TTB uses the collected information to ensure that drawback of Federal excise tax is provided only to eligible entities.

Current Actions: There are no program changes to this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is decreasing the number of respondents, responses, and burden hours associated with this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Number of Respondents: 500.

Average Responses per Respondent: 4 (on occasion).

Number of Responses: 2,000.

Average Per-response Burden: 1 hour.

Total Burden: 2,000.

18. OMB Control No. 1513–0106.

Title: Record of Operations—Importer of Tobacco Products or Processed Tobacco.

Abstract: The IRC at 26 U.S.C. 5741 requires all manufacturers and importers of tobacco products, processed tobacco, and cigarette papers and tubes, and all export warehouse proprietors to keep records as the Secretary prescribes by regulation. Under that authority, the TTB regulations in 27 CFR part 41 require importers of tobacco products or processed tobacco to maintain the usual and customary business showing the receipt and disposition of imported tobacco products or processed tobacco. TTB uses the collected information to ensure that importers' activities comply with the IRC and that processed tobacco, which is not taxed, is not diverted to taxable tobacco product manufacturing.

Current Actions: There are no program changes to this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to a change in agency estimates, TTB is decreasing the estimated number of respondents and responses to this collection. However, there is no corresponding increase in the burden hours for this collection as it consists of usual and customary business records, which impose no additional burden on respondents per the OMB regulations at 5 CFR 1320.3(b)(2).

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

Number of Respondents: 350.

Average Responses per Respondent: 1 (one).

Number of Responses: 350.

Average Per-response and Total Burden: None. Per the Office of Management and Budget (OMB) regulations at 5 CFR 1320.3(b)(2),

regulatory requirements to keep usual and customary business records impose no added burden on respondents).

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2022–23302 Filed 10–25–22; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0875]

Agency Information Collection Activity: VA-Guaranteed Home Loan Cash-Out Refinance Loan Comparison Disclosure

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 extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 27, 2022.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at www.Regulations.gov or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to nancy.kessinger@va.gov. Please refer to “OMB Control No. 2900–0875” in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email maribel.aponte@va.gov. Please refer to “OMB Control No. 2900–0875” in any correspondence.

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.

Authority: Public Law 115-174; 38 CFR 36.4306.

Title: VA-Guaranteed Home Loan Cash-out Refinance Loan Comparison Disclosure

OMB Control Number: 2900-0875.

Type of Review: Extension of a currently approved collection.

Abstract: All-VA guaranteed cash-out refinancing loans must comply with the Act and AQ42. All refinancing loan applications taken on or after the effective date that do not meet the following requirements may be subject to indemnification or the removal of the guaranty. Failure to provide initial disclosures to the Veteran within 3 business days from the initial application date and at closing may result in indemnification of the loan up

to 5 years. There are three categories of refinance loans; Interest Rate Reduction Refinancing Loans (IRRRL), TYPE I Cash-Out Refinance, and TYPE II Cash-Out Refinance.

Affected Public: Individuals and households.

Estimated Annual Burden: 40,000 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 480,000.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

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Part II

Environmental Protection Agency

40 CFR Parts 9, 59, 60, et al.

Improvements for Heavy-Duty Engine and Vehicle Test Procedures, and Other Technical Amendments; Corrections; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 59, 60, 85, 86, 88, 89, 90, 91, 92, 94, 1027, 1033, 1036, 1037, 1039, 1042, 1043, 1045, 1048, 1051, 1054, 1060, 1065, 1066, 1068, and 1074

[EPA-HQ-OAR-2019-0307; FRL-10018-52-OAR]

RIN 2060-AU62

Improvements for Heavy-Duty Engine and Vehicle Test Procedures, and Other Technical Amendments

Corrections

In rule document 2021-05306, appearing on pages 34308-34590, in the issue of Tuesday, June 29, 2021, make the following corrections:

§ 1036.301 [Corrected]

■ 1. On page 34380, in the first column, in the sixth line above Table 1, “Mreduction” should read “ $M_{reduction}$ ”.

§ 1036.540 [Corrected]

■ 2. On page 34396, in the first column, at the top of the page, before (i) insert: “(3) Run GEM for each simulated vehicle configuration as follows:”

§ 1037.528 [Corrected]

■ 3. On page 34474, in the third column, after amendatory instruction 152, the section heading should read:

§ 1037.528 Coastdown procedures for calculating drag area (C_dA).

§ 1037.540 [Corrected]

■ 4. On page 34477, in the second column, in the tenth line below Eq. 1037.540-2, “ $\bar{p}_{circuit-2}$ ” should read “ $p_{circuit-2}$ ”

§ 1037.550 [Corrected]

■ 5. On page 34479, in the third column in paragraph (f)(4), “ $k_{\alpha B} = 4.0$ ” should read “ $k_{\alpha B} = 4.0$ ”.

■ 6. On page 34481, in Table 1 of § 1037.550, in the first column, in the first line, “Slope, a_1 ” should read “Slope, a_1 ”.

§ 1037.560 [Corrected]

■ 7. On page 34485, in the first column, paragraph (f) introductory text should read:

(f) Calculate the mean power loss, \bar{P}_{loss} , at each test point as follows:

■ 8. On the same page, in the second column, (f)(2) should read:

(2) Calculate \bar{P}_{loss} as the mean power loss from all measurements at a given test point.

■ 9. On the same page, in the third column (f)(3) should read:

(3) The following example illustrates a calculation of \bar{P}_{loss} :

* * * * *

■ 10. On the same page, in the first column paragraph (g) introductory text should read:

(g) Create a table with the mean power loss, \bar{P}_{loss} , corresponding to each test point for input into GEM. Express wheel angular speed in r/min to one decimal place; express output torque in N·m to two decimal places; express power loss in kW to four decimal places.

■ 11. On the same page, in the third column, (h)(3) should read:

(3) Determine \bar{P}_{loss} of untested axles for each speed and torque setpoint based on a linear relationship between your declared power loss and axle ratio as follows:

* * * * *

■ 12. On page 34486, in the first column, (h)(4) should read:

(4) Select declared values of \bar{P}_{loss} for untested configurations that are at or above the values you determined in paragraph (h)(3) of this section.

§ 1037.565 [Corrected]

■ 13. On page 34487, in the first column, paragraph (f) introductory text should read:

(f) Calculate the mean power loss, \bar{P}_{loss} , at each operating condition as follows:

* * * * *

■ 14. On the same page, in the second column, the definition for \bar{f}_{nout} and paragraph (f)(2) introductory text should read as follows:

\bar{f}_{nout} = mean output shaft speed from paragraph (e)(6) of this section in rad/s. Let $\bar{f}_{nout} = 0$ for all tests with the transmission in neutral. See paragraph (f)(2) of this section for calculating \bar{f}_{nout} as a function of \bar{f}_{nin} instead of measuring f_{nout} .

(2) For transmissions that are configured to not allow slip, you may calculate \bar{f}_{nout} based on the gear ratio using the following equation:

* * * * *

■ 15. On the same page, in the third column, paragraph (f)(3), paragraph (f)(4) introductory text, and the eighth line after paragraph (f)(4) introductory text should read as follows:

(3) Calculate \bar{P}_{loss} as the mean power loss from all measurements at a given operating condition.

(4) The following example illustrates a calculation of \bar{P}_{loss} :

* * * * *

$$\bar{P}_{loss,3} = 4292 \text{ W} = 4.292 \text{ kW}$$

* * * * *

■ 16. On page 34488, in the first column, lines 1-3 from the top of the page should read:

(g) Create a table with the mean power loss, \bar{P}_{loss} , corresponding to each operating condition for input into GEM.

§ 1037.570 [Corrected]

■ 17. On page 34489, beginning in the second column, lines 17-20 from the top should read as follows:

(e) Calculate the mean torque ratio, $\bar{\mu}$, at each tested speed ratio, v , as follows:

(1) Calculate $\bar{\mu}$ at each tested speed ratio as follows:

■ 18. On the same page, in the same column, in the 6th through 10 lines after Eq. 1037.570-1, paragraphs (e)(2) and (3) introductory text should read as follows:

(2) Calculate $\bar{\mu}$ as the average of the two values of $\bar{\mu}$ at each tested speed ratio.

(3) The following example illustrates a calculation of $\bar{\mu}$:

* * * * *

■ 19. On the same page, in the third column, paragraphs (f) introductory text, (f)(1) introductory text, (f)(2), and (f)(3) introductory text should read as follows:

(f) Calculate the mean capacity factor, \bar{K} , at each tested speed ratio, v , as follows:

(1) Calculate \bar{K} at each tested speed ratio as follows:

* * * * *

(2) Calculate \bar{K} as the average of the two values of \bar{K} at each tested speed ratio.

(3) The following example illustrates a calculation of \bar{K} :

* * * * *

■ 20. On the same page, in the first column, beginning in the 7th line from the bottom, paragraph (g) should read as follows:

(g) Create a table of GEM inputs showing $\bar{\mu}$ and \bar{K} at each tested speed ratio, v . Express $\bar{\mu}$ to two decimal places; express \bar{K} to one decimal place; express v to two decimal places.

§ 1037.805 [Corrected]

■ 21. On page 34493, in Table 2 to § 1037.805—Symbols for Quantities, in the first column,

■ a. line 7 should read: a_g

■ b. line 8 should read: a_0

■ c. line 9 should read: a_1

■ 22. On page 34494, in the second column, in Table 3 to § 1037.805—Superscripts, in the first column, the second and third lines should read:

Double overbar (such as $\bar{\bar{y}}$)

§ 1065.307 [Corrected]

■ 23. On page 34538, in the first column, in (c)(13), the first sentence should read as follows:

(13) Use the arithmetic means, \bar{y}_i , and reference values, y_{refi} , to calculate least-squares linear regression parameters and statistical values to compare to the minimum performance criteria specified in Table 1 of this section.

■ 24. On page 34539, in the second column, in paragraph (e)(3), (v) and (vi) should read as follows:

(v) For linearity verification of a fuel flow rate meter, \dot{m}_{max} is the manufacturer's specified maximum fuel rate of the lowest-power engine expected during testing.

(vi) For linearity verification of a DEF flow rate meter, \dot{m}_{max} is 10% of the manufacturer's specified maximum fuel rate of the lowest-power DEF-using engine expected during testing.

§ 1065.530 [Corrected]

■ 25. On page 34547, in the first column, paragraph (g)(5) should read as follows:

(g) * * *

(5) If you perform carbon balance error verification, verify carbon balance error as specified in the standard-setting part and § 1065.543. Calculate and report the three carbon balance error quantities for each test interval; carbon mass absolute error for a test interval (ϵ_{aC}), carbon mass rate absolute error for a test interval (ϵ_{aCrate}), and carbon mass relative error for a test interval (ϵ_{rC}). For duty cycles with multiple test intervals, you may calculate and report the composite carbon mass relative error, ϵ_{rCcomp} , for the whole duty cycle. If you report ϵ_{rCcomp} , you must still calculate

and report ϵ_{aC} , ϵ_{aCrate} , and ϵ_{rC} for each test interval.

* * * * *

§ 1065.543 [Corrected]

■ 26. On page 34547, in the second column, paragraph (b)(1) should read:

(b) * * *

(1) Calculate carbon balance error quantities as described in § 1065.643. The three quantities for individual test intervals are carbon mass absolute error, ϵ_{aC} , carbon mass rate absolute error, ϵ_{aCrate} , and carbon mass relative error, ϵ_{rC} . Determine ϵ_{aC} , ϵ_{aCrate} , and ϵ_{rC} for all test intervals. You may determine composite carbon mass relative error, ϵ_{rCcomp} , as a fourth quantity that optionally applies for duty cycles with multiple test intervals.

■ 27. On the same page, in the same column, Eq. 1065.543-1 should read:

$$L_{\dot{a}aC} = c \cdot P_{max}$$

■ 28. On the same page, in the third column, Eq. 1065.543-2 should read:

$$L_{\dot{a}aCrate} = d \cdot P_{max}$$

■ 29. On the same page, in the same column, lines 12-17 should read:

$$L_{\dot{a}aCrate} = 0.31 \cdot 230.0 = 71.300 \text{ g/hr}$$

(iii) The carbon mass relative error limit, $L_{\epsilon rC}$, is 0.020 for comparison to the absolute value of ϵ_{rC} , and optionally the absolute value of ϵ_{rCcomp} .

§ 1065.602 [Corrected]

■ 30. On page 34554, in the third column, in (l)(1)(ii), in the 8th line

down, "pumping, \bar{P} " should read "pumping, \bar{P}_{frict} ."

§ 1065.643 [Corrected]

■ 31. On page 34559, in the first column, Eq. 1065.643-7 should read:

$$\dot{a}_{aC} = m_{Cexh} - m_{Cfluid} - m_{Cair}$$

■ 32. On page the same page, in the third column, Eq. 1065.643-8 should read:

$$\dot{a}_{aCrate} = \frac{\dot{a}_{aC}}{t}$$

■ 33. On the same page, beginning in the same column, *Example*: for Eq. 1065.643-8 should read:

$$\epsilon_{aC} = -6.7 \text{ g}$$

$$t = 1202.2 \text{ s} = 0.3339 \text{ hr}$$

$$\dot{a}_{aCrate} = \frac{-6.7}{0.3339} = -20.065 \text{ g/hr}$$

■ 34. On the same page, in the second column, Eq. 1065.643-9 should read:

$$\dot{a}_{rC} = \frac{\dot{a}_{aC}}{m_{Cfluid} + m_{Cair}}$$

■ 35. On the same page, beginning in the first column, *Example*: for Eq. 1065.643-9 should read:

$$\epsilon_{aC} = -6.7 \text{ g}$$

$$m_{Cfluid} = 975.3 \text{ g}$$

$$m_{Cair} = 278.6 \text{ g}$$

$$\dot{a}_{rC} = \frac{-6.7}{975.3 + 278.6} = -0.0053$$

■ 36. On page 34560, at the top of the page, Eq. 1065.643-10 should read:

$$\dot{a}_{rCcomp} = \frac{\sum_{i=1}^N WF_i \cdot \frac{(m_{Cexhi} - m_{Cfluidi} - m_{Cairi})}{t_i}}{\sum_{i=1}^N WF_i \cdot \frac{(m_{Cfluidi} + m_{Cairi})}{t_i}}$$

■ 37. On the same page, in the first column, the formula before (iii) should

read:

$$\dot{a}_{rCcomp} = \frac{\frac{1}{7} \cdot \frac{(1255.3 - 977.8 - 280.2)}{1} + \frac{6}{7} \cdot \frac{(1247.2 - 975.3 - 278.6)}{1}}{\frac{1}{7} \cdot \frac{(977.8 + 280.2)}{1} + \frac{6}{7} \cdot \frac{(975.3 + 278.6)}{1}} = -0.0049$$

■ 38. On the same page, in the same instruction 353 should read:
column, the formula before amendatory

$$\dot{O}_{rC_{comp}} = \frac{0.85 \cdot \left(\frac{2.873 - 2.864 - 0.023}{123} \right) + 0.15 \cdot \left(\frac{0.125 - 0.095 - 0.024}{306} \right)}{0.85 \cdot \left(\frac{2.864 + 0.023}{123} \right) + 0.15 \cdot \left(\frac{0.095 + 0.024}{306} \right)} = -0.0047$$

§ 1065.650 [Corrected]

■ 39. On page 34561, in the third column, the fourth line after Eq. 1065.650-8 should read:

$$\bar{n}_{dexh} = 57.692 \text{ mol/s}$$

■ 40. On page 34563, in the first column, the ninth through eleventh lines after Eq. 1065.650-19 should read:
 \bar{P} = mean steady-state power over the test interval as described in paragraph (e) of this section.

§ 1065.655 [Corrected]

■ 41. On page the same page, in Table 1 of § 1065.655, delete column 1 and 2 headings and insert first entry to read as follows:

TABLE 1 OF § 1065.655—SYMBOLS AND SUBSCRIPTS FOR CHEMICAL BALANCE EQUATIONS

$X_{dil/exh}$ amount of dilution gas or excess air per mole of exhaust.

* * * * *

§ 1065.1005 [Corrected]

■ 42. On page 34576, in Table 1 of § 1065.1005, in the Symbol column, the first line should read “ α ”.

§ 1066.1005 [Corrected]

■ 43. On page 34585, in Table 1 of § 1066.1005, in the Symbol column, the fifth line should read “ A_m ”

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 217

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Ocean Wind 1 Wind Energy Facility Offshore of New Jersey; Proposed Rule

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 217**

[Docket No. 221020–0223]

RIN 0648–BL36

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Ocean Wind 1 Wind Energy Facility Offshore of New Jersey

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

ACTION: Proposed rule; proposed incidental take regulations; proposed Letter of Authorization; request for comments.

SUMMARY: NMFS has received a request for Incidental Take Regulation (ITR) and associated Letter of Authorization (LOA) from Ocean Wind, LLC (Ocean Wind), a subsidiary of Orsted Wind Power North America, LLC's (Orsted) and a joint venture partner of the Public Service Enterprise Group Renewable Generation, LLC (PSEG), for the incidental take of small numbers of marine mammals during the construction of an offshore wind energy facility (Ocean Wind 1) in a designated lease area on the Outer Continental Shelf (OCS–A–0498) offshore of New Jersey. The requested ITR would govern the authorization of take, by both Level A and Level B harassment, of small numbers of marine mammals over a 5-year period incidental to construction-related pile driving activities (impact and vibratory), potential unexploded ordnances or munitions and explosives of concern (UXOs/MECs) detonation, and high-resolution geophysical (HRG) site characterization surveys conducted by Ocean Wind in Federal and State waters off of New Jersey for the Ocean Wind 1 offshore wind energy facility. A final ITR would allow for the issuance of a LOA to Ocean Wind for a 5-year period. As required by the Marine Mammal Protection Act (MMPA), NMFS requests comments on its proposed rule. NMFS will consider public comments prior to making any final decision on the promulgation of the requested ITR and issuance of the LOA; agency responses to public comments will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than November 25, 2022.

ADDRESSES: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov and enter NOAA–NMFS–2022–0109 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

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 www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Kelsey Potlock, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:**Availability**

A copy of Ocean Wind's 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-other-energy-activities-renewable>. In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

Purpose and Need for Regulatory Action

This proposed rule would establish 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 construction activities within the mid-Atlantic (New Jersey) region of the U.S. East Coast, specifically in and around lease area OCS–A–0498. We received a petition from Orsted's subsidiary, Ocean Wind requesting the 5-year regulations to construct the Ocean Wind 1 offshore wind energy facility. During the construction of Ocean Wind 1, some activities may cause the harassment (“take”) of marine mammals. Take would occur by Level A and/or Level B harassment incidental to construction activities. Please see the *Legal Authority for the Proposed Action* section below for definitions of harassment.

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, regulations are promulgated, and notice is provided to the public.

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

Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for proposing and, if appropriate, issuing this rule containing 5-year regulations and associated LOA. As directed by this legal authority, this proposed rule contains mitigation, monitoring, and reporting requirements.

Summary of Major Provisions Within the Proposed Rule

The following is a summary of the major provisions found within this proposed rule regarding Ocean Wind's construction activities. These measures include:

- Establishing a seasonal moratorium on impact pile driving during the months of highest North Atlantic right whale (*Eubalaena glacialis*) presence in the project area (January 1–April 30);
- Establishing a seasonal moratorium on any unexploded ordnances or munitions and explosives of concern (UXOs/MECs) detonations, that are determined to be necessary, during the months of highest North Atlantic right whale present in the project area (January 1–April 30);

- Requiring UXO/MEC detonations to only occur during hours of daylight and not during hours of darkness or nighttime;

- Conducting both visual and passive acoustic monitoring by trained, NOAA Fisheries-approved Protected Species Observers (PSOs) and Passive Acoustic Monitoring (PAM) operators before, during, and after the in-water construction activities;

- Establishing harassment zones that correspond to underwater noise levels that could cause injury and behavioral disturbances;

- Establishing clearance and shut down zones for all in-water construction activities to prevent or reduce Level A harassment and minimize Level B harassment;

- Requiring the use of sound attenuation device(s) during all impact pile driving and UXO/MEC detonations to reduce noise levels;

- Delaying the start of pile driving if a North Atlantic right whale is observed at any distance by the PSO on the pile driving or dedicated PSO vessels;

- Delaying the start of pile driving if other marine mammals are observed entering or within their respective clearance zones;

- Shutting down pile driving (if feasible) if a North Atlantic right whale is observed or if other marine mammals enter their respective shut down zones;

- Implementing soft starts for impact pile driving and using the least hammer energy possible;

- Implementing ramp-up for high-resolution geophysical (HRG) site characterization survey equipment;

- Requiring PSOs to continue to monitor for 30 minutes after any impact pile driving occur and for any and all UXO detonations;

- Increasing awareness of North Atlantic right whale presence through monitoring of the appropriate networks and Channel 16, as well as reporting any sightings to the sighting network;

- Implementing numerous vessel strike avoidance measures;

- A requirement to implement noise attenuation system(s) during all impact pile driving and UXO/MEC detonations;

- Sound field verification requirements during impact pile driving and UXO/MEC detonation to measure in situ noise levels for comparison against the model results; and

- Removing gear from the water during fisheries monitoring research surveys if marine mammals are considered at-risk or are interacting with gear.

National Environmental Policy Act (NEPA)

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must evaluate the proposed action (*i.e.*, promulgation of regulations and subsequent issuance of a 5-year LOA) and alternatives with respect to potential impacts on the human environment.

Accordingly, NMFS proposes to adopt the Bureau of Ocean Energy Management's (BOEM) Environmental Impact Statement (EIS), provided our independent evaluation of the document finds that it includes adequate information analyzing the effects of authoring the proposed take of marine mammals on the human environment. NMFS is a cooperating agency on BOEM's EIS. BOEM's draft EIS (Ocean Wind 1 Draft Environmental Impact Statement (DEIS) for Commercial Wind Lease OCS–A 0498) was made available for public comment on June 24, 2022 at <https://www.boem.gov/renewable-energy/state-activities/ocean-wind-1>. The DEIS had a 45-day public comment period (87 FR 37883, June 24, 2022), plus a 15-day extension (87 FR 48038, August 5, 2022) for a total of 60-days; the comment period was open from June 24, 2022 to August 23, 2022. Additionally, BOEM held three virtual public hearings on July 14, 2022, July 20, 2022, and July 26, 2022.

Information contained within Ocean Wind's ITA application and this **Federal Register** document collectively provide the environmental information related to these proposed regulations and associated 5-year LOA for public review and comment. NMFS will review all comments submitted in response to this document prior to concluding our NEPA process or making a final decision on the requested 5-year LOA.

Fixing America's Surface Transportation Act (FAST–41)

This project is covered under Title 41 of the Fixing America's Surface Transportation Act, or "FAST–41." FAST–41 includes a suite of provisions designed to expedite the environmental review for covered infrastructure projects, including enhanced interagency coordination as well as milestone tracking on the public-facing Permitting Dashboard. FAST–41 also places a 2-year limitations period on any judicial claim that challenges the validity of a Federal agency decision to issue or deny an authorization for a FAST–41 covered project (42 U.S.C. 4370m–6(a)(1)(A)).

Ocean Wind's proposed project is listed on the Permitting Dashboard (<https://www.permits.performance.gov/>). Milestones and schedules related to the environmental review and permitting associated with the Ocean Wind 1 project can be found at <https://www.permits.performance.gov/permitting-projects/ocean-wind-project>.

Summary of Request

On October 1, 2021, NMFS received a request from Ocean Wind for the promulgation of a 5-year ITR and issuance of an associated LOA to take marine mammals incidental to the construction activities associated with the Ocean Wind 1 Offshore Wind Energy Facility off of New Jersey in the BOEM Lease Area Outer Continental Shelf (OCS)–A–0498 Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf.

Ocean Wind's request is for the incidental, but not intentional, take of a small number of 17 marine mammal species (comprising 18 stocks) by Level B harassment (for all 18 marine mammal species and stocks) and by Level A harassment (for 10 marine mammal species or stock). Neither Ocean Wind nor NMFS expects serious injury or mortality to result from the specified activities.

We received subsequent applications and supplementary materials on November 12, 2021, December 3, 2021, December 28, 2021, January 5, 2022, January 20, 2022, and February 8, 2022 in response to questions and comments submitted about various aspects of the previously received iterations. The final version of the application was deemed adequate and complete on February 11, 2022 and is available on NMFS' website at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-ocean-wind-lcc-construction-ocean-wind-1-wind-energy-facility>.

A Notice of Receipt (NOR) for the application was published on March 7, 2022 in the **Federal Register** (87 FR 12666) for a 30-day public comment period. This public comment period closed on April 6, 2022. During the NOR public comment period, NMFS received two letters from environmental non-governmental organizations (ENGOS): Clean Ocean Action (COA) and the Natural Resource Defense Council (NRDC), on behalf of several other ENGOS. NMFS has reviewed all submitted material and has taken these into consideration during the drafting of this proposed rulemaking.

NMFS has previously issued three Incidental Harassment Authorizations (IHAs), including a renewed IHA, to

Ocean Wind for related work regarding high resolution site characterization surveys (see 82 FR 31562, July 7, 2017; 86 FR 26465, May 14, 2021; and 87 FR 29289, May 13, 2022 (renewal)). To date, Ocean Wind has complied with all the requirements (*e.g.*, mitigation, monitoring, and reporting) of the previous IHAs and information regarding their monitoring results may be found in the Estimated Take section. These monitoring reports can be found on NMFS' website: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>.

On August 1, 2022, NMFS announced proposed changes to the existing North Atlantic right whale vessel speed regulations to further reduce the likelihood of mortalities and serious injuries to endangered right whales from vessel collisions, which are a leading cause of the species' decline and a primary factor in an ongoing Unusual Mortality Event (87 FR 46921). Should a final vessel speed rule be issued and become effective during the effective period of this ITR (or any other MMPA incidental take authorization), the authorization holder would be required to comply with any and all applicable requirements contained within the final rule. Specifically, where measures in any final vessel speed rule are more protective or restrictive than those in this or any other MMPA authorization, authorization holders would be required to comply with the requirements of the rule. Alternatively, where measures in this or any other MMPA authorization are more restrictive or protective than those in any final vessel speed rule, the measures in the MMPA authorization would remain in place. The responsibility to comply with the applicable requirements of any vessel speed rule would become effective immediately upon the effective date of any final vessel speed rule and, when notice is published of the effective date, NMFS would also notify Ocean Wind if the measures in the speed rule were to supersede any of the measures in the

MMPA authorization such that they were no longer applicable.

Description of the Specified Activities

Overview

Ocean Wind has proposed to construct and operate a 1,100 megawatt (MW) wind energy facility (known as Ocean Wind 1) in State and Federal waters found in the Atlantic Ocean in lease area OCS-A-0498. The Ocean Wind 1 project would allow the State of New Jersey to meet its renewable energy goals under the New Jersey Offshore Wind Economic Development Act (OWEDA). OWEDA was signed into law in August 2010 and required the New Jersey Board of Public Utilities to establish a program to incentivize the development of offshore wind facilities and structures. On January 31, 2018, Governor Phil Murphy signed Executive Order #8 which further directed all New Jersey State Agencies with described responsibilities under OWEDA to work to meet a goal of 3,500 MW of energy from offshore wind by 2030 (<https://nj.gov/infobank/eo/056murphy/pdf/EO-8.pdf>). Then, in November 19, 2019, Executive Order #92 was signed and increased New Jersey's offshore wind goal of 3,500 MW by 2030 to 7,500 MW by 2035 (<https://nj.gov/infobank/eo/056murphy/pdf/EO-92.pdf>). More information on New Jersey's offshore wind goals can be found at: <https://www.nj.gov/dep/offshorewind/about.html>.

Ocean Wind's project would consist of several different types of permanent offshore infrastructure, including wind turbine generators (WTGs; *e.g.*, the GE Haliade-X 12 MW) and associated foundations, offshore substations (OSS), offshore substation array cables, and substation interconnector cables. Overall, Ocean Wind plans to install 98 WTGs and 3 offshore substations (OSS) via impact pile driving; the temporary installation and removal of cofferdams to assist in the installation of the export cable route by vibratory pile driving; several types of fishery and ecological monitoring surveys; the placement of scour protection; trenching, laying, and burial activities associated with the

installation of the export cable route from OSSs to shore-based converter stations and inter-array cables between turbines; HRG vessel-based site characterization surveys using active acoustic sources with frequencies of less than 180 kHz; and the potential detonation of up to ten UXOs/MECs of different charge weights, as necessary. Vessels would transit within the project area, and between ports and the wind farm to transport crew, supplies, and materials to support pile installation. All offshore cables will connect to onshore export cables, substations, and grid connections, which would be located in Ocean County and Cape May County found in New Jersey.

Marine mammals exposed to elevated noise levels during impact and vibratory pile driving, potential detonations of UXOs, or site characterization surveys, may be taken, by Level A harassment and/or Level B harassment, depending on the specified activity. At the time of writing this proposed notice, Ocean Wind 1 had not finalized design plans; however, they have indicated the project would consist of either all monopile foundations (a total of 101 8/11-m tapered piles to support all WTGs and the 3 OSSs) or monopiles to support the WTGs (n=98) and jacket foundations with pin piles to support the three OSSs using a total of 48 pin piles (16 pin piles per OSS).

Dates and Duration

Ocean Wind anticipates activities resulting in harassment to marine mammals occurring throughout all five years of the proposed rulemaking. Project activities are expected to begin in August 2023 and continue through July 2028. Ocean Wind anticipates the following construction schedule over the five year period (Figure 1). Ocean Wind has noted that these are the best and conservative estimates for activity durations (solid arrows), but that the schedule may shift due to weather, mechanical, or other related delays (dashed arrows). If promulgated, the proposed rule and subsequently issued 5-year LOA would be effective from 2023–2028.

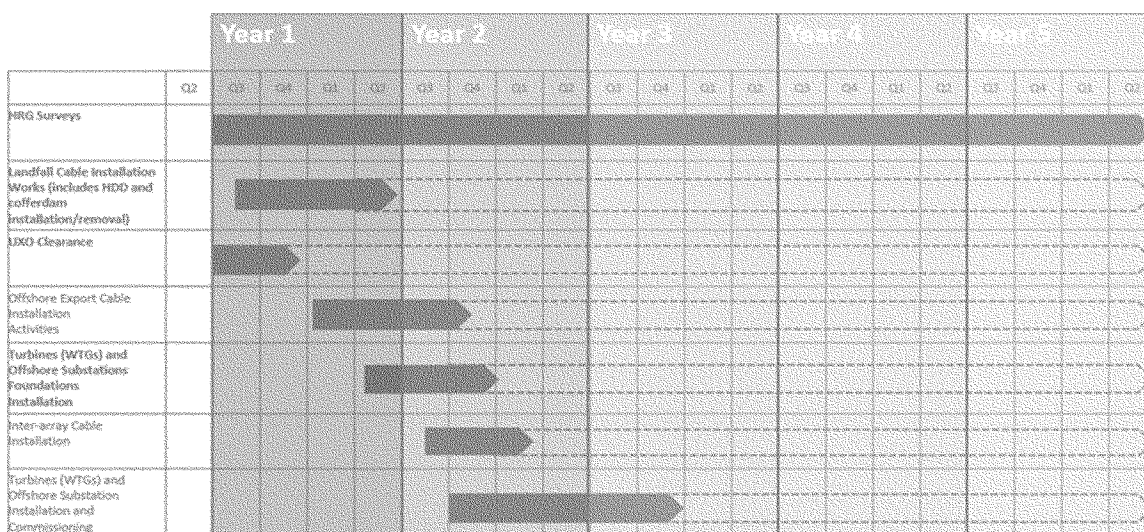


Figure 1 -- Ocean Wind's Proposed Construction Schedule

WTG and OSS Pile Installation (Impact Pile Driving)

The installation of monopiles and pin piles related to the construction of up to 98 tapered 8/11-m diameter WTGs (monopile foundations) and 3 OSSs (either consisting of up to 3 monopile or 3 jacket foundations using 48 pin piles total) would occur from May through December and only in Years 1 and 2, depending on local and environmental conditions.

Ocean Wind's present uncertainty with which construction scenario would be employed for OSS installation has resulted in two possible timelines of either 52 or 116 days of installation for all foundation piles related to WTGs and OSSs (monopiles or pin piles). In the 52-day scenario, the schedule assumes a full monopile build-out with the installation of two monopiles per day for WTGs (49 days total) and one monopile per day for each OSS (3 days total). In the 116-day scenario, the schedule assumes a joint monopile-jacket foundation build-out, with the installation of up to one monopile per day for WTGs (98 days total) and up to three pin piles being installed per day over 6 days per OSS (18 days total). Ocean Wind notes in their application that technical problems, such as pile refusal, are not anticipated but could result in additional pile driving days.

Each monopile is expected to require four hours of impact pile driving to install, with a maximum of two monopiles being installed per day. However, in some cases, only one monopile may be installed on some

days. Each pin pile is expected to require four hours of impact pile driving, with a maximum of three pin piles being installed per day.

During the installation of monopile foundations, Ocean Wind has requested 24-hour pile driving, which would consist of intermittent impact pile driving that could occur anytime within a 24-hour timeframe and would occur for a total 8 hours of active pile driving plus 1 hour of equipment mobilization (9 hours total). However, only the maximum estimated number of piles per day (two monopiles) would be installed in any 24-hour period. Furthermore, no concurrent impact pile driving (of either monopiles or pin piles) is anticipated to occur during this proposed project.

Ocean Wind anticipates that the first WTG would become operational in 2024 as each turbine would be powered on after installation is completed and all necessary components, such as array cables, OSSs, export cable routes, and onshore substations are installed.

Temporary Cofferdam Installation and Removal (Vibratory Pile Driving)

The installation and removal of up to seven temporary cofferdams at various transition points for the export cable routes, as needed, would primarily occur between October through March, although Ocean Wind does indicate that some removal of cofferdams may occur during the months of April or May.

Installation of each cofferdam would require a maximum of 12 hours via vibratory driving while removal using a vibratory extractor would require 18

hours. All seven cofferdams would necessitate 2 days for installation and 2 days for removal (4 days total) with only 12 hours of vibratory removal occurring per day. This equates to a total of 28 days for all installation and removal. NMFS notes that these 28 days may not be consecutive but would be the total number expected during the entire construction period.

High-Resolution Geophysical Site Characterization Surveys

High-resolution geophysical site characterization surveys would occur annually, with durations dependent on the activities occurring in that year (*i.e.*, construction year versus a non-construction year). Specifically, Ocean Wind estimates a maximum of 88 days of surveys to occur annually in Years 1, 4, and 5 (the pre- and post-construction years); and 180 days annually during Years 2 and 3 (the during-construction years). This estimates approximately 624 days total over the 5-year period. More specifically, in Years 1, 4, and 5, up to 47.5 survey days are expected in the offshore Wind Farm area and 40.5 survey days would occur in the export cable route areas. During Years 2 and 3, up to 180 days are planned with variable survey effort expected, but Ocean Wind anticipates approximately 78 days annually would take place within the export cable route areas and 102 days of survey effort during both of these years would occur in the offshore Wind Farm area. These HRG survey schedules, as proposed by Ocean Wind, do account for periods of down-time

due to inclement weather or technical malfunctions.

Ocean Wind anticipates site characterization surveys occurring in the project area and along the two potential export cable routes to the landfall locations (Oyster Creek, Island Beach State Park in Barnegat Bay, Farm Property, and BL England) specified in the ITA application (see Figure 1–3 in the ITA application; Ocean Wind, 2022b). HRG surveys would utilize up to three vessels working concurrently across the project area over a 24-hour period. Up to three vessels would also perform nearshore surveys; however, these vessels would operate for 12-hours and during daylight only. At any time, all three of the 24-hour vessels may work across different parts of the project area or within the same geographic area. In calculating the HRG vessel effort for the purposes of estimating marine mammal take, it was determined that each day that any given survey vessel is operating would count as a single survey day. For example, if all three vessels are operating in the two export cable routes and Lease Area concurrently, this would count as 3 survey days, regardless of the locations that are being surveyed.

Unexploded Ordnances or Munitions and Explosives of Concern (UXOs/MECs)

Ocean Wind anticipates the potential presence of UXOs/MECs in and around the project area during the 5 years of the proposed rule. These UXOs/MECs are defined as explosive munitions (*e.g.*, shells, mines, bombs, torpedoes, *etc.*) that did not explode or detonate when they were originally deployed or that were intentionally discarded to avoid detonations on land. Typically, these munitions could be left behind following Navy military training, testing, or operations. Ocean Wind primarily plans for avoidance or relocation of any UXOs/MECs found within the project area, when possible. In some cases, it may also be possible that the UXO/MEC could be cut up to extract the explosive components. However, Ocean Wind notes this may not be possible in all cases and in situ disposal may be required. If in situ disposal is required, all disposals will be performed using low-order methods (deflagration), which are considered less impactful to marine mammals, first and then would be elevated up to high-order removal (detonation), if this approach is

determined to be necessary. In the event that high-order removal is needed, all detonations would only occur during daylight hours.

Based on preliminary survey data, Ocean Wind conservatively estimates a maximum of 10 days of UXO/MEC detonation may occur, with up to one UXO/MEC being detonated per day and a maximum of 10 UXOs/MECs being detonated over the entire 5-year period. NMFS notes that UXOs/MECs may be detonated at any point in any year as they are found by project developers; however, no UXOs/MECs would be detonated in Federal waters between November 1st and April 30th of any year during the rulemaking.

Specific Geographic Region

Ocean Wind's specified activities would occur in the Northeast U.S. Continental Shelf Large Marine Ecosystem (NES LME), an area of approximately 260,000 km² (64,247,399.2 acres) from Cape Hatteras in the south to the Gulf of Maine in the north. Specifically, the lease area and cable corridor are located within the Mid-Atlantic Bight subarea of the NE LME which extends between Cape Hatteras, North Carolina, and Martha's Vineyard, Massachusetts, extending westward into the Atlantic to the 100 m isobath. In the Middle Atlantic Bight, the pattern of sediment distribution is relatively simple. The continental shelf south of New England is broad and flat, dominated by fine grained sediments. Most of the surficial sediments on the continental shelf are sands and gravels. Silts and clays predominate at and beyond the shelf edge, with most of the slope being 70–100 percent mud. Fine sediments are also common in the shelf valleys leading to the submarine canyons. There are some larger materials, left by retreating glaciers, along the coast of Long Island and to the north and east.

Primary productivity is highest in the nearshore and estuarine regions, with coastal phytoplankton blooms initiating in the winter and summer, although the timing and spatial extent of blooms varies from year to year. The relatively productive continental shelf supports a wide variety of fauna and flora.

Ocean Wind 1's proposed activities would occur in the Ocean Wind Lease Area OCS-A 0498 (see Figure 2 in this proposed rule and see Figures 1–1 in the ITA application for more detail; Ocean Wind, 2022b), within the New Jersey

WEA of BOEM's Mid-Atlantic Planning Area. Ocean Wind's 277 square kilometer (km²; 68,450 acres) Wind Farm Area is found within the larger 306 km² (75,525 acre) New Jersey Wind Energy Area (WEA). The Ocean Wind Wind Farm Area (WFA) is located approximately 13 nautical miles (nm; 24.08 km) southeast of Atlantic City, New Jersey. Noise from the specified activities will extend into the surrounding areas and is included in the specified geographic region. For consistency throughout this proposed rulemaking, NMFS will be referring to the Wind Farm Area and export cable corridors where development of the Ocean Wind 1 offshore wind facility would occur as the "project area". At its nearest point, Ocean Wind 1 would be just over 13 nm (15 miles (mi)) southeast of Atlantic City, New Jersey. The water depths range from 15–36 meters (m; 49–118 feet (ft)) in the Offshore Wind Farm Area and approximately 40 m (131.23 ft) in the export cable route areas. The seabed has a slope of less than 1 degree towards the southeast. The sedimentation in the area is predominantly sandy with some thin clay layers. Ocean Wind has noted that the average temperature of the water column (the upper 10–15 m) is higher in June to September, which increases the sound speeds and creates a downward refracting environment that propagates sounds more directly to the seafloor. However, from December to March, an increase in wind mixing and a reduction in solar energy creates a sound speed profile that is more uniform with depth.

As part of the construction activities, up to seven temporary cofferdams may be constructed where the two potential export cable routes exit the seabed. The onshore landing locations for Ocean Wind 1's export cable routes would be Oyster Creek, Island Beach State Park Barnegat Bay, Farm Property, and BL England, with grid connections being made in BL England and Oyster Creek (Figure 2). Up to 98 wind turbines would be constructed alongside three offshore-substations (OSSs). Inter-array cables would connect all WTGs to OSSs with the export cables connecting the wind facility to the cofferdam locations nearshore (see Figure 3 in this proposed ITA and see Figures 1–2 in the rulemaking application for more detail).

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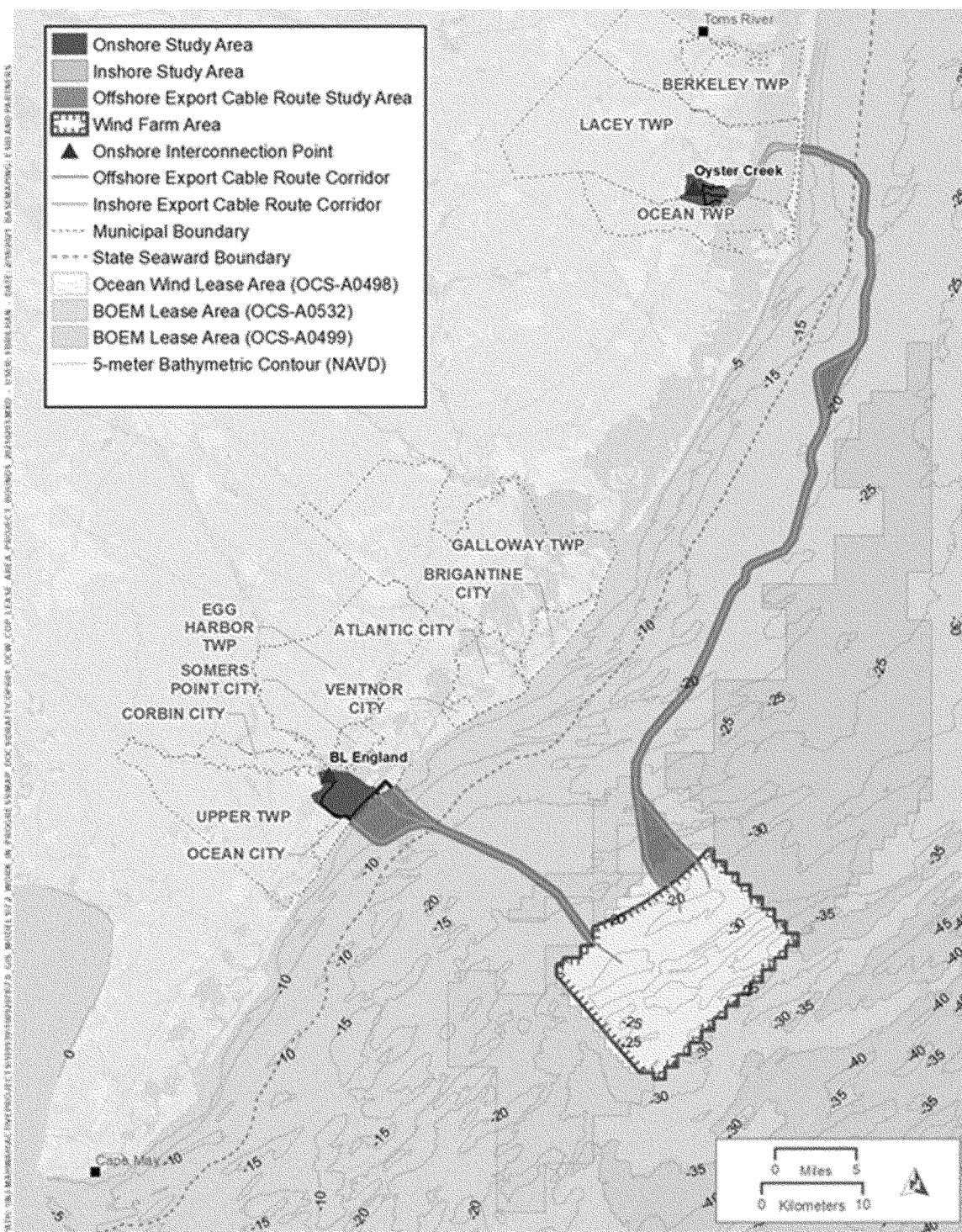


Figure 2 -- Location of Lease Area OCS-A 0498, Ocean Wind 1 Offshore Wind Farm (Ocean Wind 1) and Two Potential Export Cable Routes

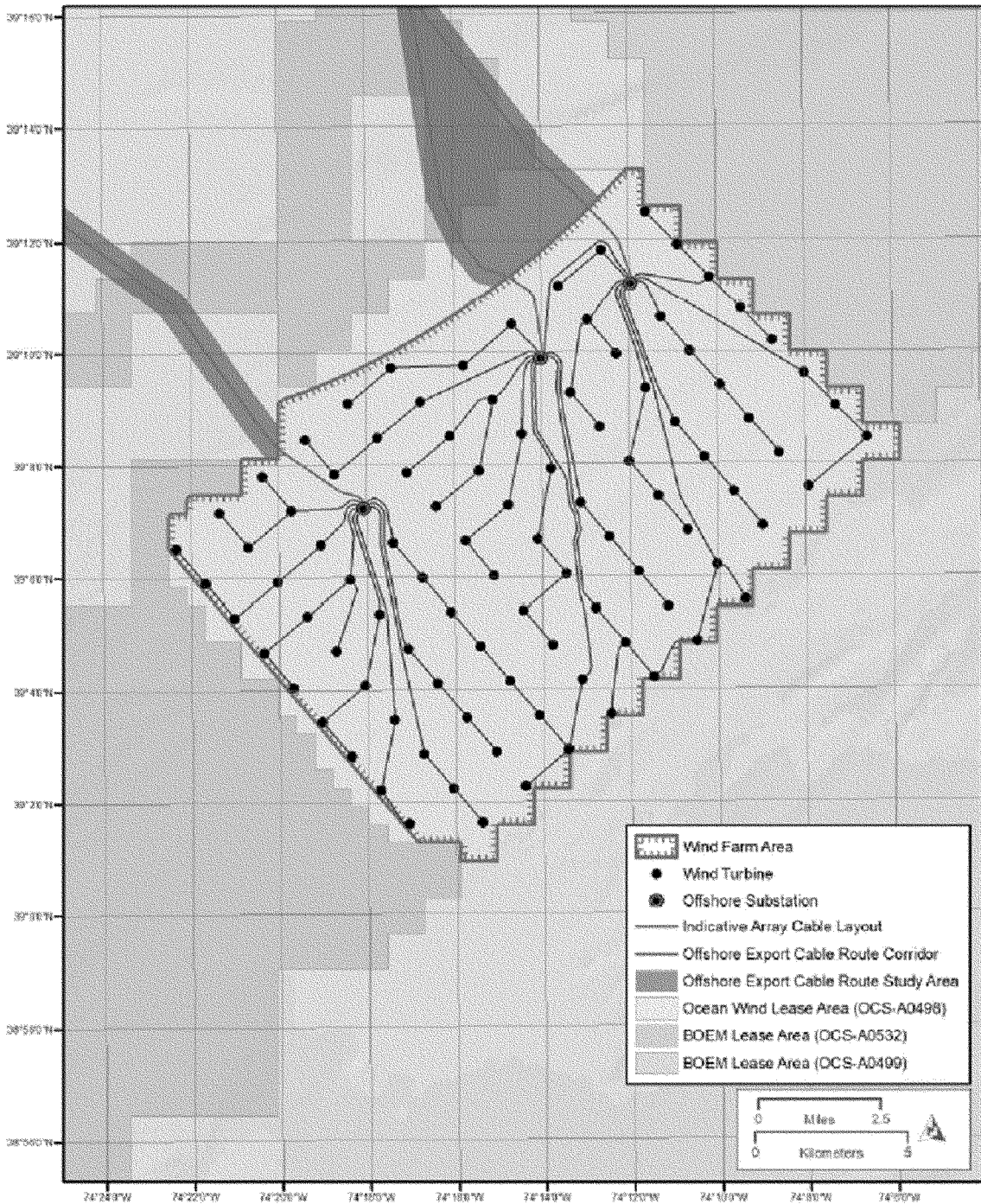


Figure 3 -- The Potential Layout of the Wind Farm Area Including the Wind Turbine Generators (WTGs), Offshore Substations (OSS) and Inter-Array Cables

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Detailed Description of Specified Activities

Below, we provide detailed descriptions of Ocean Wind’s activities, explicitly noting those that are anticipated to result in the take of

marine mammals and for which incidental take authorization is requested. Additionally, a brief explanation is provided for those activities that are not expected to result in the take of marine mammals.

Impact Pile Driving—WTGs

Impact pile driving, which is expected to result in the take of marine mammals, is planned for both WTGs (monopiles) and OSS installation (monopiles or pin piles) and will be

used to support the installation of both permanent and temporary structures.

Ocean Wind plans to use a monopile with transition piece (or alternatively a one-piece foundation where the transition piece is part of the monopile) design for all of the WTG locations. This reflects the planned type of foundation based on the preliminary site data obtained for the Project and was selected as it is the most economical solution, the simplest and quickest to install, and requires the least seabed disturbance. Pile driving is only planned to occur from May through December (Years 1 and 2) to reduce North Atlantic right whale interactions, further discussion of this may be found in the Proposed Mitigation section. The monopile will be 11-meters (m; 36-ft) in diameter at the seafloor with a 6-m (20-ft) diameter flange, and will taper to a top diameter of 8 m. Since drafting the Ocean Wind COP (Vol. I, Table 6.1.1–3; Ocean Wind, 2021), project development has continued and for design development of the monopile foundations, a monopile foundation with maximum outer diameter at seabed of 11-m (36-ft) is being carried forward.

The monopile foundations will be installed by one or two heavy lift or jack-up vessels. The main installation vessel(s) will likely remain at the Offshore Wind Farm during the installation phase and transport vessels, tugs, and/or feeder barges will provide a continuous supply of foundations to the Offshore Wind Farm. If appropriate vessels are available, the foundation components could be picked up directly in the marshaling port by the main installation vessel(s).

Each vertical monopile foundation will consist of a single hollow steel cylinder pile, up to 11-m (36-ft) in diameter with a 10.3-centimeter (4-inch) wall thickness. As mentioned above, the monopiles are tapered piles with 8-m top diameter, 11-m bottom diameter, and a tapered section near the water line (referred to as an 8/11 monopile throughout this proposed notice). The installation of all 98 WTGs would only utilize tapered monopile foundations with one monopile being used per WTG.

The monopiles will be installed using an impact hammer, an IHC-4000 or IHC S2500 kilojoule (kJ) hammer, or similar, with a power pack capacity of 6,000 kilowatts (kW), to a maximum expected penetration depth of 50-m (164-ft). Up to two monopiles will be installed per day (estimated at 4 hours of active pile driving per monopile) for an estimated total of 8 hours per day (assuming active pile driving of two monopiles). A total of 98 monopiles will be installed for WTGs. Three additional monopiles may

be installed as foundations for the OSSs. Concurrent monopile installation at more than one location is not planned by Ocean Wind and was not analyzed in the ITA application.

Pile installation would occur during daylight hours and could, if Ocean Wind meets NMFS requirements (see Proposed Mitigation section), potentially occur during nighttime hours when, (1) a pile installation is started during daylight and, due to unforeseen circumstances, would need to be finished after dark and (2) for new piles, after dark initiation of pile driving is necessary to meet schedule requirements due to unforeseen delays. To be able to install WTG and OSS monopile foundations, impact pile driving 24-hours per day is deemed necessary when considering the amount of time required to install the foundations in comparison to the time available for installation when factoring in various limitations. Based on similar projects under ideal conditions and consistent with the assumption that up to two foundations could be installed in a single day, installation of a single pile at a minimum would involve a 1-hour pre-clearance period, 4 hours of piling, and 4 hours to move to the next piling location where the process would begin again. This results in an estimated 9 hours of installation time per monopile for the Ocean Wind project, or 909 total hours for 98 WTG foundations and three OSS foundations, assuming ideal conditions for all installations. Once construction begins, Ocean Wind would proceed as rapidly as possible to reduce the total duration of construction, limiting crew transfers and vessel trips by condensing the work as much as possible. Particularly in low North Atlantic right whale abundance months, completing more work in the summer means less overlap with higher density time periods.

Impact Pile Driving—OSSs

A piled jacket foundation, being considered for the OSSs only, is formed of a steel lattice construction (comprising tubular steel members and welded joints) secured to the seabed by hollow steel pin piles attached to the jacket feet. Unlike monopiles, there is no separate transition piece. The transition piece and ancillary components are fabricated as an integrated part of the jacket. Each OSS will have either a single 8/11-m diameter monopile foundation (as used for WTG foundations) or a jacket foundation consisting of 16 2.44-m diameter vertical pin piles installed with an impact hammer, IHC S-2500 kJ hammer, or similar. Each of the piled

jacket foundations will consist of four pin piles per leg (16 pin piles total) per OSS. Up to three vertical pin piles will be installed each day during construction of the OSSs, and it is expected to take 4 hours per piling. Six days of installation per OSS foundation is anticipated. The pin piles will be driven to a maximum expected depth of 70 m (230 ft). A total of 48 pin piles (16 pin piles × 3 OSSs) or three monopiles could be installed for the OSSs.

Vibratory Pile Driving—Temporary Cofferdams

The in-water use of vibratory pile driving is expected to result in the take of marine mammals. Unlike impact pile driving, vibratory pile driving is planned to exclusively occur during the potential installation and removal of temporary cofferdams. A temporary cofferdam may need to be installed seaward of the horizontal directional drilling (HDD) landfall locations where the export cable exits from the seabed. The cofferdam, if required, may be installed as either a sheet-piled structure into the seafloor or a gravity cell structure placed on the seafloor using ballast weight. A vibratory hammer will be used to drive sheet pile sidewalls and end walls into the seabed. Installation of a cofferdam is estimated to take up to 18 hours over 2 days, with vibratory driving taking place for no longer than 12 hours each day over the installation period. Removal of the cofferdam will be accomplished using a vibratory extractor and is expected to take up to 18 hours over 2 days, with no more than 12 hours of vibratory removal each day. Cofferdam installation/removal will take place only during daylight hours.

Cofferdams are planned at the following sites: two cofferdams at Oyster Creek (Atlantic Ocean to Island Beach State Parks a sea-to-shore connection point), two cofferdams at Island Beach State Park Barnegat Bay (Barnegat Bay onshore as a bay-to-shore connection point), two cofferdams at Farm Property (bayside of Oyster Creek as a shore-to-bay connection point), and one cofferdam at BL England (as a sea-to-shore connection point). Cofferdams will necessitate minimal water to be temporarily pumped out for construction activities, and then subsequently re-flooded upon the completion of activities. Dewatering activities will be temporary and water drawdown will be minimal to prevent any permanent impacts to groundwater quality.

Ocean Wind considered two scenarios for the cofferdams: a sheet pile installation and removal scenario and a

gravity-cell structure ballasted to the seafloor. In moving forward with the sheet pile scenario, Ocean Wind anticipates that impacts relating to cofferdam installation and removal using sheet piles would exceed any potential impacts for the use of alternative methods (*i.e.*, gravity-cells), and therefore the cofferdam estimates using the sheet pile approach ensures that the most conservative values are carried forward in this proposed action.

In addition to the sound produced in-water from the vibratory driving activities, it is possible that in-air noises from the vibratory hammer could be produced during temporary cofferdam installation and removal. In-air noise is not considered a concern for cetaceans and in-water pinniped species, but could pose a risk to hauled-out seals in the area, specifically harbor seals. However, based on the analysis conducted in Section 1.5.4 of Ocean Wind's ITA application (Figure 1–8), neither Ocean Wind nor NMFS expect the in-air sounds produced to cause take of hauled-out pinnipeds at distances greater than 541 m from the cofferdam installation/removal location (Ocean Wind, 2022b). As all documented pinniped haul-outs are located further than 541 m from each of the seven cofferdam locations, no take of marine mammals is expected from any in-air noise component of vibratory pile driving. Furthermore, any additional discussion relating to vibratory pile driving of temporary cofferdams will refer to in-water noise effects, unless otherwise noted.

High-Resolution Site Characterization Surveys

Ocean Wind plans to conduct HRG surveys operating at frequencies less than 180 kHz in and around the Offshore Wind Farm and along potential export cable routes to landfall locations in New Jersey throughout construction and operation. Survey activities, which include the potential to result in the take of marine mammals, will include multibeam depth sounding, seafloor imaging, and shallow- and medium-penetration sub-bottom profiling within the Offshore Wind Farm and export cable route area, using non-parametric equipment, including boomers, sparkers, and Compressed High-Intensity Radiated Pulse (CHIRPs).

While the final survey plans will not be completed until construction contracting commences, Ocean Wind anticipates that HRG survey operations would be conducted 24 hours per day and up to three vessels may be working concurrently within this 24-hour period at a transit speed of approximately 4 knots. Based on Ocean Wind's past survey experience (*i.e.*, knowledge of typical daily downtime due to weather, system malfunctions, *etc.*), Ocean Wind assumes 70 km average daily distance. On this basis, an annual total of 88 survey days (approximately 47.5 survey days in the Offshore Wind Farm and 40.5 survey days in the export cable route area) is expected during Years 1, 4, and 5. Some inter-year variance in survey locations may be expected, however, 88 survey days annually is anticipated regardless of location. During Years 2 and 3, Ocean Wind anticipates up to 78 days annually of survey effort within the export cable route areas and up to 102 days of survey effort during both Years 2 and 3 to occur in the Wind Farm Area.

Ocean Wind estimates that a total of 6,110 linear kilometers (km) will be needed within the Offshore Wind Farm and export cable route area. Survey effort will be split between the two areas: 3,000 km for the array cable, 2,300 km for the Oyster Creek export cable, 510 km for the BL England export cable, and 300 km for the OSS interconnector cable. During WTG and OSS construction and operation, it is anticipated that up to 180 survey days per year will be required, which includes up to 11,000 km of export cable surveys, 10,500 km of array cable surveys, 1,065 km of foundation surveys, 250 km of WTG surveys, and up to 2,450 km of monitoring and verification surveys. In certain shallow-water areas, vessels may conduct surveys during daylight hours only, with a corresponding assumption that the daily survey distance would be halved (35 km). Although, for purposes of analysis, a single vessel survey day is assumed to cover the maximum 70 km.

The following acoustic sources planned for use during Ocean Wind's HRG survey activities that have the potential to result in incidental take of marine mammals:

- Shallow-penetration non-impulsive, non-Parametric SBPs (compressed high-intensity radiated pulses (CHIRP SBPs)) are used to map the near-surface stratigraphy (top 0 to 5 m (0 to 16 ft)) of sediment below the seabed. A CHIRP system emits sonar pulses that increase in frequency sweep from approximately 2 to 20 kHz over time. The pulse length frequency range can be adjusted to meet Project variables. These shallow penetration SPBs are typically mounted on a pole, rather than towed, either over the side of the vessel or through a moon pool in the bottom of the hull, reducing the likelihood that an animal would be exposed to the signal.

- Medium-penetration impulsive boomers are used to map deeper subsurface stratigraphy as needed. A boomer is a broad-band sound source operating in the 3.5 Hz to 10 kHz frequency range. This system is commonly mounted on a sled and towed behind the vessel.

- Medium-penetration impulsive sparkers are used to map deeper subsurface stratigraphy as needed. Sparkers create acoustic pulses from 50 Hz to 4 kHz omnidirectionally from the source that can penetrate several hundred meters into the seafloor. Sparkers are typically towed behind the vessel with adjacent hydrophone arrays to receive the return signals.

Table 1 identifies all the representative survey equipment that operate below 180 kilohertz (kHz) (*i.e.*, at frequencies that are audible and have the potential to disturb marine mammals) that may be used in support of planned geophysical survey activities, and are likely to be detected by marine mammals given the source level, frequency, and beamwidth of the equipment. Equipment with operating frequencies above 180 kHz (*e.g.*, SSS, MBES) and equipment that does not have an acoustic output (*e.g.*, magnetometers) will also be used but are not discussed further because they are outside the general hearing range of marine mammals likely to occur in the project area. No harassment exposures can be reasonably expected from the operation of these sources; therefore, they are not considered further in this proposed action.

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Table 1 -- Ocean Wind's Representative HRG Equipment

| Representative HRG Equipment | Operating Frequency | SL _{rms} (dB re 1 μ Pa m) | SL _{0-pk} (dB re 1 μ P a m) | Pulse Duration (width) (millisecond) | Repetition Rate (Hz) | Beamwidth (degrees) | CF = Crocker and Fratantonio (2016) MAN = manufacturer |
|---|---------------------|--|--|--------------------------------------|----------------------|---------------------|--|
| Non-parametric shallow penetration SPBs (non-impulsive) | | | | | | | |
| ET 216 (2000DS or 3200 top unit) | 2-16 | 195 | - | 20 | 6 | 24 | MAN |
| | 2-8 | | | | | | |
| ET 424 | 4-24 | 176 | - | 3.4 | 2 | 71 | CF |
| ET 512 | 0.7-12 | 179 | - | 9 | 8 | 80 | CF |
| GeoPulse 5430A | 2-17 | 196 | - | 50 | 10 | 55 | MAN |
| Teledyne Benthos Chirp III - TTV 170 | 7-2 | 197 | - | 60 | 15 | 100 | MAN |
| Medium penetration SBPs (impulsive) | | | | | | | |
| AA, Dura-spark (400 tips, 500J) ^a | 0.3-1.2 | 203 | 211 | 1.1 | 4 | Omni | CF |
| AA, triple plate S-Boom (700-1,000J) ^b | 0.1-5 | 205 | 211 | 0.6 | 4 | 80 | CF |

- = not applicable; ET = EdgeTech; J = joule; kHz = kilohertz; dB = decibels; SL = source level; UHD = ultra-high definition; AA = Applied Acoustics; rms = root-mean square; μ Pa = microPascals; re = referenced to; SPL = sound pressure level; PK = zero-to-peak pressure level; Omni = omnidirectional source.

a - The Dura-spark measurements and specifications provided in Crocker and Fratantonio (2016) were used for all sparker systems proposed for the survey. These include variants of the Dura-spark sparker system and various configurations of the GeoMarine Geo-Source sparker system. The data provided in Crocker and Fratantonio (2016) represent the most applicable data for similar sparker systems with comparable operating methods and settings when manufacturer or other reliable measurements are not available.

b - Crocker and Fratantonio (2016) provide S-Boom measurements using two different power sources (CSP-D700 and CSP-N). The CSP-D700 power source was used in the 700 J measurements but not in the 1,000 J measurements. The CSP-N source was measured for both 700 J and 1,000 J operations but resulted in a lower SL; therefore, the single maximum SL value was used for both operational levels of the S-Boom.

Potential UXO/MEC Detonations

There is the potential that Ocean Wind could encounter UXOs/MECs. These include explosive munitions such as bombs, shells, mines, torpedoes, *etc.* that did not explode when they were originally deployed or were intentionally discarded to avoid land-based detonations. There are several varieties of ordnance and net explosive weights can vary according to type. All bombs are inert but simulate the same ballistic properties.

The risk of incidental detonation associated with conducting seabed-altering activities such as cable laying and foundation installation in proximity to UXOs/MECs jeopardizes the health and safety of project participants. Ocean Wind follows an industry standard As Low as Reasonably Practicable (ALARP) process that minimizes the number of potential detonations (Appendix C; Ocean Wind, 2021).

While avoidance is the preferred approach for UXO/MEC mitigation, there may be instances when confirmed UXO/MEC avoidance is not possible due to layout restrictions, presence of archaeological resources, or other factors that preclude micro-siting. In such situations, confirmed UXO/MEC may be removed through physical relocation or in situ disposal, the latter of which may result in the take of marine mammals. Physical relocation will be the preferred method but is not an option in every case. Selection of a removal method will depend on the location, size, and condition of the confirmed UXO/MEC, and will be made

in consultation with a UXO/MEC specialist and in coordination with the agencies with regulatory oversight of UXO/MECs. For UXO/MECs that will require in situ disposal, it will be done with low-order methods (deflagration), high-order (detonation) of the UXO/MEC, or by cutting the UXO/MEC up to extract the explosive components.

To better assess the potential UXO/MEC encounter risk, geophysical surveys have been and continue to be conducted to identify potential UXOs/MECs that have not been previously mapped. As these surveys and analysis of data from them are still underway, the exact number and type of UXOs/MECs in the project area are not yet known. As a conservative approach for the purposes of the impact analysis, it is currently assumed that up to 10 UXOs/MECs 454-kg (1000 pounds; lbs) charges, which is the largest charge that is reasonably expected to be present, may have to be detonated in place. Although it is highly unlikely that all ten charges would consist of this 454 kg charge, as the Navy uses many different sizes of smaller charges (even down to a few kilograms), it was determined to be the most conservative during analysis when analyzing the potential effects of the activity. If necessary, these detonations would occur on up to 10 different days (*i.e.*, only one detonation would occur per day) over the 5-year project. In the event that high-order removal (detonation) is determined to be the preferred and safest method of disposal, all detonations would occur during daylight hours. It is expected

that impacts from detonation would occur within the current limits defined for the Project Offshore Envelope, but are dependent on the soil conditions, burial depth, and type of UXO/MEC found.

Construction-Related Vessel Activities and Transit

During construction of the project, Ocean Wind anticipates that an average of approximately 18 project-related vessels will operate during a typical workday in the Wind Farm Area and along the export cable routes. As multiple vessels may be operating concurrently, each day that a survey vessel is operating counts as a single survey day. For example, if a total of three vessels are operating with one in each of the two ECRs (two total) and one in the Lease Area (one total) concurrently, this counts as three survey days. Many of these vessels will remain in the Wind Farm Area or export cable route for days or weeks at a time, potentially making only infrequent trips to port for bunkering and provisioning, as needed. The actual number of vessels involved in the project at one time is highly dependent on the project's final schedule, the final design of the project's components, and the logistics needed to ensure compliance with the Jones Act, a Federal law that regulates maritime commerce in the United States. Table 2 below shows the number of vessels and the number of vessel trips anticipated during construction activities related to Ocean Wind 1.

Table 2 -- Type and Number of Vessels, and Number of Vessel Trips, Anticipated during Construction Activities over the Effective Period of the Requested ITA

| Vessel Types | Max Number of Simultaneous Vessels | Max Number of Return Trips Per Vessel Type |
|--|------------------------------------|--|
| Wind Turbine Foundation Installation | | |
| Scour Protection Vessel | 1 | 50 |
| Installation Vessels | 4 | 99 |
| Support Vessels | 16 | 396 |
| Transport/Feeder Vessels (Including Tugs) | 40 | 396 |
| Anchored Transport/Feeder Vessels (including tugs) | 2 | 198 |
| Structure Installation | | |
| Installation Vessels | 2 | 99 |
| Transport/Feeder Vessels | 12 | 99 |
| Other Support Vessels | 24 | 594 |
| Helicopters ¹ | 2 | 75 |
| Main Laying Vessels | 3 | 99 |
| Main Burial Vessels | 3 | 99 |
| Support Vessels | 12 | 594 |
| Duration Per Cable Section In Days | - | 3.5 |
| Total Duration In Months | - | 12 |
| Substation Installation | | |
| Primary Installation Vessels | 2 | 12 |
| Support Vessels | 12 | 72 |
| Transport Vessels | 4 | 24 |

| | | |
|---|--|----|
| Maximum Duration (Days) | 67 | - |
| Substation Interconnection Cable Installation | | |
| Main Laying Vessels | Included In Numbers For Export And Array Cables | 8 |
| Main Burial Vessels | | 8 |
| Support Vessels | | 12 |
| Duration: Per Cable In Days | | 20 |
| Duration: Total In Months | | 1 |
| Offshore Export Cable Installation | | |
| Main Cable Laying Vessels | 3 | 48 |
| Main Cable Jointing Vessels | 3 | 36 |
| Main Cable Burial Vessels | 3 | 48 |
| Support Vessels | 15 | |
| Duration Per Cable Section In Days | - | 59 |
| Typical Duration In Months | - | 6 |

1 - Although helicopters were included in the ITA application, at the time of writing this proposed action, Ocean Wind has informed NMFS that no helicopter use is planned to occur during this proposed action and any mentions of helicopter use will be removed from Ocean Wind's COP.

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While marine mammals are known to respond to vessel noise and the presence of vessels in different ways, we do not expect Ocean Wind 1's vessel operations to result in the take of marine mammals. As existing vessel traffic in the vicinity of the project area off of New Jersey is relatively high, we expect that marine mammals in the area are likely somewhat habituated to vessel noise. In addition, any construction vessels would be stationary for significant periods of time when on-site and any large vessels would travel to and from the site at relatively low speeds. Project-related vessels would be required to adhere to several mitigation measures designed to reduce the potential for marine mammals to be struck by vessels associated with the project; these measures are described further below (see the Proposed Mitigation section) and vessel strikes are neither anticipated nor authorized. As part of various construction related activities, including cable laying and construction material delivery, dynamic

positioning thrusters may be utilized to hold vessels in position or move slowly. Sound produced through use of dynamic positioning thrusters is similar to that produced by transiting vessels, in that dynamic positioning thrusters are typically operated either in a similarly predictable manner or used for short durations around stationary activities. Sound produced by dynamic positioning thrusters would be preceded by, and associated with, sound from ongoing vessel noise and would be similar in nature; thus, any marine mammals in the vicinity of the activity would be aware of the vessel's presence, further reducing the potential for startle or flight responses on the part of marine mammals. Accordingly, noise from construction-related vessel activity, including the use of dynamic positioning thrusters, is not expected to result in take of marine mammals and Ocean Wind did not request, and NMFS does not propose to authorize any takes associated with construction related vessel activity. However, NMFS

acknowledges the aggregate impacts of Ocean Wind 1's vessel operations on the acoustic habitat of marine mammals and has considered it in the analysis.

Fisheries Monitoring Surveys

Ocean Wind plans to undertake various fisheries monitoring surveys in collaboration with several academic partners throughout the period of effectiveness for this rule. As described in Section 1.3.4 of the ITA application, Ocean Wind has developed a Fisheries Monitoring Plan (FMP) in consultation with BOEM's "Guidelines for Providing Information on Fisheries for Renewable Energy Development on the Atlantic Outer Continental Shelf" (BOEM, 2019). Ocean Wind plans to conduct various types of surveys, including surveys using gear similar to that used in commercial fisheries (e.g., trawl nets, hook and line gear, gillnets, pot/trap), acoustic telemetry surveys, environmental DNA (eDNA) sampling, clam surveys, oceanographic glider surveys, and pelagic fish surveys (Ocean

Wind, 2022b). The Plan also includes structured habitat surveys involving use of chevron traps and a pelagic and benthic baited remote underwater video (BRUV) device connected to the surface by vertical lines.

Gear and activities that NMFS does not expect to have the potential to cause impacts to marine mammals include: use of autonomous gliders, clam surveys using a slow moving hydraulic dredge, non-extractive surveys specifically for pelagic fish (through use of baited and towed camera traps and autonomous glider equipment with echosounders), and non-extractive eDNA collection from water samples taken while in the field, and acoustic telemetry surveys of pelagic fish. These activities, or use of these gear types, are unlikely to have any potential to impact marine mammals as the gear types do not involve use of components that marine mammals are likely to interact with (e.g., become entangled in, be hooked by) or the surveys involve passive interaction with the environment.

Planned fishery survey activities including use of gear that could have potential to result in marine mammal interaction (e.g., trawl surveys, hook and line activities, gillnet use, pot/trap deployment, and chevron trap and BRUV use) are required to implement Best Management Practices (BMPs) that would minimize this risk to the point that take is not reasonably anticipated to occur. Because of the BMPs stated in the Proposed Mitigation section, neither NMFS nor Ocean Wind anticipates any incidental take of marine mammals to occur from the fisheries-specific activities described herein and in the ITA application (Ocean Wind, 2022b). Accordingly, Ocean Wind has not requested any take of marine mammals incidental to these fisheries surveys, nor does NMFS propose to authorize any given the nature of the activities and, for certain gear types, the mitigation measures planned for use by Ocean Wind. Therefore, fishery monitoring survey activities are not analyzed further in this document.

Dredging Activities

Dredging typically consists of the removal and sometimes transportation of underwater sediment to deepen a specific area. This is typically performed in navigational channels for vessel traffic. The ITA application notes that dredging may be required prior to cable laying in the event sandwaves are present and that dredging may need to occur across the lifetime of the project (Ocean Wind, 2022b).

NMFS does not expect dredging to generate noise levels that would cause

take of marine mammals. Most of the energy falls below 1 kHz, which indicates that it is highly unlikely to cause damage to marine mammal hearing (Todd *et al.*, 2015). For example, a study by Reine and Clarke (2014) found that, using a propagation loss coefficient of 15LogR, source levels of dredging operations in the shallow waters (less than 15 m depth) in New York Harbor were measured at and did not exceed 151 dB *re 1 μPa*, which is not expected to cause hearing shifts in marine mammals. A more recent analysis by McQueen *et al.* (2020) found that, using a maximum sound level of 192 dB *re 1 μPa*, the resulting isopleths for representative marine mammals (i.e., the harbor seal and the harbor porpoise), the resulting isopleths for temporary shifts in hearing would occur less than 20 m and less than 74 m, respectively. Isopleths for permanent shifts were noted as less than 1 m for both marine mammal species.

In Section 3.15 (Marine Mammals) of the Ocean Wind 1 draft EIS (<https://www.boem.gov/renewable-energy/state-activities/ocean-wind-1>), BOEM states that “Based on the available source level information presented in Section 3.15.5, dredging by mechanical or hydraulic dredges is unlikely to exceed marine mammal permanent threshold shifts (PTS; injury) thresholds, but if dredging occurs in one area for relatively long periods temporary threshold shifts (TTS) and behavioral thresholds could be exceeded as well as masking of marine mammal communications (Todd *et al.*, 2015; NMFS, 2018).” While NMFS acknowledges the potential of short-duration masking or slight behavioral changes (Todd *et al.*, 2015) to occur during dredging activities, any effects on marine mammals are expected to be short-term, low intensity, and unlikely to qualify as take. Given the size of the area that dredging operations would be occurring in, as well as the coastal nature of some of these activities for the nearshore sea-to-shore connection points related to temporary cofferdam installation/removal, NMFS expects that any marine mammals would not be exposed at levels or durations likely to disrupt normal life activities (i.e., migrating, foraging, calving, etc.). Therefore, the potential for take of marine mammals to result from these activities is so low as to be discountable and Ocean Wind did not request, and NMFS does not propose to authorize, any takes associated with dredging and dredging activities are not analyzed further in this document.

Cable Laying and Installation

Cable burial operations will occur both in Ocean Wind 1 Wind Farm Area for the inter-array cables connecting the WTGs to the OSS and in the Ocean Wind 1 export cable route for the cables carrying power from the OSS to land. Inter-array cables will connect the 98 WTGs to the OSS. A single offshore export cable will connect the OSSs to the New Jersey sea-to-shore transition point. The offshore export and inter-array cables will be buried in the seabed at a target depth of 1.2 to 2.8 m (4 to 6 ft). All cable burial operations will follow installation of the monopile foundations, as the foundations must be in place to provide connection points for the export cable and inter-array cables.

All cables will be buried below the seabed, when possible, and buried onshore up to the transition joint bays. The targeted burial depths will be determined later by Ocean Wind, following a detailed design and Cable Burial Risk Assessment. This Assessment will note where burial cannot occur, where sufficient depths cannot be achieved, and/or where additional protection is required due to the export cable crossing other cables or pipelines (either related to the Ocean Wind 1 project or not). Burial of cables will be performed by specific vessels, which are described in Tables 6.1.2–5, 6.1.2–6, 6.1.2–7, 6.1.2–8, and 6.1.2–9 in the Ocean Wind 1 COP (<https://www.boem.gov/ocean-wind-1-construction-and-operations-plan>).

Cable laying, cable installation, and cable burial activities planned to occur during the construction of Ocean Wind 1 may include the following:

- Jetting;
- Vertical injection;
- Leveling;
- Mechanical cutting;
- Plowing (with or without jet-assistance);
- Pre-trenching; and,
- Controlled flow excavation.

Ocean Wind notes that installation days are not continuous and do not include equipment preparation or downtime that may result from weather or maintenance.

Some dredging may be required prior to cable laying due to the presence of sandwaves. Sandwave clearance may be undertaken where cable exposure is predicted over the lifetime of the Project due to seabed mobility. Alternatively, sandwave clearance may be undertaken where slopes become greater than approximately 10 degrees (17.6 percent), which could cause instability to the burial tool. The work could be

undertaken by traditional dredging methods such as a trailing suction hopper. Alternatively, controlled flow excavation or a sandwave removal plough could be used. In some cases, multiple passes may be required. The method of sandwave clearance Ocean Wind chooses will be based on the results from the site investigation surveys and cable design. More information on cable laying associated with the proposed project is provided in Ocean Wind's COP (Ocean Wind, 2022a) and NMFS further references the reader to the Ocean Wind 1 COP found on BOEM's website (<https://www.boem.gov/ocean-wind-1-construction-and-operations-plan>). As the noise levels generated from this activity are low, the potential for take of marine mammals to result is discountable (86 FR 8490, February 5, 2021) and Ocean Wind does not request marine mammal take associated with cable laying. Therefore, cable laying activities are not analyzed further in this document.

Offshore Wind Farm Operational Noise

Although this proposed rulemaking primarily covers the noise produced from construction activities relevant to the Ocean Wind 1 offshore wind facility, operational noise was a consideration in NMFS' analysis of the project, as all 98 turbines would become operational within the effective dates of the rule, beginning no sooner than 2024. It is expected that a minimum of 68 turbines would be operational in 2024 with the rest installed and operational in either late 2024 or 2025. Once operational, offshore wind turbines are known to produce continuous, non-impulsive underwater noise, primarily in the lower-frequency bands (below 8 kHz).

In both newer, quieter, direct-drive systems (such as what has been proposed for Ocean Wind 1) and older generation, geared turbine designs, recent scientific studies indicate that operational noise from turbines is on the order of 110 to 125 dB *re* 1 μ Pa, root-mean-square sound pressure level (SPL_{rms}) at an approximate distance of 50 m (Tougaard *et al.*, 2020). Tougaard *et al.* (2020) further noted that sound levels could reach as high as 128 dB *re* 1 μ Pa, SPL_{rms} in the 10 Hz to 8 kHz range. However, BOEM notes that the Tougaard *et al.* (2020) study assumed that the largest monopile-specific WTG was 3.6 MW, which is much smaller than those being considered for the Ocean Wind 1 project (Ocean Wind 1 DEIS, Section 3.13 Finfish, Invertebrates, and Essential Fish Habitat; BOEM, 2022). Tougaard further

stated that the operational noise produced from WTGs is static in nature and is lower than noise produced from passing ships. This is a level that marine mammals in this region are likely already habituated to. Furthermore, operational noise levels are likely lower than those ambient levels already present in active shipping lanes, meaning that any operational noise levels would likely only be detected at a very close proximity to the WTG (Thomsen *et al.*, 2006; Tougaard *et al.*, 2020). Furthermore, the noise from operational wind turbines has been previously found to be much lower in intensity than the noises present during construction, although this was based on a single turbine with a maximum power of 2 MW (Madsen *et al.*, 2006). Other studies by Jansen and de Jong (2016) and Tougaard *et al.* (2009b) determined that while marine mammals would be able to detect operational noise from offshore wind farms (older 2 MW models) for several thousand kilometers, the effects produced from this should have no significant impacts on the individual survival, population viability, marine mammal distribution, or the behavior of the animals. However, these studies are, again, based on older models and not newer generation turbines with more modernized and quieter technology.

More recently, a study by Stöber and Thomsen (2021) was published where the authors were looking to estimate the operational noise from the larger, more recent generation of direct-drive WTGs. Their findings demonstrated that more modern turbine designs could generate higher operational noise levels (170 to 177 dB *re* 1 μ Pa SPL_{rms} for a 10 MW WTG) than those previously reported for older models. These results are similar to the results presented by Tougaard *et al.* (2020). However, the results of this study haven't been validated yet as they were based on a small sample size (Ocean Wind 1 DEIS, section 3.15 Marine Mammals; BOEM, 2022).

Specifically related to the proposed Ocean Wind 1 project, BOEM included operational noise throughout the DEIS. As described in Ocean Wind 1's DEIS (in COP Volume II, Appendix R-2; BOEM, 2022), BOEM states that the operational noises would primarily consist of low-frequency sounds (60 to 300 Hz) and consist of relatively low SPLs. It further concludes that, "It is unlikely that WTG operations will cause injury or behavioral responses to marine fauna [including marine mammals], so the risk of impact is expected to be low." While exceptions have been previously noted in the scientific literature where some lower-frequency

sounds produced by some marine mammal species (*i.e.*, odontocete burst-pulsed sounds (Richardson *et al.*, 1995) and bottlenose dolphin bray-calls (Janik, 2000)), may fall within similar ranges of operational wind turbine noise, these assumptions were previously attributed based upon the older generation turbines not using the more recent and modern drive shafts. Furthermore, based on the modern type of turbine planned for use in Ocean Wind 1, BOEM has preliminarily determined that no physiological effects on fish would result from WTG operation, which would indicate that no marine mammal prey impacts are likely to occur (Ocean Wind 1 DEIS, Section 3.13 Finfish, Invertebrates, and Essential Fish Habitat; BOEM, 2022). Furthermore, as many offshore permanent structures, including offshore wind farms, are known to attract fish species and other invertebrates after construction in an artificial reef effect (Wilson and Elliott, 2009; Lindeboom *et al.*, 2011; Langhamer, 2012; Glarou *et al.*, 2020), BOEM and Ocean Wind consider adverse impacts to marine mammal prey are unlikely. Neither BOEM nor Ocean Wind currently expect take of marine mammals to result from WTG operation, and Ocean Wind did not request take authorization from this activity. NMFS acknowledges that more research on the impacts of operational noise on marine mammals and their prey is needed, as currently available information on modern turbine models is limited. However, based on the information above, including the small numbers of turbines and short duration of operation that would be covered under this rule, NMFS is preliminarily not proposing to authorize take of marine mammals from operational noise from WTGs and it is not discussed or analyzed further in this proposed **Federal Register** notice.

In consideration of all activities in which the proposed harassment and subsequent take of marine mammals is considered a possibility, NMFS further addresses conservative approaches for the proposed mitigation, monitoring, and reporting measures, which are described in detail later in this document (see Proposed Mitigation and Proposed Monitoring and Reporting sections).

Description of Marine Mammals in the Area of Specified Activities

Several marine mammal species occur within the project area. Sections 3 and 4 of Ocean Wind's ITA application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially

affected species (Ocean Wind, 2022b). 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>).

Table 3 lists all species or stocks for which take is expected and proposed to be authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and

potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular

study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Atlantic and Gulf of Mexico SARs. All values presented in Table 3 are the most recent available data at the time of publication which can be found in NMFS' SARs (Hayes *et al.*, 2022), available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports>.

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Table 3 -- Marine Mammal Species¹ Likely To Occur Near the Project Area That May be Taken by Ocean Wind's Activities

| Common name | Scientific name | Stock | ESA/MMP A status; Strategic (Y/N) ² | Stock abundance (CV, N _{min} , most recent abundance survey) ³ | PBR | Annual M/SI ⁴ |
|--|------------------------------|------------------------|--|--|-----|--------------------------|
| <i>Order Artiodactyla – Infraorder Cetacea – Mysticeti (baleen whales)</i> | | | | | | |
| <i>Family Balaenidae</i> | | | | | | |
| North Atlantic right whale | <i>Eubalaena glacialis</i> | Western Atlantic | E, D, Y | 368 (0; 364; 2019) ⁵ | 0.7 | 7.7 |
| <i>Family Balaenopteridae (rorquals)</i> | | | | | | |
| Blue whale | <i>Balaenoptera musculus</i> | Western North Atlantic | E, D, Y | UNK (UNK; 402; 1980-2008) | 0.8 | 0 |
| Fin whale | <i>Balaenoptera physalus</i> | Western North Atlantic | E, D, Y | 6,802 (0.24; 5,573; 2016) | 11 | 1.8 |
| Sei whale | <i>Balaenoptera borealis</i> | Nova Scotia | E, D, Y | 6,292 (1.02; 3,098; 2016) | 6.2 | 0.8 |

| | | | | | | |
|---|-----------------------------------|---------------------------------|----------|--------------------------------------|-----|---------------|
| Minke whale | <i>Balaenoptera acutorostrata</i> | Canadian Eastern Coastal | - , -, N | 21,968 (0.31; 17,002; 2016) | 170 | 10.6 |
| Humpback whale | <i>Megaptera novaeangliae</i> | Gulf of Maine | - , -, Y | 1,396 (0; 1,380; 2016) | 22 | 12.15 |
| <i>Odontoceti (toothed whales, dolphins, and porpoises)</i> | | | | | | |
| <i>Family Physeteridae</i> | | | | | | |
| Sperm whale | <i>Physeter macrocephalus</i> | North Atlantic | E, D, Y | 4,349 (0.28; 3,451; 2016) | 3.9 | 0 |
| <i>Family Delphinidae</i> | | | | | | |
| Atlantic white-sided dolphin | <i>Lagenorhynchus acutus</i> | Western North Atlantic | - , -, N | 93,233 (0.71; 54,433; 2016) | 544 | 27 |
| Atlantic spotted dolphin | <i>Stenella frontalis</i> | Western North Atlantic | - , -, N | 39,921 (0.27; 32,032; 2016) | 320 | 0 |
| Common bottlenose dolphin | <i>Tursiops truncatus</i> | Northern Migratory Coastal | - , -, Y | 6,639 (0.41; 4,759; 2016) | 48 | 12.2- 21.5 |
| | | Western North Atlantic Offshore | - , -, N | 62,851 (0.23; 51,914; 2016) | 519 | 28 |
| Short-finned pilot whale | <i>Globicephala macrorhynchus</i> | Western North Atlantic | - , -, Y | 28,924 (0.24; 23,637; 2016) | 236 | 136 |
| Long-finned pilot whale | <i>Globicephala melas</i> | Western North Atlantic | - , -, N | 39,215 (0.30; 30,627; 2016) | 306 | 9 |
| Risso's dolphin | <i>Grampus griseus</i> | Western North Atlantic | - , -, N | 35,215 (0.19; | 301 | 34 |

| | | | | | | |
|--|---------------------------|----------------------------|---------|-------------------------------|-------|-------|
| | | | | 30,051; 2016) | | |
| Common dolphin | <i>Delphinus delphis</i> | Western North Atlantic | -, -, N | 172,974 (0.21; 145,216; 2016) | 1,452 | 390 |
| <i>Family Phocoenidae (porpoises)</i> | | | | | | |
| Harbor porpoise | <i>Phocoena</i> | Gulf of Maine/Bay of Fundy | -, -, N | 95,543 (0.31; 74,034; 2016) | 851 | 16 |
| <i>Order Carnivora – Pinnipedia</i> | | | | | | |
| <i>Family Phocidae (earless seals)</i> | | | | | | |
| Gray seal ⁶ | <i>Halichoerus grypus</i> | Western North Atlantic | -, -, N | 27,300 (0.22; 22,785; 2016) | 1,458 | 4,453 |
| Harbor seal | <i>Phoca vitulina</i> | Western North Atlantic | -, -, N | 61,336 (0.08; 57,637; 2018) | 1,729 | 339 |

1 – Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (<https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/>; Committee on Taxonomy (2022)).

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

3 – NMFS marine mammal stock assessment reports online at: www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments. CV is the coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable.

4 – These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike).

5 – The draft 2022 SARs have yet to be released; however, NMFS has updated its species web page to recognize the population estimate for North Atlantic right whales is now below 350 animals (<https://www.fisheries.noaa.gov/species/north-atlantic-right-whale>).

6 – NMFS' stock abundance estimate (and associated PBR value) applies to the U.S. population only. Total stock abundance (including animals in Canada) is approximately 451,431. The annual M/SI value given is for the total stock.

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All 38 species that could potentially occur in the proposed survey areas are included in Table 3-1 of the Ocean Wind 1 ITA application and discussed therein (Ocean Wind, 2022b). While the

majority of these species have been documented or sighted off the New Jersey coast in the past, for the species and stocks not listed in Table 3, NMFS considers it unlikely that their occurrence would overlap the activity in

a manner that would result in harassment, either because of their spatial occurrence (*i.e.*, more northern or southern ranges) and/or with the geomorphological characteristics of the underwater environment (*i.e.*, water

depth in the development area). Because of this, these species are not discussed further.

In addition, the Florida manatees (*Trichechus manatus*; a sub-species of the West Indian manatee) has been previously documented as an occasional visitor to the Northeast region during summer months (U.S. Fish and Wildlife Service (USFWS), 2019). However, manatees are managed by the USFWS and are not considered further in this document.

As indicated above, all 17 species (with 18 managed stocks) in Table 3 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. Five of the marine mammal species for which take is requested have been designated as ESA-listed, including North Atlantic right, blue, fin, sei, and sperm whales. In addition to what is included in Sections 3 and 4 of Ocean Wind's ITA application (<https://www.fisheries.noaa.gov/action/incidental-take-authorization-ocean-wind-lcc-construction-ocean-wind-1-wind-energy-facility>), the SARs (<https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>), and NMFS' website (<https://www.fisheries.noaa.gov/species-directory/marine-mammals>) provide further general information regarding life history, threats, and status of the impacted species and stocks. Below, we provide additional information, where available and applicable, to inform our impact analyses including designated Unusual Mortality Events, or ESA Critical Habitat, or information regarding other known areas of known biological importance.

Two specific areas have been designated as Critical Habitat for North Atlantic right whales. The calving ground is located in the southern Atlantic coast and extends from Georgia to Florida. The foraging ground extends from Maine to Massachusetts and includes the Gulf of Maine and Georges Bank region. With regards to Ocean Wind 1, both of these specific Critical Habitat locations are found several hundreds of miles from the project area and should not be impacted by this proposed project. Furthermore, no Critical Habitat for other species is close enough to be impacted by Ocean Wind's activities.

Under the MMPA, an unusual mortality event (UME) is defined as "a stranding that is unexpected; involves a significant die-off of any marine mammal population; and demands immediate response" (16 U.S.C. 1421h(6)). As of September 2022, seven

UMEs are considered active, with five of these occurring along the Atlantic coast for several marine mammal species.

Currently the most relevant to this proposed action are the UMEs related to the minke whale, the North Atlantic right whale, and the humpback whale. The Florida manatee UME is not discussed further as manatees are not one of NMFS' trust species. This species is managed by the USFWS and more information can be found on their website (<https://myfwc.com/research/manatee/rescue-mortality-response/ume/>). The recent 2022 Northeast Pinniped UME is not discussed further as impacts of this UME have only been recorded along the southern and central coast of Maine (<https://www.fisheries.noaa.gov/2022-pinniped-unusual-mortality-event-along-maine-coast>). Given that these areas are found several hundreds of miles away from the Ocean Wind 1 project area, and are only presently known to these areas off of Maine, the pinniped UME is not discussed further in this proposed notice. More information on UMEs, including all active, closed, or pending, can be found on NMFS' website at <https://www.fisheries.noaa.gov/national/marine-life-distress/active-and-closed-unusual-mortality-events>.

Below, we include additional information for the subset of species that presently have an active or recently closed UME occurring along the Atlantic coast, or for which there is information available related to areas of specific biological significance. For the majority of species potentially present in the specific geographic region, NMFS has designated only a single generic stock (e.g., "western North Atlantic") for management purposes. This includes the "Canadian east coast" stock of minke whales, which includes all minke whales found in U.S. waters and is also a generic stock for management purposes. For humpback and sei whales, NMFS defines stocks on the basis of feeding locations, i.e., Gulf of Maine and Nova Scotia, respectively. However, references to humpback whales and sei whales in this document refer to any individuals of the species that are found in the specific geographic region. Any areas of known biological importance (including the Biologically Important Areas (BIAs) identified in Van Parijs *et al.*, 2015) that overlap spatially with the project area are addressed in the species sections below.

North Atlantic Right Whale

The North Atlantic right whale is considered one of the most critically endangered populations of large whales in the world and has been listed as a

federally endangered species since 1970. The Western Atlantic stock is considered depleted under the MMPA (Hayes *et al.*, 2022). North Atlantic right whales are currently threatened by low population abundance, higher than normal mortality rates and lower than normal reproductive rates. In 2021, Pace *et al.* released an update of a North Atlantic right whale abundance model. From 1990–2014, the female apparent survival rate fluctuated around 0.96. In 2014, survival decreased to approximately 0.93 and hit an all-time low of 0.89 in 2017. However, in 2018, survival increased dramatically back to around 0.95. The average survival rate, based on the Pace *et al.* (2021) regime model from 2014–2018, is approximately 0.93, slightly lower than the average long-term rate from 1990–2014 (0.96). Since 1990, the estimated number of new entrants (which can be used as a proxy for recruitment rates) has widely fluctuated between 0 and 39 (Pace *et al.*, 2021, NMFS 2021). In the last 12 years (2010–2022), the average number of calves born into the population is approximately 13 (as of September 14, 2022).

However, the most recent information on the status of North Atlantic right whales can be found in NMFS' 2022 SAR (Hayes *et al.*, 2022). Although NMFS relies on the most up-to-date SARs, we also acknowledge that the population estimate has been updated to below 350 animals, as reflected on our website (<https://www.fisheries.noaa.gov/species/north-atlantic-right-whale>). We noted that this change in abundance estimate would not change the estimated take or the take NMFS has proposed for authorization of North Atlantic right whales. As a result, this information does not change our ability to make the preliminary required findings under the MMPA for Ocean Wind's proposed construction activities.

The North Atlantic right whale calving season begins around mid-November and ends after mid-April. Female North Atlantic right whales give birth to a single calf after a gestation period of 12 months, and typically repeat this in 3-year intervals. However, per NMFS' website (<https://www.fisheries.noaa.gov/national/endangered-species-conservation/north-atlantic-right-whale-calving-season-2022>) and likely due to stress (e.g., entanglements in fishing gear and vessel collisions), North Atlantic right whale mothers have begun having calves every 7 to 10 years, on average (van der Hoop *et al.*, 2017; Pettis *et al.*, 2022) with mean annual calving intervals increasing significantly over the last

three decades (Kraus *et al.*, 2020). Further compounding this issue is that not all calves born into the population survive to adulthood or to a viable age for reproduction. For example, on December 22, 2020, a newborn calf was sighted off El Hierro, an island in the Canary Islands, but has not been subsequently detected with its mother, suggesting it did not survive. More recently, a dead North Atlantic right whale calf was reported stranded on February 13, 2021, along the Florida coast. These impacts all further challenge any potential of recovery for the North Atlantic right whale. As previously stated by Greene and Pershing (2004) and Meyer-Gutbrod *et al.* (2021), the effects on changes in calving rates and further effects from climate variability, may continue to make this a vulnerable species and hinder recovery if present trends continue.

As described above, the project area is present in part of an important migratory corridor for North Atlantic right whales, which make annual migrations up and down the Atlantic coast. There is a recovery plan (NOAA Fisheries, 2017) for the North Atlantic right whale, and relatively recently there was a five-year review of the species (NOAA Fisheries, 2017). The North Atlantic right whale only had a 2.8 percent recovery rate between 1990 and 2011 (Hayes *et al.*, 2022). NMFS' website (<https://www.fisheries.noaa.gov/species/north-atlantic-right-whale>) notes fewer than 350 North Atlantic right whales are remaining.

As described above, North Atlantic right whale presence in the project area is seasonal. As a result of several years of aerial surveys and PAM deployments in the area we have confidence that right whales are expected in the project area during certain times of year, while at other times of year right whales are not expected to occur in the project area. LeBreque *et al.* (2015) identify a seasonally active migratory corridor BIA for North Atlantic right whales that overlaps the project area in March–April (northbound route) and November–December southbound. Due to the current status of North Atlantic right whales, and the spatial overlap of the proposed project with an area they are known to seasonally occur in, the potential impacts of the proposed project on right whales warrant particular attention.

Elevated right whale mortalities have occurred since June 7, 2017, along the U.S. and Canadian coast, with the leading category for the cause of death for this UME determined to be “human

interaction,” specifically from entanglements or vessel strikes. As of early October 2022, there have been 34 confirmed mortalities (dead stranded or floaters; 21 in Canada; 13 in the United States) and 21 seriously injured free-swimming whales for a total of 55 whales. As of October 14, 2022, the UME also considers animals with sublethal injury or illness bringing the total number of whales in the UME to 91. Approximately 42 percent of the population is known to be in reduced health (Hamilton *et al.*, 2021), likely contributing to the smaller body sizes at maturation (Stewart *et al.*, 2022) and making them more susceptible to threats. More information about the North Atlantic right whale UME is available online at: www.fisheries.noaa.gov/national/marine-life-distress/2017-2021-north-atlantic-right-whale-unusual-mortality-event.

NMFS' regulations at 50 CFR 224.105 designated nearshore waters of the Mid-Atlantic Bight as Mid-Atlantic U.S. Seasonal Management Areas (SMAs) for North Atlantic right whales in 2008 (73 FR 60173, October 10, 2008). SMAs were developed to reduce the threat of collisions between ships and North Atlantic right whales around their migratory route and calving grounds. While the project area does not overlap with any SMAs, transiting vessels in the Mid-Atlantic Migratory region, specifically out of Delaware Bay (38°52'27.4" N–075°01'32.1" W; active between November 1 and April 30) or the New York/New Jersey ports (40°29'42.2" N–073°55'57.6" W; active between November 1 and April 30), could travel through these SMAs. NMFS notes that Dynamic Management Areas (DMAs), triggered based on visual sightings documented during the presence of three or more right whales within a specific area, may be established at any time. More information on SMAs and DMAs can be found on NMFS' website at <https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales>.

There are no areas where North Atlantic right whales are specifically known to aggregate for foraging activities that overlap the project area.

Humpback Whale

On September 8, 2016, NMFS divided the once single humpback whale species into 14 distinct population segments (DPS)¹ removed the species-level

¹ Under the Endangered Species Act, in 16 U.S.C. 1532(16), a distinct population segment (or DPS) is

listing, and in its place listed four DPSs as endangered and one DPS as threatened (81 FR 62260, September 8, 2016). The remaining nine DPSs were not listed. The West Indies DPS, which is not listed under the ESA, is the only DPS of humpback whales that are expected to occur in the Survey Area. Bettridge *et al.* (2015) estimated the size of this population at 12,312 (95 percent Confidence Interval (CI) 8,688–15,954) whales in 2004–05, which is consistent with previous population estimates of approximately 10,000–11,000 whales (Smith *et al.*, 1999; Stevick *et al.*, 2003) and the increasing trend for the West Indies DPS (Bettridge *et al.*, 2015). Whales occurring in the project area are considered to be from the West Indies DPS but are not necessarily from the Gulf of Maine feeding population managed as a stock by NMFS. Given the current data, we expect humpback whales migrating or foraging off the United States East Coast in the North Atlantic Ocean are non-ESA-listed animals (West Indies DPS) that originate from the western North Atlantic Ocean feeding areas (*i.e.*, Gulf of Maine, Gulf of Saint Lawrence, Newfoundland/Labrador, Western Greenland, Iceland, Norwegian Sea, and Northern Norway). Barco *et al.*, 2002 estimated that, based on photo-identification, only 39 percent of individual humpback whales observed along the mid- and south Atlantic U.S. coast are from the Gulf of Maine stock. Bettridge *et al.* (2015) estimated the size of the West Indies DPS is 12,312 (95 percent CI 8,688–15,954) whales in 2004–05, which is consistent with previous population estimates of approximately 10,000–11,000 whales (Stevick *et al.*, 2003; Smith *et al.*, 1999) and the increasing trend for the West Indies DPS (Bettridge *et al.*, 2015). Humpback whales utilize the mid-Atlantic as a migration pathway between calving/mating grounds to the south and feeding grounds in the north (Waring *et al.*, 2007a; Waring *et al.*, 2007b).

Sighting of humpback whales used to be uncommon off of New Jersey; however, four decades ago, humpback whales were infrequently sighted off the US mid-Atlantic states (USMA, New York, New Jersey, Delaware, Maryland, Virginia and North Carolina; CeTAP, 1982), but they are now common to coastal Virginia in winter when most humpback whales are on their breeding

a vertebrate population or group of populations that is discrete from other populations of the species and significant in relation to the entire species. NOAA Fisheries and the US Fish and Wildlife Service released a joint statement on February 7, 1996 (61 FR 4722) that defines the criteria for identifying a population as a DPS.

grounds (Swingle *et al.*, 1993, Barco *et al.*, 2002, Aschettino *et al.*, 2022). This shift is also supported by passive acoustic monitoring data (*e.g.*, Davis *et al.*, 2020). Recently, Brown *et al.* (2022) investigated site fidelity, population composition and demographics of individual whales in the New York Bight apex (which includes New Jersey waters and found that although mean occurrence was low (2.5 days), mean occupancy was 37.6 days, and 31.3 percent of whales returned from one year to the next. The majority of whales were seen during summer (July–September, 62.5 percent), followed by autumn (October–December, 23.5 percent) and spring (April–June, 13.9 percent). They also found sightings of mother-calf pairs were rare. When data were available to evaluate age, most individuals were either confirmed or suspected juveniles, including four whales known to be 2–4 years old based on known birth year, and 13 whales with sighting histories of 2 years or less on primary feeding grounds. Three individuals were considered adults based on North Atlantic sighting records. The young age structure in the nearshore waters of the New York Bight apex is consistent with other literature (Stepanuk *et al.*, 2021; Swingle *et al.*, 1993; Barco *et al.*, 2022). It remains to be determined whether humpback whales in the New York Bight apex represent a northern expansion of individuals that had wintered off Virginia, a southern expansion of individuals from the adjacent Gulf of Maine, or is the result of another phenomenon.

Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine to Florida. Partial or full necropsy examinations have been conducted on approximately half of the 161 known cases (as of October 2022). Of the whales examined, about 50 percent had evidence of human

interaction, either ship 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 regarding this declared UME is available at: www.fisheries.noaa.gov/national/marine-life-distress/2016-2021-humpback-whale-unusual-mortality-event-along-atlantic-coast.

A humpback whale feeding BIA extends throughout the Gulf of Maine, Stellwagen Bank, and Great South Channel from May through December, annually (LeBrecque *et al.*, 2015). However, this BIA is located further north and does not overlap with any part of the project area.

Minke Whale

Since January 2017, a UME has been declared based on elevated minke whale mortalities that have occurred along the Atlantic coast from Maine through South Carolina, with a total of 123 strandings (as of October 2022). Full or partial necropsy examinations were conducted on more than 60 percent of the whales. Preliminary necropsy findings show evidence of human interactions or infectious disease, but these findings are not consistent across all of the whales examined, so more research is needed. More information is available at: www.fisheries.noaa.gov/national/marine-life-distress/2017-2021-minke-whale-unusual-mortality-event-along-atlantic-coast.

There are two minke whale feeding BIAs identified 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 from March through November, annually (LeBrecque *et al.*, 2015). However, these BIAs are located further north and do not overlap with any part of the project area.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.*, Richardson *et al.*, 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.*, low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 dB threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 4.

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Table 4 -- Marine Mammal Hearing Groups (NMFS, 2018)

| Hearing Group | Generalized Hearing Range* |
|---|----------------------------|
| Low-frequency (LF) cetaceans (baleen whales) | 7 Hz to 35 kHz |
| Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales) | 150 Hz to 160 kHz |
| High-frequency (HF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, Cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>) | 275 Hz to 160 kHz |
| Phocid pinnipeds (PW) (underwater) (true seals) | 50 Hz to 86 kHz |
| Otariid pinnipeds (OW) (underwater) (sea lions and fur seals) | 60 Hz to 39 kHz |
| * Represents the generalized hearing range for the entire group as a composite (i.e., all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall et al., 2007) and PW pinniped (approximation). | |

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For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Seventeen marine mammal species (15 cetacean species (6 mysticetes and 9 odontocetes) and 2 pinniped species (both phocid)) have the reasonable potential to co-occur with the proposed survey activities. Please refer back to Table 3. NMFS notes that in 2019, Southall *et al.* recommended new names for hearing groups that are widely recognized. However, this new hearing group classification does not change the weighting functions or acoustic thresholds (i.e., the weighting functions and thresholds in Southall *et al.* (2019) are identical to NMFS 2018 Revised Technical Guidance). When NMFS updates our Technical Guidance, we

will be adopting the updated Southall *et al.* (2019) hearing group classification.

Potential Effects to Marine Mammals and Their Habitat

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

those impacts on individuals are likely to impact marine mammal species or stocks. General background information on marine mammal hearing was provided previously (see the Description of Marine Mammals in the Area of Specified Activities section). Here, the potential effects of sound on marine mammals are discussed.

Ocean Wind has requested authorization for the take of marine mammals that may occur incidental to construction activities in the Ocean Wind 1 project area. Ocean Wind 1 analyzed potential impacts to marine mammals from acoustic and explosive sources in its ITA application. NMFS carefully reviewed the information provided by Ocean Wind, along with independently reviewing applicable scientific research and literature and

other information to evaluate the potential effects of Ocean Wind's activities on marine mammals, which are presented in this section.

The proposed activities would result in the placement of up to 101 permanent structures (*i.e.*, the monopiles and associated scour protection supporting the WTGs and OSS, depending on the foundation scenario carried forward for the OSSs) and seven temporary cofferdams in the marine environment. Up to ten UXO/MEC detonations may occur intermittently, and only as necessary. A variety of effects on marine mammals, habitat, and prey species could occur.

Description of Sound Sources

This section contains a brief technical background on sound, on the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document. For general information on sound and its interaction with the marine environment, please see, *e.g.*, Au and Hastings (2008); Richardson *et al.* (1995); Urlick (1983).

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in Hz or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the "loudness" of a sound and is typically described using the relative unit of the dB. A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure (for underwater sound, this is 1 microPascal (μPa)), and is a logarithmic unit that accounts for large variations in amplitude; therefore, a relatively small change in dB corresponds to large changes in sound pressure. The source level (SL) represents the SPL referenced at a distance of 1 m from the source (referenced to 1 μPa), while the received level is the SPL at the listener's position (referenced to 1 μPa).

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Root mean

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

Sound exposure level (SEL; represented as dB re 1 micropascal-squared second ($\mu Pa^2\text{-s}$)) represents the total energy in a stated frequency band over a stated time interval or event, and considers both intensity and duration of exposure. The per-pulse SEL is calculated over the time window containing the entire pulse (*i.e.*, 100 percent of the acoustic energy). SEL is a cumulative metric; it can be accumulated over a single pulse, or calculated over periods containing multiple pulses. Cumulative SEL represents the total energy accumulated by a receiver over a defined time window or during an event. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0-pk) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source, and is represented in the same units as the rms sound pressure.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in a manner similar to ripples on the surface of a pond and may be either directed in a beam or beams or may radiate in all directions (omnidirectional sources), as is the case for sound produced by the pile driving activity considered here. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound, which is defined as environmental background sound levels lacking a single source or point (Richardson *et al.*, 1995). The sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.*, wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.*,

sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.*, vessels, dredging, construction) sound. A number of sources contribute to ambient sound, including wind and waves, which are a main source of naturally occurring ambient sound for frequencies between 200 Hz and 50 kHz (ICES, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Precipitation can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times. Marine mammals can contribute significantly to ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz. Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, geophysical surveys, sonar, and explosions. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 2 kHz and, if higher frequency sound levels are created, they attenuate rapidly.

The sum of the various natural and anthropogenic sound sources that comprise ambient sound at any given location and time depends not only on the source levels (as determined by current weather conditions and levels of biological and human 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 activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals. Underwater ambient sound in the Atlantic Ocean southeast of Rhode Island is composed of sounds produced by a number of natural and anthropogenic sources. Human-generated sound is a significant contributor to the ambient acoustic environment in the project location.

Details of source types are described in the following text.

Sounds are often considered to fall into one of two general types: Impulsive and non-impulsive (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing. Please see Southall *et al.* (2019) and NMFS (2018) for an in-depth discussion of these concepts. The distinction between these two sound types is not always obvious, as certain signals share properties of both impulsive and non-impulsive sounds. A signal near a source could be categorized as impulsive, but due to propagation effects as it moves farther from the source, the signal duration becomes longer (*e.g.*, Greene and Richardson, 1988).

Impulsive sound sources (*e.g.*, airguns, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986, 2005; Harris, 1998; NIOSH, 1998; ISO, 2003) and occur either as isolated events or repeated in some succession. Impulsive sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features. Non-impulsive sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or intermittent (ANSI, 1995; NIOSH, 1998). Some of these non-impulsive sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.*, rapid rise time). Examples of non-impulsive sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems. The duration of such sounds can be greatly extended in a highly reverberant environment.

Potential Effects of Underwater Sound on 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. Broadly, underwater sound from active acoustic sources can potentially result in one or

more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.*, 1995; Gordon *et al.*, 2003; Nowacek *et al.*, 2007; Southall *et al.*, 2007; Götz *et al.*, 2009). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure in addition to the contextual factors of the receiver (*e.g.*, behavioral state at time of exposure, age class, *etc.*) (Southall *et al.*, 2017; Southall *et al.*, 2019). In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing will occur almost exclusively for noise within an animal's hearing range. We describe below the specific manifestations of acoustic effects that may occur based on the activities proposed by Ocean Wind.

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 (at the greatest distance) 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 (closer to the receiving animal) corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. The third is a smaller zone around the receiving animals within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other 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.

Potential effects from explosive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.*, 1973). Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.*, change in dive profile as a result of an avoidance reaction) caused by

exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.*, 2006; Southall *et al.*, 2007; Zimmer and Tyack, 2007; Tal *et al.*, 2015).

Below, we provide additional detail regarding potential impacts on marine mammals and their habitat from noise in general, as well as from the specific activities Ocean Wind plans to conduct, to the degree it is available (noting that there is limited information regarding the impacts of offshore wind construction on cetaceans).

Threshold Shift

Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which NMFS defines as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level, expressed in decibels (NMFS, 2018). Threshold shifts can be permanent, in which case there is an irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range, or temporary, in which there is a reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range and the animal's hearing threshold would fully recover over time (Southall *et al.*, 2019). Repeated sound exposure that leads to TTS could cause PTS.

When PTS occurs, there can be physical damage to the sound receptors in the ear (*i.e.*, tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Henderson *et al.*, 2008). 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; Southall *et al.*, 2019). Therefore, NMFS does not consider TTS to constitute auditory injury.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, and there is no PTS data for cetaceans, but such relationships are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several decibels above (a 40 dB threshold shift approximates a PTS onset; *e.g.*, Kryter *et al.*, 1966; Miller, 1974; Henderson *et al.*, 2008). This can also induce mild TTS (a 6 dB threshold shift approximates a TTS onset; *e.g.*, Southall *et al.*, 2019). Based on data from terrestrial mammals, a precautionary assumption is that the

PTS thresholds, expressed in the unweighted peak sound pressure level metric (PK), for impulsive sounds (such as impact pile driving pulses) are at least 6 dB higher than the TTS thresholds and the weighted PTS cumulative sound exposure level thresholds are 15 (impulsive sound) to 20 (non-impulsive sounds) dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.*, 20019). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, PTS is less likely to occur as a result of these activities, but it is possible and a small amount has been proposed for authorization for several species.

TTS is the mildest form of hearing impairment that can occur during exposure to sound, with a TTS of 6 dB considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.*, 2000; Finneran *et al.*, 2000; Finneran *et al.*, 2002).

While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. There are data on sound levels and durations necessary to elicit mild TTS for marine mammals but recovery is complicated to predict and dependent on multiple factors.

Marine mammal hearing plays a critical role in communication with conspecifics, and 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. 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 occurs 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 time when communication is critical for successful mother/calf interactions could have more serious impacts.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiatorientalis*)) and six species of

pinnipeds (northern elephant seal (*Mirounga angustirostris*), harbor seal, ring seal, spotted seal, bearded seal, and California sea lion (*Zalophus californianus*)) that were exposed to a limited number of sound sources (*i.e.*, mostly tones and octave-band noise with limited number of exposure to impulsive sources such as seismic airguns or impact pile driving) in laboratory settings (Southall *et al.*, 2019). There is currently no data available on noise-induced hearing loss for mysticetes. For summaries of data on TTS or PTS in marine mammals or for further discussion of TTS or PTS onset thresholds, please see Southall *et al.* (2019), and NMFS (2018).

Recent studies with captive odontocete species (bottlenose dolphin, harbor porpoise, beluga, and false killer whale) have observed increases in hearing threshold levels when individuals received a warning sound prior to exposure to a relatively loud sound (Nachtigall and Supin, 2013, 2015, Nachtigall *et al.*, 2016a,b,c, Finneran, 2018, Nachtigall *et al.*, 2018). These studies suggest that captive animals have a mechanism to reduce hearing sensitivity prior to impending loud sounds. Hearing change was observed to be frequency dependent and Finneran (2018) suggests hearing attenuation occurs within the cochlea or auditory nerve. Based on these observations on captive odontocetes, the authors suggest that wild animals may have a mechanism to self-mitigate the impacts of noise exposure by dampening their hearing during prolonged exposures of loud sound, or if conditioned to anticipate intense sounds (Finneran, 2018, Nachtigall *et al.*, 2018).

Behavioral Disturbance

Behavioral responses to sound are highly variable and context-specific. 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) 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.*, 2019). Related to the sound itself, the perceived nearness 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), and familiarity of the sound may affect the way an animal responds to the sound (Southall *et al.*,

2007, DeRuiter *et al.*, 2013). 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. 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. For example, Goldbogen *et al.* (2013) demonstrated that individual behavioral state was critically important in determining response of blue whales to sonar, noting that some individuals engaged in deep (greater than 50 m) feeding behavior had greater dive responses than those in shallow feeding or non-feeding conditions. Some blue whales in the Goldbogen *et al.* (2013) study that were engaged in shallow feeding behavior demonstrated no clear changes in diving or movement even when received levels were high (~160 dB *re 1μPa*) for exposures to 3–4 kHz sonar signals, while others showed a clear response at exposures at lower received levels of sonar and pseudorandom noise.

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 Cuvier's beaked whales to MF sonar and found that whales responded strongly at low received levels (89–127 dB *re 1μPa*) by ceasing normal fluking and echolocation, swimming rapidly away, and extending both dive duration and subsequent non-foraging intervals when the sound source was 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 1μPa*) from distant sonar exercises (118 km away) did not elicit such responses, suggesting that context may moderate reactions. Thus, it is known that distance from the source can have an effect on behavioral response that is independent of the effect of received levels (*e.g.*, DeRuiter *et al.*, 2013; Dunlop *et al.*, 2017a; Dunlop *et al.*, 2017b; Falcone *et al.*, 2017; Dunlop *et al.*, 2018; Southall *et al.*, 2019a). 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 suitable 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.* (2021) states 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. The following subsections provide examples of behavioral responses that provide an idea of the variability in behavioral 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, or extrapolated from closely related species when no information exists, along with contextual factors.

Avoidance and Displacement

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.*, 1995). For example, gray whales or humpback whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from airgun surveys (Malme *et al.*, 1984; Dunlop *et al.*, 2018). Avoidance is qualitatively

different from the flight response, but also differs in the magnitude of the response (*i.e.*, directed movement, rate of travel, *etc.*). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.*, Bowles *et al.*, 1994; Goold, 1996; Stone *et al.*, 2000; Morton and Symonds, 2002; Gailey *et al.*, 2007; Dähne *et al.*, 2013; Russel *et al.*, 2016; Malme *et al.*, 1984). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.*, Blackwell *et al.*, 2004; Bejder *et al.*, 2006; Teilmann *et al.*, 2006; Forney *et al.*, 2017). Avoidance of marine mammals during the construction of offshore wind facilities (specifically, impact pile driving) has been previously noted in the literature, with some significant variation in the effects and with most studies focused on harbor porpoises as one of the most common marine mammals in European waters (*e.g.*, Tougaard *et al.*, 2009; Dähne *et al.*, 2013; Thompson *et al.*, 2013; Russell *et al.*, 2016; Brandt *et al.*, 2018).

Available information on impacts to marine mammals from pile driving associated with offshore wind is limited to information on harbor porpoises and seals, as the vast majority of this research has occurred at European offshore wind projects where large whales and other odontocete species are uncommon. Harbor porpoises and harbor seals are considered to be behaviorally sensitive species (*e.g.*, Southall *et al.*, 2007) and the effects of wind farm construction in Europe on these species has been well documented. These species have received particular attention in European waters due to their abundance in the North Sea (Hammond *et al.*, 2002; Nachtshiem *et al.*, 2021). A summary of the literature on documented effects of wind farm construction on harbor porpoise and harbor seals is described below.

Brandt *et al.* (2016) summarized the effects of the construction of eight offshore wind projects within the German North Sea (*i.e.*, Alpha Ventus, BARD Offshore I, Borkum West II, DanTysk, Global Tech I, Meerwind Süd/Ost, Nordsee Ost, and Riffgat) between 2009 and 2013 on harbor porpoises, combining PAM data from 2010–2013 and aerial surveys from 2009–2013 with data on noise levels associated with pile driving. Results of the analysis revealed significant declines in porpoise detections during pile driving when compared to 25–48 hours before pile driving began, with the magnitude of

decline during pile driving clearly decreasing with increasing distances to the construction site. During the majority of projects, significant declines in detections (by at least 20 percent) were found within at least 5–10 km of the pile driving site, with declines at up to 20–30 km of the pile driving site documented in some cases. Similar results demonstrating the long-distance displacement of harbor porpoises (18–25 km) and harbor seals (up to 40 km) during impact pile driving have also been observed during the construction at multiple other European wind farms (Haelters *et al.*, 2015; Lucke *et al.*, 2012; Dähne *et al.*, 2013; Tougaard *et al.*, 2009; Haelters *et al.*, 2015; Bailey *et al.*, 2010).

While harbor porpoises and seals tend to move several kilometers away from wind farm construction activities, the duration of displacement has been documented to be relatively temporary. In two studies at Horns Rev II using impact pile driving, harbor porpoise returned within 1–2 days following cessation of pile driving (Tougaard *et al.*, 2009; Brandt *et al.*, 2011). Similar recovery periods have been noted for harbor seals off of England during the construction of four wind farms (Carroll *et al.*, 2010; Hamre *et al.*, 2011; Hastie *et al.*, 2015; Russell *et al.*, 2016; Brasseur *et al.*, 2010). In some cases, an increase in harbor porpoise activity has been documented inside wind farm areas following construction (*e.g.*, Lindeboom *et al.*, 2011). Other studies have noted longer term impacts after impact pile driving. Near Dogger Bank in Germany, harbor porpoises continued to avoid the area for over 2 years after construction began (Gilles *et al.*, 2009). Approximately 10 years after construction of the Nysted wind farm, harbor porpoise abundance had not recovered to the original levels previously seen, although the echolocation activity was noted to have been increasing when compared to the previous monitoring period (Teilmann and Carstensen, 2012). However, overall, there are no indications for a population decline of harbor porpoises in European waters (*e.g.*, Brandt *et al.*, 2016). Notably, where significant differences in displacement and return rates have been identified for these species, the occurrence of secondary project-specific influences such as use of mitigation measures (*e.g.*, bubble curtains, acoustic deterrent devices (ADDs)) or the manner in which species use the habitat in the project area are likely the driving factors of this variation.

NMFS notes the aforementioned studies from Europe involve pile driving

much smaller piles than Ocean Wind proposes to install and therefore we anticipate noise levels from impact pile driving to be louder. For this reason, we anticipate that the greater distances of displacement observed in harbor porpoise and harbor seals documented in Europe are likely to occur off of New Jersey. However, we do not anticipate any greater severity of response due to harbor porpoise and harbor seal habitat use off of New Jersey or population level consequences, similar to European findings. In many cases, harbor porpoises and harbor seals are resident to the areas where European wind farms have been constructed. However, off of New Jersey, harbor porpoises are transient (in winter when impact pile driving would not occur) and a very small percentage of the large harbor seal population are only seasonally present with no rookeries established. In summary, we anticipate that harbor porpoise and harbor seals will likely respond to pile driving by moving several kilometers away from the source; however, this impact would be temporary and, based on habitat use, not impact any critical behaviors such as foraging or calving/pupping.

It should also be noted that the only studies available on marine mammal responses to offshore wind-related pile driving have focused on species which are known to be more behaviorally sensitive to auditory stimuli than the other species that occur in the project area. Therefore, the documented behavioral responses of harbor porpoises and harbor seals to pile driving in Europe should be considered as a worst-case scenario in terms of the potential responses among all marine mammals to offshore pile driving, and these responses cannot reliably predict the responses that will occur in other marine mammal species.

Longer term or repetitive/chronic displacement for some dolphin groups and for manatees has been suggested to be due to the presence of chronic vessel noise (Haviland-Howell *et al.*, 2007; Miksis-Olds *et al.*, 2007). The context of the noise exposure has been shown to play an important role in the response. In the 2007–2008 Bahamas study, playback sounds of a potential predator—a killer whale—resulted in a similar but more pronounced reaction, which included longer inter-dive intervals and a sustained straight-line departure of more than 20 km from the area (Boyd *et al.*, 2008; Southall *et al.*, 2009; Tyack *et al.*, 2011). Southall *et al.* (2011) found that blue whales had a different response to sonar exposure depending on behavioral state, more pronounced when deep feeding/travel

modes than when engaged in surface feeding.

Forney *et al.* (2017) detailed the potential effects of noise on marine mammal populations with high site fidelity, including displacement and auditory masking, noting that a lack of observed response does not imply absence of fitness costs and that apparent tolerance of disturbance may have population-level impacts that are less obvious and difficult to document. Avoidance of overlap between disturbing noise and areas and/or times of particular importance for sensitive species may be critical to avoiding population-level impacts because (particularly for animals with high site fidelity) there may be a strong motivation to remain in the area despite negative impacts. Forney *et al.* (2017) stated that, for these animals, remaining in a disturbed area may reflect a lack of alternatives rather than a lack of effects. Forney *et al.* discusses several case studies, including western Pacific gray whales, which are a small population of mysticetes believed to be adversely affected by oil and gas development off Sakhalin Island, Russia (Weller *et al.*, 2002; Reeves *et al.*, 2005). Western gray whales display a high degree of inter-annual site fidelity to the area for foraging purposes, and observations in the area during air gun surveys has shown the potential for harm caused by displacement from such an important area (Weller *et al.*, 2006; Johnson *et al.*, 2007). Forney *et al.* (2017) also discuss beaked whales, noting that anthropogenic effects in areas where they are resident could cause severe biological consequences, in part because displacement may adversely affect foraging rates, reproduction, or health, while an overriding instinct to remain could lead to more severe acute effects.

Tyack and Clark (1983) conducted playback studies of SURTASS low frequency active (LFA) sonar in a gray whale migratory corridor off California. Similar to North Atlantic right whales, gray whales migrate close to shore (approximately +2 kms) and are low frequency hearing specialists. The LFA sonar source was placed within the gray whale migratory corridor (approximately 2 km offshore) and offshore of most, but not all, migrating whales (approximately 4 km offshore). These locations influenced received levels and distance to the source. For the inshore playbacks, not unexpectedly, the louder the source level of the playback (*i.e.*, the louder the received level), whale avoided the source at greater distances. Specifically, when the source level was 170 dB rms and 178 dB rms, whales avoided the

inshore source at ranges of several hundred meters, similar to avoidance responses reported by Malme *et al.* (1983, 1984). Whales exposed to source levels of 185 dB rms demonstrated avoidance levels at larger ranges of +1 km. Responses to the offshore source broadcasting at source levels of 185 and 200 dB, avoidance responses were greatly reduced. While there was observed deflection from course, in no case did a whale abandon its migratory behavior.

Flight Response

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.*, directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996; Frid and Dill, 2002). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, beaked whale strandings (Cox *et al.*, 2006; D'Amico *et al.*, 2009). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response. Flight responses of marine mammals have been documented in response to mobile high intensity active sonar (*e.g.*, Tyack *et al.*, 2011; DeRuiter *et al.*, 2013; Wensveen *et al.*, 2019), and more severe responses have been documented when sources are moving towards an animal or when they are surprised by unpredictable exposures (Watkins, 1986; Falcone *et al.*, 2017). Generally speaking, however, marine mammals would be expected to be less likely to respond with a flight response to either stationary pile driving (which they can sense is stationary and predictable) or significantly lower-level HRG surveys, unless they are within the area ensounded above behavioral harassment thresholds at the moment the source is turned on (Watkins, 1986; Falcone *et al.*, 2017).

Alteration of Diving or Movement

Changes in dive behavior can vary widely. They may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.*, Frankel and Clark, 2000; Costa *et al.*,

2003; Ng and Leung, 2003; Nowacek *et al.*, 2004; Goldbogen *et al.*, 2013a, 2013b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.*, foraging) or they may be of little biological significance. Variations in dive behavior may also expose an animal to potentially harmful conditions (*e.g.*, increasing the chance of ship-strike) or may serve as an avoidance response that enhances survivorship. The impact of a variation in diving resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Nowacek *et al.* (2004) reported disruptions of dive behaviors in foraging North Atlantic right whales when exposed to an alerting stimulus, an action, they noted, that could lead to an increased likelihood of ship strike. However, the whales did not respond to playbacks of either right whale social sounds or vessel noise, highlighting the importance of the sound characteristics in producing a behavioral reaction. Conversely, Indo-Pacific humpback dolphins have been observed to dive for longer periods of time in areas where vessels were present and/or approaching (Ng and Leung, 2003). In both of these studies, the influence of the sound exposure cannot be decoupled from the physical presence of a surface vessel, thus complicating interpretations of the relative contribution of each stimulus to the response. Indeed, the presence of surface vessels, their approach, and speed of approach, seemed to be significant factors in the response of the Indo-Pacific humpback dolphins (Ng and Leung, 2003). Low frequency signals of the Acoustic Thermometry of Ocean Climate (ATOC) sound source were not found to affect dive times of humpback whales in Hawaiian waters (Frankel and Clark, 2000) or to overtly affect elephant seal dives (Costa *et al.*, 2003). They did, however, produce subtle effects that varied in direction and degree among the individual seals, illustrating the equivocal nature of behavioral effects and consequent difficulty in defining and predicting them. Lastly, as noted previously, DeRuiter *et al.* (2013) noted that distance from a sound source may moderate marine mammal reactions in their study of Cuvier's beaked whales, which showed the whales swimming rapidly and silently away when a sonar signal was 3.4–9.5 km away while showing no such reaction to the same signal when the signal was 118 km away

even though the received levels were similar.

Foraging

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.*, bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.*, Croll *et al.*, 2001; Nowacek *et al.*, 2004; Madsen *et al.*, 2006a; Yazvenko *et al.*, 2007; Southall *et al.*, 2019b). An understanding of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal can facilitate the assessment of whether foraging disruptions are likely to incur fitness consequences (Goldbogen *et al.*, 2013; Farmer *et al.*, 2018; Pirota *et al.*, 2018; Southall *et al.*, 2019; Pirota *et al.*, 2021).

Impacts on marine mammal foraging rates from noise exposure have been extensively documented, though there is little data regarding the impacts of offshore turbine construction specifically. Several broader examples follow, and it is reasonable to expect that exposure to noise produced during the 5-years the proposed rule would be effective could have similar impacts.

Visual tracking, passive acoustic monitoring, and movement recording tags were used to quantify sperm whale behavior prior to, during, and following exposure to air gun arrays at received levels in the range 140–160 dB at distances of 7–13 km, following a phase-in of sound intensity and full array exposures at 1–13 km (Madsen *et al.*, 2006a; Miller *et al.*, 2009). Sperm whales did not exhibit horizontal avoidance behavior at the surface. However, foraging behavior may have been affected. The sperm whales exhibited 19 percent less vocal (buzz) rate during full exposure relative to post exposure, and the whale that was approached most closely had an extended resting period and did not resume foraging until the air guns had ceased firing. The remaining whales continued to execute foraging dives throughout exposure; however, swimming movements during foraging dives were 6 percent lower during exposure than control periods (Miller *et al.*, 2009). Miller *et al.* (2009) noted that

more data are required to understand whether the differences were due to exposure or natural variation in sperm whale behavior.

Balaenopterid whales exposed to moderate low-frequency signals similar to the ATOC sound source demonstrated no variation in foraging activity (Croll *et al.*, 2001), whereas five out of six North Atlantic right whales exposed to an acoustic alarm interrupted their foraging dives (Nowacek *et al.*, 2004). Although the received SPLs were similar in the latter two studies, the frequency, duration, and temporal pattern of signal presentation were different. These factors, as well as differences in species sensitivity, are likely contributing factors to the differential response. Blue whales exposed to mid-frequency sonar in the Southern California Bight were less likely to produce low frequency calls usually associated with feeding behavior (Melcón *et al.*, 2012). However, Melcón *et al.* (2012) were unable to determine if suppression of low frequency calls reflected a change in their feeding performance or abandonment of foraging behavior and indicated that implications of the documented responses are unknown. Further, it is not known whether the lower rates of calling actually indicated a reduction in feeding behavior or social contact since the study used data from remotely deployed, passive acoustic monitoring buoys. In contrast, blue whales increased their likelihood of calling when ship noise was present, and decreased their likelihood of calling in the presence of explosive noise, although this result was not statistically significant (Melcón *et al.*, 2012). Additionally, the likelihood of an animal calling decreased with the increased received level of mid-frequency sonar, beginning at a SPL of approximately 110–120 dB referenced to a pressure of 1 microPascal (*re* 1 μ Pa) (Melcón *et al.*, 2012). Results from the 2010–2011 field season of a behavioral response study in Southern California waters indicated that, in some cases and at low received levels, tagged blue whales responded to mid-frequency sonar but that those responses were mild and there was a quick return to their baseline activity (Southall *et al.*, 2011; Southall *et al.*, 2012b; Southall *et al.*, 2019b). Information on or estimates of the energetic requirements of the individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal will help better inform a determination of whether foraging disruptions incur fitness consequences.

Surface feeding blue whales did not show a change in behavior in response to mid-frequency simulated and real sonar sources with received levels between 90 and 179 dB *re* 1 μ Pa, but deep feeding and non-feeding whales showed temporary reactions including cessation of feeding, reduced initiation of deep foraging dives, generalized avoidance responses, and changes to dive behavior (DeRuiter *et al.*, 2017; Goldbogen *et al.*, 2013b; Sivle *et al.*, 2015). Goldbogen *et al.* (2013b) indicate that disruption of feeding and displacement could impact individual fitness and health. However, for this to be true, we would have to assume that an individual whale could not compensate for this lost feeding opportunity by either immediately feeding at another location, by feeding shortly after cessation of acoustic exposure, or by feeding at a later time. There is no indication this is the case, particularly since unconsumed prey would likely still be available in the environment in most cases following the cessation of acoustic exposure.

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 demonstrated avoidance were foraging before the exposure but the others were not; the animals that avoided 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. In fact, when the prey field was mapped and used as a covariate in similar models looking for a response in the same blue whales, the response in deep-feeding behavior by blue whales was even more apparent, reinforcing the need for contextual variables to be included when assessing behavioral responses (Friedlaender *et al.*, 2016).

Breathing

Respiration naturally varies with different behaviors and variations in respiration rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Mean exhalation rates of gray whales at rest and while diving were

found to be unaffected by seismic surveys conducted adjacent to the whale feeding grounds (Gailey *et al.*, 2007). Studies with captive harbor porpoises showed increased respiration rates upon introduction of acoustic alarms (Kastelein *et al.*, 2001; Kastelein *et al.*, 2006a) and emissions for underwater data transmission (Kastelein *et al.*, 2005). However, exposure of the same acoustic alarm to a striped dolphin under the same conditions did not elicit a response (Kastelein *et al.*, 2006a), again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure.

Vocalizations (Also See the Auditory Masking Section)

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result directly from increased vigilance (also see the *Potential Effects of Behavioral Disturbance on Marine Mammal Fitness* section) or a startle response, or from a need to compete with an increase in background noise (see Erbe *et al.*, 2016 review on communication masking), the latter of which is described more in the *Auditory Masking* section below.

For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.*, 2000; Fristrup *et al.*, 2003; Foote *et al.*, 2004) and blue increased song production (Di Iorio and Clark, 2010), while North Atlantic right whales have been 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). In some cases, animals may cease or reduce sound production during production of aversive signals (Bowles *et al.*, 1994; Thode *et al.*, 2020; Cerchio *et al.*, (2014); McDonald *et al.*, (1995)). Blackwell *et al.* (2015) showed that whales increased calling rates as soon as air gun signals were detectable before ultimately decreasing calling rates at higher received levels.

Orientation

A shift in an animal's resting state or an attentional change via an orienting response represent behaviors that would be considered mild disruptions if occurring alone. As previously

mentioned, the responses may co-occur with other behaviors; for instance, an animal may initially orient toward a sound source, and then move away from it. Thus, any orienting response should be considered in context of other reactions that may occur.

Habituation and Sensitization

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.*, 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a "progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial," rather than as, more generally, moderation in response to human disturbance having a neutral or positive outcome (Bejder *et al.*, 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. Both habituation and sensitization require an ongoing learning process. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.*, 1995; NRC, 2003; Wartzok *et al.*, 2003; Southall *et al.*, 2019b). Controlled experiments with captive marine mammals have shown pronounced behavioral reactions, including avoidance of loud sound sources (*e.g.*, Ridgway *et al.*, 1997; Finneran *et al.*, 2003; Houser *et al.*, 2013a,b; Kastelein *et al.*, 2018). Observed responses of wild marine mammals to loud impulsive sound sources (typically airguns or acoustic harassment devices) have been varied but often include avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.*, 1995; Nowacek *et al.*, 2007; Tougaard *et al.*, 2009; Brandt *et al.*, 2011; Brandt *et al.*, 2012; Dähne *et al.*, 2013; Brandt *et al.*, 2014; Russell *et al.*, 2016; Brandt *et al.*, 2018). However, many delphinids approach low-frequency airgun source vessels with no apparent discomfort or obvious behavioral change (*e.g.*, Barkaszi *et al.*, 2012), indicating the importance of frequency output in relation to the species' hearing sensitivity.

Stress Response

An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.*, Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine 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, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.*, Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.*, 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and "distress" is the 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 functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well studied through controlled experiments and 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). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.*, 2002b)

and, more rarely, studied in wild populations (*e.g.*, Romano *et al.*, 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as "distress." In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003, 2017).

Auditory Masking

Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.*, those used for intraspecific communication and social interactions, prey detection, predator avoidance, or navigation) (Richardson *et al.*, 1995; Erbe and Farmer, 2000; Tyack, 2000; Erbe *et al.*, 2016). 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 sound is natural (*e.g.*, snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.*, shipping, sonar, seismic exploration) in origin. 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 or lost foraging opportunities, and leaving an area, to both signalers and receivers, in an attempt to compensate for noise levels (Erbe *et al.*, 2016) or because sounds that would typically have triggered a behavior were not detected. In humans, significant masking of tonal signals occurs as a result of exposure to noise in a narrow band of similar frequencies. As the sound level increases, though, the detection of frequencies above those of

the masking stimulus decreases also. This principle is expected to apply to marine mammals as well because of common biomechanical cochlear properties across taxa.

Therefore, when the coincident (masking) sound is man-made, it may be considered harassment when disrupting or altering critical behaviors. 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.

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 (e.g., Erbe, 2008), 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., Branstetter *et al.*, 2013; Cholewiak *et al.*, 2018).

The echolocation calls of toothed whales are subject to masking by high-frequency sound. 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 (2008) 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 (often called “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; Curé *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 off 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 attend to all killer whale calls. Similarly, sperm whales (Curé *et al.*, 2016; Isojunno *et al.*, 2016), long-finned pilot whales (Visser *et al.*, 2016), and humpback whales (Curé *et al.*, 2015) changed their behavior in response to killer whale vocalization playbacks; these findings indicate that some recognition of predator cues could be missed if the killer whale vocalizations were masked. 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 manmade 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 ship 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, at higher levels and longer duration, 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.

In addition to making it more difficult for animals to perceive and recognize acoustic cues in their environment, anthropogenic sound presents separate challenges for animals that are vocalizing. When they vocalize, animals are aware of environmental conditions that affect the “active space” (or communication space) of their vocalizations, which is the maximum area within which their vocalizations can be detected before it drops to the level of ambient noise (Brenowitz, 2004; Brumm *et al.*, 2004; Lohr *et al.*, 2003). Animals are also aware of environmental conditions that affect whether listeners can discriminate and recognize their vocalizations from other sounds, which is more important than simply detecting that a vocalization is occurring (Brenowitz, 1982; Brumm *et al.*, 2004; Dooling, 2004, Marten and Marler, 1977; Patricelli *et al.*, 2006). Most species that vocalize have evolved with an ability to make adjustments to their vocalizations to increase the signal-to-noise ratio, active space, and recognizability/distinguishability of their vocalizations in the face of

temporary changes in background noise (Brumm *et al.*, 2004; Patricelli *et al.*, 2006). Vocalizing animals can make adjustments to vocalization characteristics such as the frequency structure, amplitude, temporal structure, and temporal delivery (repetition rate), or ceasing to vocalize.

Many animals will combine several of these strategies to compensate for high levels of background noise.

Anthropogenic sounds that reduce the signal-to-noise ratio of animal vocalizations, increase the masked auditory thresholds of animals listening for such vocalizations, or reduce the active space of an animal's vocalizations impair communication between animals. Most animals that vocalize have evolved strategies to compensate for the effects of short-term or temporary increases in background or ambient noise on their songs or calls. Although the fitness consequences of these vocal adjustments are not directly known in all instances, like most other trade-offs animals must make, some of these strategies probably come at a cost (Patricelli *et al.*, 2006; Noren *et al.*, 2017; Noren *et al.*, 2020). Shifting songs and calls to higher frequencies may also impose energetic costs (Lambrechts, 1996).

Marine mammals are also known to make vocal changes in response to anthropogenic noise. In cetaceans, vocalization changes have been reported from exposure to anthropogenic noise sources such as sonar, vessel noise, and seismic surveying (see the following for examples: Gordon *et al.*, 2003; Di Iorio and Clark, 2010; Hatch *et al.*, 2012; Holt *et al.*, 2008; Holt *et al.*, 2011; Lesage *et al.*, 1999; McDonald *et al.*, 2009; Parks *et al.*, 2007; Risch *et al.*, 2012; Rolland *et al.*, 2012), as well as changes in the natural acoustic environment (Dunlop *et al.*, 2014). Vocal changes can be temporary, or can be persistent. For example, model simulation suggests that the increase in starting frequency for the North Atlantic right whale upcall over the last 50 years resulted in increased detection ranges between right whales. The frequency shift, coupled with an increase in call intensity by 20 dB, led to a call detectability range of less than 3 km to over 9 km (Tennesen and Parks, 2016). Holt *et al.* (2008) measured killer whale call source levels and background noise levels in the one to 40 kHz band and reported that the whales increased their call source levels by one dB SPL for every one dB SPL increase in background noise level. Similarly, another study on St. Lawrence River belugas reported a similar rate of increase in vocalization activity in response to passing vessels (Scheifele *et*

al., 2005). Di Iorio and Clark (2010) showed that blue whale calling rates vary in association with seismic sparker survey activity, with whales calling more on days with surveys than on days without surveys. They suggested that the whales called more during seismic survey periods as a way to compensate for the elevated noise conditions.

In some cases, these vocal changes may have fitness consequences, such as an increase in metabolic rates and oxygen consumption, as observed in bottlenose dolphins when increasing their call amplitude (Holt *et al.*, 2015). A switch from vocal communication to physical, surface-generated sounds such as pectoral fin slapping or breaching was observed for humpback whales in the presence of increasing natural background noise levels, indicating that adaptations to masking may also move beyond vocal modifications (Dunlop *et al.*, 2010).

While these changes all represent possible tactics by the sound-producing animal to reduce the impact of masking, the receiving animal can also reduce masking by using active listening strategies such as orienting to the sound source, moving to a quieter location, or reducing self-noise from hydrodynamic flow by remaining still. The temporal structure of noise (*e.g.*, amplitude modulation) may also provide a considerable release from masking through comodulation masking release (a reduction of masking that occurs when broadband noise, with a frequency spectrum wider than an animal's auditory filter bandwidth at the frequency of interest, is amplitude modulated) (Branstetter and Finneran, 2008; Branstetter *et al.*, 2013). Signal type (*e.g.*, whistles, burst-pulse, sonar clicks) and spectral characteristics (*e.g.*, frequency modulated with harmonics) may further influence masked detection thresholds (Branstetter *et al.*, 2016; Cunningham *et al.*, 2014).

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, right whales 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). Clark *et al.* (2009) also observed that right whales' communication space decreased by up to 84 percent in the presence of vessels. Cholewiak *et al.* (2018) also

observed loss in communication space in Stellwagen National Marine Sanctuary for North Atlantic right whales, fin whales, and humpback whales with increased ambient noise and shipping noise. 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 (for examples see: Holt *et al.*, 2008; Holt *et al.*, 2011; Gervaise *et al.*, 2012; Williams *et al.*, 2013; Hermannsen *et al.*, 2014; Papale *et al.*, 2015; Liu *et al.*, 2017). While masking impacts are not a concern from lower intensity, higher frequency HRG surveys, some degree of masking would be expected in the vicinity of turbine pile driving and concentrated support vessel operation.

Explosive Sources

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. 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.

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. Blast effects are greatest at the gas-liquid interface (Landsberg, 2000). Gas-containing organs, particularly the lungs and gastrointestinal tract, are especially susceptible (Goertner, 1982; Hill, 1978; Yelverton *et al.*, 1973). 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).

Because the ears are the most sensitive to pressure, 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, and 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).

Given the mitigation measures proposed, and the small number of detonations proposed, it is unlikely that any of the more serious injuries or mortality discussed above are likely to result from any UXO/MEC detonation that Ocean Wind might need to undertake. TTS and brief startle reactions are the most likely impacts to result from this activity.

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. There is little quantitative marine mammal data relating the exposure of marine mammals from 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.

One consequence of behavioral avoidance results in the altered energetic expenditure of marine mammals because energy is required to move and avoid surface vessels or the sound field associated with active sonar (Frid and Dill, 2002). Most animals can avoid that energetic cost by swimming away at slow speeds or speeds that minimize the cost of transport (Miksis-Olds, 2006), as has been demonstrated in Florida manatees (Miksis-Olds, 2006).

Those energetic costs increase, however, when animals shift from a resting state, which is designed to conserve an animal's energy, to an active state that consumes energy the animal would have conserved had it not been disturbed. Marine mammals that have been disturbed by anthropogenic noise and vessel approaches are commonly reported to shift from resting to active behavioral states, which would imply that they incur an energy cost.

Morete *et al.*, (2007) reported that undisturbed humpback whale cows that were accompanied by their calves were frequently observed resting while their calves circled them (milling). When vessels approached, the amount of time cows and calves spent resting and milling, respectively, declined significantly. These results are similar to those reported by Scheidat *et al.* (2004) for the humpback whales they observed off the coast of Ecuador.

Constantine and Brunton (2001) reported that bottlenose dolphins in the Bay of Islands, New Zealand engaged in resting behavior just 5 percent of the time when vessels were within 300 m, compared with 83 percent of the time when vessels were not present. However, Heenehan *et al.* (2016) report that results of a study of the response of Hawaiian spinner dolphins (*Stenella longirostris*) to human disturbance suggest that the key factor is not the sheer presence or magnitude of human activities, but rather the directed interactions and dolphin-focused activities that elicit responses from dolphins at rest. This information again illustrates the importance of context in

regard to whether an animal will respond to a stimulus. Miksis-Olds (2006) and Miksis-Olds *et al.* (2005) reported that Florida manatees in Sarasota Bay, Florida, reduced the amount of time they spent milling and increased the amount of time they spent feeding when background noise levels increased. Although the acute costs of these changes in behavior are not likely to exceed an animal's ability to compensate, the chronic costs of these behavioral shifts are uncertain.

Attention is the cognitive process of selectively concentrating on one aspect of an animal's environment while ignoring other things (Posner, 1994). Because animals (including humans) have limited cognitive resources, there is a limit to how much sensory information they can process at any time. The phenomenon called "attentional capture" occurs when a stimulus (usually a stimulus that an animal is not concentrating on or attending to) "captures" an animal's attention. This shift in attention can occur consciously or subconsciously (for example, when an animal hears sounds that it associates with the approach of a predator) and the shift in attention can be sudden (Dukas, 2002; van Rij, 2007). Once a stimulus has captured an animal's attention, the animal can respond by ignoring the stimulus, assuming a "watch and wait" posture, or treat the stimulus as a disturbance and respond accordingly, which includes scanning for the source of the stimulus or "vigilance" (Cowlshaw *et al.*, 2004).

Vigilance is an adaptive behavior that helps animals determine the presence or absence of predators, assess their distance from conspecifics, or to attend cues from prey (Bednekoff and Lima, 1998; Treves, 2000). Despite those benefits, however, vigilance has a cost of time; when animals focus their attention on specific environmental cues, they are not attending to other activities such as foraging or resting. These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (Saino, 1994; Beauchamp and Livoreil, 1997; Fritz *et al.*, 2002; Purser and Radford, 2011). Animals will spend more time being vigilant, which may translate to less time foraging or resting, when disturbance stimuli approach them more directly, remain at closer distances, have a greater group size (*e.g.*, multiple surface vessels), or when they co-occur with times that an animal perceives increased risk (*e.g.*, when they are giving birth or

accompanied by a calf). Most of the published literature, however, suggests that direct approaches will increase the amount of time animals will dedicate to being vigilant. An example of this concept with terrestrial species involved bighorn sheep and Dall's sheep, which dedicated more time being vigilant, and less time resting or foraging, when aircraft made direct approaches over them (Frid, 2001; Stockwell *et al.*, 1991). Vigilance has also been documented in pinnipeds at haul out sites where resting may be disturbed when seals become alerted and/or flush into the water due to a variety of disturbances, which may be anthropogenic (noise and/or visual stimuli) or due to other natural causes such as other pinnipeds (Richardson *et al.*, 1995; Southall *et al.*, 2007; VanBlaricom, 2010; and Lozano and Hente, 2014).

Chronic disturbance can cause population declines through reduction of fitness (*e.g.*, decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.*, Harrington and Veitch, 1992; Daan *et al.*, 1996; Bradshaw *et al.*, 1998). For example, Madsen (1994) reported that pink-footed geese (*Anser brachyrhynchus*) in undisturbed habitat gained body mass and had about a 46 percent reproductive success rate compared with geese in disturbed habitat (being consistently scared off the fields on which they were foraging) which did not gain mass and had a 17 percent reproductive success rate. Similar reductions in reproductive success have been reported for mule deer (*Odocoileus hemionus*) disturbed by all-terrain vehicles (Yarmoloy *et al.*, 1988), caribou (*Rangifer tarandus caribou*) disturbed by seismic exploration blasts (Bradshaw *et al.*, 1998), and caribou disturbed by low-elevation military jet flights (Luick *et al.*, 1996, Harrington and Veitch, 1992). Similarly, a study of elk (*Cervus elaphus*) that were disturbed experimentally by pedestrians concluded that the ratio of young to mothers was inversely related to disturbance rate (Phillips and Alldredge, 2000). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a 5-day period in open-air, open-water enclosures in San Diego Bay did not cause any sleep deprivation or stress effects such as changes in cortisol or epinephrine levels.

The primary mechanism by which increased vigilance and disturbance appear to affect the fitness of individual animals is by disrupting an animal's

time budget and, as a result, reducing the time they might spend foraging and resting (which increases an animal's activity rate and energy demand while decreasing their caloric intake/energy). An example of this concept with terrestrial species involved a study of grizzly bears (*Ursus horribilis*) that reported that bears disturbed by hikers reduced their energy intake by an average of 12 kilocalories/min (50.2×103 kilojoules/min), and spent energy fleeing or acting aggressively toward hikers (White *et al.*, 1999).

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 traveling 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.

On a related note, many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hr cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant for fitness if they last more than one diel cycle or recur on subsequent days (Southall *et al.*, 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.*, 2007). It is important to note the difference between behavioral reactions lasting or recurring over multiple days and anthropogenic activities lasting or recurring over multiple days. For example, just because certain activities last for multiple days does not necessarily mean that individual animals will be either exposed to those activity-related stressors (*i.e.*, sonar) for multiple days or further, exposed in a manner that would result in sustained multi-day substantive behavioral responses; however, special attention is warranted where longer-duration activities overlay areas in which animals are known to congregate for longer durations for biologically important behaviors.

Stone (2015a) reported data from at-sea observations during 1,196 airgun surveys from 1994 to 2010. When large arrays of airguns (considered to be 500 in 3 or more) were firing, lateral displacement, more localized avoidance, or other changes in behavior were evident for most odontocetes. However, significant responses to large arrays were found only for the minke whale and fin whale. Behavioral responses observed included changes in swimming or surfacing behavior, with indications that cetaceans remained near the water surface at these times. Cetaceans were recorded as feeding less often when large arrays were active. Behavioral observations of gray whales during an air gun survey monitored whale movements and respirations pre-, during-, and post-seismic survey (Gailey *et al.*, 2016). Behavioral state and water depth were the best 'natural' predictors of whale movements and respiration and, after considering natural variation, none of the response variables were significantly associated with survey or vessel sounds.

In order to understand how the effects of activities may or may not impact species and stocks of marine mammals, it is necessary to understand not only

what the likely disturbances are going to be, but how those disturbances may affect the reproductive success and survivorship of individuals, and then how those impacts to individuals translate to population-level effects. Following on the earlier work of a committee of the U.S. National Research Council (NRC, 2005), New *et al.* (2014), in an effort termed the Potential Consequences of Disturbance (PCoD), outline an updated conceptual model of the relationships linking disturbance to changes in behavior and physiology, health, vital rates, and population dynamics. 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). 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, North Atlantic right whales, *Ziphiidae* beaked whales, and bottlenose dolphins) and developed state-space energetic models that can be used to effectively 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, 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); blue whale, Pirotta *et al.*, (2018a)). These models continue to add to refinement of the approaches to the Population Consequences of Disturbance (PCoD) framework. Such models also help identify what data inputs require further investigation. Pirotta *et al.* (2018b) provides a review of the PCoD framework with details on each step of the process and approaches to applying real data or simulations to achieve each step.

New *et al.* (2020) found that closed populations of dolphins could not withstand a higher probability of disturbance, compared to open populations with no limitation on food. Two bottlenose dolphin populations in Australia were also modeled over 5 years against a number of disturbances, (Reed *et al.*, 2020) and results indicated that habitat/noise disturbance had little overall impact on population abundances in either location, even in the most extreme impact scenarios modeled. By integrating different sources of data (*e.g.*, controlled exposure data, activity monitoring, telemetry tracking, and prey sampling) into a theoretical model to predict effects from sonar on a blue whale's daily energy intake, Pirotta *et al.* (2021) found that tagged blue whales' activity budgets, lunging rates, and ranging patterns caused variability in their predicted cost of disturbance. Dunlop *et al.* (2021) modeled migrating humpback whale mother-calf pairs in response to seismic surveys using both a forwards and backwards approach. While a typical forwards approach can determine if a stressor would have population-level consequences, Dunlop *et al.* demonstrated that working backwards through a PCoD model can be used to assess the "worst case" scenario for an interaction of a target species and stressor. This method may be useful for future management goals when appropriate data becomes available to fully support the model. Harbor porpoise movement and foraging were modeled for baseline periods and then for periods with seismic surveys as well; the models demonstrated that the seasonality of the seismic activity was an important predictor of impact (Gallagher *et al.*, 2021).

Nearly all PCoD studies and experts agree that infrequent exposures of a single day or less are unlikely to impact individual fitness, let alone lead to population level effects (Booth *et al.*, 2016; Booth *et al.*, 2017; Christiansen and Lusseau 2015; Farmer *et al.*, 2018; Wilson *et al.*, 2020; Harwood and Booth 2016; King *et al.*, 2015; McHuron *et al.*, 2018; NAS 2017; New *et al.*, 2014; Pirotta *et al.*, 2018; Southall *et al.*, 2007; Villegas-Amtmann *et al.*, 2015). Since NMFS expects that any exposures would be very brief, and repeat exposures to the same individuals are unlikely, any behavioral responses that would occur due to animals being exposed to construction activity are expected to be temporary, with behavior returning to a baseline state shortly after the acoustic stimuli ceases. Given this, and NMFS' evaluation of the available

PCoD studies, any such behavioral responses are not expected to impact individual animals' health or have effects on individual animals' survival or reproduction, thus no detrimental impacts at the population level are anticipated. North Atlantic right whales may temporarily avoid the immediate area but are not expected to permanently abandon the area or their migratory behavior. Impacts to breeding, feeding, sheltering, resting, or migration are not expected, nor are shifts in habitat use, distribution, or foraging success. NMFS does not anticipate North Atlantic right whale takes that would result from the proposed project would impact annual rates of recruitment or survival. Thus, any takes that occur would not result in population level impacts.

Potential Effects of Vessel Strike

Vessel collisions with marine mammals, also referred to as vessel strikes or ship strikes, can result in death or serious injury of the animal. Wounds resulting from ship 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). In addition, some baleen whales seem generally unresponsive to vessel sound, making them more susceptible to vessel collisions (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).

An examination of all known ship strikes from all shipping sources (civilian and military) indicates vessel

speed is a principal factor in whether a vessel strike occurs and, if so, whether it results in injury, serious injury, or mortality (Knowlton and Kraus, 2001; Laist *et al.*, 2001; Jensen and Silber, 2003; Pace and Silber, 2005; Vanderlaan and Taggart, 2007; Conn and Silber 2013). 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.

Jensen and Silber (2003) detailed 292 records of known or probable ship 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. The majority (79 percent) of these strikes occurred at speeds of 13 kn or greater. The average speed that resulted in serious injury or death was 18.6 kn. 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, and exceeded 90 percent at 17 kn. Higher speeds during collisions 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. The chances of a lethal injury decline from approximately 80 percent at 15 kn to approximately 20 percent at 8.6 kn. At speeds below 11.8 kn, the chances of lethal injury drop

below 50 percent, while the probability asymptotically increases toward 100 percent above 15 kn.

The Jensen and Silber (2003) report notes that the Large Whale Ship Strike Database represents a minimum number of collisions, because the vast majority probably goes undetected or unreported. In contrast, Ocean Wind's personnel are likely to detect any strike that does occur because of the required personnel training and lookouts, along with the inclusion of Protected Species Observers (as described in the Proposed Mitigation section), and they are required to report all ship strikes involving marine mammals.

In the Ocean Wind project area, NMFS has no documented vessel strikes of marine mammals by Ocean Wind or Orsted during previous site characterization surveys. Given the extensive mitigation and monitoring measures (see the Proposed Mitigation and Proposed Monitoring and Reporting section) that would be required of Ocean Wind, NMFS believes that vessel strike is not likely to occur.

Marine Mammal Habitat

Ocean Wind's proposed construction 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 important habitat for marine mammals.

The presence of structures such as wind turbines are likely to result in both local and broader oceanographic effects. However, the scale of impacts is difficult to predict and may vary from hundreds of meters for local individual turbine impacts (Schultze *et al.*, 2020) to large-scale dipoles of surface elevation changes stretching hundreds of kilometers (Christiansen *et al.*, 2022).

Effects on Prey

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.*, crustaceans, cephalopods, fish, and zooplankton). Marine mammal prey varies by species, season, and location and, for some, 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 reaction 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 have 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 source without any significant physiological response. Other studies have documented either a lack of TTS in species whose hearing range cannot perceive sonar (such as Navy 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).

In terms of behavioral responses, Juanes *et al.* (2017) discuss the potential for negative impacts from anthropogenic noise 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 mid-frequency active sonar. Doksaeter *et al.* (2009; 2012) reported no behavioral responses to mid-frequency sonar (such as naval sonar) by Atlantic herring; specifically, no escape reactions (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 sonar. The authors concluded that the use of 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 reactions to activities that produce underwater noise sources are unlikely to cause long-term consequences for individual fish or populations. The most likely impact to fish from impact and vibratory pile driving activities at the project areas would be temporary behavioral avoidance of the area. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. The duration of fish avoidance of an area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the expected short daily duration of individual pile driving events and the relatively small areas being affected.

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.*, 2012b; Casper *et al.*, 2013). As described in the Proposed Mitigation section below, Ocean Wind would utilize a sound attenuation device which would reduce potential for injury to marine mammal prey. Other 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 from UXO/MEC detonation. Physical effects from pressure waves generated by underwater sounds (e.g., underwater explosions) could potentially affect fish within proximity of training or testing activities. The shock wave from an underwater explosion is lethal to fish at close range, causing massive organ and tissue damage 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). 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 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).

UXO/MEC detonations would be dispersed in space and time; therefore, repeated exposure of individual fishes are 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 project area would not be expected.

Furthermore, required soft-starts would allow prey and marine mammals to move away from the source prior to any noise levels that may physically injure prey and the use of the noise attenuation devices would reduce noise levels to the degree any mortality or injury of prey is also minimized. Use of bubble curtains, in addition to reducing impacts to marine mammals, for example, is a key mitigation measure in reducing injury and mortality of ESA-listed salmon on the West Coast. However, we recognize some mortality, physical injury and hearing impairment in marine mammal prey may occur but we anticipate the amount of prey impacted in this manner is minimal compared to overall availability. Any behavioral responses to pile driving by marine mammal prey are expected to be brief. We expect that other impacts such as stress or masking would occur in fish that serve as marine mammals prey (Thomas *et al.*, 2006); however, those impacts would be limited to the duration of impact pile driving and during any UXO/MEC detonations and, if prey were to move out the area in response to noise, these impacts would be minimized.

In addition to fish, prey sources such as marine invertebrates could potentially be impacted by noise stressors as a result of the proposed activities. However, most marine invertebrates' ability to sense sounds is limited. 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 are 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). Jones *et al.* (2020) found that when squid (*Doryteuthis 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. Cumulatively for squid as a prey species, individual and population impacts from exposure to explosives, like fish, are not likely to be significant, and explosive impacts would be short-term and localized.

Explosions could 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.

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., Andriquetto-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.

The presence of large numbers of turbines has been shown to impact meso and sub-meso-scale water column circulation, which can affect the density, distribution, and energy content of zooplankton, and thereby their availability as marine mammal prey. Ocean Wind intends to have up to 68 operational by 2024, with the other 30 WTG installed and operational by

either late 2024 or 2025. As described above, there is scientific uncertainty around the scale of impacts (meters to kilometers). Ocean Wind 1 is located in an area of the Mid-Atlantic Bight that experiences coastal upwelling, a consequence of the predominant wind direction and the orientation of the coastline. Along the coast of New Jersey, upwelling of deeper, nutrient-rich waters frequently leads to late summer blooms of phytoplankton and subsequently increased biological productivity (Gong *et al.*, 2010; Glenn *et al.*, 2004). However, the project area does not include key foraging grounds for marine mammals with planktonic diets (*e.g.*, North Atlantic right whale). Ocean Wind 1 is also located on the inshore edge of the Cold Pool. While there may be localized oceanographic impacts from operation, the footprint of those impacts relative to the scale of the Cold Pool itself. Overall, any impact to plankton aggregation, and hence availability as marine mammal prey, from turbine presence and operation during the effective period of the proposed rule is likely to be very limited.

Overall, the combined impacts of sound exposure, explosions, and oceanographic impacts on marine mammal habitat 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.

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 Navy 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 on Masking), 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 (*e.g.*, foraging, 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).

Sound produced from construction activities in the Ocean Wind 1 project area is temporary and transitory. The sounds produced during construction activities may be widely dispersed or concentrated in small areas for varying periods. Any anthropogenic noise attributed to construction activities in the project area would be temporary and the affected area would be expected to immediately return to the original state when these activities cease.

Water Quality

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 in (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 Ocean Wind within the project area, including ships and other marine vessels, potentially aircrafts, and other equipment, are also potential sources of by-products. All equipment is properly maintained in accordance with applicable legal requirements. All such operating equipment meets Federal water quality standards, where applicable.

Preliminary Conclusion

The most likely impact to marine mammal habitat from the project is expected to be from impact and vibratory pile driving and UXO/MEC detonations, which may affect marine mammal food sources such as forage fish and could also affect acoustic habitat (see the *Auditory Masking* section) effects on marine mammal prey (*e.g.*, fish).

The most likely impact to fish from impact and vibratory pile driving activities at the project areas would be temporary behavioral avoidance of the area. The duration of fish avoidance of an area after pile driving stops is

unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be relatively minor and temporary due to the expected short daily duration of individual pile driving events and the relatively small areas being affected. The most likely impacts of prey fish from UXO/MEC detonations, if determined to be necessary, are injury or mortality if they are located within the vicinity when detonation occurs. However, given the likely spread of any UXOs/MECs in the project area, the low chance of detonation (as lift-and-shift and deflagration are the primary removal approaches), and that this area is not a biologically important foraging ground, overall effects should be minimal to marine mammal species. NMFS does not expect HRG acoustic sources to impact fish and most sources are likely outside the hearing range of the primary prey species in the project area. As described previously, the placement and operation of wind turbines can also impact hydrographic patterns, though these impacts assessed through this rule are expected to be minimal given the small number of turbines that will be operational and the short amount of time covered under the rule.

These potential impacts on prey could impact the distribution of marine mammals within the project area, potentially necessitating additional energy expenditure to find and capture prey, but at the temporal and spatial scales anticipated for this activity are not expected to impact the reproduction or survival of any individual marine mammals. Although studies assessing the impacts of offshore wind development on marine mammals are limited, the repopulation of wind energy areas by harbor porpoises (Brandt *et al.*, 2016; Lindeboom *et al.*, 2011) and harbor seals (Lindeboom *et al.*, 2011; Russell *et al.*, 2016) following the installation of wind turbines are promising.

Impacts to the immediate substrate during installation of piles are anticipated, but these would be limited to minor, temporary suspension of sediments, which could impact water quality and visibility for a short amount of time, but which would not be expected to have any effects on individual marine mammals.

Ocean Wind 1 would be located within the migratory corridor BIA for North Atlantic right whales; however, the 68,450 acre (277 km²) lease area occupies a fraction of the available habitat for North Atlantic right whales migrating through the region

(66,591,935 acres; 269,488 km²). There are no known foraging hotspots, or other ocean bottom structures of significant biological importance to marine mammals present in the project area.

Based on the information discussed herein, NMFS concludes that any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this rulemaking, which will inform both NMFS' consideration of "small numbers" and the negligible impact determination.

Authorized takes would primarily be by Level B harassment, as use of the acoustic sources (*i.e.*, impact and vibratory pile driving, site characterization surveys, and UXO/MEC detonations) have the potential to result in disruption of marine mammal behavioral patterns due to exposure to elevated noise levels. Impacts such as masking and TTS can contribute to behavioral disturbances. There is also some potential for auditory injury (Level A harassment) to occur in select marine mammal species incidental to the specified activities (*i.e.*, impact pile driving and UXO/MEC detonations). For this action, this potential is limited to mysticetes, high frequency cetaceans, and phocids due to their hearing sensitivities and the nature of the activities. As described below, the larger distances to the PTS thresholds, when considering marine mammal weighting functions, demonstrate this potential. For mid-frequency hearing sensitivities, when thresholds and weighting and the associated PTS zone sizes are considered, the potential for PTS from the noise produced by the project is negligible. The proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

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

Generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine

mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.*, previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Marine Mammal Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment). Thresholds have also been developed to identify the levels above which animals may incur different types of tissue damage (non-acoustic Level A harassment or mortality) from exposure to pressure waves from explosive detonation. Thresholds have also been developed identifying the received level of in-air sound above which exposed pinnipeds would likely be behaviorally harassed. A summary of all NMFS' thresholds can be found at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>.

Level B harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.*, frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.*, other noises in the area) and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.*, Southall *et al.*, 2007, 2021; Ellison *et al.*, 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1

micropascal (*re* 1 μPa) for continuous (*e.g.*, vibratory pile driving, drilling) and above RMS SPL 160 dB *re* 1 μPa for non-explosive impulsive (*e.g.*, seismic airguns) or intermittent (*e.g.*, scientific sonar) sources (Table 5). Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may

result in changes in behavior patterns that would not otherwise occur.

Ocean Wind's construction activities include the use of continuous (*e.g.*, vibratory pile driving), intermittent (*e.g.*, impact pile driving, HRG acoustic sources), and impulsive (*e.g.*, UXO/MEC detonations) sources, and, therefore, the 120 and 160 dB *re* 1 μPa (rms) thresholds are applicable.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different

types of sources (impulsive or non-impulsive). As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.*, metric resulting in the largest isopleth). Ocean Wind's proposed activity includes the use of impulsive and non-impulsive sources.

These thresholds are provided in Table 5 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.

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Table 5 -- Onset of Permanent Threshold Shift (PTS) (NMFS, 2018)

| Hearing Group | PTS Onset Thresholds* (Received Level) | |
|--|---|--|
| | Impulsive | Non-impulsive |
| Low-Frequency (LF) Cetaceans | <i>Cell 1</i> L _{p,0-pk,flat} : 219 dB L _{E,p,LF,24h} : 1183 dB | <i>Cell 2</i> L _{E,p,LF,24h} : 199 dB |
| Mid-Frequency (MF) Cetaceans | <i>Cell 3</i> L _{p,0-pk,flat} : 230 dB L _{E,p,MF,24h} : 185 dB | <i>Cell 4</i> L _{E,p,MF,24h} : 198 dB |
| High-Frequency (HF) Cetaceans | <i>Cell 5</i> L _{p,0-pk,flat} : 202 dB L _{E,p,HF,24h} : 155 dB | <i>Cell 6</i> L _{E,p,HF,24h} : 173 dB |
| Phocid Pinnipeds (PW) (Underwater) | <i>Cell 7</i> L _{p,0-pk,flat} : 218 dB L _{E,p,PW,24h} : 185 dB | <i>Cell 8</i> L _{E,p,PW,24h} : 201 dB |
| Otariid Pinnipeds (OW) (Underwater) | <i>Cell 9</i> L _{p,0-pk,flat} : 232 dB L _{E,p,OW,24h} : 203 dB | <i>Cell 10</i> L _{E,p,OW,24h} : 219 dB |
| <p>* Dual metric thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds are recommended for consideration.</p> <p>Note: Peak sound pressure level (L_{p,0-pk}) has a reference value of 1 μPa, and weighted cumulative sound exposure level (L_{E,p}) has a reference value of 1μPa²s. In this Table, thresholds are abbreviated to be more reflective of International Organization for Standardization standards (ISO, 2017). The subscript “flat” is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals (i.e., 7 Hz to 160 kHz). The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The weighted cumulative sound exposure level thresholds could be exceeded in a multitude of ways (i.e., varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these thresholds will be exceeded.</p> | | |

Explosive sources—Based on the best available science, NMFS uses the acoustic and pressure thresholds

indicated in Tables 6 and 7 to predict the onset of behavioral harassment,

TTS, PTS, tissue damage, and mortality from explosive detonations.

Table 6 -- PTS onset, TTS onset, and behavioral thresholds (multiple detonations) for underwater explosives (NMFS, 2018)

| Hearing Group | PTS Impulsive Thresholds | TTS Impulsive Thresholds | Behavioral Threshold (multiple detonations) |
|---|---|---|---|
| Low-Frequency (LF) Cetaceans | <i>Cell 1</i> $L_{pk,flat}$: 219 dB $L_{E,LF,24h}$: 183 dB | <i>Cell 2</i> $L_{pk,flat}$: 213 dB $L_{E,LF,24h}$: 168 dB | <i>Cell 3</i> $L_{E,LF,24h}$: 163 dB |
| Mid-Frequency (MF) Cetaceans | <i>Cell 4</i> $L_{pk,flat}$: 230 dB $L_{E,MF,24h}$: 185 dB | <i>Cell 5</i> $L_{pk,flat}$: 224 dB $L_{E,MF,24h}$: 170 dB | <i>Cell 6</i> $L_{E,MF,24h}$: 165 dB |
| High-Frequency (HF) Cetaceans | <i>Cell 7</i> $L_{pk,flat}$: 202 dB $L_{E,HF,24h}$: 155 dB | <i>Cell 8</i> $L_{pk,flat}$: 196 dB $L_{E,HF,24h}$: 140 dB | <i>Cell 9</i> $L_{E,HF,24h}$: 135 dB |
| Phocid Pinnipeds (PW) (Underwater) | <i>Cell 10</i> $L_{pk,flat}$: 218 dB $L_{E,PW,24h}$: 185 dB | <i>Cell 11</i> $L_{pk,flat}$: 212 dB $L_{E,PW,24h}$: 170 dB | <i>Cell 12</i> $L_{E,PW,24h}$: 165 dB |
| Otariid Pinnipeds (OW) (Underwater) | <i>Cell 13</i> $L_{pk,flat}$: 232 dB $L_{E,OW,24h}$: 203 dB | <i>Cell 14</i> $L_{pk,flat}$: 226 dB $L_{E,OW,24h}$: 188 dB | <i>Cell 15</i> $L_{E,OW,24h}$: 183 dB |
| * Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS/TTS onset. | | | |
| Note: Peak sound pressure (L_{pk}) has a reference value of 1 μ Pa, and cumulative sound exposure level (L_E) has a reference value of 1 μ Pa ² s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (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. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (i.e., varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded. | | | |

Additional thresholds for the onset of non-auditory injury to lung and gastrointestinal organs from the blast shock wave and/or high peak pressures are also relevant (at relatively close

ranges) (Table 7). These criteria have been developed by the U.S. Navy (DoN (U.S. Department of the Navy), 2017a) and are based on the mass of the animal (e.g., lowest to highest range for each

hearing group) and the depth at which it is present in the water column. Equations predicting the onset of the associated potential effects are included below (Table 7).

Table 7 -- Lung and G.I. tract injury thresholds (DoN, 2017)

| Hearing Group | Mortality (Severe lung injury)* | Slight Lung Injury* | G.I. Tract Injury |
|--------------------|---|---|---|
| All Marine Mammals | <i>Cell 1</i> Modified Goertner model; <i>Equation 1</i> | <i>Cell 2</i> Modified Goertner model; <i>Equation 2</i> | <i>Cell 3</i> $L_{pk,flat}$: 237 dB |

* Lung injury (severe and slight) thresholds are dependent on animal mass (Recommendation: Table C.9 from DoN (2017) based on adult and/or calf/pup mass by species).

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μ Pa. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (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.

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)

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Below, we discuss the acoustic modeling, marine mammal density information, and take estimation for each of Ocean Wind’s proposed construction activities. NMFS has carefully considered all information and analysis presented by the applicant as well as all other applicable information and, based on the best available science, concurs that the applicant’s estimates of the types and amounts of take for each species and stock are complete and accurate.

Marine Mammal Densities

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

Habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory and the Marine-life Data and Analysis Team, based on the best available marine mammal data from 1992–2022 obtained in a collaboration between Duke University, the Northeast Regional Planning Body, the University of North Carolina Wilmington, the Virginia Aquarium and Marine Science Center, and NOAA (Roberts *et al.*, 2016a, 2016b, 2017, 2018, 2020, 2021a, 2021b; Roberts and Halpin, 2022), represent the best available information regarding marine mammal densities in the survey area. More recently, these data have been

updated with new modeling results and include density estimates for pinnipeds (Roberts *et al.*, 2016b, 2017, 2018; Roberts and Halpin, 2022). Density data are subdivided into five separate raster data layers for each species, including: Abundance (density), 95 percent-Confidence Interval of Abundance, 5 percent Confidence Interval of Abundance, Standard Error of Abundance, and Coefficient of Variation of Abundance.

Ocean Wind’s initial densities and take estimates were included in the ITA application that was considered Adequate & Complete on February 11, 2022, in line with NMFS’ standard ITA guidance (<https://www.fisheries.noaa.gov/national/marine-mammal-protection/apply-incident-take-authorization>). However, on June 20, 2022, the Duke Marine Geospatial Ecology Laboratory released a new, and more comprehensive, set of marine mammal density models for the area along the East Coast of the United States (Roberts and Halpin, 2022). The differences between the new density data and the older data necessitated the use of updated marine mammal densities and, subsequently, revised marine mammal take estimates. This information was provided to NMFS as a memo (referred to as the Revised Density and Take Estimate Memo) on August 29, 2022

after continued discussion between Ocean Wind and NMFS and NMFS has considered it in this analysis. The Revised Density and Take Estimate Memo was made public on NMFS’ website (<https://www.fisheries.noaa.gov/action/incidental-take-authorization-ocean-wind-lcc-construction-ocean-wind-1-wind-energy-facility>).

The densities used to estimate take from foundation installation, were calculated based on average monthly densities for all grid cells within the lease area as well as grid cells extending an additional 5 km (3.11 mi) beyond the lease area, referred to as a 5 km perimeter (refer to Figure 1 of the Revised Density and Take Estimate Memo provided by Orsted and found on NMFS’ website). The take estimates assumed that up to 60 WTG monopiles would be installed in the highest density month for each marine mammal species (2 monopiles per day maximum \times 30 days) with the remaining 38 WTG monopiles being installed in the second highest density month (2 monopiles per day maximum \times 19 days). This estimation approach is conservative as it is unlikely that all piles will be installed within 2 months; however, given the uncertainty with the exact pile schedule, this approach allows for the worst-case scenario to be analyzed and provides certainty that the maximum of

take has been analyzed. Although Ocean Wind is not sure which foundation type would be used for the OSSs (monopiles or jackets), the highest month density was used for the exposure modeling of pin piles using jacket foundations as this resulted in the highest number of takes as was considered reasonable that all 48 pin piles could be installed in a single month (3 pin piles per day \times 16 days).

For cofferdam density estimates, a 10 km (6.21 mi) perimeter was applied around each of the cofferdam locations (Figure 2 of the Revised Density and Take Estimate Memo), with densities averaged among the seven cofferdam locations to result in one density table for all cofferdams. Due to the uncertainty of the specific months that temporary cofferdams would be installed and removed via vibratory pile driving, Ocean Wind used the average density for the months of October through May, as described in the Revised Density and Take Estimate Memo. We note that in the application Ocean Wind assumed all the work would occur in the month when a species density was the highest (*e.g.*, Ocean Wind has assumed all cofferdam would occur in December for humpback whales but in April for sei whales; Table 6–2 in the ITA application). This original approach was deemed too conservative and the revised approach, as described in the aforementioned Memo, avoids the unnecessary overestimation of marine mammal takes. While it is possible for seven 4-day installation/removal events to occur within the same month, there is no specific expectation that the installations will occur immediately one

after another across the different locations and, therefore, this approach is appropriate.

To estimate densities for the HRG surveys occurring both within the lease area and within the export cable routes, a 5 km (3.11 mi) perimeter was applied around the cable corridors (Figure 3 of the Revised Density and Take Estimate Memo). Given this work could occur year-round, the average annual density for each species was calculated using average monthly densities from January through December. The revised density estimates for HRG surveys were calculated for both the export cable route area and the lease area in the Revised Density and Take Estimate Memo in a way that aligned with the proposed schedule for HRG activities (88 survey days in Years 1, 4, and 4; 180 survey days in Years 2 and 3), as opposed to averaging the each species annual density across the entire project area was presented in the ITA application. Furthermore, while the original ITA application included the entire HRG area (Lease Area and export cable routes) collectively, the Memo has separated these two locations with more specific densities for the export cable route and Lease Area. These changes better account for the activity footprint and perimeter (5 km) to more accurately represent the spatial extent and resolution of the survey effort planned.

For UXO/MEC detonations, given that UXOs/MECs have the potential to occur anywhere within the project area, a 15 km (9.32 mi) perimeter was applied to both the lease area and the export cable corridors (Figure 4 of the Revised Density and Take Estimate Memo). In cases where monthly densities were unavailable, annual densities were used

instead (*i.e.*, blue whales, pilot whale *spp.*, Atlantic spotted dolphins).

NMFS notes several exceptions to the determination of the relevant densities for some marine mammal species to the method described above. These are described here in greater detail.

For several marine mammal species, the Roberts data does not differentiate by stock. This is true for the bottlenose dolphins, for which two stocks were requested to be taken by Ocean Wind (coastal migratory and offshore stock). This is also true for long-finned and short-finned pilot whales (pilot whales *spp.*) and harbor and gray seals (seals), where a pooled density is the only value available from the data that is not partitioned by stock. To account for this, the coastal migratory and offshore stocks of bottlenose dolphins were adjusted based on the 20-m isobath cutoff, such that take predicted to occur in any area less than 20-m in depth was apportioned to the coastal stock only and take predicted to occur in waters of greater than 20 m of depth was apportioned to the offshore stock. The densities for the pilot whales were apportioned based on their relative abundance in the project area to estimate species- and stock-specific exposures. The same approach was taken for the two pinniped species (harbor and gray seals), where each species was scaled based on its relative abundance in the project area, as opposed the application of the same density to both, as previously described in the ITA application. Table 8, 9, 10, and 11 below demonstrate all of the densities used in the exposure and take analyses.

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Table 8 -- The Highest and Second Highest Monthly Marine Mammal And Annual Densities (Animals Per Km²) Used For The Modeling Of Ocean Wind's WTGs And OSSs From May Through December

| Marine Mammal Species | Monopile Foundations | | Jacket Foundations |
|---|-----------------------|------------------------|-----------------------|
| | First Highest Density | Second Highest Density | First Highest Density |
| North Atlantic right whale ^a | 0.00045 (December) | 0.00012 (November) | 0.00045 (December) |

| | | | |
|---|------------------------|-----------------------|------------------------|
| Blue whale ^a | – ^c | – ^c | – ^c |
| Fin whale ^a | 0.00141 (December) | 0.00080 (May) | 0.00141 (December) |
| Sei whale ^a | 0.00042 (December) | 0.00021 (November) | 0.00042 (December) |
| Minke whale | 0.00674 (May) | 0.00154 (June) | 0.00674 (May) |
| Humpback whale | 0.00126 (December) | 0.00085 (May) | 0.00126 (December) |
| Sperm whale ^a | 0.00008 (May) | 0.00004 (December) | 0.00008 (May) |
| Atlantic white-sided dolphin | 0.00643 (May) | 0.00539 (November) | 0.00643 (May) |
| Atlantic spotted dolphin | – ^c | – ^c | – ^c |
| Bottlenose dolphin (offshore stock) ^b | 0.11352 (August) | 0.11146 (November) | 0.11352 (August) |
| Bottlenose dolphin (coastal stock) ^b | 0.51100 (September) | 0.47620 (August) | 0.51100 (September) |
| Short-finned pilot whale ^b | 0.00011 (annual) | n/a | 0.00011 (annual) |
| Long-finned pilot whale ^b | 0.00015 (annual) | n/a | 0.00015 (annual) |
| Risso's dolphin | 0.00096 (December) | 0.00063 (November) | 0.00096 (December) |
| Common dolphin | 0.05157 (December) | 0.04682 (November) | 0.05157 (December) |
| Harbor porpoise | 0.02456 (December) | 0.00801 (May) | 0.02456 (December) |
| Harbor seal | 0.09830 (December) | 0.08433 (May) | 0.09830 (December) |
| Gray seal | 0.03517 (December) | 0.03017 (May) | 0.03517 (December) |

a – Listed as Endangered under the Endangered Species Act.

b – Densities were adjusted by their relative abundance.

c – Exposure modeling for the blue whale and Atlantic spotted dolphin was not conducted because impacts to those species approach zero due to their low predicted densities in the Project; therefore, were excluded from all quantitative analyses and tables based on modeling results.

Table 9 -- The Marine Mammal Average And Annual Densities (Animals Per Km²) Used For Analysis Of Ocean Wind's Cofferdam Installation And Removal For October Through May

| Marine Mammal Species | Period of Density Used | Estimated Density |
|--|------------------------|-------------------|
| North Atlantic right whale ^a | October - May average | 0.00028 |
| Blue whale ^a | Annual Density | 0.00075 |
| Fin whale ^a | October - May average | 0.00039 |
| Sei whale ^a | October - May average | 0.00014 |
| Minke whale | October - May average | 0.00078 |
| Humpback whale | October - May average | 0.00062 |
| Sperm whale ^a | October - May average | 0.00002 |
| Atlantic white-sided dolphin | October - May average | 0.00077 |
| Bottlenose dolphin (offshore stock) ^b | October - May average | 0.14866 |
| Bottlenose dolphin (coastal stock) ^b | October - May average | 0.32471 |
| Short-finned pilot whale ^b | Annual Density | 0.00001 |
| Long-finned pilot whale ^b | Annual Density | 0.00001 |
| Risso's dolphin | October - May average | 0.00002 |
| Common dolphin | October - May average | 0.00409 |
| Harbor porpoise | October - May average | 0.00854 |
| Harbor seal | October - May average | 0.10069 |
| Gray seal | October - May average | 0.03602 |

a – Listed as Endangered under the Endangered Species Act.

b – Densities were adjusted by their relative abundance (short-finned pilot whale = 0.00000133395 animals/km²; long-finned pilot whale = 0.00000181 animals/km²).

Table 10 -- The Highest Monthly Marine Mammal and Annual Densities (Animals Per Km²) Used For The Modeling of Ocean Wind's UXOs/MECs For May Through October

| Marine Mammal Species | Density Used |
|--|---------------------|
| North Atlantic right whale ^a | 0.00008 (May) |
| Blue whale ^a | 0.00001 (Annual) |
| Fin whale ^a | 0.00068 (May) |
| Sei whale ^a | 0.00021 (May) |
| Minke whale | 0.00627 (May) |
| Humpback whale | 0.00081 (May) |
| Sperm whale ^a | 0.00008 (May) |
| Atlantic white-sided dolphin | 0.00545 (May) |
| Bottlenose dolphin (offshore stock) ^b | 0.12615 (August) |
| Bottlenose dolphin (coastal stock) ^b | 0.71100 (September) |
| Short-finned pilot whale ^b | 0.00010 (Annual) |
| Long-finned pilot whale ^b | 0.00013 (Annual) |
| Risso's dolphin | 0.00021 (May) |
| Common dolphin | 0.02407 (May) |
| Harbor porpoise | 0.00789 (May) |
| Harbor seal | 0.09467 (May) |
| Gray seal | 0.03387 (May) |

a – Listed as Endangered under the Endangered Species Act.

b – Densities were adjusted by their relative abundance.

Table 11 -- The Highest Monthly Marine Mammal, Average, and Annual Densities In (Animals Per Km²) Used For Analysis of Ocean Wind's HRG Survey Effort For The Export Cable Route and Inter-Array Cables From January Through December

| Marine Mammal Species | Wind Farm Area | Export Cable Route |
|--|--------------------------|--------------------------|
| North Atlantic right whale ^a | 0.00026 (Average Annual) | 0.00026 (Average Annual) |
| Blue whale ^a | 0.00001 (Annual) | 0.00001 (Annual) |
| Fin whale ^a | 0.00086 (Average Annual) | 0.00054 (Average Annual) |
| Sei whale ^a | 0.00022 (Average Annual) | 0.00016 (Average Annual) |
| Minke whale | 0.00171 (Average Annual) | 0.00099 (Average Annual) |
| Humpback whale | 0.00069 (Average Annual) | 0.00057 (Average Annual) |
| Sperm whale ^a | 0.00003 (Average Annual) | 0.00002 (Average Annual) |
| Atlantic white-sided dolphin | 0.00399 (Average Annual) | 0.00130 (Average Annual) |
| Bottlenose dolphin (offshore stock) ^b | 0.06119 (Average Annual) | 0.14499 (Average Annual) |
| Bottlenose dolphin (coastal stock) ^b | 0.18073 (Average Annual) | 0.36680 (Average Annual) |
| Short-finned pilot whale ^b | 0.00014 (Annual) | 0.00001 (Annual) |
| Long-finned pilot whale ^b | 0.00018 (Annual) | 0.00002 (Annual) |
| Risso's dolphin | 0.00029 (Average Annual) | 0.00005 (Average Annual) |
| Common dolphin | 0.02418 (Average Annual) | 0.00702 (Average Annual) |
| Harbor porpoise | 0.01518 (Average Annual) | 0.00925 (Average Annual) |
| Harbor seal | 0.04715 (Average Annual) | 0.06051 (Average Annual) |
| Gray seal | 0.01687 (Average Annual) | 0.02165 (Average Annual) |

a – Listed as Endangered under the Endangered Species Act.

b – Densities were adjusted by their relative abundance.

Modeling and Take Estimation

Below, we describe the three methods that were used to estimate take in consideration of the acoustic thresholds and marine mammal densities described above and the four different activities (WTG and OSS foundation installation, temporary cofferdam installation/removal, UXO/MEC detonation, and

HRG surveys). The take estimates for the four different activities, as well as the combined total, are presented.

WTG and OSS Foundation Installation (Impact Pile Driving) Take Estimates

As described above, Ocean Wind has proposed to install up to 98 WTGs and 3 OSS in the project area. Ocean Wind has proposed two piling scenarios that

may be encountered during the construction of the OSSs and were therefore considered in the acoustic modeling conducted to estimate the potential number of marine mammal exposures above relevant harassment thresholds: (1) all monopile build-out for WTGs and OSS (101 monopiles total), and (2) a joint-monopile WTG

and OSS jacket foundation build-out (98 monopiles and 48 pin piles total). Full installation parameters for each of the monopile and jacket foundations are described below:

(1) Monopile foundation (for either WTG only or WTG and OSS) with either 98 (assuming OSSs are built-out using jacket foundations) or 101 8/11 m diameter tapered piles (assuming both WTG and OSS are using monopile foundations; one monopile per WTG/OSS); and/or,

(2) Jacket foundations (for OSS only) with up to 48 2.44 m diameter pin piles total (16 per OSS).

In recognition of the need to ensure that the range of potential impacts to marine mammals from the various potential scenarios are accounted for, both piling scenarios (WTG using monopiles; OSS using monopiles or jacket foundations with pin piles) were modeled separately in order to assess the impacts of each. The two impact pile driving installation scenarios modeled are:

(1) Full monopile foundation scenario (see Table 1–7 in the Ocean Wind 1 ITA application): A total of 10,846 hammer strikes are needed per pile over 4 hours (392 total hours needed for 98 WTGs or 404 total hours needed for 101 WTGS

and OSS foundations (12 hours total specific to OSS installation)); and,

(2) A joint-monopile and jacket foundation scenario (see Table 1–15 in the Ocean Wind 1 ITA application): A total of 13,191 hammer strikes are needed per pile over 4 hours (192 hours are necessary to complete the installation of all pin piles).

Representative hammering schedules of increasing hammer energy with increasing penetration depth were modeled, resulting in, generally, higher intensity sound fields as the hammer energy and penetration increases (Table 12).

Table 12 -- Estimated Impact Hammer Energy Schedules For Monopiles and Pin Piles

| Monopile foundations (8/11-m) | | | Jacket Foundations (Pin piles; 2.44-m) | | |
|--------------------------------|--------------|----------------------------|--|--------------|------------------------|
| Hammer: IHC S-4000 | | | Hammer: IHC S-2500 | | |
| Energy Level (kJ) ¹ | Strike Count | Pile Penetration Depth (m) | Energy Level (kJ) | Strike Count | Pile Penetration Depth |
| 500 | 763 | 7 | 500 | 554 | 3 |
| 2,000 | 980 | 6 | 200 | 5,373 | 29 |
| 1,000 | 375 | 3 | 750 | 1,402 | 8 |
| 3,000 | 385 | 2 | 1,000 | 1,604 | 8 |
| 4,000 | 5,006 | 16 | 1,500 | 1,310 | 6 |
| 3,000 | 1,135 | 6 | 2,500 | 1,026 | 6 |
| 4,000 | 2,202 | 10 | 1,500 | 1,922 | 10 |
| Total: | 10,846 | 50 | Total: | 13,191 | 70 |

1 – Sediment types with greater resistances require hammers that deliver higher energy strikes and/or an increased number of strikes relative to installation in softer sediments. Typically the maximum sound levels usually occur during the last stage of impact pile installation where the greatest resistance is encountered (Betke, 2008).

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Both monopiles and pin piles were assumed to be vertically aligned and driven to a maximum depth of 50 m for monopiles and 70 m for pin piles. While pile penetration depths may vary slightly, these values were chosen as reasonable penetration depths during

modeling. All acoustic modeling was performed assuming that concurrent pile driving of either monopiles or pin piles would not occur. While multiple piles may be driven within any single 24-hour period, these installation activities would not occur

simultaneously. Below we describe the assumptions inherent to the modeling approach and those by which Ocean Wind 1 would not exceed:

Modeling assumptions for the project are as follows:

- Two monopiles installed per day (4 hours per monopile with a 1 hour pre-clearance period; 9 hours of total with 8 hours of active pile driving time), although only one monopile may be installed on some days;

- No concurrent monopile and/or pin pile driving would occur;

- Monopiles would be 80 millimeters (mm) thick and consist of steel;

- Impact Pile driving: IHC S–4000 or IHC S–2500 kJ rated energy; 1,977.151 kilonewton (kN) ram weight);

- Helmet weight: 3,776.9 kN;

- Impact hammers would have a maximum power capacity of 6,000 kilowatts (KW);

- Up to three pin piles installed per day;

- Pin piles would be 75 mm thick;

- Impact Pile driving: IHC S–2,500 kJ rated energy; 1,227.32 kN ram weight);

- Helmet weight: 279 kN.

Sound fields produced during impact pile driving were modeled by first characterizing the sound signal produced during pile driving using the industry standard GRLWEAP (wave equation analysis of pile driving) model and JASCO Applied Sciences' (JASCO) Pile Driving Source Model (PDSM). We provide a summary of the modelling effort below but the full JASCO modeling report can be found in Section 6 and Appendix A of Ocean Wind's ITA application (<https://www.fisheries.noaa.gov/action/incidental-take-authorization-ocean-wind-lcc-construction-ocean-wind-1-wind-energy-facility>).

Underwater sound propagation (*i.e.*, transmission loss) as a function of range from each source was modeled using JASCO's Marine Operations Noise Model (MONM) for multiple propagation radials centered at the source to yield 3D transmission loss fields in the surrounding area. The MONM computes received per-pulse SEL for directional sources at specified depths. MONM uses two separate models to estimate transmission loss.

At frequencies less than 2 kHz, MONM computes acoustic propagation via a wide-angle parabolic equation (PE) solution to the acoustic wave equation based on a version of the U.S. Naval Research Laboratory's Range-dependent Acoustic Model (RAM) modified to account for an elastic seabed. MONM–RAM incorporates bathymetry, underwater sound speed as a function of depth, and a geo-acoustic profile based on seafloor composition, and accounts for source horizontal directivity. The PE method has been extensively benchmarked and is widely employed in the underwater acoustics community, and MONM–RAM's predictions have

been validated against experimental data in several underwater acoustic measurement programs conducted by JASCO. At frequencies greater than 2 kHz, MONM accounts for increased sound attenuation due to volume absorption at higher frequencies with the widely used BELLHOP Gaussian beam ray-trace propagation model. This component incorporates bathymetry and underwater sound speed as a function of depth with a simplified representation of the sea bottom, as sub-bottom layers have a negligible influence on the propagation of acoustic waves with frequencies above 1 kHz. MONM–BELLHOP accounts for horizontal directivity of the source and vertical variation of the source beam pattern. Both propagation models account for full exposure from a direct acoustic wave, as well as exposure from acoustic wave reflections and refractions (*i.e.*, multi-path arrivals at the receiver).

The sound field radiating from the pile was simulated using a vertical array of point sources. Because sound itself is an oscillation (vibration) of water particles, acoustic modeling of sound in the water column is inherently an evaluation of vibration. For this study, synthetic pressure waveforms were computed using the full-wave range-dependent acoustic model (FWRAM), which is JASCO's acoustic propagation model capable of producing time-domain waveforms.

Models are more efficient at estimating SEL than SPL_{rms} . Therefore, conversions may be necessary to derive the corresponding SPL_{rms} . Propagation was modeled for a subset of sites using the FWRAM, from which broadband SEL to SPL conversion factors were calculated. The FWRAM required intensive calculation for each site, thus a representative subset of modeling sites were used to develop azimuth-, range-, and depth-dependent conversion factors. These conversion factors were used to calculate the broadband SPL_{rms} from the broadband SEL prediction.

The sound fields for the monopile and pin pile scenarios were each modeled based on one representative location in the project area. For monopiles this area is G10 and for jacket foundations with pin piles this area is Z11 (see in Appendix A of the ITA application). Both modeling locations were selected as they were determined to be the most representative of the water depths in the Ocean Wind 1 project area, as appropriate for each foundation type (*i.e.*, monopiles in shallower waters and jackets in deeper waters). All monopiles were assumed to be driven vertically and to a maximum penetration depth of 50 m (164 ft). All pin piles associated

with jacket foundations were also assumed to be driven vertically to a maximum penetration depth of 70 m (230 ft).

The model also incorporated two different sound velocity profiles (related to in situ measurements of temperature, salinity, and pressure within the water column) to account for variations in the acoustic propagation conditions between summer (May through November) and winter (December only). Estimated pile driving schedules (Table 12) were used to calculate the SEL sound fields at different points in time during impact pile driving.

Next, Ocean Wind modeled the sound field produced during impact pile driving by incorporating the results of the source level modeling into an acoustic propagation model. The sound propagation model incorporated site-specific environmental data that considers bathymetry, sound speed in the water column, and seabed geo-acoustics in the construction area.

Ocean Wind estimated both acoustic ranges and exposure ranges. Acoustic ranges represent the distance to a harassment threshold based on sound propagation through the environment (*i.e.*, independent of any receiver) while exposure range represents the distance at which an animal can accumulate enough energy to exceed a Level A harassment threshold in consideration of how it moves through the environment (*i.e.*, using movement modeling). In both cases, the sound level estimates are calculated from three-dimensional sound fields and then, at each horizontal sampling range, the maximum received level that occurs within the water column is used as the received level at that range. These maximum-over-depth (R_{max}) values are then compared to predetermined threshold levels to determine acoustic and exposure ranges to Level A harassment and Level B harassment zone isopleths. However, the ranges to a threshold typically differ among radii from a source, and also might not be continuous along a radii because sound levels may drop below threshold at some ranges and then exceed threshold at farther ranges. To minimize the influence of these inconsistencies, 5 percent of the farthest such footprints were excluded from the model data. The resulting range, $R_{95\%}$, was chosen to identify the area over which marine mammals may be exposed above a given threshold, because, regardless of the shape of the maximum-over-depth footprint, the predicted range encompasses at least 95 percent of the horizontal area that would be exposed to sound at or above the specified

threshold. The difference between R_{\max} and $R_{95\%}$ depends on the source directivity and the heterogeneity of the acoustic environment. $R_{95\%}$ excludes ends of protruding areas or small isolated acoustic foci not representative of the nominal ensonified zone. For purposes of calculating Level A harassment take, Ocean Wind applied $R_{95\%}$ exposure ranges, not acoustic ranges, to estimate take and determine mitigation distances for the reasons described below.

In order to best evaluate the (SEL_{cum}) harassment thresholds for PTS, it is necessary to consider animal movement, as the results are based on how sound moves through the environment between the source and the receiver. Applying animal movement and behavior within the modeled noise fields provides the exposure range, which allows for a more realistic indication of the distances at which PTS acoustic thresholds are reached that considers the accumulation of sound over different durations (note that in all cases the distance to the peak threshold is less than the SEL-based threshold).

As described in Section 2.6 of Appendix A of Ocean Wind's ITA application, for modeled animals that have received enough acoustic energy to exceed a given Level A harassment

threshold, the exposure range for each animal is defined as the closest point of approach (CPA) to the source made by that animal while it moved throughout the modeled sound field, accumulating received acoustic energy. The resulting exposure range for each species is the 95th percentile of the CPA distances for all animals that exceeded threshold levels for that species (termed the 95 percent exposure range ($ER_{95\%}$)). The $ER_{95\%}$ ranges are species-specific rather than categorized only by any functional hearing group, which allows for the incorporation of more species-specific biological parameters (*e.g.*, dive durations, swim speeds, *etc.*) for assessing the impact ranges into the model. Furthermore, because these $ER_{95\%}$ ranges are species-specific, they can be used to develop mitigation monitoring or shutdown zones.

Tables 13 and 14 below represent the $ER_{95\%}$ exposure ranges (for SEL_{cum} and SPL_{rms}) for monopiles foundations, with Table 13 demonstrating the ranges using the summer sound speed profile and Table 14 using the winter sound speed profile. For both tables, a single monopiles and two monopiles per day are provided (the two per day ranges are shown in the parenthesis). NMFS notes that monopiles foundations constructed for Ocean Wind 1 are applicable to all

WTGs and may be applicable to OSS structures, depending on the finalized buildout. Please see the Estimated Take section below, Appendix A of the Ocean Wind 1 ITA application, and Appendix R of the Ocean Wind 1 COP for further details on the acoustic modeling methodology.

Displayed in Tables 13, 14, 15, and 16 below, Ocean Wind would also employ a noise abatement system during all impact pile driving of monopiles and pin piles. Noise abatement systems, such as bubble curtains, are sometimes used to decrease the sound levels radiated from a source. Additional information on sound attenuation devices is discussed in the Noise Abatement Systems section under Proposed Mitigation. In modeling the sound fields for Ocean Wind's proposed activities, hypothetical broadband attenuation levels of 0 dB, 6 dB, 10 dB, 15 dB, and 20 dB were modeled to gauge the effects on the ranges to thresholds given these levels of attenuation. The results for 10 dB of sound attenuation are shown below and the other attenuation levels (0 dB, 6 dB, 15 dB, and 20 dB) can be found in the ITA application.

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Table 13 - Level A Harassment (SEL_{cum}) and Level B Harassment (SPL_{rms}) Exposure Ranges ($ER_{95\%}$) In Kilometers for Monopile Foundations in the Summer (May - November); Exposures for One (Two) Monopiles per Day Are Shown

| Marine Mammal Species | Ranges to Threshold (Assuming 10 dB attenuation) | |
|-------------------------------------|--|--------------------|
| | Level A Harassment | Level B Harassment |
| Fin whale | 1.58 (1.65) | 3.04 (3.13) |
| Minke whale | 1.23 (1.26) | 3.13 (3.10) |
| Humpback whale | 1.14 (1.05) | 3.10 (3.09) |
| North Atlantic right whale | 1.28 (1.37) | 2.95 (2.98) |
| Sei whale | 1.36 (1.27) | 3.13 (3.09) |
| Blue whale* | - (-) | - (-) |
| Atlantic white-sided dolphin | 0 (0) | 3.10 (3.04) |
| Atlantic spotted dolphin* | - (-) | - (-) |
| Common dolphin | 0 (0) | 3.09 (3.05) |
| Bottlenose dolphin (coastal stock) | 0 (0) | 2.80 (2.81) |
| Bottlenose dolphin (offshore stock) | 0 (0) | 2.90 (2.81) |
| Risso's dolphin | 0 (0) | 3.06 (3.09) |
| Long-finned pilot whale | 0 (0) | 0 (0) |
| Short-finned pilot whale | 0 (0) | 3.01 (3.08) |
| Sperm whale | 0 (0) | 0 (0) |
| Harbor porpoise | 0.84 (0.88) | 3.11 (3.07) |
| Gray seal | 0 (0.08) | 3.21 (3.09) |
| Harbor seal | 0 (0.06) | 3.11 (3.08) |

* Exposure modeling for the blue whale and Atlantic spotted dolphin was not conducted because impacts on the species approach zero due to their low predicted densities in the project area. These species were excluded from quantitative analyses and tables. Results for these scenarios can be found in Appendix A found in the ITA application.

Table 14 -- Level A Harassment (SEL_{cum}) and Level B Harassment (SPL_{rms}) Exposure Ranges ($ER_{95\%}$) In Kilometers for Monopile Foundations in the Winter (December); Exposures for One (Two) Monopiles per Day Are Shown

| Marine Mammal Species | Ranges to Threshold (Assuming 10 dB attenuation) | |
|--|--|--------------------|
| | Level A Harassment | Level B Harassment |
| Fin whale | 2.33 (2.49) | 3.48 (3.44) |
| Minke whale (migrating) | 1.98 (1.98) | 3.39 (3.42) |
| Humpback whale (migrating) | 1.75 (1.77) | 3.32 (3.37) |
| North Atlantic right whale (migrating) | 1.85 (2.03) | 3.28 (3.35) |
| Sei whale (migrating) | 1.86 (2.19) | 3.42 (3.45) |
| Blue whale* | - (-) | - (-) |
| Atlantic white-sided dolphin | 0 (0) | 3.37 (3.33) |
| Atlantic spotted dolphin* | - (-) | - (-) |
| Common dolphin | 0 (0) | 3.40 (3.36) |
| Bottlenose dolphin (coastal stock) | 0 (0) | 3.12 (3.15) |
| Bottlenose dolphin (offshore stock) | 0 (0) | 3.22 (3.18) |
| Risso's dolphin | 0 (0) | 3.49 (3.36) |
| Long-finned pilot whale | 0 (0) | 0 (0) |
| Short-finned pilot whale | 0 (0) | 3.31 (3.41) |
| Sperm whale | 0 (0) | 0 (0) |
| Harbor porpoise | 1.06 (1.43) | 3.34 (3.37) |
| Gray seal | 0 (0.14) | 3.44 (3.42) |
| Harbor seal | 0.07 (0.24) | 3.47 (3.31) |

* Exposure modeling for the blue whale and Atlantic spotted dolphin was not conducted because impacts on the species approach zero due to their low predicted densities in the project area. These species were excluded from quantitative analyses and tables. Results for these scenarios can be found in Appendix A found in the ITA application.

Tables 15 and 16 below represent the exposure ranges ($ER_{95\%}$) for jacket

foundations, with Table 15 demonstrating the ranges using the

summer sound speed profile and Table 16 using the winter sound speed profile.

For both tables, two pin piles and three pin piles (the three pin pile ranges are shown in the parenthesis) per day are provided. NMFS notes that jacket foundations used in Ocean Wind 1 are applicable only to OSS structures,

depending on the finalized buildout. As with Tables 13 and 14 above, sound reductions of 0, 6, 10, 15, and 20 dB were modeled, but Ocean Wind would only be required to meet a minimum sound reduction level of 10 dB. The

results for 10 dB of sound attenuation are shown below and the other attenuation levels (0 dB, 6 dB, 15 dB, and 20 dB) can be found in the ITA application.

Table 15 -- Level A (SEL_{cum}) and Level B Harassment (SPL_{rms}) Exposure Ranges ($ER_{95\%}$) In Kilometers for Jacket Foundations (Pin Piles) in the Summer; Exposure Distances For Two (Three) Pin Piles per Day Are Shown

| Marine Mammal Species | Ranges to Threshold (Assuming 10 dB attenuation) | |
|-------------------------------------|--|--------------------|
| | Level A Harassment | Level B Harassment |
| Fin whale | 0.55 (0.59) | 1.82 (1.79) |
| Minke whale | 0.55 (0.51) | 1.76 (1.76) |
| Humpback whale | 0.40 (0.42) | 1.81 (1.86) |
| North Atlantic right whale | 0.51 (0.58) | 1.64 (1.72) |
| Sei whale | 0.37 (0.36) | 1.81 (1.84) |
| Blue whale* | - (-) | - (-) |
| Atlantic white-sided dolphin | 0 (0) | 1.55 (1.72) |
| Atlantic spotted dolphin* | - (-) | - (-) |
| Common dolphin | 0 (0) | 1.72 (1.72) |
| Bottlenose dolphin (coastal stock) | 0 (0) | 1.53 (1.46) |
| Bottlenose dolphin (offshore stock) | 0 (0) | 1.58 (1.60) |
| Risso's dolphin | 0 (0) | 1.61 (1.65) |
| Long-finned pilot whale | 0 (0) | 0 (0) |
| Short-finned pilot whale | 0 (0) | 0 (0) |
| Sperm whale | 0 (0) | 0 (0) |
| Harbor porpoise | 0.61 (0.61) | 1.75 (1.73) |
| Gray seal | 0 (less than 0.01) | 1.75 (1.65) |
| Harbor seal | 0 (less than 0.01) | 1.96 (1.91) |

* Exposure modeling for the blue whale and Atlantic spotted dolphin was not conducted because impacts on the species approach zero due to their low predicted densities in the project area. These species were excluded from quantitative analyses and tables. Results for these scenarios can be found in Appendix A found in the ITA application.

Table 16 -- Level A (SEL_{cum}) and Level B Harassment (SPL_{rms}) Exposure Ranges ($ER_{95\%}$) In Kilometers for Jacket Foundations (Pin Piles) in the Winter; Exposure Distances For Two (Three) Pin Piles per Day Are Shown

| Marine Mammal Species | Ranges to Threshold (Assuming 10 dB attenuation) | |
|-------------------------------------|--|--------------------|
| | Level A Harassment | Level B Harassment |
| Fin whale | 0.84 (0.74) | 2.11 (2.04) |
| Minke whale | 0.58 (0.59) | 2.09 (2.06) |
| Humpback whale | 0.52 (0.51) | 2.18 (2.11) |
| North Atlantic right whale | 0.69 (0.70) | 2.06 (2.11) |
| Sei whale | 0.59 (0.53) | 2.13 (2.03) |
| Blue whale* | - (-) | - (-) |
| Atlantic white-sided dolphin | 0 (0) | 2.12 (2.08) |
| Atlantic spotted dolphin* | - (-) | - (-) |
| Common dolphin | 0 (0) | 2.09 (2.06) |
| Bottlenose dolphin (coastal stock) | 0 (0) | 1.97 (1.88) |
| Bottlenose dolphin (offshore stock) | 0 (0) | 1.91 (1.85) |
| Risso's dolphin | 0 (0) | 1.93 (1.87) |
| Long-finned pilot whale | 0 (0) | 0 (0) |
| Short-finned pilot whale | 0 (0) | 0 (0) |
| Sperm whale | 0 (0) | 0 (0) |
| Harbor porpoise | 0.63 (0.70) | 2.16 (2.06) |
| Gray seal | 0 (less than 0.01) | 2.33 (2.14) |
| Harbor seal | 0 (less than 0.01) | 2.24 (2.19) |

* Exposure modeling for the blue whale and Atlantic spotted dolphin was not conducted because impacts on the species approach zero due to their low predicted densities in the project area. These species were excluded from quantitative analyses and tables. Results for these scenarios can be found in Appendix A found in the ITA application.

harassment thresholds. Sound exposure models like JASMINE use simulated animals (also known as “animats”) to forecast behaviors of animals in new situations and locations based on previously documented behaviors of those animals. The predicted 3D sound fields (*i.e.*, the output of the acoustic modeling process described earlier) are sampled by animats using movement rules derived from animal observations. The output of the simulation is the exposure history for each animat within the simulation.

The precise location of animats (and their pathways) are not known prior to a project, therefore a repeated random sampling technique (Monte Carlo) is used to estimate exposure probability with many animats and randomized starting positions. The probability of an animat starting out in or transitioning into a given behavioral state can be defined in terms of the animat’s current behavioral state, depth, and the time of day. In addition, each travel parameter and behavioral state has a termination function that governs how long the parameter value or overall behavioral state persists in the simulation.

The output of the simulation is the exposure history for each animat within the simulation, and the combined history of all animats gives a probability density function of exposure during the project. Scaling the probability density function by the real-world density of animals results in the mean number of animats expected to be exposed to a given threshold over the duration of the project. Due to the probabilistic nature of the process, fractions of animats may be predicted to exceed threshold. If, for example, 0.1 animats are predicted to exceed threshold in the model, that is interpreted as a 10 percent chance that one animat will exceed a relevant threshold during the project, or equivalently, if the simulation were re-run 10 times, 1 of the 10 simulations would result in an animat exceeding the

threshold. Similarly, a mean number prediction of 33.11 animats can be interpreted as re-running the simulation where the number of animats exceeding the threshold may differ in each simulation but the mean number of animats over all of the simulations is 33.11. A portion of an individual marine mammal cannot be taken during a project, so it is common practice to round mean number animat exposure values to integers using standard rounding methods. However, for low-probability events it is more precise to provide the actual values.

Sound fields were input into the JASMINE model, as described above, and animats were programmed based on the best available information to “behave” in ways that reflect the behaviors of the 17 marine mammal species (18 stocks) expected to occur in the project area during the proposed activity. The various parameters for forecasting realistic marine mammal behaviors (*e.g.*, diving, foraging, surface times, *etc.*) are determined based on the available literature (*e.g.*, tagging studies); when literature on these behaviors was not available for a particular species, it was extrapolated from a similar species for which behaviors would be expected to be similar to the species of interest. The parameters used in JASMINE describe animat movement in both the vertical and horizontal planes (*e.g.*, direction, travel rate, ascent and descent rates, depth, bottom following, reversals, inter-dive surface interval).

Animats were modeled to move throughout the three-dimensional sound fields produced by each construction schedule for the entire construction period. For PTS exposures, both SPL_{pk} and SEL_{cum} were calculated for each species based on the corresponding acoustic criteria. Once an animat is taken within a 24-hrs period, the model does not allow it to be taken a second time in that same period, but rather

resets the 24-hrs period on a sliding scale across 7 days of exposure. Specifically, an individual animat’s accumulated energy levels (SEL_{cum}) are summed over that 24-hrs period to determine its total received energy, and then compared to the PTS threshold. Takes by behavioral harassment are predicted when an animat enters an area ensonified by sound levels exceeding the associated behavioral harassment threshold.

It is important to note that the calculated or predicted takes represent a take instance or event within one day and likely overestimate the number of individuals taken for some species. Specifically, as the 24-hr evaluation window means that individuals exposed on multiple days are counted as multiple takes. For example, 10 takes may represent 10 takes of 10 different individual marine mammals occurring within 1 day each, or it may represent take of 1 individual on 10 different days; information about the species’ daily and seasonal movement patterns helps to inform the interpretation of these take estimates. Also note that animal aversion was not incorporated into the JASMINE model runs that were the basis for the take estimate for any species.

To conservatively estimate the number of animals likely to be exposed above thresholds, 60 WTG monopiles (at a rate of 2 per day for 30 days) were assumed to be installed during the highest density month of each species. Additionally, 38 WTG monopiles (at a rate of 2 per day for 19 days) were also assumed to be installed during the month with the second highest species density. Two scenarios were considered for the three OSS foundations: either three monopiles (at a rate of two per day for 1 day and then 1 on a third day) or 48 pin piles (at a rate of three per day for a total of 16 days). The preliminary construction schedule is shown below in Table 17.

Table 17 -- Construction Schedule Assumptions for Both WTG and OSS Foundations

| Foundation Type | Configuration | Days of Impact Pile Driving | |
|-----------------|--|---------------------------------------|---------------------------------------|
| | | 1 st Highest Density Month | 2 nd Highest Density Month |
| WTG | Monopile foundation, 2 piles per day | 30 | 19 |
| OSS, Scenario 1 | Monopile foundation, 2 piles per day | 1 | - |
| | Monopile foundation, 1 pile per day | - | 1 |
| OSS, Scenario 2 | Jacket foundation, 3 pin piles per day | 16 | 0 |

Note: - indicate no piling days.

In summary, exposures were estimated in the following way:

(1) The characteristics of the sound output from the proposed pile driving activities were modeled using the GRLWEAP (wave equation analysis of pile driving) model and JASCO's PDSM;

(2) Acoustic propagation modeling was performed within the exposure model framework using JASCO's MONM and FWRAM that combined the outputs of the source model with the spatial and temporal environmental context (*e.g.*, location, oceanographic conditions, seabed type) to estimate sound fields;

(3) Animal movement modeling integrated the estimated sound fields with species-typical behavioral parameters in the JASMINE model to estimate received sound levels for the animals that may occur in the operational area; and

(4) The number of potential exposures above Level A and Level B harassment thresholds were calculated.

The results of marine mammal exposure modeling for the full monopile scenario (WTG and OSS) and joint foundation approach (WTGs use monopiles; OSSs use jackets with pin piles) over 5 years assuming 10 dB

attenuation only are shown in Tables 18 and 19, as these form the basis for the take authorization proposed in this document. These values were presented by Ocean Wind after the habitat-based density models were updated; please see the Revised Density and Take Estimate Memo available at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-ocean-wind-lcc-construction-ocean-wind-1-wind-energy-facility> for more information.

Table 18 -- Modeled Potential Level A and Level B Harassment Exposures (assuming 10 dB Sound Attenuation) Due To Impact Pile Driving Of A Monopile Foundation (Assuming 98 Total Monopiles For WTGs) Over 5 Years

| Marine Mammal Species | Population Estimate | Level A Harassment (SEL _{cum}) | Level B Harassment (160 dB rms) |
|---|----------------------|--|---------------------------------|
| North Atlantic right whale ^a | 368 | 0.9 ^e | 3.11 |
| Blue whale ^a | unknown ^b | n/a ^e | n/a ^e |
| Fin whale ^a | 6,802 | 3.69 | 7.05 |
| Sei whale ^a | 6,292 | 0.89 | 2.00 |
| Minke whale | 21,968 | 18.42 | 52.25 |
| Humpback whale | 1,396 | 4.24 | 13.82 |
| Sperm whale ^a | 4,349 | 0 | 0 |
| Atlantic white-sided dolphin | 93,233 | 0 | 71.5 |
| Atlantic spotted dolphin | 39,921 | n/a ^e | n/a ^e |
| Bottlenose dolphin (offshore stock) | 62,851 | 0 | 935.91 |
| Bottlenose dolphin (coastal stock) | 6,639 | 0 | 0 |
| Short-finned pilot whale | 28,924 | 0 | 0.04 |
| Long-finned pilot whale | 39,215 | 0 | 0 |
| Risso's dolphin | 35,215 | 0 | 7.06 |
| Common dolphin | 172,974 | 0 | 1,229.37 |
| Harbor porpoise ^d | 95,543 | 51.31 | 233.89 |
| Gray seal | 27,300 | 3.04 | 197.56 |
| Harbor seal | 61,336 | 12.16 | 554.22 |

a - Listed as Endangered under the Endangered Species Act (ESA)

b - The minimum blue whale population is estimated at 412, although the exact value is not known. NMFS is utilizing this value for our preliminary small numbers determination, as shown in parenthesis.

c - Level A exposures were initially estimated for this species, but due to the mitigation measures that Ocean Wind would be required to abide by, no Level A harassment take would be requested or expected. Instead, the requested Level A harassment take from these exposure estimates was added to the requested Level B harassment take.

d - The calculated Level A exposures are likely an overestimate as the modeled 10 dB sound reduction from the noise mitigation systems does not take into account that the reduction is greater at higher frequencies, which are best heard by harbor porpoises.

e - Exposure modeling for blue whales and Atlantic spotted dolphins was not conducted because the impacts on the species approached zero due to the low density estimates. Because of this, values for these species have been excluded from the quantitative analyses and subsequent tables.

Table 19 -- Modeled Potential Level A and Level B Harassment Exposures (Assuming 10 dB of Sound Attenuation) Due To Impact Pile Driving Of OSS Foundations (Assuming 3 Monopiles Or Three Jackets With 48 Pin Piles) Over 5 Years

| Marine Mammal Species | Population Estimate | 8/11-m Monopile Foundation Scenario | | 2.44-m Pin Pile for Jacket Foundation Scenario | |
|---|----------------------|--|---------------------------------|--|---------------------------------|
| | | Level A Harassment (SEL _{cum}) | Level B Harassment (160 dB rms) | Level A Harassment (SEL _{cum}) | Level B Harassment (160 dB rms) |
| North Atlantic right whale ^a | 368 | 0.04 ^c | 0.14 | 0.10 ^c | 0.75 |
| Blue whale ^a | unknown ^b | n/a ^e | n/a ^e | n/a ^e | n/a ^e |
| Fin whale ^a | 6,802 | 0.15 | 0.27 | 0.48 | 1.20 |
| Sei whale ^a | 6,292 | 0.04 | 0.08 | 0.14 | 0.45 |
| Minke whale | 21,968 | 0.76 | 2.32 | 2.29 | 15.81 |
| Humpback whale | 1,396 | 0.18 | 0.51 | 0.54 | 3.63 |
| Sperm whale ^a | 4,349 | 0 | 0 | 0 | 0 |
| Atlantic white-sided dolphin | 93,233 | 0 | 2.37 | 0 | 16.20 |
| Atlantic spotted dolphin | 39,921 | n/a ^e | n/a ^e | n/a ^e | n/a ^e |
| Bottlenose dolphin (offshore stock) | 62,851 | 0 | 30.44 | 0 | 168.23 |
| Bottlenose dolphin (coastal stock) | 6,639 | 0 | 0 | 0 | 0 |
| Short-finned pilot whale | 28,924 | 0 | less than 0.01 | 0 | 0 |

| | | | | | |
|------------------------------|---------|------|--------|-------|--------|
| Long-finned pilot whale | 39,215 | 0 | 0 | 0 | 0 |
| Risso's dolphin | 35,215 | 0 | 0.26 | 0 | 1.79 |
| Common dolphin | 172,974 | 0 | 40.51 | 0 | 293.89 |
| Harbor porpoise ^d | 95,543 | 2.38 | 10.004 | 16.60 | 70.97 |
| Gray seal | 27,300 | 0.08 | 6.98 | 0.32 | 38.59 |
| Harbor seal | 61,336 | 0.37 | 19.76 | 0.43 | 99.14 |

a - Listed as Endangered under the Endangered Species Act (ESA)

b - The minimum blue whale population is estimated at 412, although the exact value is not known. NMFS is utilizing this value for our preliminary small numbers determination, as shown in parenthesis.

c - Level A harassment exposures were initially estimated for this species, but due to the mitigation measures that Ocean Wind would be required to abide by, no Level A harassment take would be requested or expected. Instead, the requested Level A harassment take from these exposure estimates was added to the requested Level B harassment take.

d - The calculated Level A harassment exposures are likely an overestimate as the modeled 10 dB sound reduction from the noise mitigation systems does not take into account that the reduction is greater at higher frequencies, which are best heard by harbor porpoises.

e - Exposure modeling for blue whales and Atlantic spotted dolphins was not conducted because the impacts on the species approached zero due to the low density estimates. Because of this, values for these species have been excluded from the quantitative analyses and subsequent tables.

Based on the exposure estimates for impact pile driving activities related to WTGs and OSS installation (monopile foundations and/or jacket foundations with pin piles), the take estimates, as

proposed by NMFS, are found below in Tables 20 and 21. In the majority of cases, to determine the proposed take numbers, the calculated exposures were rounded to the next whole number,

except where explanations have been provided to predict zero takes or to round up to average group size (see footnotes).

Table 20 -- Proposed Level A and Level B Harassment Take Resulting from Impact Pile Driving Associated with the WTG 8/11-m Using Monopile Foundations (Assuming 98 total) Over 5 Years

| Marine Mammal Species | Population Estimate | Requested Level A Harassment | Requested Level B Harassment |
|---|---------------------|------------------------------|------------------------------|
| North Atlantic right whale ^a | 368 | 0 ^b | 4 |
| Blue whale ^a | unknown | 0 | 4 ^c |
| Fin whale ^a | 6,802 | 4 | 8 |
| Sei whale ^a | 6,292 | 1 | 2 ^d |
| Minke whale | 21,968 | 19 | 53 |
| Humpback whale | 1,396 | 5 | 14 |
| Sperm whale ^a | 4,349 | 0 | 3 ^d |
| Atlantic white-sided dolphin | 93,233 | 0 | 72 |
| Atlantic spotted dolphin | 39,921 | 0 | 45 ^d |
| Bottlenose dolphin (offshore stock) | 62,851 | 0 | 936 |
| Bottlenose dolphin (coastal stock) | 6,639 | 0 | 0 |
| Short-finned pilot whale | 28,924 | 0 | 10 ^d |
| Long-finned pilot whale | 39,215 | 0 | 10 ^d |
| Risso's dolphin | 35,215 | 0 | 30 ^d |
| Common dolphin | 172,974 | 0 | 1,230 |
| Harbor porpoise | 95,543 | 52 | 234 |
| Gray seal | 27,300 | 4 | 198 |
| Harbor seal | 61,336 | 13 | 555 |

a – Listed as Endangered under the Endangered Species Act (ESA).

b – JASCO's modeling estimated 0.90 Level A harassment exposures for North Atlantic right whales, but due to mitigation measures (see the **Proposed Mitigation** section), no Level A harassment takes are expected or requested.

c – No Level B harassment exposures were estimated for blue whales, but up to 4 Level B harassment takes, which were not calculated through density estimates, are proposed in the event that four individuals approach the monopile installations.

d – The requested take for sei whales (Kenney and Vigness-Raposa, 2010), sperm whales (Barkaszi and Kelly, 2019), Atlantic spotted dolphins (Kenney and Vigness-Raposa, 2010), both species of pilot whales (Kenney and Vigness-Raposa, 2010), and Risso's dolphins (Barkaszi and Kelly, 2019) was adjusted based on mean group size.

Table 21 -- Proposed Level A and Level B Harassment Take Resulting from Impact Pile Driving Associated with OSS Using 8/11-m Monopile Foundations (Assuming 3 total) Or 2.44-m Jacket Foundation Using Pin Piles (48 Total Pin Piles) Over 5 Years

| Marine Mammal Species | Population Estimate | Three 8/11-m Monopile Foundation Scenario | | 48 2.44-m Pin Pile (Jacket Foundation) Scenario | |
|---|---------------------|---|------------------------------|---|------------------------------|
| | | Requested Level A Harassment | Requested Level B Harassment | Requested Level A Harassment | Requested Level B Harassment |
| North Atlantic right whale ^a | 368 | 0 | 0 | 0 | 1 |
| Blue whale ^a | unknown | 0 | 0 | 0 | 0 |
| Fin whale ^a | 6,802 | 0 | 0 | 0 | 2 |
| Sei whale ^a | 6,292 | 0 | 0 | 0 | 0 |
| Minke whale | 21,968 | 1 | 3 | 3 | 16 |
| Humpback whale | 1,396 | 0 | 1 | 1 | 4 |
| Sperm whale ^a | 4,349 | 0 | 0 | 0 | 3 b |
| Atlantic white-sided dolphin | 93,233 | 0 | 3 | 0 | 17 |
| Atlantic spotted dolphin | 39,921 | 0 | 0 | 0 | 45 ^b |
| Bottlenose dolphin (offshore stock) | 62,851 | 0 | 31 | 0 | 169 |
| Bottlenose dolphin (coastal stock) | 6,639 | 0 | 0 | 0 | 0 |
| Short-finned pilot whale | 28,924 | 0 | 0 | 0 | 10 ^b |

| | | | | | |
|-------------------------|---------|---|----|----|-----------------|
| Long-finned pilot whale | 39,215 | 0 | 0 | 0 | 10 ^b |
| Risso's dolphin | 35,215 | 0 | 0 | 0 | 30 ^b |
| Common dolphin | 172,974 | 0 | 41 | 0 | 294 |
| Harbor porpoise | 95,543 | 3 | 11 | 17 | 71 |
| Gray seal | 27,300 | 0 | 7 | 0 | 39 |
| Harbor seal | 61,336 | 0 | 20 | 0 | 100 |

a – Listed as Endangered under the Endangered Species Act (ESA).

b – The requested take for sei whales (Kenney and Vigness-Raposa, 2010), sperm whales (Barkaszi and Kelly, 2019), Atlantic spotted dolphins (Kenney and Vigness-Raposa, 2010), both species of pilot whales (Kenney and Vigness-Raposa, 2010), and Risso's dolphins (Barkaszi and Kelly, 2019) was adjusted based on mean group size.

Temporary Cofferdam Installation and Removal (Vibratory Pile Driving) Take Estimates

Similar to the impact pile driving source level modeling, vibratory driving sound source characteristics were generated using the GRLWEAP 2010 wave equation model (Pile Dynamics, Inc., 2010). Installation and removal of the cofferdams were modeled from a single location that was deemed representative of the two potential cable routes. The radiated sound waves were modeled as discrete point sources over the full length of the pile in the water. Ocean Wind is not proposing to employ noise mitigation during vibratory piling; therefore, no abatement is applied.

To estimate the sound field to harassment isopleths generated during

installation and removal during pile driving, a practical spreading loss model and a source level of 165.0 dB *re* 1 μ Pa was used (JASCO, 2021). Ocean Wind did not separately analyze the removal of the cofferdams using a vibratory extractor but has assumed that the removal would be acoustically comparable to the installation. Based on available pile driving data (Caltrans, 2020), this is a conservative assumption.

Given the short duration of the activity and shallow, near coast location, animal exposure modeling was not conducted for cofferdam installation and removal to determine potential exposures from vibratory pile driving. Rather, the modeled acoustic range distances to isopleths corresponding to the relatively small Level A harassment

and Level B harassment threshold values were used to calculate the area around the cofferdam predicted to be ensonified daily to levels that exceed the thresholds, or the Ensonified Area. The Ensonified Area is calculated as the following:

$$\text{Ensonified Area} = \pi r^2,$$

where r is the linear acoustic range distance from the source to the isopleth to Level A harassment or Level B harassment thresholds.

The Level A and Level B harassment threshold distances were mapped in GIS to remove any areas that overlapped land masses or areas where water was blocked by land as these areas would not be ensonified during the cofferdam installation and removal. These results are shown in Table 22.

Table 22 -- Areas Calculated for the Maximum Level A and Level B Harassment Threshold Distances for Vibratory Installation of Sheet Piles

| Cofferdam Location | Area of Level A Harassment Zone (km ²) | | | | Area of Level B Harassment Zone (km ²) |
|-----------------------|--|-------------------------|--------------------------|-----------------------------|--|
| | Low-frequency cetaceans | Mid-frequency cetaceans | High-frequency cetaceans | Phocid pinnipeds (in water) | |
| Ocean City HDD | 0.024 | less than 0.000 | 0.052 | 0.009 | 163.75 |
| BL England HDD | | | | | 158.59 |
| Farm Property HDD | | | | | 77.01 |
| ISBP Barnegat Bay HDD | | | | | 76.70 |

Animal movement and exposure modeling was not performed by JASCO to determine potential exposures from vibratory pile driving. Rather, the average monthly density value from October through May for each marine mammal species (refer back to Table 9) were then multiplied by the estimated Level A harassment and Level B harassment areas and the expected durations for each component of the cofferdams (*i.e.*, installation and removal). Finally, the resulting value

was multiplied by the number of proposed activity days which is, for cofferdam installation and removal, conservatively estimated as 4 days (2 days for installation, 2 days for removal). For Level A harassment, monthly exposures were less than 0.01 for all species except harbor porpoise and harbor seals, which had a few monthly totals that were greater than 0.01, but were always less than 0.04 (see Table 6–9 in the Revised Density and Take Estimate Memo). For Level B

harassment, this yielded the exposure estimates found in Table 23.

As previously stated, Ocean Wind anticipates that cofferdam installation and removal would occur only during Year 1 of the construction activities, specifically from October through March, although a small number of cofferdam removals could occur in Year 2 during April or May, but it is not expected.

| | | | | | | | | | | |
|-------------------------------------|---------|--------|--------|--------|--------|----------|----------|----------|----------|----------|
| Bottlenose dolphin (offshore stock) | 62,851 | 120.06 | 38.12 | 60.99 | 260.70 | 653.27 | 1,019.85 | 951.596 | 670.22 | 471.85 |
| Bottlenose dolphin (coastal stock) | 6,639 | 161.51 | 61.44 | 137.20 | 696.39 | 1,745.23 | 2,378.69 | 1,988.58 | 1,076.10 | 1,030.64 |
| Short-finned pilot whale | 28,924 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Long-finned pilot whale | 39,215 | 0.1 | 0.01 | 0.1 | 0.1 | 0.1 | 0.1 | 0.1 | 0.1 | 0.1 |
| Risso's dolphin | 35,215 | 0.01 | 0.00 | 0.00 | 0.03 | 0.02 | 0.02 | 0.11 | 0.21 | 0.05 |
| Common dolphin | 172,974 | 7.05 | 3.05 | 5.43 | 13.05 | 8.91 | 6.24 | 36.20 | 24.03 | 12.99 |
| Harbor porpoise | 95,543 | 39.03 | 34.32 | 39.17 | 51.95 | 10.28 | 0.18 | 0.69 | 41.18 | 27.10 |
| Gray seal | 27,300 | 102.96 | 73.31 | 81.20 | 131.83 | 84.76 | 126.98 | 182.25 | 131.44 | 114.34 |
| Harbor seal | 61,336 | 287.77 | 294.92 | 226.96 | 368.48 | 236.92 | 354.92 | 509.40 | 367.39 | 319.59 |

a - Listed as Endangered under the Endangered Species Act (ESA).

b - The minimum blue whale population is estimated at 412, although the exact value is not known. NMFS is utilizing this value for our preliminary small numbers determination, as shown in parenthesis.

c - The average exposure values were calculated using the October through May columns.

Modeling of the Level A harassment exposures resulting from two 18-hrs periods of vibratory pile driving and removal resulted in less than one exposure for all species for each month between October 1 and May 31. Because of this, Ocean Wind anticipates and has only requested Level B harassment from vibratory installation and removal of

cofferdams; no Level A harassment is expected. However, due to the coastal location of the cofferdams, some Level A harassment takes of the coastal stock of bottlenose dolphins and both species of phocids have been requested to be conservative.

From the exposures calculated shown in Table 23, Ocean Wind utilized the

average monthly value from October through May in their proposed take request, which are shown in Table 24. For some species, calculated Level B harassment exposures were zero or very low, but Ocean Wind requested take of an average group size and NMFS concurred this was appropriate given

the species potential occurrence in the area.

Table 24 -- Proposed Level A and Level B Harassment Take Resulting From Vibratory Pile Driving Associated With The Installation and Removal of Temporary Cofferdams Over 5 Years

| Marine Mammal Species | Population Estimate | Requested Level A Harassment | Requested Level B Harassment |
|---|---------------------|------------------------------|------------------------------|
| North Atlantic right whale ^a | 368 | 0 | 1 |
| Blue whale ^a | unknown | 0 | 0 |
| Fin whale ^a | 6,802 | 0 | 2 |
| Sei whale ^a | 6,292 | 0 | 1 |
| Minke whale | 21,968 | 0 | 3 |
| Humpback whale | 1,396 | 0 | 3 |
| Sperm whale ^a | 4,349 | 0 | 0 |
| Atlantic white-sided dolphin | 93,233 | 0 | 5 |
| Atlantic spotted dolphin | 39,921 | 0 | 45 ^b |
| Bottlenose dolphin (offshore stock) | 62,851 | 0 | 472 |
| Bottlenose dolphin (coastal stock) ^f | 6,639 | 11 ^c | 1,031 |
| Short-finned pilot whale | 28,924 | 0 | 10 ^d |
| Long-finned pilot whale | 39,215 | 0 | 10 ^d |
| Risso's dolphin | 35,215 | 0 | 30 ^d |

| | | | |
|-----------------|---------|-----------------|-----|
| Common dolphin | 172,974 | 0 | 13 |
| Harbor porpoise | 95,543 | 0 | 28 |
| Gray seal | 27,300 | 28 ^e | 115 |
| Harbor seal | 61,336 | 28 ^e | 320 |

a – Listed as Endangered under the Endangered Species Act (ESA).

b – No Level B harassment exposures were estimated for Atlantic spotted dolphins, but Ocean Wind has requested a group size estimate of up to 45 Level B harassment takes.

c – No Level A harassment exposures were estimated for bottlenose dolphins of the coastal stock but a group size estimate of 11 Level A harassment takes have been requested by Ocean Wind.

d – Level B harassment takes for pilot whales (short-finned and long-finned; Kenney and Vigness-Raposa, 2010) and Risso's dolphins (Barkaszi and Kelly, 2019) were adjusted to account for an average pod size.

e – No Level A harassment exposures were estimated for gray seals and harbor seals, but 28 Level A harassment takes have been requested in the event up to 2 animals are taken during either removal or installation of cofferdams due to the nearshore location of the cofferdams and seal haulouts.

f – The estimate for coastal bottlenose dolphins (bayside versus Atlantic Ocean-facing) is likely an overestimate as this stock has demonstrated a preference for coastal environments as opposed to estuarine (Toth et al., 2011).

UXO/MEC Detonation

To assess the impacts from UXO/MEC detonations, JASCO conducted acoustic modeling based on previous underwater acoustic assessment work that was performed jointly between NMFS and the United States Navy. JASCO evaluated the effects thresholds (for TTS, PTS, non-auditory injury, and mortality) based on the appropriate metrics to use as indicators of disturbance and injury: (1) peak pressure level; (2) sound exposure level (SEL); and (3) acoustic impulse. Charge weights of 2.3 kgs, 9.1 kgs, 45.5 kgs, 227 kgs, and 454 kgs, which is the largest charge the Navy considers for the purposes of its analyses (see the Description of the Specified Activities section), were modeled to determine the ranges to mortality, gastrointestinal injury, lung injury, PTS, and TTS thresholds. These charge weights were modeled at four different locations off Massachusetts, consisting of different depths (12 m (Site S1), 20 m (Site S2), 30 m (Site S3), and 45 m (Site S4)). The sites were deemed to be representative of both the export cable route and the lease area. Here, we present distances to PTS and TTS thresholds for only the 454 kg UXO/MEC as this has the greatest potential for these impacts. Ocean Wind would be committed to mitigating these distances. Due to the implementation of mitigation and monitoring measures, the potential for mortality and non-auditory injury is low

and Ocean Wind did not request, and we are not proposing to authorize take by mortality or non-auditory injury. For this reason we are not presenting all modeling results here; however, they can be found in Appendix C of the application.

- Shallow water ECR: Site S1; In the channel within Narragansett Bay (12 m depth);
- Shallow water ECR: Site S2; Intermediate waters outside of Narragansett Bay (20 m depth);
- Shallow water lease area: Site S3; Shallower waters in the southern portion of the Hazard Zone 2 area (30 m depth);
- Deeper water lease area: Site S4; Deeper waters in northern portion of the Hazard Zone 2 area (45 m depth).

In their UXO/MEC modeling report (Appendix C of Ocean Wind's ITA application), JASCO notes that although the sample sites were located offshore of Massachusetts, the chosen sites share similar depths, sea surface, and seabed conditions as the project area where Ocean Wind 1 is proposed to be developed and making it an ideal as a proxy.

Based on the depths within the Ocean Wind 1 location, Site S1 (12 m) was chosen as the most representative depth to assess UXO/MEC detonations within the export cable route corridor. Sites S2, S3, and S4 (20 m, 30 m, and 45 m) are applicable to the wind farm area (*i.e.*, location of the WTGs and OSSs). The SEL-based ($R_{95\%}$) isopleths for Level A

harassment (PTS) and Level B harassment (TTS) were calculated from the horizontal distances shown in Tables 25 and 26. For all species, the distance to the SEL thresholds exceeded that for the peak thresholds. Model results for all sites and all charge weights can be found in Appendix C of Ocean Wind's application. Further, JASCO presented the results for both mitigated and unmitigated scenarios in the ITA application. Since that time, Ocean Wind has committed to the use of a noise mitigation system during all detonations, and plans to achieve a 10 dB noise reduction as minimum. As a result, the August 2022 Revised Density and Take Estimate Memo carried forward only the mitigated UXO/MEC scenario. Therefore, only the attenuated results are presented in Tables 25 and 26 and were carried forward into the exposure and take estimation. Additional information can be found in JASCO's UXO/MEC report and the Revised Density and Take Estimate Memo on NMFS' website (<https://www.fisheries.noaa.gov/action/incidental-take-authorization-ocean-wind-lcc-construction-ocean-wind-1-wind-energy-facility>).

NMFS notes that the more detailed results for the mortality and non-auditory injury analysis to marine mammals for onset gastrointestinal injury, onset lung injury, and onset of mortality can be found in Appendix C of the ITA application, which can be found on NMFS' website. NMFS

preliminarily concurs with Ocean Wind's analysis and does not expect or propose to authorize any non-auditory injury, serious injury, or mortality of marine mammals from UXO/MEC detonation. The modeled distances to the mortality threshold for all UXO/MECs sizes for all animal masses are small (*i.e.*, 5–553 m; see Table 38 in Appendix C of Ocean Wind's

application), as compared to the distance/area that can be effectively monitored. The modeled distances to non-auditory injury thresholds range from 5–658 m (see Tables 30 and 34 in Appendix C of the application). Ocean Wind would be required to conduct extensive monitoring using both PSOs and PAM operators and clear an area of marine mammals prior to detonating

any UXO. Given that Ocean Wind would be employing multiple platforms to visually monitor marine mammals as well as passive acoustic monitoring, it is reasonable to assume that marine mammals would be reliably detected within approximately 660 m of the UXO/MEC being detonated, the potential for mortality or non-auditory injury is *de minimis*.

Table 25 -- Greatest SEL-based R_{95%} PTS-Onset Ranges (In Meters) From All Sites Modeled During UXO/MEC Detonation, Assuming 10 dB Sound Reduction

| Marine Mammal Hearing Group | Distance (m) to PTS Threshold During E12 (454 kg) detonation | |
|-----------------------------|--|------------------|
| | R _{max} | R _{95%} |
| Low-frequency cetaceans | 4,270 | 3,780 |
| Mid-frequency cetaceans | 535 | 461 |
| High-frequency cetaceans | 6,750 | 6,200 |
| Phocid pinnipeds (in water) | 1,830 | 1,600 |

Table 26 -- Greatest SEL-based R_{95%} TTS-onset Ranges (In Meters) From All Sites Modeled During UXO/MEC Detonation, Assuming 10 dB Sound Reduction

| Marine Mammal Hearing Group | Distance (m) to PTS Threshold During E12 (454 kg) detonation | |
|-----------------------------|--|------------------|
| | R _{max} | R _{95%} |
| Low-frequency cetaceans | 13,200 | 11,900 |
| Mid-frequency cetaceans | 2,930 | 2,550 |
| High-frequency cetaceans | 15,600 | 14,100 |
| Phocid pinnipeds (in water) | 7,610 | 7,020 |

JASCO's take estimate analysis assumed that all 10 of the potential UXOs/MECs would be 454 kg in weight. Although Ocean Wind does not expect that all UXOs/MECs would consist of this charge weight, they assumed as much to be conservative in estimating take. The take estimate calculations assume that the ten 454 kg charges would be split between the different

depths (20 m–45 m), as these were considered representative for the project area.

To calculate the potential marine mammal exposures from any UXO/MEC detonations, the horizontal distances from Tables 25 and 26 were multiplied by the highest monthly species density in the Wind Farm Area (based on the Revised Density and Take Estimate

Memo) for each of the 20 m to 45 m representative depths and by the highest monthly species density in the export cable route for the 12 m depth (see Table 11 for the densities used and Table 6–Y NEW from the Revised Density and Take Estimate Memo for all of the available densities from May through October). The resulting value from the areas multiplied by the

respective species densities were then multiplied by the number of UXOs/MECs estimated at each of the depths (two UXOs/MECs at 12 m, three UXOs/MECs at 20 m, three UXOs/MECs at 30 m, and two UXOs/MECs at 40 m), for a total of 10 predicted UXOs. However, Ocean Wind has committed not to conduct more than one UXO/MEC detonation on any given day.

Level A harassment exposures resulting from UXO/MEC detonations are considered unlikely, but possible.

To reduce impacts, a noise abatement system (likely a bubble curtain or similar device) capable of achieving 10 dB of sound attenuation would be implemented. This level of sound reduction is considered achievable and reasonable given work being done in European waters (Bellmann *et al.*, 2020; Bellmann and Betke, 2021).

The estimated maximum PTS and TTS exposures assuming 10 dB of sound attenuation are presented in Table 27. These results are found in Appendix C,

Tables 15 and 16 of Ocean Wind's ITA application (Ocean Wind, 2022b). As indicated previously, where there is no more than one detonation per day, the TTS threshold is expected to also appropriately represent the level above which any behavioral disturbance might occur; so the Level B harassment exposures noted below could include TTS or behavioral disturbance.

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Table 27 -- Estimated Potential Maximum PTS and TTS Exposures Of Marine Mammals Resulting From The Possible Detonations Of Up To 10 UXOs/MECs Assuming 10 dB Of Sound Attenuation

| Marine Mammal Species | Population Estimate | Assuming 10 dB of Sound Attenuation | |
|--|----------------------|-------------------------------------|------------------------------|
| | | Level A Harassment (PTS SEL) | Level B Harassment (TTS SEL) |
| North Atlantic right whale ^{a, c} | 368 | 0.03 | 0.35 |
| Blue whale ^a | Unknown ^b | less than 0.01 | 0.04 |
| Fin whale ^a | 6,802 | 0.28 | 2.87 |
| Sei whale ^a | 6,292 | 0.08 | 0.87 |
| Minke whale | 21,968 | 2.53 | 26.42 |
| Humpback whale | 1,396 | 0.33 | 3.41 |
| Sperm whale ^a | 4,349 | less than 0.01 | 0.01 |
| Atlantic white-sided dolphin | 93,233 | 0.03 | 1.05 |
| Atlantic spotted dolphin | 39,921 | n/a | n/a |
| Bottlenose dolphin (offshore stock) | 62,851 | 0.68 | 24.36 |
| Bottlenose dolphin (coastal stock) | 6,639 | 3.84 | 137.31 |
| Short-finned pilot whale | 39,215 | less than 0.01 | 0.02 |
| Long-finned pilot whale | 28,924 | less than 0.01 | 0.02 |
| Risso's dolphin | 35,215 | less than 0.01 | 0.04 |
| Common dolphin | 172,974 | 0.13 | 4.65 |
| Harbor porpoise | 95,543 | 9.49 | 46.50 |
| Gray seal | 27,300 | 2.28 | 50.98 |
| Harbor seal | 61,336 | 6.39 | 142.49 |

a – Listed as Endangered under the Endangered Species Act (ESA).

b - The minimum blue whale population is estimated at 412, although the exact value is not known. NMFS is utilizing this value for our preliminary small numbers determination, as shown in parenthesis.

c - Level A harassment exposures were estimated for this species, but due to mitigation measures outlined in Section 11, no Level A harassment takes are expected or requested. See Section 6.2.3 of the ITA application for more information.

Table 27 presents the attenuated (10 dB) PTS and TTS take estimates. Although the original ITA application described and analyzed the unattenuated estimates given

uncertainty with exact mitigation during UXO/MEC detonations, given the commitment by Ocean Wind to mitigate the proposed UXO/MEC detonations, NMFS concurs that it is appropriate to

carry forward the take estimates from the mitigated (10 dB sound attenuation) scenario that are found in the Revised Density and Take Estimate Memo received in August 2022 (Table 28).

Table 28 -- Proposed Level A Harassment and Level B Harassment Takes Resulting From The Detonation Of Up To 10 UXOs, Assuming 10 dB of Sound Attenuation, Over 5 Years

| Marine Mammal Species | Population Estimate | Requested Level A Harassment | Requested Level B Harassment |
|---|----------------------|------------------------------|------------------------------|
| North Atlantic right whale ^a | 368 | 0 | 1 |
| Blue whale ^a | unknown ^d | 0 | 0 |
| Fin whale ^a | 6,802 | 0 | 3 |
| Sei whale ^a | 6,292 | 0 | 1 |
| Minke whale | 21,968 | 0 ^b | 27 |
| Humpback whale | 1,396 | 0 | 4 |
| Sperm whale ^a | 4,349 | 0 | 3 ^c |
| Atlantic white-sided dolphin | 93,233 | 0 | 2 |
| Atlantic spotted dolphin | 39,921 | 0 | 45 ^c |
| Bottlenose dolphin (offshore stock) | 62,851 | 0 ^b | 25 |
| Bottlenose dolphin (coastal stock) | 6,639 | 0 ^b | 138 |
| Short-finned pilot whale | 28,924 | 0 | 10 ^c |
| Long-finned pilot whale | 39,215 | 0 | 10 ^c |
| Risso's dolphin | 35,215 | 0 | 30 ^c |
| Common dolphin | 172,974 | 0 | 5 |
| Harbor porpoise | 95,543 | 10 | 47 |
| Gray seal | 27,300 | 3 | 51 |
| Harbor seal | 61,336 | 7 | 143 |

a – Listed as Endangered under the Endangered Species Act (ESA).

b – A small amount of Level A harassment exposures were estimated based on the density calculations, but no Level A harassment take is being requested due to the mitigation measures Ocean Wind would be required to implement.

c – The requested take for the sperm whale (Barkaszi and Kelly, 2019), the Atlantic spotted dolphin (Kenny and Vigness-Raposa, 2010), both pilot whale species (Kenny and Vigness-Raposa, 2010), and the Risso's dolphins (Barkaszi and Kelly, 2019) were adjusted based on mean group size.

d - The minimum blue whale population is estimated at 412, although the exact value is not known. NMFS is utilizing this value for our preliminary small numbers determination, as shown in parenthesis.

Due to mitigation measures that would be implemented during any UXO/MEC detonations, the likelihood of Level A harassment take and some Level B harassment take for some species was reduced. However, there is still potential for Level A harassment take for some species, such as for harbor porpoises and both harbor and gray seals.

HRG Surveys

NMFS considers the data provided by Crocker and Fratantonio (2016) to represent the best available information on source levels associated with HRG equipment and, therefore, recommends that source levels provided by Crocker and Fratantonio (2016) be incorporated in the method described above to estimate ranges to the Level A harassment and Level B harassment isopleths. In cases when the source level for a specific type of HRG equipment is not provided in Crocker and Fratantonio (2016), NMFS recommends that either the source levels provided by the manufacturer be used, or, in instances where source levels provided by the manufacturer are unavailable or unreliable, a proxy from Crocker and Fratantonio (2016) be used instead.

Ocean Wind utilized the following criteria for selecting the appropriate inputs into the NMFS User Spreadsheet Tool (NMFS, 2018):

(1) For equipment that was measured in Crocker and Fratantonio (2016), the reported SL for the most likely operational parameters was selected.

(2) For equipment not measured in Crocker and Fratantonio (2016), the best available manufacturer specifications were selected. Use of manufacturer specifications represent the absolute maximum output of any source and do not adequately represent the operational source. Therefore, they should be considered an overestimate of the sound propagation range for that equipment.

(3) For equipment that was not measured in Crocker and Fratantonio (2016) and did not have sufficient manufacturer information, the closest proxy source measured in Crocker and Fratantonio (2016) was used.

The Dura-spark measurements and specifications provided in Crocker and Fratantonio (2016) were used for all sparker systems proposed for the HRG surveys. These included variants of the Dura-spark sparker system and various configurations of the GeoMarine Geo-Source sparker system. The data

provided in Crocker and Fratantonio (2016) represent the most applicable data for similar sparker systems with comparable operating methods and settings when manufacturer or other reliable measurements are not available. Crocker and Fratantonio (2016) provide S-Boom measurements using two different power sources (CSP-D700 and CSP-N). The CSP-D700 power source was used in the 700 joules (J) measurements but not in the 1,000 J measurements. The CSP-N source was measured for both 700 J and 1,000 J operations but resulted in a lower source level; therefore, the single maximum source level value was used for both operational levels of the S-Boom.

Table 29 identifies all the representative survey equipment that operates below 180 kHz (*i.e.*, at frequencies that are audible and have the potential to disturb marine mammals) that may be used in support of planned survey activities, and are likely to be detected by marine mammals given the source level, frequency, and beamwidth of the equipment. The lowest frequency of the source was used when calculating the absorption coefficient.

Table 29 -- Summary of Representative HRG Equipment Ocean Wind May Use During the Project

| Equipment Type | Representative HRG Equipment | Operating Frequency | SL _{rms} (dB re 1 μ Pa m) | SL _{0-pk} (dB re 1 μ Pa m) | Pulse Duration (width) (millisecond) | Repetition Rate (Hz) | Beamwidth (degrees) | CF = Crocker and Fratantonio (2016) MAN = manufacturer |
|---|---|---------------------|--|---|--------------------------------------|----------------------|---------------------|--|
| Non-parametric shallow penetration SPBs (non-impulsive) | | | | | | | | |
| Sub-bottom Profiler | ET 216 (2000DS or 3200 top unit) | 2-16 | 195 | - | 20 | 6 | 24 | MAN |
| | | 2-8 | | | | | | |
| | ET 424 | 4-24 | 176 | - | 3.4 | 2 | 71 | CF |
| | ET 512 | 0.7-12 | 179 | - | 9 | 8 | 80 | CF |
| | GeoPulse 5430A | 2-17 | 196 | - | 50 | 10 | 55 | MAN |
| Teledyne Benthos Chirp III - TTV 170 | 7-2 | 197 | - | 60 | 15 | 100 | MAN | |
| Medium penetration SBPs (impulsive) | | | | | | | | |
| Sparker | AA, Dura-spark (400 tips, 500J) ^a | 0.3-1.2 | 203 | 211 | 1.1 | 4 | Omni | CF |
| | AA, triple plate S-Boom (700-1,000J) ^b | 0.1-5 | 205 | 211 | 0.6 | 4 | 80 | CF |

- = not applicable; ET = EdgeTech; J = joule; kHz = kilohertz; dB = decibels; SL = source level; UHD = ultra-high definition; AA = Applied Acoustics; rms = root-mean square; μ Pa = microPascals; re = referenced to; SPL = sound pressure level; PK = zero-to-peak pressure level; Omni = omnidirectional source.

Notes: All source information that was used to calculate threshold isopleths are provided in Table 1.

a - The Dura-spark measurements and specifications provided in Crocker and Fratantonio (2016) were used for all sparker systems proposed for the survey. These include variants of the Dura-spark sparker system and various configurations of the GeoMarine Geo-Source sparker system. The data provided in Crocker and Fratantonio (2016) represent the most applicable data for similar sparker systems with comparable operating methods and settings when manufacturer or other reliable measurements are not available.

b - Crocker and Fratantonio (2016) provide S-Boom measurements using two different power sources (CSP-D700 and CSP-N). The CSP-D700 power source was used in the 700 J measurements but not in the 1,000 J measurements. The CSP-N source was measured for both 700 J and 1,000 J operations but resulted in a lower SL; therefore, the single maximum SL value was used for both operational levels of the S-Boom.

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimation of Level A harassment. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling

methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For mobile sources (such as the active acoustic sources proposed for use during Ocean Wind's HRG surveys), the User Spreadsheet predicts the closest distance at which a stationary animal would not incur PTS if the sound source traveled by the animal in a straight line at a constant speed. JASCO modeled distances to Level A harassment isopleths for all types of HRG equipment and all marine mammal functional hearing groups using the NMFS User Spreadsheet and NMFS Technical Guidance (2018).

For HRG surveys, in order to better consider the narrower and directional beams of the sources, NMFS has

developed an additional tool for determining the sound pressure level (SPL_{rms}) at the 160-dB isopleth for the purposes of estimating the extent of Level B harassment isopleths associated with HRG survey equipment (NMFS, 2020). This methodology incorporates frequency-dependent absorption and some directionality to refine estimated ensonified zones. Ocean Wind used NMFS' methodology with additional modifications to incorporate a seawater absorption formula and account for energy emitted outside of the primary beam of the source. For sources that operate with different beam widths, the maximum beam width was used (see Table 30). The lowest frequency of the source was used when calculating the absorption coefficient.

Table 30 -- Distance To Weighted Level A Harassment and Level B Harassment Thresholds For Each HRG Sound Source or Comparable Sound Source Category For Each Marine Mammal Hearing Group

| Equipment Type | HRG Sources | Distance to Level A harassment threshold (m) | | | | | Distance to Level B harassment threshold (m) |
|---|---|---|---|--|---|--|--|
| | | Low-frequency cetaceans (SEL _{CUM}) | Mid-frequency cetaceans (SEL _{CUM}) | High-frequency cetaceans (SEL _{CUM}) | High-frequency cetaceans (SPL _{0-PK}) | Phocid pinnipeds (in water; SEL _{CUM}) | All (SPL _{rms}) |
| Non-impulsive, non-parametric, shallow SBP (CHIRPs) | | | | | | | |
| Sub-bottom Profilers (CHIRPs) | EdgeTech 216 | less than 1 | less than 1 | 2.9 | n/a | 0 | 9 |
| | EdgeTech 424 | 0 | 0 | 0 | n/a | 0 | 4 |
| | EdgeTech 512i | 0 | 0 | less than 1 | n/a | 0 | 6 |
| | GeoPulse 5430 | less than 1 | less than 1 | 36.5 | n/a | less than 1 | 21 |
| | Teledyn Benthos Chirp III - TTV 170 | 1.5 | less than 1 | 16.9 | n/a | less than 1 | 48 |
| Impulsive, medium SBP (Boomers and Sparkers) | | | | | | | |
| Boomer | AA Triple plate S-Boom (700/1,000 J) | less than 1 | 0 | 0 | 4.7 | less than 1 | 34 |
| Sparker | AA Dura-spark UHD (500 J/400 tip) | less than 1 | 0 | 0 | 2.8 | less than 1 | 141 |
| | AA Dura-spark UHD 400+400 | less than 1 | 0 | 0 | 2.8 | less than 1 | 141 |
| | GeoMarine Geo-Source dual 400 tip sparker | less than 1 | 0 | 0 | 2.8 | less than 1 | 141 |

Potential exposures of marine mammals to acoustic impacts from HRG survey activities were estimated by assuming an active survey distance of 70 km per 24-hour period. This assumes the vessel would be traveling at a speed

of 4 knots and only during periods where active acoustics were being used with frequency ranges less than 180 kHz. A vessel that would only operate during daylight hours is assumed to have an active survey distance of 35 km.

To maintain a potential for 24-hour HRG surveys, the corresponding Level A and Level B harassment areas were calculated for each source based on the threshold distances, assuming a 70 km operational period (Table 31).

Table 31 -- Calculated Areas (With Distances (m) In Parenthesis) Encompassing the Level A and Level B Harassment Thresholds^a for Representative Acoustic Source

| Acoustic Source | Level A Harassment Isopleth Area (in km ²) and Distance (m) ^b | | | | Level B Harassment Isopleth Area (in km ²) and Distance (m) ^c |
|---|--|-------------------------|--------------------------|---|--|
| | Marine Mammal Hearing Group | | | | |
| | Low-frequency cetaceans | Mid-frequency cetaceans | High-frequency cetaceans | Phocid pinnipeds (in water) | All Marine Mammal Hearing Groups |
| Non-impulsive, non-parametric, shallow SBP (CHIRPs) | | | | | |
| ET 216 CHIRP | 0 (less than 1) | 0 (less than 1) | 0.4 (2.9) | 0 (0) | 1.3 (9) |
| ET 424 CHIRP | 0 (0) | 0 (0) | 0 (0) | 0 (0) | 0.6 (4) |
| ET 512i CHIRP | 0 (0) | 0 (0) | 0 (less than 1) | 0 (less than 1) | 0.8 (21) |
| GeoPulse 5430 | 0 (less than 1) | 0.1 (less than 1) | 5.1 (36.5) | 0 (less than 1) | 2.9 (21) |
| TB CHIRP III | 0.2 (1.5) | 0 (less than 1) | 2.4 (16.9) | 0.1 (less than 1) | 6.7 (48) |
| Impulsive, medium SBP (Boomers and Sparkers) | | | | | |
| AA Triple plate S-Boom (700-1,000 J) | 0.1 (less than 1) | 0 (0) | 0.7 (0) | 0 (SEL _{CUM} : 0; SPL _{0-PK} : 4.7) | 4.8 (34) |
| AA, Dura-spark UHD | 0.1 (less than 1) | 0 (0) | 0.4 (0) | 0 (SEL _{CUM} : 0; SPL _{0-PK} : 2.8) | 19.8 (141) |

a – The Level A and B harassment isopleths were calculated to comprehensively assess the potential impacts of the predicted source operations as required for the ITA application (Ocean Wind, 2022b). As described in the ITA application, minimal Level A harassment takes are expected and were included.

b – Based on maximum distances in Table 1-30 of the ITA application (Ocean Wind, 2022b). For consistency, the metric producing the largest distance to the Level A harassment thresholds (either cumulative sound exposure level or zero to peak sound pressure level) was used to calculate the areas for each hearing group.

c – Based on maximum distances in Table 1-30 of the ITA application calculated for Level B harassment root-mean-square sound pressure level thresholds (Ocean Wind, 2022b).

Results of modeling using the methodology described above indicated that, of the HRG survey equipment planned for use by Ocean Wind that has the potential to result in Level B harassment of marine mammals, sound produced by the Applied Acoustics Dura-Spark UHD sparkers and GeoMarine Geo-Source sparker would propagate furthest to the Level B harassment threshold (141 m; Table 31). For the purposes of the exposure analysis, it was conservatively assumed that sparkers would be the dominant acoustic source for all survey days. Thus, the distances to the isopleths corresponding to the threshold for Level B harassment for sparkers (141 m) was used as the basis of the take calculation for all marine mammals.

The modeled distances to isopleths corresponding to the Level A

harassment threshold are very small (less than 1 m) for three of the four marine mammal functional hearing groups that may be impacted by the proposed activities (*i.e.*, low frequency and mid frequency cetaceans, and phocid pinnipeds). The largest distance to the Level A harassment isopleth is 36.5 m, associated with use of the GeoPulse 5430A. Because this distance is small, coupled with the characteristics of sounds produced by HRG equipment in general (including the GeoPulse 5430A), neither NMFS nor Ocean Wind anticipates Level A harassment during HRG surveys, even absent mitigation. Therefore, Ocean Wind has not requested and NMFS has not proposed authorizing Level A harassment take incidental to HRG surveys.

The estimated exposures were calculated using the average density for the 12 months for each marine mammal species, or the annual density when only one value was available. These densities were multiplied by the number of proposed survey days (Years 1, 4, 5 = 88; Years 2, 3 = 180) and then by the area ensonified per day (70 km multiplied by the areas found in Table 31). This approach was taken because Ocean Wind does not know which months HRG surveys would occur in. This approach produced a conservative estimate of exposures and, subsequently, take for each species.

Based on the analysis above, the modeled Level A and B harassment exposures of marine mammals resulting from HRG survey activities are shown in Table 32.

Table 32 -- Calculated Annual Maximum Level A and B Harassment Exposures of Marine Mammals Resulting From HRG Surveys

| Marine Mammal Species | Population Estimate | Estimated Level A Harassment Exposures ^b | | Estimated Level B Harassment Exposures | |
|---|---------------------|---|-----------------------------------|--|-----------------------------------|
| | | Years 1, 4, and 5 (88 days annually) | Years 2 and 3 (180 days annually) | Years 1, 4, and 5 (88 days annually) | Years 2 and 3 (180 days annually) |
| North Atlantic right whale ^a | 368 | less than 0.01 | 0.01 | 0.46 | 0.94 |
| Blue whale ^a | Unknown | less than 0.01 | less than 0.01 | 0.02 | 0.03 |
| Fin whale ^a | 6,802 | 0.01 | 0.02 | 1.24 | 2.56 |
| Sei whale ^a | 6,292 | less than 0.01 | less than 0.01 | 0.33 | 0.68 |
| Minke whale | 21,968 | 0.02 | 0.04 | 2.40 | 4.98 |
| Humpback whale | 1,396 | 0.01 | 0.02 | 1.10 | 2.27 |
| Sperm whale ^a | 4,349 | less than 0.01 | less than 0.01 | 0.04 | 0.09 |
| Atlantic white-sided dolphin | 93,233 | 0.03 | 0.05 | 4.79 | 10.04 |

| | | | | | |
|-------------------------------------|---------|----------------|----------------|--------|--------|
| Atlantic spotted dolphin | 39,921 | n/a | n/a | n/a | n/a |
| Bottlenose dolphin (offshore stock) | 62,851 | 1.23 | 2.46 | 173.84 | 348.37 |
| Bottlenose dolphin (coastal stock) | 6,639 | 3.28 | 6.60 | 464.18 | 933.46 |
| Short-finned pilot whales | 39,215 | less than 0.01 | less than 0.01 | 0.14 | 0.29 |
| Long-finned pilot whales | 28,924 | less than 0.01 | less than 0.01 | 0.19 | 0.40 |
| Risso's dolphin | 35,215 | less than 0.01 | less than 0.01 | 0.31 | 0.65 |
| Common dolphin | 172,974 | 0.20 | 0.42 | 28.38 | 59.52 |
| Harbor porpoise | 95,543 | 5.60 | 11.59 | 21.69 | 44.88 |
| Gray seal | 27,300 | 0.23 | 0.48 | 33.23 | 67.56 |
| Harbor seal | 61,336 | 0.66 | 1.34 | 92.88 | 188.83 |

a – Listed as Endangered under the Endangered Species Act (ESA).

b – Some Level A harassment exposures were estimated to occur during HRG surveys, but due to the proposed mitigation measures Ocean Wind would be required to undertake, no Level A harassment takes were carried forward.

NMFS reiterates that any proposed to be authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to noise from certain HRG acoustic sources. Based primarily on the characteristics of the signals produced by the acoustic sources planned for use and due to the small PTS zones associated with HRG equipment types proposed for use, Level A harassment is neither anticipated (even absent mitigation), nor proposed to be authorized. Consideration of the anticipated effectiveness of the measures (*i.e.*, exclusion zones and shutdown measures), discussed in detail below in the Proposed Mitigation section, further strengthens the conclusion that Level A harassment is

not a reasonably anticipated outcome of the survey activity. Ocean Wind did not request authorization of take by Level A harassment, and no take by Level A harassment is proposed for authorization by NMFS. As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity.

The proposed take estimates presented here assumed that HRG surveys would be occurring for 24 hours each day. Adjustments based on the mean group size estimates (*i.e.*, increasing take to the mean group size if the calculated exposures were fewer) were included for the following species: sei whales (Kenney and Vigness-Raposa, 2010), minke whales (Kenney and Vigness-Raposa, 2010), humpback whales (CeTAP, 1982), sperm whales

(Barkaszi and Kelly, 2019), Atlantic spotted dolphins (Kenney and Vigness-Raposa, 2010), both species of pilot whales (Kenney and Vigness-Raposa, 2010), and Risso's dolphins (Barkaszi and Kelly, 2019).

Years 1, 4, and 5 in Table 33 below represent HRG surveys occurring during the pre- and post-construction phases of Ocean Wind's proposed project. Each of these years is based on an annual HRG survey effort of 88 days (264 total effort over 3 years). Years 2 and 3 would include HRG surveys occurring during the construction of other elements of Ocean Wind's project. Each of these years is based on an annual HRG survey effort of 180 days (360 days total over 2 years).

Table 33 -- Proposed Level A and Level B Harassment Take Resulting From High-Resolution Site Characterization Surveys Over 5 Years

| Marine Mammal Species | Population Estimate | Pre- and Post-Construction Phases (Years 1, 4, 5; 88 days annually) | | During Construction Phase (Years 2 and 3; 180 days annually) | |
|---|---------------------|---|------------------------------|--|------------------------------|
| | | Requested Level A Harassment | Requested Level B Harassment | Requested Level A Harassment | Requested Level B Harassment |
| North Atlantic right whale ^a | 368 | 0 | 1 ^d | 0 | 2 ^d |
| Blue whale ^a | unknown | 0 | 0 | 0 | 0 |
| Fin whale ^a | 6,802 | 0 | 2 | 0 | 3 |
| Sei whale ^a | 6,292 | 0 | 0 ^b | 0 | 1 ^b |
| Minke whale | 21,968 | 0 | 3 ^b | 0 | 5 ^b |
| Humpback whale | 1,396 | 0 | 2 ^b | 0 | 3 ^b |
| Sperm whale ^a | 4,349 | 0 | 3 ^b | 0 | 3 ^b |
| Atlantic white-sided dolphin | 93,233 | 0 | 5 | 0 | 11 |
| Atlantic spotted dolphin | 39,921 | 0 | 45 ^b | 0 | 45 ^b |
| Bottlenose dolphin | 62,851 | 0 ^c | 173 | 0 ^c | 349 |

| | | | | | |
|------------------------------------|---------|----------------|-----------------|----------------|-----------------|
| (offshore stock) | | | | | |
| Bottlenose dolphin (coastal stock) | 6,639 | 0 ^c | 465 | 0 ^c | 934 |
| Short-finned pilot whale | 28,924 | 0 | 10 ^b | 0 | 10 ^b |
| Long-finned pilot whale | 39,215 | 0 | 10 ^b | 0 | 10 ^b |
| Risso's dolphin | 35,215 | 0 | 30 ^b | 0 | 30 ^b |
| Common dolphin | 172,974 | 0 | 29 | 0 | 60 |
| Harbor porpoise | 95,543 | 0 ^c | 22 | 0 ^c | 45 |
| Gray seal | 27,300 | 0 ^c | 34 | 0 ^c | 68 |
| Harbor seal | 61,336 | 0 ^c | 93 | 0 ^c | 189 |

a – Listed as Endangered under the Endangered Species Act (ESA).

b – The following species' requested take was adjusted based on mean group size: Sei whale (Kenney and Vigness-Raposa, 2010), minke whale (Kenney and Vigness-Raposa, 2010), humpback whale (CeTAP, 1982), sperm whale (Barkaszi and Kelly, 2019), Atlantic spotted dolphin (Kenney and Vigness-Raposa, 2010), both species of pilot whale (Kenney and Vigness-Raposa, 2010), and Risso's dolphin (Barkaszi and Kelly, 2019).

c – A small amount of Level A harassment exposures were estimated based on the density calculations, but no Level A harassment take is being requested by Ocean Wind due to the mitigation measures planned for use.

d - Based on the exposure estimates, values greater than 0.5 for all other species besides North Atlantic right whale were rounded up to 1. Take estimates for North Atlantic right whales from 0.45 and up were rounded up to 1 (to be conservative) and 0.93 was rounded to 2.

Total Proposed Ocean Wind Take Across All Activity Types

Level A harassment and Level B harassment proposed takes for the combined activities of impact pile driving assuming 10 dB of sound

attenuation during the installation of monopiles and/or pin piles; vibratory pile driving for cofferdam installation and removal; HRG surveys; and potential UXO/MEC detonation (no sound attenuation) are provided in Table 34. NMFS also presents the

percentage of each marine mammal stock estimated to be taken based on the total amount of take in Table 35. The mitigation and monitoring measures provided in the Proposed Mitigation and Proposed Monitoring and Reporting sections are activity-specific and are

designed to minimize acoustic exposures to marine mammal species.

The take numbers NMFS proposed for authorization (Table 35) are considered conservative for the following key reasons:

- Proposed take numbers for impact pile driving assume a maximum piling schedule (two monopiles and three pin piles installed per 24-hour period);
- Proposed take numbers for vibratory pile driving assume that a sheet pile temporary cofferdam will be installed (versus the alternative installation of a gravity cell cofferdam, for which no take is anticipated);

- Proposed take numbers for pile driving are conservatively based on maximum densities across the proposed construction months; and,

- Proposed Level A harassment take numbers do not fully account for the likelihood that marine mammals will avoid a stimulus when possible before the individual accumulates enough acoustic energy to potentially cause auditory injury, or the effectiveness of the proposed mitigation measures.

The Year 1 take estimates include 88 days of HRG surveys, cofferdam installation/removal, and mitigated UXO/MEC detonations. Year 2 includes 180 days of HRG surveys, WTG impact

installation using monopile foundations, and OSS impact installation using pin piles for jacket foundations. Year 3 includes 180 days of HRG surveys only. And Years 4 and 5 include 88 days of HRG surveys. Although temporary cofferdam installation/removal could occur in Year 2, all of the proposed takes were allocated to Year 1 as this represents the most accurate construction scenario. All impact pile driving activities for the WTGs and OSSs could also occur outside of Year 2; however, all of the takes were allocated to Year 2 as this represents the most likely scenario.

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Table 34 -- Proposed Level A and Level B Harassment Takes For All Activities Proposed To Be Conducted During The Construction and Development Of The Ocean Wind 1 Offshore Wind Energy Facility

| Marine Mammal Species | Population Estimate | 2024 (Year 1) | | 2025 (Year 2) | | 2026 (Year 3) | | 2027 (Year 4) | | 2028 (Year 5) | |
|---|----------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| | | Level A Harassment | Level B Harassment | Level A Harassment | Level B Harassment | Level A Harassment | Level B Harassment | Level A Harassment | Level B Harassment | Level A Harassment | Level B Harassment |
| North Atlantic right whale ^a | 368 | 0 | 3 | 0 | 7 | 0 | 2 | 0 | 1 | 0 | 1 |
| Blue whale ^a | Unknown ^b | 0 | 0 | 0 | 4 | 0 | 0 | 0 | 0 | 0 | 0 |
| Fin whale ^a | 6,802 | 0 | 7 | 4 | 13 | 0 | 3 | 0 | 2 | 0 | 2 |
| Sci whale ^a | 6,292 | 0 | 2 | 1 | 3 | 0 | 1 | 0 | 0 | 0 | 0 |
| Minke whale | 21,968 | 0 | 33 | 22 | 74 | 0 | 5 | 0 | 3 | 0 | 3 |
| Humpback whale | 1,396 | 0 | 9 | 6 | 21 | 0 | 3 | 0 | 2 | 0 | 2 |
| Sperm whale ^a | 4,349 | 0 | 6 | 0 | 6 | 0 | 3 | 0 | 3 | 0 | 3 |
| Atlantic white-sided dolphin | 93,233 | 0 | 12 | 0 | 100 | 0 | 11 | 0 | 5 | 0 | 5 |
| Atlantic spotted dolphin | 39,921 | 0 | 135 | 0 | 135 | 0 | 45 | 0 | 45 | 0 | 45 |

| n | | | | | | | | | | | |
|--|---------|----|-------|----|-------|---|-----|---|-----|---|-----|
| Bottle nose dolphin (offshore stock) | 62,851 | 0 | 671 | 0 | 1,454 | 0 | 349 | 0 | 174 | 0 | 174 |
| Bottle nose dolphin (coastal stock) ^c | 6,639 | 11 | 1,634 | 0 | 934 | 0 | 934 | 0 | 465 | 0 | 465 |
| Long-finned pilot whale | 28,924 | 0 | 30 | 0 | 30 | 0 | 10 | 0 | 10 | 0 | 10 |
| Short-finned pilot whale | 39,215 | 0 | 30 | 0 | 30 | 0 | 10 | 0 | 10 | 0 | 10 |
| Risso's dolphin | 35,215 | 0 | 90 | 0 | 90 | 0 | 30 | 0 | 30 | 0 | 30 |
| Common dolphin | 172,974 | 0 | 47 | 0 | 1,584 | 0 | 60 | 0 | 29 | 0 | 29 |
| Harbor porpoise | 95,543 | 10 | 97 | 69 | 350 | 0 | 45 | 0 | 22 | 0 | 22 |
| Gray seal | 27,300 | 31 | 200 | 4 | 305 | 0 | 68 | 0 | 68 | 0 | 34 |
| Harbor seal | 61,336 | 35 | 556 | 13 | 844 | 0 | 189 | 0 | 93 | 0 | 93 |

a – Listed as Endangered under the Endangered Species Act (ESA).

b - The minimum blue whale population is estimated at 412, although the exact value is not known. NMFS is utilizing this value for our preliminary small numbers determination, as shown in parenthesis.

c - The estimate for coastal bottlenose dolphins (bayside versus Atlantic Ocean-facing) is likely an overestimate as this stock has demonstrated a preference for coastal environments as opposed to estuarine (Toth et al., 2011).

Table 35 -- Total 5-Year Requested Takes (Level A Harassment And Level B Harassment) All Activities Proposed To Be Conducted During The Construction and Development Of The Ocean Wind 1 Offshore Wind Energy Facility

| Marine Mammal Species | Population Size | 5-Year Project Duration ^b | | |
|---|----------------------|--------------------------------------|--------------------|--------------------|
| | | Level A Harassment | Level B Harassment | Total 5-Year |
| North Atlantic right whale ^a | 368 | 0 | 14 | 14 |
| Blue whale ^a | Unknown ^c | 0 | 4 | 4 |
| Fin whale ^a | 6,802 | 4 | 27 | 31 |
| Sei whale ^a | 6,292 | 1 | 6 | 7 |
| Minke whale | 21,968 | 22 | 118 | 140 |
| Humpback whale | 1,396 | 6 | 37 | 43 |
| Sperm whale ^a | 4,349 | 0 | 21 | 21 |
| Atlantic white-sided dolphin | 93,233 | 0 | 133 | 133 |
| Atlantic spotted dolphin | 39,921 | 0 | 405 | 405 |
| Bottlenose dolphin (offshore stock) | 62,851 | 0 | 2,822 | 2,822 |
| Bottlenose dolphin (coastal stock) | 6,639 | 11 | 4,432 | 4,443 ^d |

| | | | | |
|--------------------------|---------|----|-------|-------|
| Short-finned pilot whale | 28,924 | 0 | 90 | 90 |
| Long-finned pilot whale | 39,215 | 0 | 90 | 90 |
| Risso's dolphin | 35,215 | 0 | 270 | 270 |
| Common dolphin | 172,974 | 0 | 1,749 | 1,749 |
| Harbor porpoise | 95,543 | 79 | 536 | 615 |
| Gray seal | 27,300 | 35 | 675 | 710 |
| Harbor seal | 61,336 | 48 | 1,775 | 1,823 |

a – Listed as Endangered under the Endangered Species Act (ESA).

b – Activities include impact pile driving of WTG and OSS foundations (assuming mitigated by 10 dB), vibratory pile driving for the installation/removal of temporary cofferdams, HRG surveys (year-round with variable levels of effort), and up to 10 potential high-order UXO/MEC detonations (assuming mitigated by 10 dB).

c - The minimum blue whale population is estimated at 412, although the exact value is not known. NMFS is utilizing this value for our preliminary small numbers determination, as shown in parenthesis.

d - The estimate for coastal bottlenose dolphins (bayside versus Atlantic Ocean-facing) is likely an overestimate as this stock has demonstrated a preference for coastal environments as opposed to estuarine (Toth et al., 2011).

In making the negligible impact determination and the necessary small numbers finding, NMFS assesses the greatest number of proposed take of marine mammals that could occur within any one year, which in the case of this rule is based on the predicted Year 2 for all species, except the coastal stock of bottlenose dolphins, which

used the calculated Level A harassment from Year 1 with the calculated Level B harassment from Year 2. In this calculation, the maximum estimated number of Level A harassment takes in any one year is summed with the maximum estimated number of Level B harassment takes in any one year for each species to yield the highest number

of estimated take that could occur in any year. We recognize that certain activities could shift within the 5-year effective period of the rule; however, the rule allows for that flexibility and the takes are not expected to exceed those shown in Table 36 in any year.

Table 36 -- Maximum Number Of Requested Takes (Level A Harassment and Level B Harassment) That Could Occur In Any One Year Of The Project And The Total Percent Stock That Would Be Taken Based On The Maximum Annual Requested Take

| Marine Mammal Species | Population Size | Maximum Annual Take Authorized | | | |
|---|----------------------|--------------------------------|------------------------|---|---|
| | | Max Level A Harassment | Max Level B Harassment | Max Annual Take (Max Level A Harassment + Max Level B Harassment) | Total Percent Stock Taken Based on Maximum Annual Take ^b |
| North Atlantic right whale ^a | 368 | 0 | 7 | 7 | 1.90 |
| Blue whale ^a | Unknown ^c | 0 | 4 | 4 | 0.97 |
| Fin whale ^a | 6,802 | 4 | 13 | 17 | 0.25 |
| Sei whale ^a | 6,292 | 1 | 3 | 4 | 0.06 |
| Minke whale | 21,968 | 22 | 74 | 96 | 0.44 |
| Humpback whale | 1,396 | 6 | 21 | 27 | 1.93 |
| Sperm whale ^a | 4,349 | 0 | 6 | 6 | 0.14 |
| Atlantic white-sided dolphin | 93,233 | 0 | 100 | 100 | 0.11 |
| Atlantic spotted dolphin | 39,921 | 0 | 135 | 135 | 0.34 |

| | | | | | |
|-------------------------------------|---------|----|-------|-------|--------------------|
| Bottlenose dolphin (offshore stock) | 62,851 | 0 | 1,454 | 1,454 | 2.31 |
| Bottlenose dolphin (coastal stock) | 6,639 | 11 | 1,643 | 1,645 | 24.78 ^d |
| Short-finned pilot whale | 28,924 | 0 | 30 | 30 | 0.10 |
| Long-finned pilot whale | 39,215 | 0 | 30 | 30 | 0.08 |
| Risso's dolphin | 35,215 | 0 | 90 | 90 | 0.26 |
| Common dolphin | 172,974 | 0 | 1,584 | 1,584 | 0.92 |
| Harbor porpoise | 95,543 | 69 | 350 | 419 | 0.44 |
| Gray seal | 27,300 | 31 | 305 | 336 | 1.23 |
| Harbor seal | 61,336 | 35 | 844 | 879 | 1.43 |

a – Listed as Endangered under the Endangered Species Act (ESA).

b – Calculations of percentage of stock taken are based on the maximum requested Level A harassment take in any one year + the total requested Level B harassment take in any one year and then compared against the best available abundance estimate as shown in Table 3. For this proposed action, the best available abundance estimates are derived from the NMFS Stock Assessment Reports (Hayes et al., 2022).

c - The minimum blue whale population is estimated at 412, although the exact value is not known. NMFS is utilizing this value for our preliminary small numbers determination, as shown in parenthesis.

d - The estimate for coastal bottlenose dolphins (bayside versus Atlantic Ocean-facing) is likely an overestimate as this stock has demonstrated a preference for coastal environments as opposed to estuarine (Toth et al., 2011).

Proposed Mitigation

In order to promulgate a rulemaking under section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS' regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

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

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

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

The mitigation strategies described below are consistent with those required and successfully implemented under previous incidental take authorizations issued in association with in-water construction activities (*i.e.*, ramp-up, establishing harassment zones, implementing shutdown zones, *etc.*). Additional measures have also been incorporated to account for the fact that the proposed construction activities would occur offshore. Modeling was

performed to estimate harassment zones, which were used to inform mitigation measures for pile driving activities to minimize Level A harassment and Level B harassment to the extent practicable, while providing estimates of the areas within which Level B harassment might occur.

Generally speaking, the measures considered and proposed here fall into three categories: seasonal-area restrictions, real-time measures (shutdown, clearance zones, and vessel strike avoidance), and noise abatement/reduction measures. Seasonal/Area limitations are designed to avoid or minimize operations in season and/or areas of biological importance (where marine mammals are concentrated or engaged in behaviors that make them more susceptible, or make severe impacts more likely) in order to reduce both the number and severity of potential takes, and are effective in reducing both chronic (longer-term) and acute effects. Real-time measures, such as shutdown and pre-clearance zones, and vessel strike avoidance measures, are intended to reduce the probability or scope of near-term acute impacts by taking steps in real time once a higher-risk scenario is identified (*i.e.*, once animals are detected within an impact zone). Noise abatement measures, such as bubble curtains, are intended to reduce the noise at the source, which reduces both acute impacts, as well as the contribution to aggregate and cumulative noise that results in longer term chronic impacts.

Training and Coordination

Prior to the onset of any in-water activities involving vessel use, pile driving, UXO/MEC detonation, and HRG surveys, and when new personnel join the work, Ocean Wind would conduct briefings for construction supervisors and crews, marine mammal observer and acoustic monitoring teams, and all Ocean Wind staff prior to the start of all pile driving, UXO/MEC detonation, and HRG survey activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, and marine mammal mitigation, monitoring, and reporting requirements. More information on vessel crew training requirements can be found in the *Vessel Strike Avoidance Measures* section below.

North Atlantic Right Whale Awareness Monitoring

Ocean Wind must use available sources of information on North Atlantic right whale presence, including daily monitoring of the Right Whale

Sightings Advisory System, monitoring of Coast Guard VHF Channel 16 throughout each day to receive notifications of any sightings, and information associated with any regulatory management actions (*e.g.*, establishment of a zone identifying the need to reduce vessel speeds). Maintaining daily awareness and coordination affords increased protection of North Atlantic right whales by understanding North Atlantic right whale presence in the area through ongoing visual and passive acoustic monitoring efforts and opportunities (outside of Ocean Wind's efforts), and allows for planning of construction activities, when practicable, to minimize potential impacts on North Atlantic right whales.

Protected Species Observers and PAM Operator Training

Ocean Wind would only employ NMFS-approved PSOs and PAM operators. The PSO field team and PAM team will have a lead member (designated as the "Lead PSO" or "PAM Lead") who will have prior experience observing mysticetes, odontocetes and pinnipeds in the Northwestern Atlantic Ocean on other offshore projects requiring PSOs. Any remaining PSOs and PAM operators must have previous experience observing marine mammals during projects and must have the ability to work with all required and relevant software and equipment. New and/or inexperienced PSOs would be paired with an experienced PSO to ensure that the quality of marine mammal observations and data recording is kept consistent.

All PSOs and PAM operators would be required to complete a Permits and Environmental Compliance Plan (PECP) training, as well as a two-day training and refresher session. These trainings will be held with the PSO provider and Project compliance representatives and will occur before the start of project activities related to the construction and development of the Ocean Wind 1 Offshore Wind Energy Facility. PSOs would be required during all foundation installation, cofferdam installation/removal, UXO/MEC detonation, and HRG surveys. More information on requirements during each activity can be found in the Proposed Monitoring and Reporting section.

Vessel Strike Avoidance Measures

This proposed rule contains numerous vessel strike avoidance measures. Ocean Wind will be required to comply with these measures except under circumstances when doing so would create an imminent and serious

threat to a person or vessel, or to the extent that a vessel is unable to maneuver and, because of the inability to maneuver, the vessel cannot comply (*e.g.*, due to towing, *etc.*). Vessel operators and crews will receive protected species identification training. This training will cover sightings of marine mammals and other protected species known to occur or which have the potential to occur in the project area. It will include training on making observations in both good weather conditions (*i.e.*, clear visibility, low wind, and low sea state) and bad weather conditions (*i.e.*, fog, high winds and high sea states, in glare). Training will not only include identification skills, but will also include information and resources available regarding applicable Federal laws and regulations for protected species.

Ocean Wind will abide by the following vessel strike avoidance measures:

- All vessel operators and crews must maintain a vigilant watch for all marine mammals and slow down, stop their vessel, or alter course (as appropriate) and regardless of vessel size, to avoid striking any marine mammal.

- During any vessel transits within or to/from the Ocean Wind project area, such as for crew transfers), an observer would be stationed at the best vantage point of the vessel(s) to ensure that the vessel(s) are maintaining the appropriate separation distance from marine mammals.

- Year-round, all vessel operators will monitor, the project's Situational Awareness System, WhaleAlert, US Coast Guard VHF Channel 16, and the Right Whale Sighting Advisory System (RWSAS) for the presence of North Atlantic right whales once every 4-hour shift during project-related activities. The PSO and PAM operator monitoring teams for all activities will also monitor these systems no less than every 12 hours. If a vessel operator is alerted to a North Atlantic right whale detection within the project area, they will immediately convey this information to the PSO and PAM teams. For any UXO/MEC detonation, these systems will be monitored for 24 hours prior to blasting.

- Any observations of any large whale by any Ocean Wind staff or contractor, including vessel crew, must be communicated immediately to PSOs and all vessel captains to increase situational awareness.

- All vessels would comply with existing NMFS regulations and speed restrictions and state regulations as applicable for North Atlantic right whales.

- Between November 1st and April 30th, all vessels, regardless of size, would operate port to port (specifically from ports in New Jersey, New York, Maryland, Delaware, and Virginia) at 10 knots or less.

- All vessels, regardless of size, would immediately reduce speed to 10 kts or less when any large whale, mother/calf pairs, or large assemblages of non-delphinid cetaceans are observed near (within 500 m) an underway vessel.

- All vessels, regardless of size, would immediately reduce speed to 10 kts or less when a North Atlantic right whale is sighted, at any distance, by an observer or anyone else on the vessel.

- If a vessel is traveling at greater than 10 kts, in addition to the required dedicated visual observer, real-time PAM of transit corridors must be conducted prior to and during transits. If a North Atlantic right whale is detected via visual observation or PAM within or approaching the transit corridor, all crew transfer vessels must travel at 10 kts or less for the following 12 hours. Each subsequent detection will trigger a 12-hour reset. A slowdown in the transit corridor expires when there has been no further visual or acoustic detection in the transit corridor in the past 12 hours.

- All underway vessels (*e.g.*, transiting, surveying) must have a dedicated visual observer on duty at all times to monitor for marine mammals within a 180° direction of the forward path of the vessel (90° port to 90° starboard). Visual observers must be equipped with alternative monitoring technology for periods of low visibility (*e.g.*, darkness, rain, fog, *etc.*). The dedicated visual observer must receive prior training on protected species detection and identification, vessel strike minimization procedures, how and when to communicate with the vessel captain, and reporting requirements in this proposed action. Visual observers may be third-party observers (*i.e.*, NMFS-approved PSOs) or crew members and must not have any other duties other than observing for marine mammals. Observer training related to these vessel strike avoidance measures must be conducted for all vessel operators and crew prior to the start of in-water construction activities to distinguish marine mammals from other phenomena and broadly to identify a marine mammal as a North Atlantic right whale, other whale (defined in this context as sperm whales or baleen whales other than North Atlantic right whales), or other marine mammals. Confirmation of the observers' training and understanding of

the ITA requirements must be documented on a training course log sheet and reported to NMFS.

- All vessel operators and crews, regardless of their vessel's size, must maintain a vigilant watch for all marine mammals and slow down, stop their vessel, or alter course, as appropriate, to avoid striking any marine mammal.

- All vessels must maintain a minimum separation distance of 500 m from North Atlantic right whales. If a whale is observed but cannot be confirmed as a species other than a North Atlantic right whale, the vessel operator must assume that it is a North Atlantic right whale and take appropriate action.

- If underway, all vessels must steer a course away from any sighted North Atlantic right whale at 10 kts or less such that the 500-m minimum separation distance requirement is not violated. If a North Atlantic right whale, or a large whale that cannot be confirmed to species, is sighted within 500 m of an underway vessel, that vessel must shift the engine to neutral. Engines will not be engaged until the whale has moved outside of the vessel's path and beyond 500 m.

- All vessels must maintain a minimum separation distance of 100 m from sperm whales and non-North Atlantic right whale baleen whales. If one of these species is sighted within 100 m of an underway vessel, that vessel must shift the engine to neutral. Engines will not be engaged until the whale has moved outside of the vessel's path and beyond 100 m.

- All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all delphinoid cetaceans and pinnipeds, with an exception made for those that approach the vessel (*e.g.*, bow-riding dolphins). If a delphinoid cetacean or pinniped is sighted within 50 m of an underway vessel, that vessel must shift the engine to neutral, with an exception made for those that approach the vessel (*e.g.*, bow-riding dolphins). Engines will not be engaged until the animal(s) has moved outside of the vessel's path and beyond 50 m.

- When a marine mammal(s) is sighted while a vessel is underway, the vessel must take action as necessary to avoid violating the relevant separation distances (*e.g.*, attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area. If a marine mammal(s) is sighted within the relevant separation distance, the vessel must reduce speed and shift the engine to neutral, not engaging the engine(s) until the animal(s) is clear of

the area. This does not apply to any vessel towing gear or any situation where respecting the relevant separation distance would be unsafe (*i.e.*, any situation where the vessel is navigationally constrained).

- All vessels underway must not divert or alter course in order to approach any marine mammal. Any vessel underway must avoid excessive speed or abrupt changes in direction.
- For in-water construction heavy machinery activities other than impact or vibratory pile driving, if a marine mammal is on a path towards or comes within 10 m of equipment, Ocean Wind must cease operations until the marine mammal has moved more than 10 m on a path away from the activity to avoid direct interaction with equipment.
- Individuals implementing the monitoring protocol will assess its effectiveness using an adaptive approach. All PSOs will use their best professional judgment throughout implementation and seek improvements to these methods when deemed appropriate. Any modifications to the protocol will be coordinated between NMFS and Ocean Wind.

With the measures described herein, NMFS has prescribed the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Fishery Monitoring Surveys

Training

All crew undertaking the fishery survey activities would be required to receive protected species identification training prior to activities occurring.

During Vessel Use

During all fishery monitoring activities that require the use of a vessel as a platform, Ocean Wind would follow the *Vessel Strike Avoidance Measures*, described in the section above.

Vessels would also undertake the following measures:

- Specifically for trawl surveys, marine mammal monitoring will occur prior to, during, and after haul-back, and gear will not be deployed if a marine mammal is observed in the area;
 - Trawl operations will only start after 15 minutes of no marine mammal sightings within 1 nm of the sampling station; and,
 - During daytime sampling for the research trawl surveys, Ocean Wind will maintain visual monitoring efforts during the entire period of time that trawl gear is in the water from

deployment to retrieval. If a marine mammal is sighted before the gear is removed from the water, the vessel will slow its speed and steer away from the observed animal(s).

Gear-Specific Best Management Practices (BMPs)

Ocean Wind would be required to undertake BMPs to reduce risks to marine mammals during several types of activities. These include:

- BRUV sampling and chevron trap usage, for example, would utilize specific mitigation measures to reduce impacts to marine mammals. These specifically include the breaking strength of all lines being less than 1,700 pounds (771 kg), limited soak durations of 90 minutes or less, no gear being left without a vessel nearby, and a delayed deployment of gear if a marine mammal is sighted nearby;
 - The permit number will be written clearly on buoy and any lines that go missing will be reported to NOAA Fisheries' Greater Atlantic Regional Fisheries Office (GARFO) Protected Resources Division as soon as possible;
 - If marine mammals are sighted near the proposed sampling location, chevron traps and/or BRUVs will not be deployed;
 - If a marine mammal is determined to be at risk of interaction with the deployed gear, all gear will be immediately removed;
 - Marine mammal monitoring would occur during daylight hours and begin prior to the deployment of any gear (*e.g.*, trawls, longlines) and continue until all gear has been retrieved;
 - If marine mammals are sighted in the vicinity within 15 minutes prior to gear deployment and it is determined the risks of interaction are present regarding the research gear, the sampling station will either move to another location or suspend activities until there are no marine mammal sightings for 15 minutes within 1 nm.

WTG and OSS Foundation Installation

Seasonal and Daily Restrictions

No foundation impact pile driving activities would occur January 1 through April 30. This seasonal restriction would minimize the potential for North Atlantic right whales to be exposed to pile driving noise. Based on the best available information (Roberts *et al.*, 2022), the highest densities of North Atlantic right whales in the project area are expected during the months of January through April. NMFS is requiring this seasonal restriction to minimize the potential for North Atlantic right whales to be

exposed to noise incidental to impact pile driving of monopiles, which is expected to greatly reduce the number of takes of North Atlantic right whales.

No more than two foundation monopiles would be installed per day. Monopiles would be no larger than 11-m in diameter, representing the larger end of the tapered 8/11-m monopile design. If jacket foundations are used for OSSs, pin piles would be no larger than 2.44-m in diameter. For all monopiles and pin piles, the minimum amount of hammer energy necessary to effectively and safely install and maintain the integrity of the piles must be used. Hammer energies must not exceed 4,000 kJ.

Ocean Wind has requested authorization to initiate pile driving during nighttime when detection of marine mammals is visually challenging. To date, Ocean Wind has not submitted a plan containing the information necessary, including evidence, that their proposed systems are capable of detecting marine mammals, particularly large whales, at distances necessary to ensure mitigation measures are effective and, in general, the scientific literature on these technologies demonstrate there is a high degree of uncertainty in reliably detecting marine mammals at distances necessary for this project. Therefore, NMFS is not proposing, at this time, to allow Ocean Wind to initiate pile driving later than 1.5 hours after civil sunset or 1 hour before civil sunrise. We are, however, proposing to encourage and allow Ocean Wind the opportunity to further investigate and test advanced technology detection systems to support their request. NMFS is proposing to condition the LOA such that nighttime pile driving would only be allowed if Ocean Wind submits an Alternative Monitoring Plan to NMFS for approval that proves the efficacy of their night vision devices (*e.g.*, mounted thermal/IR camera systems, hand-held or wearable night vision devices (NVDs), infrared (IR) spotlights) in detecting protected marine mammals. If the plan does not include a full description of the proposed technology, monitoring methodology, and data supporting that marine mammals can reliably and effectively be detected within the clearance and shutdown zones for monopiles before and during impact pile driving, nighttime pile driving (unless a pile was initiated 1.5 hours prior to civil sunset) will not be allowed. The Plan should identify the efficacy of the technology at detecting marine mammals in the clearance and shutdowns under all the various conditions anticipated during

construction, including varying weather conditions, sea states, and in consideration of the use of artificial lighting.

Noise Abatement Systems

Ocean Wind would employ noise abatement systems, also known as noise mitigation systems (NMS), during all impact pile driving (monopiles and pin piles) to reduce the sound pressure levels that are transmitted through the water in an effort to reduce ranges to acoustic thresholds and minimize any acoustic impacts resulting from pile driving. Ocean Wind would be required to employ a big double bubble curtain or a combination of two or more NMS during these activities, as well as the adjustment of operational protocols to minimize noise levels.

Two categories of NMS exist: primary and secondary. A primary NMS would be used to reduce the level of noise produced by the pile driving activities at the source, typically through adjustments on to the equipment (*e.g.*, hammer strike parameters). Primary NMS' are still evolving and will be considered for use during mitigation efforts when the NMS has been demonstrated as effective in commercial projects. However, as primary NMS are not fully effective at eliminating, a secondary NMS would be employed. The secondary NMS is a device or group of devices that would reduce noise as it was transmitted through the water away from the pile, typically through a physical barrier that would reflect or absorb sound waves and, therefore reducing the distance the higher energy sound propagates through the water column. Together, these systems must reduce noise levels to the lowest level practicable with the goal of not exceeding measured ranges to Level A harassment and Level B harassment isopleths corresponding to those modeled assuming 10-dB sound attenuation, pending results of SFV (see the *Acoustic Monitoring for Sound Field and Harassment Isopleth Verification* section).

Noise abatement systems, such as bubble curtains, are sometimes used to decrease the sound levels radiated from a source. Bubbles create a local impedance change that acts as a barrier to sound transmission. The size of the bubbles determines their effective frequency band, with larger bubbles needed for lower frequencies. There are a variety of bubble curtain systems, confined or unconfined bubbles, and some with encapsulated bubbles or panels. Attenuation levels also vary by type of system, frequency band, and location. Small bubble curtains have

been measured to reduce sound levels but effective attenuation is highly dependent on depth of water, current, and configuration and operation of the curtain (Austin *et al.*, 2016; Koschinski and Lüdemann, 2013). Bubble curtains vary in terms of the sizes of the bubbles and those with larger bubbles tend to perform a bit better and more reliably, particularly when deployed with two separate rings (Bellmann, 2014; Koschinski and Lüdemann, 2013; Nehls *et al.*, 2016). Encapsulated bubble systems (*e.g.*, Hydro Sound Dampers (HSDs)), can be effective within their targeted frequency ranges, *e.g.*, 100–800 Hz, and when used in conjunction with a bubble curtain appear to create the greatest attenuation. The literature presents a wide array of observed attenuation results for bubble curtains. The variability in attenuation levels is the result of variation in design, as well as differences in site conditions and difficulty in properly installing and operating in-water attenuation devices. Secondary NMS that must be used by Ocean Wind include a big bubble curtain (BBC), a hydro-sound damper (HSD), or an Adbm Helmholtz resonator (Elzinga *et al.*, 2019). See Section 2.8 of the ITA application (Appendix B, Protected Species Mitigation and Monitoring Plan (PSMMP)) for more information on these (Ocean Wind, 2022b). If a single system is used, it must be a double big bubble curtain (DBBC). Other systems (*e.g.*, noise mitigation screens) are not considered feasible for the Ocean Wind 1 project as they are in their early stages of development and field tests to evaluate performance and effectiveness have not been completed. Should the research and development phase of these newer systems demonstrate effectiveness, as part of adaptive management, Ocean Wind may submit data on the effectiveness of these systems and request approval from NMFS to use them during pile driving.

If a bubble curtain is used (single or double), Orsted would be required to maintain the following operational parameters: The bubble curtain(s) must distribute air bubbles using a target air flow rate of at least $0.5 \text{ m}^3/(\text{min} \cdot \text{m})$, and must distribute bubbles around 100 percent of the piling perimeter for the full depth of the water column. The lowest bubble ring must be in contact with the seafloor for the full circumference of the ring, and the weights attached to the bottom ring must ensure 100-percent seafloor contact; no parts of the ring or other objects should prevent full seafloor contact. Ocean Wind must require that

construction contractors train personnel in the proper balancing of airflow to the bubble ring, and must require that construction contractors submit an inspection/performance report for approval by Ocean Wind within 72 hours following the performance test. Corrections to the attenuation device to meet the performance standards must occur prior to impact driving of monopiles. If Ocean Wind uses a noise mitigation device in addition to a BBC, similar quality control measures will be required.

The literature presents a wide array of observed attenuation results for bubble curtains. The variability in attenuation levels is the result of variation in design, as well as differences in site conditions and difficulty in properly installing and operating in-water attenuation devices. Dähne *et al.* (2017) found that single bubble curtains that reduce sound levels by 7 to 10 dB reduced the overall sound level by approximately 12 dB when combined as a double bubble curtain for 6 m steel monopiles in the North Sea. Bellmann *et al.* (2020) provide a review of the efficacy of using bubble curtains (both single and double) as noise abatement systems in the German Exclusive Economic Zone (EEZ) of the North and Baltic Seas. For 8 m diameter monopiles, single bubble curtains achieved an average of 11 dB broadband noise reduction (Bellmann *et al.*, 2020). Ocean Wind would use a combination of two devices during impact pile driving.

As previously discussed, the modeling of the sound fields for Ocean Wind's proposed activities demonstrated modeling assuming broadband attenuation levels of 0 dB, 6 dB, 10 dB, 15 dB, and 20 dB to gauge the effects on the ranges to threshold, given these various levels of sound attenuation. Ocean Wind anticipates, and NMFS agrees, that the use of a noise mitigation system will produce field measurements of the isopleth distances to the Level A harassment and Level B harassment thresholds that accord with those modeled assuming 10 dB of attenuation for both impact pile driving of monopiles and pin piles (refer back to the Estimated Take, Proposed Mitigation, and Proposed Monitoring and Reporting sections).

Use of PSOs and PAM Operators

As described above, Ocean Wind would be required to use PSOs and acoustic PSOs (*i.e.*, PAM operator) during all foundation installation activities. At minimum, four PSOs would be actively observing marine mammals before, during, and after pile driving. At least two PSOs would be

stationed on the pile driving vessel and at least two PSOs would be stationed on a secondary, PSO-dedicated vessel. The dedicated PSO vessel would be located at the outer edge of the 2 km (in the summer; 2.5 km in the winter) large whale clearance zone (unless modified by NMFS based on SFV). These PSOs would be required to maintain watch at all times when impact pile driving of monopiles and/or pin piles is underway. Concurrently, at least one PAM operator would be actively monitoring for marine mammals before, during and after pile driving. More details on PSO and PAM operator requirements can be found in the Proposed Monitoring and Reporting section.

Furthermore, all crew and personnel working on the Ocean Wind 1 project would be required to maintain situational awareness of marine mammal presence (discussed further above) and would be required to report any sightings to the PSOs.

Clearance and Shutdown Zones

NMFS is proposing to require the establishment of both clearance and shutdown zones during all impact pile driving of WTG and OSS foundation piles. Ocean Wind must use visual PSOs and PAM operators to monitor the area around each foundation pile before, during and after pile driving. Prior to the start of impact pile driving activities, Ocean Wind would clear the area of marine mammals, per Table 37, to minimize the potential for and degree of harassment.

The purpose of “clearance” of a particular zone is to prevent potential instances of auditory injury, and more severe behavioral disturbance or, in the case of North Atlantic right whales, avoid and minimize behavioral disturbance to the maximum extent practicable (for North Atlantic right whales, the clearance and shutdown zones are set to any distance; see Table 37). By delaying the commencement of impact pile driving if marine mammals are detected within certain pre-defined distances from the pile being installed.

PSOs would visually monitor for marine mammals for a minimum of 60 minutes while PAM operators would review data from at least 24 hours prior to pile driving and actively monitor hydrophones for 60 minutes prior to pile driving. Prior to initiating soft-start procedures, all clearance zones must be visually confirmed to be free of marine mammals for 30 minutes immediately prior to starting a soft-start of pile

driving. If a marine mammal is observed entering or within the relevant clearance zone prior to the initiation of impact pile driving activities, pile driving must be delayed and will not begin until either the marine mammal(s) has voluntarily left the specific clearance zones and have been visually or acoustically confirmed beyond that clearance zone, or, when specific time periods have elapsed with no further sightings or acoustic detections have occurred (*i.e.*, 15 minutes for small odontocetes and 30 minutes for all other marine mammal species).

All distances to the perimeter of clearance zones are the radii from the center of the pile.

Mitigation zones related to impact pile driving activities were created around two different seasonal periods to account for the different seasonal sound speed profiles that were used in JASCO’s underwater sound propagation modeling, including summer (May through November) and winter (December) (Table 37). Ocean Wind would be required to implement these zones during foundation installation. While clearance and shutdowns would be monitored both visually and acoustically, NMFS is proposing to establish a minimum visibility zone close to the piles to ensure that marine mammals are detected prior to commencement of pile driving as visual and acoustic methods provide the most effective means of detection when combined (*e.g.*, VanParijs *et al.*, 2021). The minimum visibility zone would extend 1,650 m from the pile during summer months and 2,500 m during December (Table 37). These values correspond to the maximum LFC distance to Level A harassment thresholds assuming two monopiles are driven in a day. The entire minimum visibility zone must be visible (*i.e.*, not obscured by dark, rain, fog, *etc.*) for a full 30 minutes immediately prior to commencing impact pile driving. For North Atlantic right whales, there is an additional requirement that the clearance zone may only be declared clear if no confirmed North Atlantic right whale acoustic detections (in addition to visual) have occurred during the 60-minute monitoring period. Any large whale sighted by a PSO or acoustically detected by a PAM operator that cannot be identified as a non-North Atlantic right whale must be treated as if it were a North Atlantic right whale.

The purpose of a shutdown is to prevent a specific acute impact, such as auditory injury or severe behavioral

disturbance of sensitive species, by halting the activity. If a marine mammal is observed entering or within the respective shutdown zone (Table 37) after impact pile driving has begun, the PSO will request a temporary cessation of impact pile driving. In situations when shutdown is called for but Ocean Wind determines shutdown is not practicable due to imminent risk of injury or loss of life to an individual, or risk of damage to a vessel that creates risk of injury or loss of life for individuals, reduced hammer energy must be implemented when the lead engineer determines it is practicable. Specifically, pile refusal or pile instability could result in not being able to shut down pile driving immediately. Pile refusal occurs when the pile driving sensors indicate the pile is approaching refusal, and a shut-down would lead to a stuck pile which then poses an imminent risk of injury or loss of life to an individual, or risk of damage to a vessel that creates risk for individuals. Pile instability occurs when the pile is unstable and unable to stay standing if the piling vessel were to “let go.” During these periods of instability, the lead engineer may determine a shut-down is not feasible because the shut-down combined with impending weather conditions may require the piling vessel to “let go” which then poses an imminent risk of injury or loss of life to an individual, or risk of damage to a vessel that creates risk for individuals.

After shutdown, impact pile driving may be reinitiated once all clearance zones are clear of marine mammals for the minimum species-specific periods, or, if required to maintain pile stability, at which time the lowest hammer energy must be used to maintain stability. If pile driving has been shut down due to the presence of a North Atlantic right whale, pile driving may not restart until the North Atlantic right whale is no longer observed or 30 minutes has elapsed since the last detection. Upon re-starting pile driving, soft start protocols must be followed.

The clearance and shutdown zone sizes vary by species and are shown in Table 37. Ocean Wind would be allowed to request modification to these zone sizes pending results of sound field verification (see Proposed Monitoring and Reporting section). Any changes to zone size would be part of adaptive management and would require NMFS’ approval.

Table 37 -- Clearance and Shutdown Zones During Impact Pile Driving In Summer And Winter

| Monitoring details | Zone Sizes for Impact Piling ^a | | | | |
|-------------------------|---|-------------------|------------|-------------------|-------|
| | North Atlantic right whales | Large whales | Delphinids | Harbor porpoises | Seals |
| Minimum Visibility Zone | 1,650 m (2,500 m) | | | | |
| Clearance Zone | any distance | 2,000 m (2,500 m) | 100 m | 1,100 m (1,450 m) | 100 m |
| PAM Clearance Zone | 3,500 m (3,800 m) | n/a | n/a | n/a | n/a |
| Shutdown Zone | any distance | 1,800 m (2,500 m) | 100 m | 1,000 m (1,450 m) | 100 m |
| PAM Shutdown Zone | 1,650 m (2,500 m) | n/a | n/a | n/a | n/a |

a - Winter (i.e., December) distances are presented in parentheses.

Soft-Start

The use of a soft start procedure is believed to provide additional protection to marine mammals by warning them, or providing them with a chance to leave the area prior to the hammer operating at full capacity. Soft start typically involves initiating hammer operation at a reduced energy level (relative to full operating capacity) followed by a waiting period. Ocean Wind must utilize a soft start protocol for impact pile driving of monopiles by performing 4–6 strikes per minute at 10 to 20 percent of the maximum hammer energy, for a minimum of 20 minutes. NMFS notes that it is difficult to specify a reduction in energy for any given hammer because of variation across drivers. For impact hammers, the actual number of strikes at reduced energy will vary because operating the hammer at less than full power results in “bouncing” of the hammer as it strikes the pile, resulting in multiple “strikes”; however, as mentioned previously, Ocean Wind will target less than 20 percent of the total hammer energy for the initial hammer strikes during soft start. Soft start will be required at the beginning of each day’s monopile installation, and at any time following a cessation of impact pile driving of 30

minutes or longer. If a marine mammal is detected within or about to enter the applicable clearance zones, prior to the beginning of soft-start procedures, impact pile driving would be delayed until the animal has been visually observed exiting the clearance zone or until a specific time period has elapsed with no further sightings (i.e., 15 minutes for small odontocetes and 30 minutes for all other species).

Cofferdam Installation and Removal Seasonal and Daily Restrictions

Ocean Wind has proposed to construct the cofferdams from October to May within the first year of the effective period of the regulations and LOA, with some potential removal being necessary in April or May. However, NMFS is not requiring any seasonal restrictions in this proposed rule due to the relatively short duration of work (i.e., low associated impacts) and although North Atlantic right whales do migrate in coastal waters, they do not typically migrate very close to shore off of New Jersey and/or within New Jersey bays where work would be occurring. Given the distance to the Level B harassment isopleth is conservatively modeled at approximately 10 km, any exposure to vibratory pile driving

during cofferdam installation would be at levels closer to the 120 dB Level B harassment threshold and not at louder source levels. Ocean Wind would be required; however, to conduct vibratory pile driving associated with cofferdam installation during daylight hours only.

Noise Abatement Systems

Ocean Wind would install the cofferdams using vibratory pile driving. Given this and the short duration of work, NMFS is not proposing to require noise abatement systems during this activity.

Passive Acoustic Monitoring

PAM would not be required during the installation or removal of temporary cofferdams.

Clearance and Shutdown Zones

Ocean Wind would establish clearance and shutdown zones for vibratory pile driving activities associated with cofferdam installation (Table 38). Prior to the start of vibratory pile driving activities, at least two PSOs will monitor the clearance zone for 30 minutes, continue monitoring during pile driving and for 30 minutes post pile driving. If a marine mammal is observed entering or is observed within the respective zones, piling will not

commence or will be delayed until the animal has exited the zone or a specific amount of time has elapsed since the last sighting (*i.e.*, 30 minutes for large whales and 15 minutes for dolphins, porpoises, and pinnipeds). If a marine mammal is observed entering or within the respective shutdown zone after vibratory pile driving has begun, the PSO will call for a temporary cessation of vibratory pile driving. Ocean Wind

must immediately cease pile driving upon orders of the PSO unless shutdown is not practicable due to imminent risk of injury or loss of life to an individual, pile refusal, or pile instability. Pile driving must not restart until either the marine mammal(s) has voluntarily left the specific clearance zones and have been visually or acoustically confirmed beyond that clearance zone, or, when specific time

periods have elapsed with no further sightings or acoustic detections have occurred (*i.e.*, 15 minutes for small odontocetes and 30 minutes for all other marine mammal species). Because a vibratory hammer can grip a pile without operating, pile instability should not be a concern and no caveat for re-starting pile driving due to pile instability is proposed.

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Table 38 -- Distances to Harassment Thresholds and Mitigation Zones¹ During Vibratory Sheet Pile Driving

| Marine Mammal Species | Level A harassment (SEL _{cum}) (m) | Level B harassment (m) | Clearance Zone ² (m) | Shutdown Zone ³ (m) |
|-------------------------------------|--|------------------------|---------------------------------|--------------------------------|
| Low-frequency cetaceans | | | | |
| Fin whale* | 86.7 | 10,000 | 150 | 100 |
| Minke whale | 86.7 | 10,000 | 150 | 100 |
| Sei whale* | 86.7 | 10,000 | 150 | 100 |
| Humpback whale | 86.7 | 10,000 | 150 | 100 |
| North Atlantic right whale* | 86.7 | 10,000 | 150 | 100 |
| Blue whale* | 86.7 | 10,000 | 150 | 100 |
| Mid-frequency cetaceans | | | | |
| Sperm whale* | 7.7 | 10,000 | 150 | 100 |
| Atlantic white-sided dolphin | 7.7 | 10,000 | 150 | 50 |
| Atlantic spotted dolphin | 7.7 | 10,000 | 150 | 50 |
| Common dolphin | 7.7 | 10,000 | 150 | 50 |
| Risso's dolphin | 7.7 | 10,000 | 150 | 50 |
| Bottlenose dolphin (offshore stock) | 7.7 | 10,000 | 150 | 50 |
| Bottlenose dolphin (coastal stock) | 7.7 | 10,000 | 150 | 50 |
| Long-finned pilot whale | 7.7 | 10,000 | 150 | 50 |
| Short-finned pilot whale | 7.7 | 10,000 | 150 | 50 |

| High-frequency cetaceans | | | | |
|-----------------------------|-------|--------|-----|-----|
| Harbor porpoise | 128.2 | 10,000 | 150 | 150 |
| Phocid Pinnipeds (in water) | | | | |
| Gray seal | 52.7 | 10,000 | 150 | 60 |
| Harbor seal | 52.7 | 10,000 | 150 | 60 |

* = denotes species listed under the Endangered Species Act.

Note: SEL_{cum} = cumulative sound exposure level; SPL_{pk} = peak sound pressure level.

1 - Zone sizes are based upon a practical spreading loss model and a source level of 165.0 dB re 1 μ Pa (JASCO, 2021).

2 - The clearance zones for large whales, porpoises, and seals are based upon the maximum Level A harassment zone (128.2 m) and rounded up for PSO clarity.

3 - The shutdown zones for large whales (including North Atlantic right whale) and porpoises are based upon the maximum Level A harassment zone for each group and rounded up for PSO clarity. Shutdown zones for other dolphins and pilot whales were set using precautionary distances.

UXO/MEC Detonations

While there would be no more than 10 detonations of UXOs/MECs, and these detonations are of very short duration (approximately 1 second), UXO/MEC detonations have a higher potential to cause mortality and injury than other activities proposed by Ocean Wind, and therefore have specific mitigation measures designed to minimize the likelihood of mortality and/or injury of marine mammals, including: (1) time of year/seasonal restrictions; (2) time of day restrictions; (3) use of PSOs to visually observe for North Atlantic right whales; (4) use of PAM to acoustically detect North Atlantic right whales; (5) implementation of clearance zones; (6) use of noise mitigation technology; and, (7) post-detonation monitoring visual and acoustic monitoring by PSOs and PAM operators.

As Low as Reasonably Practicable (ALARP) Approach

For any UXOs/MECs that require removal, Ocean Wind would be required to implement the As Low as Reasonably Practicable (ALARP) process. This process would require Ocean Wind to undertake “life-and-shift”, *i.e.*, physical removal and then lead up to in situ disposal, which would include low-order (deflagration) to high-order (detonation) methods of removal. Other approaches involve the cutting of the UXO/MEC to extract any explosive components. Implementing the ALARP approach would minimize potential

impacts to marine mammals as UXOs/MECs would only be detonated as a last resort.

Seasonal and Daily Restrictions

There is no specific time of year that UXOs/MECs would be detonated as detonation would be considered on a case-by-case basis. However, Ocean Wind would be limited to detonating UXOs/MECs only between May 1st through October 31st to reduce impacts to North Atlantic right whales during peak migratory periods. Furthermore, UXO/MEC detonation would be limited to daylight hours only to reduce impacts on migrating species (such as North Atlantic right whales) and to ensure that visual PSOs can confirm appropriate clearance of the site prior to detonation events occurring.

Noise Abatement Systems

Ocean Wind would be required to use a dual noise abatement system during all UXO/MEC detonation events, as detonations are determined to be necessary during the construction. Although the exact level of noise attenuation that can be achieved by noise abatement systems is unknown, available data from Bellmann *et al.* (2020) and Bellmann and Betke (2021) provide a reasonable expectation that the noise abatement systems will be able to achieve at least 10 dB attenuation. SFV would be required for all detonation events to verify the modeled distances, assuming 10 dB attenuation, are representative of the sound fields generated during detonations. This level

of noise reduction is substantial in reducing impact zones for low-frequency cetaceans such as the North Atlantic right whale. For example, assuming the largest UXO/MEC charge weight (454 kg; E12) at a depth of 45 m, a 10 dB reduces the Level A harassment isopleth from 229 km² to approximately 41 km² (Table 6–4 in the ITA application). The Level B harassment zone, given the same parameters, would decrease from 1,134 km² to 437 km² (Table 6–5 in the ITA application). However, and as previously stated in this document, Ocean Wind does not expect that all ten of the potential UXOs/MECs would constitute the largest charge weight; however, this weight was used as a conservative option in estimating exposures and take of marine mammals.

Use of PSOs and PAM Operators

Clearing the zone would require use of at least six visual PSOs and one PAM operator on at least two dedicated PSO vessels. An aerial survey must also be performed prior to detonation and immediately after detonation to monitor for marine mammals. This zone must be fully visible for at least 60 minutes and all marine mammal(s) must be confirmed to be outside of the clearance zone for at least 30 minutes prior to detonation. PAM must also be conducted for at least 60 minutes and the zone must be acoustically cleared during this time.

Clearance Zones

Prior to any detonation activities, Ocean Wind proposed to clear a zone encompassing a radius of 3.78 km around the detonation site using both visual and acoustic monitoring methods. This distance represents the modeled Level A (PTS) harassment threshold for low-frequency cetaceans (*i.e.*, large whales) rounded up to the nearest km assuming a 454 kg charge weight and use of a bubble curtain (Table 39). However, NMFS is proposing to require more protective zone sizes in order to ensure the least practicable adverse impact which includes minimizing the potential for TTS. It is currently not known how

easily Ocean Wind will be able to identify UXO/MEC size in the field. For this reason, NMFS proposes to require Ocean Wind to clear a zone extending 10 km for large whales, 2 km for dolphins, 10 km for harbor porpoises, and 5 km for seals (Table 39). These zones are based on (but not equal to) the greatest TTS threshold distances from 454 kg charge at any site modeled. We note that harbor porpoise and seals are difficult to detect at great distances, but due to the UXO/MEC detonation time of year restrictions, their presence/abundance is likely to be relatively low. These zone sizes may be adjusted based on SFV and confirmation of UXO/donor charge sizes. Moreover, if Ocean Wind indicates to NMFS they will be able to

easily identify charge weights in the field, NMFS would develop clearance zones in the final rule for each charge weight analyzed. The zones would be based on Table 39 below.

If a marine mammal is observed entering or within the clearance zone prior to detonation, the activity would be delayed. Only when the marine mammals have been confirmed to have voluntarily left the clearance zones and been visually confirmed to be beyond the clearance zone, or when 60 minutes have elapsed without any redetections for whales (including the North Atlantic right whale) or 15 minutes have elapsed without any redetections of delphinids, harbor porpoises, or seals may detonation continue.

Table 39 -- Largest Modeled Clearance and Harassment Zones during UXO/MEC Detonation of E12 (454 kg) Charges Assuming 10 dB Noise Abatement

| Marine Mammal Species | Distances to Zones for E12 (454 kg) UXO/MEC Charge Weight ¹ | | | |
|-------------------------------|---|--------------------------------|-----------------|----------|
| | Level A Harassment Clearance zone (m) | Level B Harassment Zone (m) | Clearance Zones | |
| Low-frequency cetaceans | | | | |
| Fin whale* | 3,780 | 11,900 | 10,000 | |
| Minke whale | | | | |
| Sei whale* | | | | |
| Humpback whale | | | | |
| North Atlantic right whale* | | | | |
| Blue whale* | | | | |
| Mid-frequency cetaceans | | | | |
| Sperm whale* | 461 | 2,550 | 2,000 | |
| Atlantic white-sided dolphin | | | | |
| Atlantic spotted dolphin | | | | |
| Common dolphin (short-beaked) | | | | |
| Risso's dolphin | | | | |
| Bottlenose dolphin | | | | Coastal |
| | | | | Offshore |
| Long-finned pilot whale | | | | |
| Short-finned pilot whale | | | | |
| High-frequency cetaceans | | | | |

| | | | |
|----------------------|-------|--------|--------|
| Harbor porpoise | 6,200 | 14,100 | 10,000 |
| Pinnipeds (in water) | | | |
| Gray seal | 1,600 | 7,020 | 5,000 |
| Harbor seal | | | |

* = denotes species listed under the Endangered Species Act; kg = kilograms; m = meters; PK = peak pressure level; SEL = sound exposure level.

1 - At time of preparing this proposed rule, Ocean Wind has not provided NMFS evidence they will be able to reliably determine the charge weight of any UXO/MEC that must be detonated; therefore, NMFS assumes all UXO/MECs could be of the largest size modeled. If Ocean Wind provides information they can detect charge weights in the field prior to issuance of the final rule, if issued, NMFS may modify the clearance zone to ones based on charge weights distances to PTS and TTS. Distances to PTS and TTS thresholds have been identified by Ocean Wind in Appendix C of their application.

HRG Surveys

Ocean Wind would be required to implement several mitigation measures during all HRG survey activities using boomers, sparkers, and CHIRPs. The measures include shutdown, clearance, ramp-up, the use of PSOs, and vessel strike avoidance. There are no mitigation measures prescribed for sound sources greater than 180 kHz as these would be expected to fall outside of marine mammal hearing ranges and not result in harassment; however, all HRG survey vessels would be subject to the aforementioned vessel strike avoidance measures described earlier in this section. Furthermore, due to the frequency range and characteristics of some of the sound sources, shutdown, clearance, and ramp-up procedures are not proposed to be conducted during HRG surveys utilizing only non-impulsive sources (e.g., Ultra-Short BaseLine and other parametric sub-bottom profilers), with exception to usage of CHIRPS and other non-parametric sub-bottom profilers.

Seasonal and Daily Restrictions

Given the potential impacts to marine mammals from exposure to HRG survey noise sources are relatively minor (e.g., limited to Level B harassment) and that the distances to the Level B harassment isopleth is very small (maximum distance is 141 m), NMFS is not proposing to implement any seasonal or time-of-day restrictions for HRG surveys.

Although no temporal restrictions are proposed, NMFS would require Ocean Wind to deactivate acoustic sources during periods where no data is being collected, except as determined necessary for testing. Any unnecessary

use of the acoustic source would be avoided.

Use of PSOs

Ocean Wind would be required to employ qualified, NMFS-approved PSOs during site characterization surveys related to the Ocean Wind 1 project. One PSO would be required to monitor during daylight hours and two would be required to monitor during nighttime hours, per vessel. Any PSO would have the authority to call for a delay or shutdown of survey activities. PSOs would begin visually monitoring 30 minutes prior to the initiation of the specified acoustic source (i.e., ramp-up, if applicable) through 30 minutes after the use of the specified acoustic source has ceased. PSOs would be required to establish and monitor the appropriate clearance and shutdown zones. These zones would be based around the radial distance from the acoustic source and not from the vessel.

Ocean Wind would be required to instruct all vessel personnel regarding the authority of the marine mammal monitoring team(s). For example, the vessel operator(s) would be required to immediately comply with any call for a shutdown by the Lead PSO. Any disagreement between the Lead PSO and the vessel operator would only be discussed after shutdown has occurred. All relevant vessel personnel and the marine mammal monitoring team would be required to participate in joint, onboard briefings that would be led by the vessel operator and the Lead PSO, prior to the beginning of survey activities. This would serve to ensure that all relevant responsibilities, communication procedures, marine mammal monitoring protocols, safety, operational procedures, and ITA

requirements are clearly understood by all involved parties. The briefing would be repeated whenever new relevant personnel (e.g., new PSOs, acoustic source operators, relevant crew) join the survey operation before work commences.

Passive Acoustic Monitoring

PAM would not be required during HRG surveys. While NMFS agrees that PAM can be an important tool for augmenting detection capabilities in certain circumstances, its utility in further reducing impacts during HRG survey activities is limited. We have provided a thorough description of our reasoning for not requiring PAM during HRG surveys in several **Federal Register** notices (e.g., 87 FR 40796, July 8, 2022; 87 FR 52913, August 3, 2022; 87 FR 51356, August 22, 2022) which we adopt and those reasons continue to apply for this proposed action.

Clearance, Shutdown, and Vessel Separation Zones

Ocean Wind would be required to implement a 30-minute clearance period of the clearance zones (Table 40) immediately prior to the commencing of the survey or when there is more than a 30 minute break in survey activities and PSOs are not actively monitoring. The clearance zones would be monitored by PSOs, using the appropriate visual technology. If a marine mammal is observed within a clearance zone during the clearance period, ramp-up (as described further on) would not be allowed to begin until the animal(s) has been observed voluntarily exiting its respective clearance zone or until an additional time period has elapsed with no further sighting (i.e., 15 minutes for small

odontocetes and seals, and 30 minutes for all other species). In any case when the clearance process has begun in conditions with good visibility, including via the use of night vision equipment (IR/thermal camera), and the Lead PSO has determined that the clearance zones are clear of marine mammals, survey operations would be allowed to commence (*i.e.*, no delay is required) despite periods of inclement weather and/or loss of daylight.

Once the survey has commenced, Ocean Wind would be required to shut down boomers, sparkers, and CHIRPs if a marine mammal enters a respective shutdown zone (Table 40). In cases when the shutdown zones become obscured for brief periods due to inclement weather, survey operations would be allowed to continue (*i.e.*, no shutdown is required) so long as no marine mammals have been detected. The use of boomers, and sparkers, and CHIRPS would not be allowed to commence or resume until the animal(s) has been confirmed to have left the

Level B harassment zone or until a full 15 minutes (for small odontocetes and seals) or 30 minutes (for all other marine mammals) have elapsed with no further sighting. Any large whale sighted by a PSO within 1,000 m of the boomers, sparkers, and CHIRPs that cannot be identified as a non-North Atlantic right whale would be treated as if it were a North Atlantic right whale.

Ocean Wind would be required to immediately shut down any boomer, sparker, or CHIRP sources if a marine mammal(s) is sighted entering or within its respective shutdown zone:

- A 500 m zone for the North Atlantic right whale; and,
- A 100 m zone for all other marine mammal species (with exception of specific delphinid species).

The shutdown requirement would be waived for small delphinids of the following genera: *Delphinus*, *Stenella*, *Lagenorhynchus*, and *Tursiops*. Specifically, if a delphinid from the specified genera is visually detected approaching the vessel (*i.e.*, to bow-ride) or towed equipment, shutdown would

not be required. Furthermore, if there is uncertainty regarding identification of a marine mammal species (*i.e.*, whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived), the PSOs would use their best professional judgment in making the decision to call for a shutdown. Additionally, shutdown is required if a delphinid that belongs to a genus other than those specified is detected in the shutdown zone.

If a boomer, sparker, or CHIRP is shut down for reasons other than mitigation (*e.g.*, mechanical difficulty) for less than 30 minutes, it would be allowed to be activated again without ramp-up only if: (1) PSOs have maintained constant observation and (2) no additional detections of any marine mammal occurred within the respective shutdown zones. If a boomer, sparker, or CHIRP was shut down for a period longer than 30 minutes, then all clearance and ramp-up procedures would be required to be initiated, as previously described.

Table 40 -- Harassment Threshold Ranges and Mitigation Zones During HRG Surveys

| Marine Mammal Species | Level B Harassment Zone (m) | | Clearance Zone (m) | Shutdown Zone (m) |
|-------------------------------------|-----------------------------|--------|--------------------|-------------------|
| | Boomer/Sparke r use | CHIRPs | | |
| Low-frequency cetaceans | | | | |
| Fin whale* | 141 | 48 | 100 | 100 |
| Minke whale | | | 100 | 100 |
| Sei whale* | | | 100 | 100 |
| Humpback whale | | | 100 | 100 |
| North Atlantic right whale* | | | 500 | 500 |
| Blue whale* | | | 100 | 100 |
| Mid-frequency cetaceans | | | | |
| Sperm whale* | 141 | 48 | 100 | 100 |
| Atlantic white-sided dolphin | | | 100 | n/a |
| Atlantic spotted dolphin | | | 100 | n/a |
| Common dolphin | | | 100 | n/a |
| Risso's dolphin | | | 100 | 100 |
| Bottlenose dolphin (offshore stock) | | | 100 | n/a |
| Bottlenose dolphin (coastal stock) | | | 100 | n/a |

| | | | | |
|-----------------------------|-----|----|-----|-----|
| Long-finned pilot whale | | | 100 | 100 |
| Short-finned pilot whale | | | 100 | 100 |
| High-frequency cetaceans | | | | |
| Harbor porpoise | 141 | 48 | 100 | 199 |
| Phocid Pinnipeds (in water) | | | | |
| Gray seal | 141 | 48 | 100 | 100 |
| Harbor seal | | | | |

Note: n/a = no shutdown zone mitigation will be applied

* = species is listed under the Endangered Species Act

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Ocean Wind to deactivate acoustic sources during periods where no data is being collected, except as determined necessary for testing. Any unnecessary use of the acoustic source would be avoided.

Ramp-Up

At the start or restart of the use of boomers, sparkers, and/or CHIRPs, a ramp-up procedure would be required unless the equipment operates on a binary on/off switch. A ramp-up procedure, involving a gradual increase in source level output, is required at all times as part of the activation of the acoustic source when technically feasible. Operators should ramp up sources to half power for 5 minutes and then proceed to full power. Prior to a ramp-up procedure starting, the operator would have to notify a PSO of the planned start of the ramp-up. This notification time would not be less than 60 minutes prior to the planned ramp-up activities as all relevant PSOs would need the appropriate 30 minute period to monitor prior to the initiation of ramp-up. Prior to ramp-up beginning, the operator must receive confirmation from the PSO that the clearance zone is clear of any marine mammals. All ramp-ups would be scheduled to minimize the overall time spent with the source being activated. The ramp-up procedure must be used at the beginning of construction survey activities or after more than a 30-minute break in survey activities using the specified HRG

equipment to provide additional protection to marine mammals in or near the survey area by allowing them to vacate the area prior to operation of survey equipment at full power.

Ocean Wind would not initiate ramp-up until the clearance process has been completed (see Clearance and Shutdown Zones section above). Ramp-up activities would be delayed if a marine mammal(s) enters its respective shutdown zone. Ramp-up would only be reinitiated if the animal(s) has been observed exiting its respective shutdown zone or until additional time has elapsed with no further sighting (*i.e.*, 15 minutes for small odontocetes and seals, and 30 minutes for all other species).

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

Proposed Monitoring and Reporting

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

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

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

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or

cumulative impacts from multiple stressors.

- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (e.g., marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

Separately, monitoring is also regularly used to support mitigation implementation, which is referred to as mitigation monitoring, and monitoring plans typically include measures that both support mitigation implementation and increase our understanding of the impacts of the activity on marine mammals.

During the construction activities related to Ocean Wind 1, visual monitoring by NMFS-approved PSOs would be conducted before, during, and after impact pile driving; vibratory pile driving; any UXO/MEC detonations, and during HRG surveys, and PAM will be conducted during all impact pile driving and UXO/MEC detonations. Observations by PSOs will support the mitigation measures described above. Also, to increase understanding of the impacts of the activity on marine mammals, observers will record all incidents of marine mammal occurrence at any distance from the piling location, UXO/MEC detonation site, and during active HRG acoustic sources, and monitors will document all behaviors, and behavioral changes, in concert with distance from an acoustic source. The required monitoring is described below, beginning with PSO measures that are applicable to all activities or monitoring, followed by activity-specific monitoring requirements.

Protected Species Observer Requirements

Ocean Wind would be required to collect sighting data and behavioral response data related to construction activities for marine mammal species observed in the region of the activity during the period in which an activity occurs using NMFS-approved visual and acoustic PSOs (see Proposed Mitigation section). All observers must be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring. PSOs will monitor all clearance and shutdown zones prior to, during, and following impact pile driving; vibratory pile driving; UXO/

MEC detonation; and during HRG surveys using boomers, sparkers, and CHIRPs (with monitoring durations specified further below). PSOs will also monitor the Level B harassment zones and will document any marine mammals observed within these zones, to the extent practicable (noting that some zones are too large to fully observe). Observers would be located at the best practicable vantage points on the pile driving vessel and, where required, dedicated PSO vessels or aerial platforms. Full details regarding all marine mammal monitoring must be included in relevant Plans (e.g., Pile Driving and Marine Mammal Monitoring Plan) that, under this proposed action, Ocean Wind would be required to submit to NMFS for approval at least 90 days in advance of the commencement of any construction activities.

The following measures apply to all visual monitoring efforts:

1. Monitoring must be conducted by qualified, trained PSOs who will be placed on the primary vessel relevant to the activity (e.g., pile driving vessel, UXO/MEC vessel, HRG survey vessel) and dedicated PSO vessels (e.g., additional UXO/MEC vessels) and must be in positions that allow for the best vantage point to monitor for marine mammals and implement the relevant shutdown procedures, when determine to be applicable;
2. PSO must be independent, dedicated, and qualified, meaning that they must be employed by a third-party observer provider and must have no other tasks beyond to conduct observational effort, collect data, and communicate with an instruct the relevant vessel crew with regard to the presence of protected species and mitigation requirements;
3. During all activities, PSOs would be located at the best vantage point(s) to provide adequate coverage of the entire visual shutdown and clearance zones, and as much of the Level B harassment zone as possible, while still maintaining a safe work environment;
4. PSOs may not exceed 4 consecutive watch hours, must have a minimum 2-hour break between watches, and may not exceed a combined watch schedule of more than 12 hours in a single 24-hour period;
5. During all observation periods related to pile driving (impact and vibratory), and UXO/MEC detonations, PSOs would be required to use high-magnification (25x), as well as standard handheld (7x), binoculars and the naked eyes to search continuously for marine mammals. During periods of low visibility (e.g., darkness, rain, fog, poor

weather conditions, etc.), PSOs would be required to use alternative technologies (i.e., infrared or thermal cameras) to monitor the shutdown and clearance zones. At least one PSO located on the foundation pile driving vessel and UXO/MEC monitoring vessel would be equipped with “Big Eye” binoculars (e.g., 25 × 150; 2.7 view angle; individual ocular focus; height control) of appropriate quality. These would be mounted on a pedestal on the deck of the vessel at the most appropriate vantage point that would provide for the optimal sea surface observation, as well as safety of the PSO;

6. PSOs should have the following minimum qualifications:

- a. Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water’s surface with the ability to estimate the target size and distance. The use of binoculars is permitted and may be necessary to correctly identify the target(s);
- b. Ability to conduct field observations and collect data according to the assigned protocols;
- c. Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- d. Writing skills sufficient to document observations, including but not limited to: the number and species of marine mammals observed, the dates and times of when in-water construction activities were conducted, the dates and time when in-water construction activities were suspended to avoid potential incidental injury of marine mammals from construction noise within a defined shutdown zone, and marine mammal behavior;
- e. Ability to communicate orally, by radio, or in-person, with project personnel to provide real-time information on marine mammals observed in the area, as necessary.

Observer teams employed by Ocean Wind, in satisfaction of the mitigation and monitoring requirements described herein, must meet the following additional requirements:

1. At least one observer must have prior experience working as an observer;
2. Other observers may substitute education (a degree in biological science or a related field) or training for experience;
3. One observer will be designated as lead observer or monitoring coordinator (“Lead PSO”). This Lead PSO would have prior experience working as an observer in an offshore environment;
4. At least two PSOs located on platforms (either vessel-based or aerial)

would be required to have a minimum of 90 days of at-sea experience working in those roles in an offshore environment and would be required to have no more than eighteen months elapsed since the conclusion of their last at-sea experience; and,

5. All PSOs must be approved by NMFS. Ocean Wind would be required to submit the curriculum vitae (CV) of the initial set of PSOs necessary to commence the project to NMFS OPR (at *itp.potlock@noaa.gov*) for approval at least 60 days prior to the first day of construction activities. PSO resumes would need to include the dates of training and any prior NMFS approval, as well as the dates and description of their last PSO experience, and must be accompanied by information documenting their successful completion of an acceptable training course. NMFS would allow for 3 weeks to approve PSOs from the time that the necessary information is received by NMFS, after which any PSOs that meet the minimum requirements would automatically be considered approved.

Some activities planned to be undertaken by Ocean Wind may require the use of PAM, which would necessitate the employment of at least one acoustic PSO (aka PAM operator on duty at any given time). PAM operators would be required to meet several of the specified requirements described above for PSOs, including: 2, 6b–e, 8, 10, and 11. Furthermore, PAM operators would be required to complete a specialized training for operating the PAM systems and must demonstrate familiarity with the PAM system on which they will be working.

PSOs would be able to act as both acoustic and visual observers during the construction of Ocean Wind 1 if the individual(s) demonstrates that they have had the required level and appropriate training and experience to perform each task. However, a single individual would not be allowed to concurrently act in both roles.

Ocean Wind would be required to conduct briefings between construction supervisors, construction crews, and the PSO/PAM team prior to the start of all construction activities. When new personnel join the work, briefings must be held to explain all responsibilities, communication procedures, marine mammal monitoring protocols, and operational procedures. An informal guide must be included with the Marine Mammal Monitoring Plan to aid in identifying species if they are observed in the vicinity of the project area.

Ocean Wind's personnel and PSOs would also be required to use available sources of information on North

Atlantic right whale presence to aid in monitoring efforts. This includes:

1. Monitoring daily of the Right Whale Sightings Advisory System;
2. Consulting of the WhaleAlert app; and,
3. Monitoring of the Coast Guard's VHF Channel 16 throughout the day to receive notifications of any sightings and information associated with any Dynamic Management Areas, to plan construction activities and vessel routes, if practicable, to minimize the potential for co-occurrence with North Atlantic right whales.

Additionally, whenever multiple project-associated vessels (of any size; e.g., construction survey, crew transfer) are operating concurrently, any visual observations of ESA-listed marine mammals must be communicated to PSOs and vessel captains associated with other vessels to increase situational awareness.

The following are proposed monitoring and reporting measures that NMFS would require specific to each construction activity:

WTG and OSS Foundation Installation

Ocean Wind would be required to implement the following monitoring procedures during all impact pile driving activities of monopiles and/or pin piles related to WTG and OSS installation.

Ocean Wind would be required to have a minimum of four PSOs actively observing marine mammals before, during, and after (specific times described below) the installation of foundation piles (monopiles and/or pin piles). At least four PSOs must be actively observing for marine mammals. At least two PSOs must be actively observing on the pile driving vessel while at least two PSOs are actively observing on a secondary, PSO-dedicated vessel. At least one active PSO on each platform must have a minimum of 90 days at-sea experience working in those roles in offshore environments with no more than 18 months elapsed since the conclusion of the at-sea experience. Concurrently, at least one acoustic PSO (i.e., passive acoustic monitoring (PAM) operator) must be actively monitoring for marine mammals before, during and after impact pile driving.

All PSOs would need to be located at the best vantage point(s) on the impact pile driving vessel and dedicated PSO vessels in order to ensure 360° visual coverage of the entire clearance and shutdown zones around the vessels, and as much of the Level B harassment zone as possible. During all observation periods associated with impact pile

driving, PSOs would use high magnification (25x) binoculars, standard handheld (7x) binoculars, and the naked eye to search continuously for marine mammals. At least one PSO on the foundation pile driving vessel must be equipped with Big Eye binoculars (e.g., 25 x 150; 2.7 view angle; individual ocular focus; height control) of appropriate quality. These must be pedestal mounted on the deck at the most appropriate vantage point that provides for optimal sea surface observation and PSO safety. As described in the Proposed Mitigation section, if the minimum visibility zone cannot be visually monitored at all times using this or alternative equipment, pile driving operations may not commence or, if active, must shutdown. To supplement visual observers within the applicable shutdown zones, Ocean Wind would utilize at least one PAM operator before, during, and after pile installation. This PAM operator would assist the PSOs in ensuring full coverage of the clearance and shutdown zones. All on-duty visual PSOs will remain in contact with the PAM operator on-duty, who will monitor the PAM systems for acoustic detections of marine mammals in the area. The use of real-time PAM will require at least one PAM operator to monitor each system by viewing the data/data products that would be streamed in real-time or near real-time to a computer workstation and monitor. In some cases, the PAM operator may be located onshore with the workstation and monitor or they may be located on a vessel. In either situation, PAM operators will maintain constant and clear communications with visual PSOs on duty regarding animal detections that would be approaching or found within the applicable zones related to impact pile driving. Ocean Wind would utilize PAM to acoustically monitor the clearance and shutdown zones, and would record all detections of marine mammals and estimated distance (noting whether they are in the Level A harassment or Level B harassment zones). To effectively utilize PAM, Ocean Wind would implement the following protocols:

- PAM operators would be stationed on at least one of the dedicated monitoring vessels in addition to the PSOs; or located remotely/onshore.
- PAM operators would have completed specialized training for operating PAM systems prior to the start of monitoring activities.
- All on-duty PSOs will be in contact with the PAM operator on-duty, who will monitor the PAM systems for

acoustic detections of marine mammals that are vocalizing in the area.

- For real-time PAM systems, at least one PAM operator will be designated to monitor each system by viewing data or data products that are streamed in real-time or near real-time to a computer workstation and monitor located on a Project vessel or onshore.

- The PAM operator will inform the Lead PSO on duty of animal detections approaching or within applicable ranges of interest to the pile driving activity via the data collection software system (*i.e.*, Mysticetus or similar system) who will be responsible for requesting the designated crewmember to implement the necessary mitigation procedures.

- Acoustic monitoring during nighttime and low visibility conditions during the day will complement visual monitoring (*e.g.*, PSOs and thermal cameras) and will cover an area of at least the Level B harassment zone around each foundation.

All PSOs and PAM operators would be required to begin monitoring 60 minutes prior to any impact pile driving, during, and after for 30 minutes. As described in the Proposed Mitigation section, in addition to the clearance zones which can be both visually and acoustically cleared, PSOs would need to visually clear an area extending 1.65 km from the pile during summer months and 2.5 km during December prior to any impact pile driving activities occurring. During this period, marine mammals must be able to be visually detected within the entire minimum visibility zone for a full 30 minutes immediately prior to the start of impact pile driving. The impact pile driving of both monopiles and/or pin piles would only be able to commence when the minimum visibility zone is fully visible (*e.g.*, not obscured by darkness, rain, fog, *etc.*) and the clearance zones are clear of marine mammals for at least 30 minutes, as determined by the Lead PSO, immediately prior to the initiation of impact pile driving.

For North Atlantic right whales, any visual or acoustic detection would trigger a delay to the commencement of pile driving. In the event that a large whale is sighted or acoustically detected that cannot be confirmed as a non-North Atlantic right whale species, it must be treated as if it were a North Atlantic right whale. Following a shutdown, monopile and/or pin pile installation may not recommence until the minimum visibility zone is fully visible and clear of marine mammals for 30 minutes.

Cofferdam Installation and Removal

Ocean Wind would be required to implement the following procedures during all vibratory pile driving activities on sheet piles associated with cofferdam installation and removal.

Ocean Wind would be required to have a minimum of two PSOs on active duty during any installation and removal of the temporary cofferdams. These PSOs would always be located at the best vantage point(s) on the vibratory pile driving platform or secondary platform in the immediate vicinity of the vibratory pile driving platform, in order to ensure that appropriate visual coverage is available of the entire visual clearance zone and as much of the Level B harassment zone, as possible. NMFS would not require the use of PAM during vibratory pile driving activities related to the installation or removal of the temporary cofferdam.

PSOs will monitor the clearance zone for the presence of marine mammals for 30 minutes before, throughout the installation of the sheet piles (and casing pipe, if installed), and for 30 minutes after all vibratory pile driving activities have ceased. Sheet pile or casing pipe installation may only commence when visual clearance zones are fully visible (*e.g.*, not obscured by darkness, rain, fog, *etc.*) and clear of marine mammals, as determined by the Lead PSO, for at least 30 minutes immediately prior to initiation of impact or vibratory pile driving.

During all observation periods related to vibratory pile driving, PSOs must use high-magnification (25x), standard handheld (7x) binoculars, and the naked eye to search continuously for marine mammals. During periods of low visibility (*e.g.*, darkness, rain, fog, *etc.*), PSOs must use alternative technology (*i.e.*, IR/Thermal camera) to monitor clearance and shutdown zones.

UXO/MEC Detonations

Ocean Wind would be required to implement the following procedures during all UXO/MEC detonations.

Ocean Wind would be required to use a minimum of six PSOs and one PAM operator located on at least two dedicated PSO vessels. All PSOs and PAM operators would be required to begin monitoring 60 minutes prior to the UXO/MEC detonation event, during the event, and after for 30 minutes. As UXO/MEC detonation would only occur during daylight hours, PSOs would only need to monitor during daylight hours (*i.e.*, period between civil twilight rise and set).

Ocean Wind would be required to utilize a PAM operator at least 60

minutes prior to detonation events to monitor for marine mammals prior to and after detonation events. The PAM operator would be stationed on one of the dedicated monitoring vessels but may also be located remotely on-shore, but this is subject to approval by NMFS. When real-time PAM is used, at least one PAM operator would be designated to monitor each system by viewing the data or data products that would be streamed in real-time or near real-time to a computer workstation and monitor, which would be located either on an Ocean Wind vessel or onshore. The PAM operator would work in coordination with the visual PSOs to ensure no detections of marine mammals prior to detonation occurring. The PAM operator would inform the Lead PSO on-duty of any animal detections approaching or within the applicable ranges of interest to the detonation activity via the data collection software (*i.e.*, Mysticetus or a similar system), who would then be responsible for requesting the necessary mitigation procedures. The PAM operator would monitor to and past the clearance zone for large whales (10 km), as possible.

Ocean Wind would also be required to perform aerial surveys, given the size of the UXO/MEC detonation zones, and at least two PSOs must also be located on the plane during aerial surveys that would occur before, during, and after UXO/detonation events. Aerial PSOs (which would be the same as the vessel-based PSOs) would continue to monitor for marine mammals before, during, and after the detonation has occurred.

PSOs will monitor the clearance zone for the presence of marine mammals for 60 minutes before, throughout the detonation event, and for 30 minutes after. Detonation may only commence when visual clearance zones are fully visible (*e.g.*, not obscured by darkness, rain, fog, *etc.*) and clear of marine mammals, as determined by the Lead PSO, for at least 60 minutes immediately prior to detonation occurring. For detonation zones (based on UXO/MEC charge weight) larger than 2 km, a secondary vessel would be used to monitor the detonation zone(s). In the event a secondary vessel is needed, two PSOs would be located at an appropriate vantage point on this vessel and would maintain watch during the same time period as the PSOs on the primary monitoring vessel. Ocean Wind would be required to ensure that the clearance zones are fully (100 percent) monitored prior to, during, and after detonation events.

During all observation periods related to UXO/MEC detonation, PSOs must use high-magnification (25x), standard handheld (7x) binoculars, and the naked eye to search continuously for marine mammals. PSOs located on the UXO/MEC monitoring vessel would also be equipped with “Big Eye” binoculars (e.g., 25 x 150; 2.7 view angle; individual ocular focus; height control). These would be mounted on a pedestal on the deck of the vessel at the most appropriate vantage point that would provide for the optimal sea surface observation, as well as safety of the PSO.

HRG Surveys

Ocean Wind would be required to implement the following procedures during all HRG surveys.

Between four and six PSOs would be present on every 24-hour survey vessel, and two to three PSOs would be present on every 12-hour survey vessel. Ocean Wind would be required to have at least one PSO on active duty during HRG surveys that are conducted during daylight hours (i.e., from 30 minutes prior to sunrise through 30 minutes following sunset) and at least two during HRG surveys that are conducted during nighttime hours. During all observation periods, PSOs must use standard handheld (7x) binoculars and the naked eye to search continuously for marine mammals. During periods of low visibility (e.g., darkness, rain, fog, etc.), PSOs must use alternative technology (i.e., IR/Thermal camera) to monitor clearance and shutdown zones, as necessary. NMFS does not require the use of PAM during HRG survey activities.

All PSOs would begin monitoring 30 minutes prior to the activation of boomers, sparkers, or CHIRPs; throughout boomer, sparker, or CHIRP use; and for 30 minutes after the use of the acoustic sources has ceased.

Given that multiple HRG vessels may be operating concurrently, any observations of marine mammals would be required to be communicated to PSOs on all nearby survey vessels.

Ramp-up of boomers, sparkers, and CHIRPs would only commence when visual clearance zones are fully visible (e.g., not obscured by darkness, rain, fog, etc.) and clear of marine mammals, as determined by the Lead PSO, for at least 30 minutes immediately prior to initiation of survey activities utilizing the specified acoustic sources.

During daylight hours when survey equipment is not operating, Ocean Wind would ensure that visual PSOs conduct, as rotation schedules allow, observations for comparison of sighting

rates and behavior with and without use of the specified acoustic sources. Off-effort PSO monitoring must be reflected in the monthly PSO monitoring reports.

Marine Mammal Passive Acoustic Monitoring

Ocean Wind would be required to utilize a PAM system to supplement visual monitoring for all monopile and pin pile installations, as well as during all UXO/MEC detonations. The PAM system must be monitored by a minimum of one PAM operator beginning at least 60 minutes prior to soft start of impact pile driving of monopiles and pin piles and UXO/MEC detonation, at all times during monopile and pin pile installation and UXO/MEC detonation, and 30 minutes post-completion of impact pile installation and UXO/MEC detonation. PAM PSOs must immediately communicate all detections of marine mammals at any distance (i.e., not limited to the Level B harassment zones) to visual PSOs, including any determination regarding species identification, distance, and bearing and the degree of confidence in the determination.

PAM operators may be on watch for a maximum of 4 consecutive hours followed by a break of at least 2 hours between watches. PAM operators must be required to demonstrate that they have completed specialized training for operating PAM systems, including identification of species-specific mysticete vocalizations. PSOs can act as PAM operators or visual PSOs (but not simultaneously) as long as they demonstrate that their training and experience are sufficient to perform each task.

Some PAM systems may be used for real-time mitigation monitoring. This can utilize a variety of sources, but the most likely options, as proposed in Ocean Wind’s PSMMP, will be discussed here.

Towed PAM systems may be utilized for the Ocean Wind 1 project. These would consist of cabled hydrophone arrays that would be deployed from a vessel and then typically monitored from a tow vessel. Notably, several challenges exist when using a towed PAM system (i.e., the tow vessel may not be fit for the purpose as it may be towing other equipment, operating sound sources, or working in patterns not conducive to effective PAM). Furthermore, detection and localization capabilities for low-frequency cetacean calls (i.e., mysticete species) can be difficult in a commercial deployment setting. Alternatively, these systems have many positive benefits, as they are often low cost to operate, have high

mobility, and are fairly easy and reliable to operate. These types of systems also work well in conjunction with visual monitoring efforts.

Another PAM system being considered by Ocean Wind are mobile and hybrid PAM systems that are often autonomous and may utilize Autonomous Surface Vehicle (ASV) and radio-linked autonomous acoustic recorders.

Ocean Wind plans to deploy PAM arrays specific for mitigation and monitoring of marine mammals outside of the shutdown zone to optimize the PAM system’s capabilities to monitor for the presence of animals potentially entering these zones. The exact configuration and number of PAM systems would depend on the size of the zone(s) being monitored, the amount of noise expected in the area, and the characteristics of the signals being monitored. More closely spaced hydrophones would allow for more directionality, and perhaps, range to the vocalizing marine mammals; although, this approach would add additional costs and greater levels of complexity to the project. As larger baleen cetacean species (i.e., mysticetes), which would produce loud and lower-frequency vocalizations, may be able to be heard with fewer hydrophones spaced at greater distances. However, smaller cetaceans (such as mid-frequency delphinids; odontocetes) may necessitate more hydrophones and to be spaced closer together given the shorter range of the shorter, mid-frequency acoustic signals (e.g., whistles and echolocation clicks). As there are no “perfect fit” single optimal array configurations, these set-ups would need to be considered on a case-by-case basis.

A Passive Acoustic Monitoring Plan must be submitted to NMFS and BOEM for review and approval at least 180 days prior to the planned start of monopile and pin pile installations. PAM should follow standardized measurement, processing methods, reporting metrics, and metadata standards for offshore wind (Van Parijs *et al.*, 2021). The plan must describe all proposed PAM equipment, procedures, and protocols. However, NMFS considers PAM usage for every project on a case-by-case basis and would continue discussions with Ocean Wind for choosing the PAM system that is determined to be appropriate for this proposed project.

Acoustic Monitoring for Sound Field and Harassment Isoleth Verification (SFV)

During the installation of the first 3 monopile foundations, the installation of the first full jacket foundation (consisting of 16 total pin piles), and during all UXO/MEC detonations, Ocean Wind must empirically determine source levels, the ranges to the isopleths corresponding to the Level A harassment and Level B harassment thresholds and the transmission loss coefficient(s). Ocean Wind may also estimate ranges to the Level A harassment and Level B harassment isopleths by extrapolating from in situ measurements conducted at several distances from the monopile and pin piles being driven and all UXOs/MECs being detonated. Ocean Wind must measure received levels at a standard distance of 750 m from the monopiles and pin piles and at both the presumed modeled Level A harassment and Level B harassment threshold ranges, or an alternative distance as agreed to in the SFV Plan.

If acoustic field measurements collected during installation of the first or subsequent monopile, pin pile, and UXOs/MEC being detonated indicate ranges to the isopleths corresponding to Level A harassment and Level B harassment thresholds are greater than the ranges predicted by modeling (assuming 10-dB attenuation), Ocean Wind must implement additional noise mitigation measures prior to installing the next monopile or pin pile, or detonating any additional UXOs/MECs. Initial additional measures may include improving the efficacy of the implemented noise mitigation technology (e.g., BBC, DBBC) and/or modifying the piling schedule to reduce the sound source. Each sequential modification would be evaluated empirically by acoustic field measurements. In the event that field measurements indicate ranges to isopleths corresponding to Level A harassment and Level B harassment thresholds are greater than the ranges predicted by modeling (assuming 10 dB attenuation), NMFS may expand the relevant harassment, clearance, and shutdown zones and associated monitoring protocols. If harassment zones are expanded beyond an additional 1,500 m, additional PSOs would be deployed on additional platforms, with each observer responsible for maintaining watch in no more than 180° and of an area with a radius no greater than 1,500 m.

If acoustic measurements indicate that ranges to isopleths corresponding to the

Level A harassment and Level B harassment thresholds are less than the ranges predicted by modeling (assuming 10 dB attenuation), Ocean Wind may request a modification of the clearance and shutdown zones for impact pile driving of monopiles and pin piles and for detonation of all UXOs/MECs. For a modification request to be considered by NMFS, Ocean Wind would have had to conduct SFV on 3 or more monopiles and 1 entire jacket foundation (16 pin piles) and on all UXOs/MECs to verify that zone sizes are consistently smaller than predicted by modeling (assuming 10 dB attenuation). In addition, if a subsequent monopile and pin pile installation and location is selected that was not represented by previous three locations (i.e., substrate composition, water depth), SFV would be conducted. Furthermore, if a subsequent UXO/MEC charge weight is encountered and/or detonation location is selected that was not representative of the previous locations (i.e., substrate composition, water depth), SFV would also be required to be conducted. Upon receipt of an interim SFV report, NMFS may adjust zones (i.e., Level A harassment, Level B harassment, clearance, and/or shutdown) to reflect SFV measurements. The shutdown and clearance zones for pile driving would be equivalent to the measured range to the Level A harassment isopleths plus 10 percent (shutdown zone) and 20 percent (clearance zone), rounded up to the nearest 100 m for PSO clarity. However, the minimum visibility zone would not be decreased to a radius smaller than 1.65 km in the summer (and 2.5 km in the winter) from the pile. The shutdown zone for sei, fin, blue, and sperm whales (i.e., large whales) would not be reduced to a size less than 1.8 km in the summer and 2.5 km in the winter. The visual and PAM clearance and shutdown zones for North Atlantic right whales would not be decreased, regardless of acoustic field measurements. The Level B harassment zone would be equal to the largest measured range to the Level B harassment isopleth.

Ocean Wind would be required to submit a SFV Plan at least 180 days prior to the planned start of impact pile driving or any detonation activities. The plan would describe how Ocean Wind would ensure that the first three monopile and pin pile installation sites and each UXO/MEC detonation site selected for SFV are representative of the rest of the monopile and pin pile installation and UXO/MEC sites. In the case that these sites are not determined to be representative of all other monopile and pin pile installation sites

and UXO/MEC detonation locations, Ocean Wind would include information on how additional sites would be selected for SFV. The plan would also include methodology for collecting, analyzing, and preparing SFV data for submission to NMFS. The plan would describe how the effectiveness of the sound attenuation methodology would be evaluated based on the results. Ocean Wind must also provide, as soon as they are available but no later than 48 hours after each installation, the initial results of the SFV measurements to NMFS in an interim report after each monopile for the first 3 piles and pin pile installation for the first full jacket foundation (16 pin piles).

Reporting

Prior to any construction activities occurring, Ocean Wind would provide a report to NMFS (at itp.potlock@noaa.gov and pr.itp.monitoringreports@noaa.gov) that demonstrates that all required training for Ocean Wind personnel, which includes the vessel crews, vessel captains, PSOs, and PAM operators have completed all required trainings.

NMFS would require standardized and frequent reporting from Ocean Wind during the life of the proposed regulations and LOA. All data collected relating to the Ocean Wind 1 project would be recorded using industry-standard software (e.g., Mysticetus or a similar software) installed on field laptops and/or tablets. Ocean Wind would be required to submit weekly, monthly and annual reports as described below. During activities requiring PSOs, the following information would be collected and reported related to the activity being conducted:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Watch status (i.e., sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);
- PSO who sighted the animal;
- Time of sighting;
- Weather parameters (e.g., wind speed, percent cloud cover, visibility);
- Water conditions (e.g., sea state, tide state, water depth);
- All marine mammal sightings, regardless of distance from the construction activity;
- Species (or lowest possible taxonomic level possible);
- Pace of the animal(s);
- Estimated number of animals (minimum/maximum/high/low/best);

- Estimated number of animals by cohort (*e.g.*, adults, yearlings, juveniles, calves, group composition, *etc.*);
 - Description (*i.e.*, as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics);
 - Description of any marine mammal behavioral observations (*e.g.*, observed behaviors such as feeding or traveling) and observed changes in behavior, including an assessment of behavioral responses thought to have resulted from the specific activity;
 - Animal's closest distance and bearing from the pile being driven, UXO/MEC, or specified HRG equipment and estimated time entered or spent within the Level A harassment and/or Level B harassment zones;
 - Construction activity at time of sighting (*e.g.*, vibratory installation/removal, impact pile driving, UXO/MEC detonation, construction survey), use of any noise attenuation device(s), and specific phase of activity (*e.g.*, ramp-up of HRG equipment, HRG acoustic source on/off, soft start for pile driving, active pile driving, post-UXO/MEC detonation, *etc.*);
 - Description of any mitigation-related action implemented, or mitigation-related actions called for but not implemented, in response to the sighting (*e.g.*, delay, shutdown, *etc.*) and time and location of the action;
 - Other human activity in the area.

For all real-time acoustic detections of marine mammals, the following must be recorded and included in weekly, monthly, annual, and final reports:

 - a. Location of hydrophone (latitude & longitude; in Decimal Degrees) and site name;
 - b. Bottom depth and depth of recording unit (in meters);
 - c. Recorder (model & manufacturer) and platform type (*i.e.*, bottom-mounted, electric glider, *etc.*), and instrument ID of the hydrophone and recording platform (if applicable);
 - d. Time zone for sound files and recorded date/times in data and metadata (in relation to UTC. *i.e.* EST time zone is UTC-5);
 - e. Duration of recordings (start/end dates and times; in ISO 8601 format, yyyy-mm-ddTHH:MM:SS.sssZ);
 - f. Deployment/retrieval dates and times (in ISO 8601 format);
 - g. Recording schedule (must be continuous);
 - h. Hydrophone and recorder sensitivity (in dB *re.* 1 μ Pa);
 - i. Calibration curve for each recorder;
 - j. Bandwidth/sampling rate (in Hz);
 - k. Sample bit-rate of recordings; and,

- l. Detection range of equipment for relevant frequency bands (in meters). For each detection the following information must be noted:
 - a. Species identification (if possible);
 - b. Call type and number of calls (if known);
 - c. Temporal aspects of vocalization (date, time, duration, *etc.*, date times in ISO 8601 format);
 - d. Confidence of detection (detected, or possibly detected);
 - e. Comparison with any concurrent visual sightings;
 - f. Location and/or directionality of call (if determined) relative to acoustic recorder or construction activities;
 - g. Location of recorder and construction activities at time of call;
 - h. Name and version of detection or sound analysis software used, with protocol reference;
 - i. Minimum and maximum frequencies viewed/monitored/used in detection (in Hz); and,
 - j. Name of PAM operator(s) on duty.

If a North Atlantic right whale is observed at any time by PSOs or personnel on or in the vicinity of any impact or vibratory pile-driving vessel, dedicated PSO vessel, construction survey vessel, or during vessel transit, Ocean Wind must immediately report sighting information to the NMFS North Atlantic Right Whale Sighting Advisory System (866) 755-6622, to the U.S. Coast Guard via channel 16, and through the WhaleAlert app (<http://www.whalealert.org/>) as soon as feasible but no longer than 24 hours after the sighting. Information reported must include, at a minimum: time of sighting, location, and number of North Atlantic right whales observed.

If a North Atlantic right whale is detected via Ocean Wind PAM, the date, time, location (*i.e.*, latitude and longitude of recorder) of the detection as well as the recording platform that had the detection must be reported to nmfs.pacmdata@noaa.gov as soon as feasible, but no longer than 24 hours after the detection. Full detection data and metadata must be submitted monthly on the 15th of every month for the previous month via the webform on the NMFS North Atlantic right whale Passive Acoustic Reporting System website (<https://www.fisheries.noaa.gov/resource/document/passive-acoustic-reporting-system-templates>).

Prior to initiation of project activities, Ocean Wind must demonstrate in a report submitted to NMFS (at itp.potlock@noaa.gov and pr.itp.monitoringreports@noaa.gov) that all required training for Ocean Wind personnel (including vessel crew and

captains, and PSOs) has been completed.

Weekly Report—Ocean Wind would be required to compile and submit weekly PSO and PAM reports to NMFS (at itp.potlock@noaa.gov and PR.ITP.monitoringreports@noaa.gov) that document the daily start and stop of all pile driving, HRG survey, or UXO/MEC detonation activities, the start and stop of associated observation periods by PSOs, details on the deployment of PSOs, a record of all detections of marine mammals, any mitigation actions (or if mitigation actions could not be taken, provide reasons why), and details on the noise attenuation system(s) used and its performance. Weekly reports would be due on Wednesday for the previous week (Sunday–Saturday).

Monthly Report—Ocean Wind would be required to compile and submit monthly reports that include a summary of all information in the weekly reports, including project activities carried out in the previous month, vessel transits (number, type of vessel, and route), number of piles installed, and all observations of marine mammals. Monthly reports would be due on the 15th of the month for the previous month. The report should note the location and date of any turbines that become operational.

Annual Report—Ocean Wind would be required to submit an annual summary report to NMFS no later than 90 days following the end of a given calendar year describing, in detail, the following:

- Total number of marine mammals of each species/stock detected and how many were within designated Level A harassment and Level B harassment zones with comparison to authorized take of marine mammals for the associated activity type;
 - Marine mammal detections and behavioral observations before, during, and after each activity;
 - What mitigation measures were implemented (*i.e.*, number of shutdowns or clearance zone delays, *etc.*) or, if no mitigative action was taken, why not;
 - Operational details (*i.e.*, days of impact and vibratory pile driving, days/amount of HRG survey effort, total number and charge weights related to UXO/MEC detonations, *etc.*);
 - SFV/SSV results;
 - PAM systems used;
 - The results, effectiveness, and which noise abatement systems were used during relevant activities (*i.e.*, impact pile driving, UXO/MEC detonation);

- Summarized information related to Situational Reporting; and,
- Any other important information relevant to the Ocean Wind 1 project, including additional information that may be identified through the adaptive management process.

A final annual report would be prepared and submitted within 30 calendar days following receipt of any NMFS comments on the draft report. If no comments were received from NMFS within 60 calendar days of NMFS' receipt of the draft report, the report would be considered final.

Five-year Report—By 90 days after the expiration of the rule, Ocean Wind would submit a final report that summarizes all of the data contained within the annual reports. A final five-year report would be prepared and submitted within 60 calendar days following receipt of any NMFS comments on the draft report. If no comments were received from NMFS within 60 calendar days of NMFS' receipt of the draft report, the report would be considered final.

Situational Reporting

Specific situations encountered during the development of Ocean Wind 1 would require immediate reporting to be undertaken. These situations and the relevant procedures include:

- If a marine mammal observation occurs during vessel transit, the following information must be recorded:
 - a. Time, date, and location;
 - b. The vessel's activity, heading, and speed;
 - c. Sea state, water depth, and visibility;
 - d. Marine mammal identification to the best of the observer's ability (*e.g.*, North Atlantic right whale, whale, dolphin, seal);
 - e. Initial distance and bearing to marine mammal from vessel and closest point of approach; and,
 - f. Any avoidance measures taken in response to the marine mammal sighting.
- If a sighting of a stranded, entangled, injured, or dead marine mammal occurs. In this situation, the sighting would be reported to OPR, the NMFS RWSAS hotline, and the NMFS Greater Atlantic Regional Fisheries Office (GARFO) Marine Mammal and Sea Turtle Stranding & Entanglement Hotline (866-755-6622), and the U.S. Coast Guard within 24 hours. The report must include the following information:
 - a. Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

b. Species identification (if known) or description of the animal(s) involved;

Condition of the animal(s) (including carcass condition if the animal is dead);

c. Observed behaviors of the animal(s), if alive;

d. If available, photographs or video footage of the animal(s); and

e. General circumstances under which the animal was discovered.

- If a marine mammal is injured or killed as a result of Ocean Wind 1 project-related activities or vessels. In this case, the vessel captain or PSO on board shall immediately report the strike incident to the NMFS Office of Protected Resources and the GARFO within and no later than 24 hours. If activities related to the Ocean Wind 1 project caused the injury or death of the animal, Ocean Wind would supply a vessel to assist with any salvage efforts, if requested by NMFS. The notification of the strike would include:

a. Time, date, and location (latitude/longitude) of the incident;

b. Species identification (if known) or description of the animal(s) involved;

c. Vessel's speed during and leading up to the incident;

d. Vessel's course/heading and what operations were being conducted (if applicable);

e. Status of all sound sources in use;

f. Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;

g. Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;

h. Estimated size and length of animal that was struck;

i. Description of the behavior of the marine mammal immediately preceding and following the strike;

j. If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;

k. Estimated fate of the animal (*e.g.*, dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and

l. To the extent practicable, photographs or video footage of the animal(s).

Sound Monitoring Reporting

Ocean Wind will be required to provide the initial results of SFV (including measurements) to NMFS in interim reports after each monopile installation and pin pile installation or the first three piles as soon as they are available, but no later than 48 hours

after each installation. Ocean Wind would also have to provide interim reports after every UXO/MEC detonation as soon as they are available, but no later than 48 hours after each detonation. If SFV is required for subsequent monopile and pin pile installations, the same reporting timeline and data requirements apply. In addition to in situ measured ranges to the Level A harassment and Level B harassment isopleths, the acoustic monitoring report must include: SPL_{peak} , SPL_{rms} that contains 90 percent of the acoustic energy, single strike sound exposure level, integration time for SPL_{rms} , SEL_{ss} , and 24-hour cumulative SEL extrapolated from measurements. All these levels must be reported in the form of median, mean, max, and minimum. The SEL and SPL power spectral density and one-third octave band levels (usually calculated as decidecade band levels) at the receiver locations should be reported. The acoustic monitoring report must also include a description of the hydrophones used, hydrophone and water depth, distance to the pile driven, and sediment type at the recording location. Final results of SFV must be submitted as soon as possible, but no later than within 90 days following completion of impact pile driving of monopiles and pin piles and detonations of up to 10 UXOs/MECs.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" by mortality, serious injury, and Level A or Level B harassment, we consider other factors, such as the likely nature of any behavioral responses (*e.g.*, intensity, duration), the context of any such responses (*e.g.*, critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the

1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (e.g., as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

In the Estimated Take section, we identified the subset of potential effects that would be expected to rise to the level of take, and then identified the number of takes by Level A harassment and Level B harassment that we estimate are reasonably expected to occur based on the methods described. The impact that any given take would have is dependent on many case-specific factors that need to be considered in the negligible impact analysis (e.g., the context of behavioral exposures such as duration or intensity of a disturbance, the health of impacted animals, the status of a species that incurs fitness-level impacts to individuals, *etc.*). In this rule, we evaluate the likely impacts of the enumerated harassment takes that are proposed for authorization in the context of the specific circumstances surrounding these predicted takes. We also collectively evaluate this information, as well as other more tax-specific information and mitigation measure effectiveness, in group-specific discussions that support our negligible impact conclusions for each stock. As also described above, no serious injury or mortality is expected or proposed for authorization for any species or stock.

The Description of the Specified Activities section describes the specified activities proposed by Ocean Wind that may result in take of marine mammals and an estimated schedule for conducting those activities. Ocean Wind has provided a realistic construction schedule (e.g., Ocean Wind's schedule reflects the maximum number of piles they anticipate to be able to drive each month pile driving is authorized to occur); however, we recognize schedules may shift for a variety of reasons (e.g., weather or supply delays). However, the total amount of take would not exceed the maximum annual total in any given year and 5-year totals indicated in Tables 36 and 35, respectively.

We base our analysis and negligible impact determination (NID) on the maximum number of takes that would be reasonably expected to occur and are proposed to be authorized in the LOA, if issued, although, as stated before, the number of takes are only a 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 in this Negligible Impact Analysis and Determination section that applies to all the species listed in Table 3, given that some of the anticipated effects of Ocean Wind's construction and operation activities on marine mammals are expected to be relatively similar in nature. Then, we subdivide into more detailed discussions for mysticetes, odontocetes, and pinnipeds which have broad life history traits that support an overarching discussion of some factors considered within the analysis for those groups (e.g., habitat-use patterns, high-level differences in feeding strategies).

Last, we provide a negligible impact determinations for each species, providing species or stock-specific information or analysis, where appropriate, for example, for North Atlantic right whales given their population status. Organizing our analysis by grouping species or stocks that share common traits or that would respond similarly to effects of Ocean Wind's proposed 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. It is important to note that in the group or species sections, we base our negligible impact analysis on the maximum annual take that is predicted under the 5-year rule—however, the majority of the impacts are associated with turbine and substations construction, which will occur largely within a 2-year period. The estimated take in the other years is expected to be notably less, which is reflected in the total take that would be allowable under the rule (see Tables 34, 35, and 36).

Behavioral Disturbance

The amount of harassment Ocean Wind has requested, and NMFS is proposing to authorize, is based on exposure models that consider the outputs of an acoustic source and propagation model. Several conservative parameters and assumptions are ingrained into these models such as assuming forcing functions that consider direct contact with piles (*i.e.*, no cushion allowances) and applying the highest monthly sound speed profile to all months within a given season, and the exposure model results do not reflect any mitigation measures (except for North Atlantic right whales) or

avoidance response, and some of those results have been adjusted upward to consider sighting or group size data, where necessary. The resulting values for each stock were then used by Ocean Wind to request take. The only case in which mitigation measures (other than source level reduction via a noise abatement system) was considered is the potential for PTS (Level A harassment) of North Atlantic right whales (the model predicted a maximum of 1.08 PTS exposures but Ocean Wind did not request and we are not proposed to authorize Level A harassment of this species due, in large part, to the extended mitigation measures for this species). Therefore, for all species, the amount of take proposed to be authorized represents the maximum amount of Level A harassment and Level B harassment that is reasonably expected to occur.

In general, NMFS anticipates that impacts on an individual that has been harassed are likely to be more intense when exposed to higher received levels and for longer a duration (though this is in no way a strictly linear relationship for behavioral effects throughout species, individuals, or circumstances) and less severe impacts result when exposed to lower received levels and for brief duration. However, there is also growing evidence of the importance of contextual factors such as distance from a source in predicting marine mammal behavioral response to sound—*i.e.*, sounds of a similar level emanating from a more distant source have been shown to be less likely to evoke a response of equal magnitude (e.g., DeRuiter, 2012; Falcone *et al.*, 2017). As described in the Potential Effects to Marine Mammals and their Habitat section, the intensity and duration of any impact resulting from exposure to Ocean Wind's activities is dependent upon a number of contextual factors including, but not limited to, sound source frequencies, whether the sound source is moving towards the animal, hearing ranges of marine mammals, behavioral state at time of exposure, status of individual exposed (e.g., reproductive status, age class, health) and an individual's experience with similar sound sources. Ellison *et al.* (2012) and Moore and Barlow (2013), among others, emphasize the importance of context (e.g., behavioral state of the animals, distance from the sound source.) in evaluating behavioral responses of marine mammals to acoustic sources. Harassment to marine mammals may result in behavioral modifications of marine mammals (e.g., avoidance, temporary cessation of

foraging or communicating, changes in respiration or group dynamics, masking) or may result in auditory impacts such as hearing loss. In addition, some of the lower level physiological stress responses (e.g., orientation or startle response, change in respiration, change in heart rate) discussed previously would likely co-occur with the behavioral modifications, although these physiological responses are more difficult to detect and fewer data exist relating these responses to specific received levels of sound. Takes by Level B harassment, then, may have a stress-related physiological component as well; however, we would not expect Ocean Wind's activities to present conditions of long-term and continuous exposure to noise leading to long-term physiological stress responses in marine mammals that could affect reproduction or survival.

In the range of potential behavioral effects that might expect to be part of a response that qualifies as an instance of Level B harassment by behavioral disturbance (which by nature of the way it is modeled/counted, occurs within one 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. A less severe exposure of this nature could result in a behavioral response, such as avoiding an area that an animal would otherwise have chosen to move through or feed in for some amount of time or breaking off one or a few feeding bouts. More severe effects could occur if an animal gets close enough to the source to receive a comparatively higher level, is exposed continuously to one source for a longer time, or is exposed intermittently to different sources throughout a day. Such 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.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing on a diel cycle (24-hour cycle). Behavioral reactions to noise exposure, when taking place in a biologically important context, such as disruption of critical life functions, displacement, or avoidance of important habitat, are more likely to be significant if they last more than one day or recur on subsequent days (Southall *et al.*, 2007) due to diel and lunar patterns in diving and foraging behaviors observed in many cetaceans (Baird *et al.*, 2008, Barlow *et al.*, 2020, Henderson *et al.*, 2016, Schorr *et al.*, 2014). It is important

to note the water depth in the Ocean Wind 1 project area is shallow (15 to 36 m) and deep diving species, such as beaked whales and sperm whales, are not expected to be engaging in deep foraging dives when exposed to noise above NMFS harassment thresholds during the specified activities. Therefore, we do not anticipate impacts to deep foraging behavior to be impacted by the specified activities.

It is also important to identify that the estimated number of takes does not necessarily equate to the number of individual animals Ocean Wind expects 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 5-year period. These instances may represent either brief exposures (e.g., seconds UXO/MEC detonation or seconds to minutes for HRG surveys) or, in some cases, longer durations of exposure within a day. Some individuals of a species may experience recurring instances of take over multiple days over the course of the year, while some members of a species or stock may experience one exposure as they move through an area or not experience take at all which means that the number of individuals taken is smaller than the total estimated takes. In short, for species that are more likely to be migrating through the area and/or for which only a comparatively smaller number of takes are predicted (e.g., some of the mysticetes), it is more likely that each take represents a different individual, whereas for non-migrating species with larger amounts of predicted take, we expect that the total anticipated takes represent exposures of a smaller number of individuals of which some would be exposed multiple times.

Impact pile driving is most likely to result in a higher magnitude and severity of behavioral disturbance than other activities (*i.e.*, vibratory pile driving, UXO/MEC detonation and HRG surveys). Impact pile driving has higher source levels than vibratory pile driving and HRG sources. HRG surveys also produce much higher frequencies than pile driving resulting in minimal sound propagation. While UXO/MEC detonations may have higher source levels, impact pile driving is planned for longer durations (*i.e.*, a maximum of 10 UXO/MEC detonations are planned, which result in only instantaneous exposures). While impact pile driving is anticipated to be most impactful for these reasons, impacts are minimized through implementation of mitigation measures, including soft-start, use of a sound attenuation system, and the

implementation of clearance zones that would facilitate a delay of pile driving if marine mammals were observed approaching or within areas that could be ensounded above sound levels that could result in Level B harassment. Given sufficient notice through the use of soft-start, marine mammals are expected to move away from a sound source that is annoying prior to becoming exposed to very loud noise levels. The requirement that pile driving can only commence when the full extent of all clearance zones are fully visible to visual PSOs would ensure a higher marine mammal detection capability, enabling a high rate of success in implementation of clearance zones. Furthermore, Ocean Wind would be required to utilize PAM during all clearance periods, during impact pile driving, and after pile driving has ended during the post-piling period. PAM has shown strength when used in conjunction with visual observations and increases the detection capabilities of marine mammals (Van Parijs *et al.*, 2021). These measures also apply to UXO/MEC detonation(s) which also have the potential to elicit more severe behavioral reactions in the unlikely event that an animal is relatively close to the explosion in the instance that it occurs; hence, severity of behavioral responses are expected to be lower than without mitigation.

Occasional, milder behavioral reactions are unlikely to cause long-term consequences for individual animals or populations, and even if some smaller subset of the takes are in the form of a longer (several hours or a day) and more severe response, if they are not expected to be repeated over 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).

Temporary Threshold Shift (TTS)

TTS is one form of Level B harassment that marine mammals may incur through exposure to Ocean Wind's activities and, as described earlier, the proposed takes by Level B harassment may represent takes in the form of behavioral disturbance, TTS, or both. As discussed in the Potential Effects to Marine Mammals and their Habitat section, in general, TTS can last from a few minutes to days, be of varying degree, and occur across different frequency bandwidths, all of which determine the severity of the impacts on

the affected individual, which can range from minor to more severe. Impact and vibratory pile driving generate sounds in the lower frequency ranges (with most of the energy below 1–2 kHz but with a small amount energy ranging up to 20 kHz); therefore, in general and all else being equal, we would anticipate the potential for TTS is higher in low frequency cetaceans (*i.e.*, mysticetes) than other marine mammal hearing groups and would be more likely to occur in frequency bands in which they communicate. However, we would not expect the TTS to span the entire communication or hearing range of any species given the frequencies produced by pile driving do not span entire hearing ranges for any particular species. Additionally, though the frequency range of TTS that marine mammals might sustain would overlap with some of the frequency ranges of their vocalization types, the frequency range of TTS from Ocean Wind's pile driving and UXO/MEC detonation activities would not usually span the entire frequency range of one vocalization type, much less span all types of vocalizations or other critical auditory cues for any given species. However, the mitigation measures proposed by Ocean Wind and proposed by NMFS, further reduce the potential for TTS in mysticetes.

Generally, both the degree of TTS and the duration of TTS would be greater if the marine mammal is exposed to a higher level of energy (which would occur when the peak dB level is higher or the duration is longer). The thresholds for the onset of TTS was discussed previously in this rule (refer back to Table 6). However, source level alone is not a predictor of TTS. 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 proposed mitigation and the nominal speed of receiver relative to the stationary sources such as impact pile driving. The recovery time of TTS is also of importance when considering the potential impacts from TTS. In TTS laboratory studies (as discussed in the Potential Effects to Marine Mammals and their Habitat section), some using exposures of almost an hour in duration or up to 217 SEL, almost all individuals recovered within 1 day (or less, often in minutes) and we note that while the pile driving activities last for hours a day, it is unlikely that most marine mammals would stay in the close vicinity of the source long enough to incur more severe TTS. UXO/MEC detonation also has the

potential to result in TTS; however, given the duration of exposure is extremely short (milliseconds), the degree of TTS (*i.e.*, the amount of dB shift) is expected to be small and TTS duration is expected to be short (minutes to hours). Overall, given the small number of times that any individual might incur TTS, the low degree of TTS and the short anticipated duration, and the unlikely scenario that any TTS overlapped the entirety of a critical hearing range, it is unlikely that TTS of the nature expected to result from Ocean Wind's activities would result in behavioral changes or other impacts that would impact any individual's (of any hearing sensitivity) reproduction or survival.

Permanent Threshold Shift

Ocean Wind has requested, and NMFS proposed to authorize, a very small amount of take by PTS to some marine mammal individuals. The numbers of proposed takes by Level A harassment are relatively low for all marine mammal stocks and species: sei whales (1 take), fin whales (4 takes), minke whales (22 takes), humpback whales (6 takes), the coastal stock of bottlenose dolphins (11 takes), harbor porpoises (79 takes), gray seals (35 takes), and harbor seals (48 takes). The only activities from which we anticipate PTS may occur is from exposure to impact pile driving and UXO/MEC detonations, which produce sounds that are both impulsive and primarily concentrated in the lower frequency ranges (below 1 kHz) (David, 2006; Krumpel *et al.*, 2021).

There are no PTS data on cetaceans and only one instance of PTS being induced in an older harbor seals (Reichmuth *et al.*, 2019); however, available data (of mid-frequency hearing specialists exposed to mid- or high-frequency sounds (Southall *et al.*, 2007; NMFS 2018; Southall *et al.*, 2019) suggest that most threshold shifts occur in the frequency range of the source up to one octave higher than the source (with the maximum TTS at ½ octave above). We would anticipate a similar result for PTS. Further, no more than a small degree of PTS is expected to be associated with any of the Level A harassment take incurred, given it is unlikely that animals would stay in the close vicinity of a source for a duration long enough to produce more than a small degree of PTS.

PTS would consist of minor degradation of hearing capabilities occurring predominantly at frequencies one-half to one octave above the frequency of the energy produced by pile driving or instantaneous UXO/MEC

detonation (*i.e.*, the low-frequency region below 2 kHz) (Cody and Johnstone, 1981; McFadden, 1986; Finneran, 2015), not severe hearing impairment. If hearing impairment occurs from either impact pile driving or UXO/MEC detonation, it is most likely that the affected animal would lose a few decibels in its hearing sensitivity, which in most cases is not likely to meaningfully affect its ability to forage and communicate with conspecifics. However, given sufficient notice through use of soft-start prior to the full hammer energy that would be used during impact pile driving, marine mammals are expected to move away from a sound source that is annoying prior to it becoming potentially injurious or resulting in more severe behavioral reactions. Furthermore, while up to 10 UXOs/MECs have been estimated to be detonated, the exposure analysis assumed the worst-case scenario of assuming that all of the UXOs/MECs found would consist of the largest charge weight of UXO/MEC (E12; 454 kg). It is highly unlikely that all charges would be this size, which would reduce the take estimate. Furthermore, Ocean Wind plans to implement sound attenuation during all UXO/MEC detonations that would further be expected to reduce take of marine mammals.

Auditory Masking or Communication Impairment

The ultimate potential impacts of masking on an individual are similar to those discussed for TTS (*e.g.*, decreased ability to communicate, forage effectively, or detect predators), but an important difference is that masking only occurs during the time of the signal, versus TTS, which continues beyond the duration of the signal. Also, though, masking can result from the sum of exposure to multiple signals, none of which might individually cause TTS. Fundamentally, masking is referred to as a chronic effect because one of the key potential harmful components of masking is its duration—the fact that an animal would have reduced ability to hear or interpret critical cues becomes much more likely to cause a problem the longer it is occurring. 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, we expect that impact pile driving foundations have the greatest

potential to mask marine mammal signals and this pile driving may occur for several, albeit intermittent, hours per day. Masking is fundamentally more of a concern at lower frequencies (which are pile driving dominant frequencies), because low frequency signals propagate significantly further than higher frequencies and because they are more likely to overlap both the narrower low frequency calls of mysticetes, as well as many non-communication cues such as fish and invertebrate prey, and geologic sounds that inform navigation. However, the area in which masking would occur for all marine mammal species and stocks (*e.g.*, predominantly in the vicinity of the foundation pile being driven) is small relative to the extent of habitat used by each species and stock. In addition, the waters off of New Jersey are not known to have any particular foraging or reproductive significance for any marine mammals. In summary, the nature of Ocean Wind's activities paired with habitat use by marine mammals do not support the likelihood that the level of masking occurring would have the potential to affect reproductive success or survival.

Impacts on Habitat and Prey

Construction activities may result in fish and invertebrate mortality or injury very close to pile driving, HRG surveys, or UXO/MEC detonation and may cause some fish to leave the area of disturbance. It is anticipated any mortality or injury would be limited to a very small subset of available prey and the implementation of mitigation measures such as the use of bubble curtains during pile driving and UXO/MEC detonation would further limit the degree of impact (and noting UXO/MEC detonation would be limited to 10 events over 5 years). Behavioral changes in prey in response to construction activities could temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the relatively small area of the habitat that may be affected at any given time (*e.g.*, around a pile being driven) and that there are no known areas of foraging importance to marine mammals in the action area, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

Cable presence and operation are not anticipated to impact marine mammal habitat as these would be buried and any electromagnetic fields emanating from the cables are not anticipated to result in consequences that would impact marine mammals prey to the extent they would be unavailable for

consumption and marine mammal habitat does not occur within the substrate where cables would be present.

The presence and operation of turbines within the lease area could have longer-term impacts on marine mammal habitat as the project would result in the presence of the structures in the Atlantic Ocean where marine mammals occur for 30+ years. The presence and operation of structures such as wind turbines are, in general, likely to result in local and broader oceanographic effects in the marine environment, and may disrupt marine mammal prey such as dense aggregations and distribution of zooplankton through altering the strength of tidal currents and associated fronts, changes in stratification, primary production, the degree of mixing, and stratification in the water column (Chen *et al.*, 2021, Johnson *et al.*, 2021; Christiansen *et al.*, 2022; Dorrell *et al.*, 2022). However, the scale of impacts is difficult to predict and may vary from hundreds of meters for local individual turbine impacts (Schultze *et al.*, 2020) to large-scale dipoles of surface elevation changes stretching hundreds of kilometers (Christiansen *et al.*, 2022). In 2022, NMFS hosted a workshop to better understand the current scientific knowledge and data gaps around the potential long-term impacts of offshore wind farm operations in the Atlantic Ocean. The report from that workshop is pending and NMFS will consider its findings in development of the final rule for this action. As discussed in the Potential Effects to Marine Mammals and Their Habitat section, Ocean Wind 1 is in an area of the MAB that experiences coastal upwelling and is on the inshore edge of the Cold Pool footprint. While there is some chance of local oceanographic impacts from wind farm presence and operation, meaningful ocean impacts relative to stratification and the Cold Pool that would affect marine mammal habitat and prey are unlikely. This rule considers the presence of the turbines scheduled to be fully constructed through the course of the rule and the likelihood that some subset of the turbines (approximately 68) will likely become operational in 2024 with the last 30 being installed and operational between 2024 and 2025. Further, this area does not support dense congregations of zooplankton (baleen whale prey) that could be impacted if long-term oceanographic changes occurred. For these reasons, we predict only small habitat changes from wind farm operation and if oceanographic

features are affected by wind farm operation, the impact on marine mammal habitat and their prey is likely to be insignificant.

Mitigation To Reduce Impacts on All Species

This proposed rulemaking includes a variety of mitigation measures designed to minimize impacts on all marine mammals, with a focus on North Atlantic right whales (latter described in more detail below). For impact pile driving of foundation piles, eight overarching mitigation measures are proposed, which are intended to reduce both the number and intensity of marine mammal takes: (1) time of year/seasonal restrictions; (2) use of multiple PSOs to visually observe for marine mammals (with any detection within designated zones triggering delay or shutdown); (3) use of PAM to acoustically detect marine mammals, with a focus on detecting baleen whales (with any detection within designated zones triggering delay or shutdown); (4) implementation of clearance zones; (5) implementation of shutdown zones; (6) use of soft-start; (7) use of noise abatement technology; and, (8) maintaining situational awareness of marine mammal presence through the requirement that any marine mammal sighting(s) by Ocean Wind project personnel must be reported to PSOs.

When monopile or jacket foundation installation does occur, Ocean Wind is committed to reducing the noise levels generated by impact pile driving to the lowest levels practicable and ensuring that they do not exceed a noise footprint above that which was modeled, assuming a 10 dB attenuation. Use of a soft-start will allow animals to move away from (*i.e.*, avoid) the sound source prior to the elevation of the hammer energy to the level maximally needed to install the pile (Ocean Wind will not use a hammer energy greater than necessary to install piles). Clearance zone and shutdown zone implementation, required when marine mammals are within given distances associated with certain impact thresholds, will reduce the magnitude and severity of marine mammal take.

To reduce the daily amount of time the area may be ensonified (and thereby decrease daily exposure risk), Ocean Wind will drive no more than two monopiles per day. Ocean Wind indicates the need for up to nine hours of impact pile driving installation activities per each monopile; however, this entire period is unlikely to consist of active hammering as some time would be needed to move vessels and equipment to set up additional

monopiles (assuming a full monopile foundation build-out). Specifically, the application notes that “installation of a single pile at a minimum would involve a 1-hour pre-clearance period, 4 hours of piling, and 4 hours to move to the next piling location where the process would begin again.” Based on this, at a rate of two monopiles with only 4 hours of active impact hammering being necessary, the physical installation time occurring daily would only consist of 8 hours instead of 18 hours, as that full period would also consist of other activities that are not likely to harass marine mammals (e.g., vessel transit, equipment set-up, pre-clearance monitoring by visual PSOs and PAM operators) outside of active impact driving.

NMFS is also proposing to require Ocean Wind to apply a noise attenuation device (likely a big bubble curtain and another technology, such as a hydro-damper) to ensure sound generated from the project does not exceed that modeled (assuming 10 dB reduction) at given ranges to harassment isopleths, and to minimize noise levels to the lowest level practicable. As an example used previously in the CVOW pilot project, double big bubble curtains are successfully and widely applied across European wind development efforts, and are known to reduce noise levels more than a single big bubble curtain alone (e.g., see Bellman *et al.*, 2020). Further, NMFS will be reviewing the operational reports provided by Ocean Wind to ensure that deployments are successful (e.g., the maximum air flow rate is being used during pile driving).

Mysticetes (North Atlantic Right Whale, Blue Whale, Fin Whale, Sei Whale, Minke Whale, and Humpback Whale)

Six mysticete species of cetaceans (comprising six stocks) are proposed to be taken by harassment. These stocks all use the waters off of New Jersey as a migratory corridor (recognizing that not all animals within a given stock migrate every year), and while some behavior such as foraging may occur sporadically, none of the six species are known to specifically congregate in or around the project area for feeding or reproductive behaviors.

Behavioral data on mysticete reactions to pile driving noise is scant. Kraus *et al.* (2019) predicted that the three main impacts of offshore wind farms on marine mammals would consist of displacement, behavioral disruptions, and stress. Broadly, we can look to studies that have focused on other noise sources such as seismic surveys and military training exercises,

which suggest that exposure to loud signals can result in avoidance of the sound source (or displacement if the activity continues for a longer duration in a place where individuals would otherwise have been staying in, which is less likely for mysticetes in this area), disruption of foraging activities (if they are occurring in the area, which is less likely for mysticetes in the project area), local masking around the source, associated stress responses, and impacts to prey, as well as TTS or PTS in some cases.

Mysticetes encountered in the Ocean Wind project area would primarily be migrating through the area, and there are no known areas where any mysticete species concentrate for feeding or reproductive behaviors in or in the vicinity of the project area. If foraging events did occur, these would likely be sporadic and not focused specifically in the area. In any case, it is unlikely dedicated foraging activities in this area would occur, much less consistently during the same hours where impact pile driving is planned to occur. While we have acknowledged above that mortality, hearing impairment, or displacement of mysticete prey species may result locally from impact pile driving or UXO/MEC detonation, given the broad availability of prey species in the area and the low likelihood of mysticete foraging in the area, any impacts from pile driving on mysticete foraging would be expected to be minor. Further, given the fact that mysticete species are expected to predominantly be migrating through, and the relatively low Level B harassment take numbers indicated in Table 35 (between 4 and 118 for the 6 species), it is likely that most of the proposed takes represent an exposure of a different individual, which means that the behavioral impacts to mysticetes are limited to behavioral disturbance occurring on one or two days within a year—an amount that would not be expected to impact reproduction or survival.

Neither North Atlantic right whales nor blue whales are expected or authorized to incur PTS, and the other mysticetes have 1, 4, 6, and 22 Level A harassment takes for sei, fin, humpback, and minke whales, respectively. As described previously, PTS for mysticetes from impact pile driving may overlap frequencies used for communication, navigation, or detecting prey, however, given the nature and duration of the activity, the mitigation measures, and likely avoidance behavior, any PTS is expected to be of a small degree, would be limited to frequencies where pile driving noise is concentrated (i.e., only a small subset of

their hearing range) and would not be expected to impact reproductive success or survival.

North Atlantic Right Whales

North Atlantic right whales are listed as endangered under the ESA and, as described in the Effects to Marine Mammals and Their Habitat section, are threatened by a low population abundance, higher than average mortality rates, and lower than average reproductive rates. Recent studies have reported individuals showing poor health or high stress levels (Corkeron *et al.*, 2017) which has further implications on reproductive success (Christiansen *et al.*, 2020; Stewart *et al.*, 2021; Stewart *et al.*, 2022). Given this, the status of the North Atlantic right whale population is of heightened concern and, therefore, merits additional analysis and consideration. NMFS proposes to authorize a maximum of seven takes of North Atlantic right whales, by Level B harassment only, within any given year with no more than 14 takes incidental to all construction activities are proposed to be authorized over the 5-year effectiveness of this proposed rule.

Given their migratory behavior in the project area, we anticipate individual whales would be swimming through the area and it is likely that the number of annual exposures represents individual whales as we do not anticipate whales to linger in the area. Therefore, we anticipate these takes to occur to seven individuals in a given year (i.e., seven individuals incurring a behavioral disturbance on one day within a year). Across all years, while it is possible an animal migrating through could have been exposed during a previous year, the low amount of take proposed to be authorized during the 5-year period of the proposed rule makes this scenario also unlikely. However, if an individual were to be exposed during a subsequent year, the impact of that exposure is likely independent of the previous exposure given the duration between exposures. No mortality, serious injury, or Level A harassment of North Atlantic right whales is anticipated or proposed to be authorized.

North Atlantic right whales are presently experiencing an ongoing UME (beginning in June 2017). Preliminary findings support human interactions, specifically vessel strikes and entanglements, as the cause of death for the majority of North Atlantic right whales. Given the current status of the North Atlantic right whale, the loss of even one individual could significantly impact the population. No mortality, serious injury, or injury of North

Atlantic right whales as a result of the project is expected or proposed to be authorized. Any disturbance to North Atlantic right whales due to Ocean Wind's activities is expected to result in temporary avoidance of the immediate area of construction. As no injury, serious injury, or mortality is expected or authorized, and Level B harassment of North Atlantic right whales will be reduced to the level of least practicable adverse impact through use of mitigation measures, the authorized number of takes of North Atlantic right whales would not exacerbate or compound the effects of the ongoing UME in any way.

As described in the general Mysticete section above, impact pile driving (assuming WTG monopile and OSS pin pile build-out) has the potential to result in the highest amount of annual take (5 Level B harassment takes) and is of greatest concern given loud source levels. The potential types, severity, and magnitude of impacts is also anticipated to mirror that described in the general mysticete section above, including avoidance (the most likely outcome), changes in foraging or vocalization behavior, masking, a small amount of TTS, and temporary physiological impacts (e.g., change in respiration, change in heart rate). Importantly, the effects of the activities proposed by Ocean Wind are sufficiently low-level and localized to specific areas as to not meaningfully impact important behaviors such as migratory behavior of North Atlantic right whales—their primary behavior within the project area. As described above, only seven instances of take are proposed for authorization, with each occurring within a day, and likely any take would only occur once a year to seven different individual animals. If this small number of exposures results in temporary behavioral reactions, such as slight displacement (but not abandonment) of a migratory pathway, it is unlikely to result in energetic consequences that could affect reproduction or survival of any individuals. Overall, NMFS expects that any harassment of North Atlantic right whales incidental to the specified activities would not result in changes to their migration patterns as only temporary avoidance of an area during construction is expected to occur, animals would be migrating through these areas and are not known to remain in this habitat for extensive durations, and that any temporarily displaced animals would be able to return to or continue to travel through these areas once activities have ceased. Although acoustic masking may occur, based on

the acoustic characteristics of noise associated with pile driving (e.g., frequency spectra, short duration of exposure given anticipated behavioral patterns (i.e., migration)) and construction surveys (e.g., intermittent signals), NMFS expects masking effects to be minimal (e.g., impact or vibratory pile driving) to none (e.g., construction surveys), and only present in a period of time that a North Atlantic right whale were in the close vicinity of pile driving, which is expected to be infrequent and brief, given time of year restrictions, anticipated mitigation effectiveness, and likely avoidance behaviors. TTS is another potential form of Level B harassment that could result in brief periods of slightly reduced hearing sensitivity, affecting behavioral patterns by making it more difficult to hear or interpret acoustic cues within the frequency range (and slightly above) of sound produced during impact pile driving; however, given the North Atlantic right whale-specific mitigation (described below), it is unlikely TTS would occur and, if it did, any TTS would likely be of low amount, be limited to frequencies where most construction noise is centered (below 2 kHz) and we would expect hearing sensitivity returning to pre-exposure levels shortly after migrating through the area.

Foundation installation impact pile driving source levels would be loud; however, we anticipate any whale exposed to pile driving noise would be receiving low levels (closer to the 160 dB rms level than source levels) and be at relatively greater distances given the proposed mitigation measures. As described in the Potential Effects to Marine Mammals and Their Habitat section, the distance of the receiver to the source influences the severity of response with greater distances typically eliciting less severe responses. Additionally, NMFS recognizes North Atlantic right whales migrating could be pregnant females (in the fall) and cows with older calves (in spring) and that these animals may slightly alter their migration course in response to any foundation pile driving; however, as described in the Potential Effects to Marine Mammals and Their Habitat section, we anticipate that course diversion would be of small magnitude. Hence, while some avoidance of the pile driving activities may occur, we anticipate any avoidance behavior would be similar to that of gray whales and be on the order of a couple hundreds of meters up to 1 km. This diversion from a path otherwise uninterrupted by Ocean Wind activities

is not expected to result in meaningful energetic costs that would impact annual rates of recruitment of survival. Evidence suggests that in no case would a North Atlantic right whale abandon its migratory behavior. NMFS expects that North Atlantic right whales would be able to avoid areas during periods of active noise production, while not being forced out of important migratory habitat.

North Atlantic right whale presence in the Ocean Wind 1 project area is year-round; however, abundances during summer months are low compared to the winter months with spring and fall serving as “shoulder seasons,” wherein abundance waxes (fall) or wanes (spring). Given this year-round habitat usage and in recognition that where and when whales may actually occur during project activities is unknown as it depends on the annual migratory behaviors, the applicant has proposed and NMFS is proposing to require a suite of mitigation measures designed to reduce impacts to North Atlantic right whales to the maximum extent practicable. These mitigation measures (e.g., vessel separation distances, reduced speed) would not only avoid the likelihood of ship strikes, but also would minimize the severity of behavioral disruptions by minimizing impacts (e.g., through sound reduction using abatement systems). This would further ensure that the relatively small number of Level B harassment takes that are estimated to occur are not expected to affect reproductive success or survivorship via detrimental impacts to energy intake or calf/calf interactions during migratory transit. However, even in consideration of these recent habitat-use and distribution shifts, Ocean Wind would be installing monopiles when the presence of North Atlantic right whales is lower (compared to winter).

As described in the Description of Marine Mammals in the Area of Specified Activities section, Ocean Wind 1 would be constructed within the North Atlantic right whale migratory corridor BIA which represent areas and months within which a substantial portion of a species or population is known to migrate. The Ocean Wind 1 project area is relatively small compared with the migratory BIA area (approximately 277 km² against the size of the full North Atlantic right whale migratory BIA at 269,448 km²). Because of this, any North Atlantic right whales that may be encountered during the Ocean Wind 1 project would be expected to be migrating through the area. There are no known North Atlantic right whale mating or calving areas within the project area. The primary

foraging habitat for North Atlantic right whales is located further north (391 km (243 mi) away from the lease area). However, if foraging events did occur, these would likely be sporadic and not focused specifically in the project area. In any case, it is unlikely dedicated foraging activities in this area would occur often, much less consistently the same hours when impact pile driving is planned to occur. Impact driving, which is responsible for the majority of North Atlantic right whale impacts, would be limited to a maximum of eight hours per day (intermittent two four-hour events); therefore, if foraging activity is disrupted due to pile driving, any disruption would be brief as North Atlantic right whales would likely resume foraging after pile driving ceases or when animals move to another location to forage. Prey species are mobile (e.g., calanoid copepods can initiate rapid and directed escape responses) and are broadly distributed throughout the project area (noting again that North Atlantic right whale prey is not concentrated in the project area); therefore, any impacts to prey that may occur are also unlikely to impact marine mammals. However, given the project area is in the migratory corridor and not a dedicated foraging ground, animals are more likely to be transiting through and not engaging in concentrated, frequent foraging behavior.

The most significant measure to minimize impacts to individual North Atlantic right whales during monopile installations is the seasonal moratorium on impact pile driving of monopiles from January 1 through April 30, when North Atlantic right whale abundance in the project area is expected to be greatest. NMFS also expects this measure to greatly reduce the potential for mother-calf pairs to be exposed to impact pile driving noise above the Level B harassment threshold during their annual spring migration through the project area from calving grounds to foraging grounds. Further, NMFS expects that exposures to North Atlantic right whales would be reduced due to the additional proposed mitigation measures that would ensure that any exposures above the Level B harassment threshold would result in only short-term effects to individuals exposed. Impact pile driving of monopiles is limited to two piles per day and may only begin in the absence of North Atlantic right whales (any visual detection by PSOs and if detected in a PAM clearance zone). If impact pile driving has commenced, NMFS anticipates North Atlantic right whales

would avoid the area, utilizing nearby waters to carry on behavior pre-exposure. However, impact pile driving must be shutdown if a North Atlantic right whale is sighted at any distance, unless a shutdown is not feasible due to risk of injury or loss of life. Shutdown may occur anywhere within or beyond the Level B harassment zone, further minimizing the duration and intensity of exposure. NMFS anticipates that if North Atlantic right whales go undetected and they are exposed to impact pile driving noise it is unlikely a North Atlantic right whale would approach the impact pile driving locations to the degree that they would purposely expose themselves to very high noise levels. These measures are designed to avoid PTS and also reduce the severity of Level B harassment, including the potential for TTS. While some TTS could occur, given the proposed mitigation measures (e.g., delay pile driving upon a sighting or acoustic detection and shutting down upon a sighting or acoustic detection), the potential for TTS to occur is low.

The proposed clearance and shutdown measures are most effective when detection efficiency is maximized as the measures are triggered by a sighting or acoustic detection. To maximize detection efficiency, Ocean Wind proposed, and NMFS is proposed to require the combination of PAM and visual observers (as well as communication protocols with other Ocean Wind vessels, and other heightened awareness efforts such as daily monitoring of North Atlantic right whale sighting databases) such that as a North Atlantic right whale approaches the source (and thereby could be exposed to higher noise energy levels), PSO detection efficacy will increase, the whale will be detected, and a delay to commencing pile driving or shutdown (if feasible) will occur. In addition, the implementation of a soft start will provide an opportunity for whales to move away from the source if they are undetected, reducing received levels. Further, Ocean Wind has committed to not installing two WTG or OSS foundations simultaneously. North Atlantic right whales would, therefore, not be exposed to concurrent impact pile driving on any given day and the area ensonified at any given time would be limited. We note that Ocean Wind has requested to install foundation piles at night which does raise concern over detection capabilities. Ocean Wind is currently conducting detection capability studies using alternative technology and intends to submit the results of that study to NMFS. In

consultation with BOEM, NMFS will review the results and determine if Ocean Wind should be allowed to conduct pile driving at night.

Although temporary cofferdam Level B harassment zones are large (10 km to the unweighted Level B harassment threshold; Table 1–24 in the ITA application), the cofferdams would be installed nearshore over a short timeframe (36 hours total; 18 hours for installation and 18 hours for removal), with the closest cofferdam (BL England) approximately 24.18 km (15.02 mi) away from the Lease Area. Therefore, it is also unlikely that any North Atlantic right whales would be exposed to concurrent vibratory and impact pile installation noises. Any UXO/MEC detonations, if determined to be necessary, would only occur in daylight and if all other low-order methods or removal of the explosive equipment of the device are determined to not be possible. Given that specific locations for the ten possible UXOs/MECs are not presently known, Ocean Wind has agreed to undertake specific mitigation measures to reduce impacts on any North Atlantic right whales, including the use of a sound attenuation device (i.e., likely a bubble curtain and another device) to a minimum of 10 dB and not detonating a UXO/MEC is a North Atlantic right whale is observed within an exclusion zone. The area around the detonation would be monitored effectively using at least 2 dedicated PSO vessels or a vessel and aerial platform. Finally, for HRG surveys, the maximum distance to the Level B harassment isopleth is 141 m. The estimated take, by Level B harassment only, associated with construction surveys is to account for any North Atlantic right whale PSOs may miss when HRG acoustic sources are active. However, because of the short maximum distance to the Level B harassment isopleth (141 m), the requirement that vessels maintain a distance of 500 m from any North Atlantic right whales, and the whales are unlikely to remain in close proximity to a construction survey vessel for any length of time, any exposure to noise levels about harassment threshold if any, would be very brief as the source would be turned off upon detection. To further minimize exposure, ramp-up of boomers, sparkers, and CHIRPs must be delayed during the clearance period if PSOs detect a North Atlantic right whale (or any other ESA-listed species) within 500 m of the acoustic source. Operation of this equipment (if active) must be shut down if a North Atlantic right whale is sighted

within 500 m. With implementation of the proposed mitigation requirements, take by Level A harassment is unlikely and is therefore not proposed for authorization. Potential impacts associated with Level B harassment would include low-level, temporary behavioral modifications, most likely in the form of avoidance behavior or potential alteration of vocalizations (due to masking). Given the high level of precautions taken to minimize both the amount and intensity of Level B harassment take on marine mammals and because the exposures will not occur in areas or at times where impacts would be likely to affect feeding and energetics or calving (given this is a migratory corridor), it is unlikely that the anticipated low level exposures could lead to reduced reproductive success or survival.

Altogether, North Atlantic right whales are listed as endangered under the ESA with a declining population primarily due to vessel strike and entanglement. Only five instances of take, by Level B harassment only, are estimated to occur annually within a migratory corridor and 14 instance of take over the 5-year effective period of the proposed rule with the likely scenario that each instance of exposure occurs to a different individual (a small portion of the stock), and any individual North Atlantic right whale is likely to be disturbed at a low-moderate level. The low magnitude and severity of harassment effects is not expected to result in impacts on the reproduction or survival of any individuals, let alone have impacts on annual rates of recruitment or survival of this stock. No mortality, serious injury, or Level A harassment is anticipated or proposed to be authorized. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Ocean Wind's activities combined, that the proposed authorized take would have a negligible impact on the North Atlantic stock of North Atlantic right whales.

Humpback Whales

Humpback whales potentially impacted by Ocean Wind's activities do not belong to a DPS that is listed as threatened or endangered under the ESA. However, 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 half had evidence of human interaction (ship strike or entanglement). The UME does not yet

provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or DPS of which the Gulf of Maine stock is a part) remains stable at approximately 12,000 individuals.

Ocean Wind has requested, and NMFS has proposed to authorize, a limited amount of humpback whale harassment. No mortality or serious injury is anticipated or proposed to be authorized. Similar to North Atlantic right whales, impact pile driving (assuming the joint-monopile and pin pile build-out) has the potential to result in the highest amount of annual take (6 Level A harassment and 21 Level B harassment takes) and is of greatest concern given loud source levels. As described in the Description of Marine Mammals in the Area of Specified Activities section, Brown *et al.* (2022) found that mean humpback whale occurrence offshore of New Jersey was low (2.5 days), mean occupancy was 37.6 days, and 31.3 percent of whales returned from one year to the next. The majority of whales were seen during summer (July–September, 62.5 percent), followed by autumn (October–December, 23.5 percent) and spring (April–June, 13.9 percent). These data suggest that of the 21 maximum annual instances of predicted to take by Level B harassment, they could consist either of individuals exposed to levels above the Level B harassment threshold once during migration and/or individuals exposed on 2 or 3 days to activities conducted by Ocean Wind (primarily impact or vibratory pile driving and HRG surveys during months in which they are abundant), and we note that any such exposures would not be occurring continuously throughout the days. Animals exposed are likely to be juveniles and while they may be foraging (primary foraging grounds occur in more northern latitudes), they are likely migrating through the area.

For all the reasons described in the Mysticete section above, we anticipate any PTS or TTS to be small (limited to a few dB) and be concentrated at half or one octave above the frequency band of pile driving noise (most sound is below 2 kHz) which does not include the full predicted hearing range of baleen whales. If TTS is incurred, hearing sensitivity would likely return to pre-exposure levels shortly after exposure ends. Any masking or physiological responses would also be of low magnitude and severity for reasons described above.

Altogether, the amount of take proposed to be authorized is small and

the low magnitude and severity of harassment effects is not expected to result in impacts on the reproduction or survival of any individuals, let alone have impacts on annual rates of recruitment or survival of this stock. No mortality or serious injury is anticipated or proposed to be authorized. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Ocean Wind's activities combined, that the proposed authorized take would have a negligible impact on the Gulf of Maine stock of humpback whales.

Blue, Sei, and Fin Whales

The Western North Atlantic stocks of blue and fin whales and the Nova Scotia stock of sei whales are all listed under the ESA. There are no known areas of specific biological importance in or around the project area, nor are there any UMEs. For all three stocks, the actual abundance of each stock is likely significantly greater than what is reflected in each SAR because, as noted in the SARs, the most recent population estimates are primarily based on surveys conducted in U.S. waters and all three stocks' range extends well beyond the U.S. EEZ.

Regarding the magnitude of take, the maximum number of annual and 5-year total estimated harassment takes for all three species is very low: 4, 3, and 13 takes by Level B harassment of blue, sei, and fin whales respectively, with 4 and 1 potential Level A harassment takes for fin and sei whales. Similarly to other mysticetes, we would anticipate the number of takes to represent individuals taken only once or, in rare cases, an individual taken a very small number of times as most whales in the project area would be migrating. Regarding the severity of those individual takes by behavioral Level B harassment, we would anticipate impacts to be limited to low-level, temporary behavioral responses with avoidance and potential masking impacts in the vicinity of the turbine installation to be the most likely type of response (similar to other migrating mysticetes). Any avoidance distances would be expected to be relatively limited. We are also proposing to authorize a very small amount of Level A harassment takes in the form of PTS to fin whales and sei whales (4 and 1 takes, respectively). As with other mysticetes, we anticipate the mitigation measures employed and avoidance behavior would reduce the severity of PTS such that any threshold shift would be small and be limited to the frequencies in which impact pile driving contains the most energy which

does not overlap with the entire hearing range of these species.

Overall, the take by harassment proposed to be authorized is of a low magnitude and severity and is not expected to result in impacts on the reproduction or survival of any individuals, let alone have impacts on annual rates of recruitment or survival of this stock. No mortality or serious injury is anticipated or proposed to be authorized. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Ocean Wind's activities combined, that the proposed authorized take would have a negligible impact on the Western North Atlantic blue whale and fin whales stocks and the Nova Scotia sei whale stock.

Minke Whales

Beginning in January 2017, elevated minke whale strandings have occurred along the Atlantic coast from Maine through South Carolina, with highest numbers in Massachusetts, Maine, and New York. This event does not provide cause for concern regarding population level impacts, as the likely population abundance is greater than 20,000 whales. No mortality or serious injury of this stock is anticipated or proposed for authorization.

Minke whales may be taken by Level A and Level B harassment; however, this would be limited to a low number of individuals annually (22 and 74, respectively). We anticipate the impacts of this harassment to follow that described in the general Mysticete section above. In summary, any PTS would be of small amount not expected to impact individual fitness. Level B harassment would be temporary with primary impacts being temporary displacement of the project area but not abandonment of any migratory behavior. Overall, the amount of take proposed to be authorized is small and the low magnitude and severity of harassment effects is not expected to result in impacts on the reproduction or survival of any individuals, let alone have impacts on annual rates of recruitment or survival of this stock. No mortality or serious injury is anticipated or proposed to be authorized. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Ocean Wind's activities combined, that the proposed authorized take would have a negligible impact on the Gulf of Maine stock of humpback whales.

Odontocetes

In this section, we include information here that applies to all of the odontocete species and stocks

addressed below, which are further divided into the following subsections: Sperm whales, Dolphins and small whales; and Harbor porpoise. These sub-sections include more specific information about the group, as well as conclusions for each stock represented.

The majority of takes by harassment of odontocetes incidental to Ocean Wind 1 specified activities are by Level B harassment from pile driving and HRG surveys. We anticipate that, given ranges of individuals (*i.e.*, that some individuals remain within a small area for some period of time), and non-migratory nature of some odontocetes in general (especially as compared to mysticetes), these takes are more likely to represent multiple exposures of a smaller number of individuals than is the case for mysticetes, though some takes may also represent one-time exposures to an individual.

Pile driving, particularly impact pile driving foundation piles, has the potential to disturb odontocetes to the greatest extent compared to HRG surveys and UXO/MEC detonations. We expect animals to avoid the area during pile driving; however, their habitat range is extensive compared to the area ensounded during pile driving.

As described earlier, Level B harassment may manifest as changes to behavior (*e.g.*, avoidance, changes in vocalizations (from masking) or foraging); physiological responses, or TTS. Odontocetes are highly mobile species and, similar to mysticetes, would expect any avoidance behavior to be limited to the area near the pile being driven. While masking could occur during pile driving, it would only occur in the vicinity of and during the duration of the pile driving, and would not generally occur in a frequency range that overlaps communication or echolocation signals. The mitigation measures (*e.g.*, use of sound abatement systems, implementation of clearance and shutdown zones) would also minimize received levels such that the severity of any behavioral response would be expected to be less than exposure to unmitigated noise exposure.

Any masking or TTS effects is also anticipated to be of low-severity. First, the frequency range of pile driving, the most impactful activity conducted by Ocean Wind in terms of response severity, falls within the range of most odontocete vocalizations. However, odontocete vocalizations span a much wider range than the low frequency construction activities proposed by Ocean Wind. Further, as described above, recent studies suggest odontocetes have a mechanism to self-mitigate (*i.e.*, reduce hearing sensitivity)

the impacts of noise exposure. Any masking or TTS is anticipated to be limited and would typically only interfere with communication within a portion of an odontocete's range and as discussed earlier, the effects would only be expected to be of a short duration and, for TTS, a relatively small degree. Furthermore, odontocete echolocation occurs predominantly at frequencies significantly higher than low frequency construction activities; therefore, there is little likelihood that threshold shift, either temporary or permanent would interfere with feeding behaviors (noting that take by Level A harassment (PTS) is proposed for only two species: bottlenose dolphins and harbor porpoise. For HRG surveys, the sources operate at higher frequencies than pile driving and UXO/MEC detonations; however, sound from these sources attenuate very quickly in the water column, as described above, therefore any potential for TTS and masking is very limited. Further, odontocetes (*e.g.*, common dolphins, spotted dolphins, bottlenose dolphins) have demonstrated an affinity to bow-ride actively surveying HRG surveys; therefore, the severity of any harassment, if it does occur, is anticipated to be minimal.

The waters off the coast of New Jersey are used by several odontocete species; however, none (except the sperm whale) are listed under the ESA and there are no known habitats of particular importance. In general, odontocete habitat ranges are far-reaching along the Atlantic coast of the U.S. and the waters off of New Jersey do not contain any unique features that make up the project area.

Sperm Whale

The Western North Atlantic stock of sperm whales spans the East Coast out into oceanic waters well beyond the U.S. EEZ. Although listed as endangered, the primary threat faced by the sperm whale (*i.e.*, commercial whaling) has been eliminated and, further, sperm whales in the western North Atlantic were little affected by modern whaling (Taylor *et al.*, 2008). Current potential threats to the species globally include vessel strikes, entanglement in fishing gear, anthropogenic noise, exposure to contaminants, climate change, and marine debris. There is no currently reported trend for the stock and, although the species is listed as endangered under the ESA, there are no specific issues with the status of the stock that cause particular concern (*e.g.*, no UMEs). There are no known areas of biological importance (*e.g.*, critical

habitat or BIAs) in or near the project area.

No mortality, serious injury or Level A harassment is anticipated or proposed to be authorized for this species. Impacts would be limited to Level B harassment and would occur to only a very small number of individuals (maximum of 6 per year or 18 across all 5 years) incidental to pile driving, UXO/MEC detonation(s), and HRG surveys. Sperm whales are not common within the project area due to the shallow waters and it is not expected any noise levels would reach habitat in which sperm whales are common, including deep-water foraging habitat. If sperm whales do happen to be present in the project area during any activities related to Ocean Wind 1, they would likely be only transient visitors and not engaging in any significant behaviors. This very low magnitude and severity of effects is not expected to result in impacts on the reproduction or survival of individuals, much less impact annual rates of recruitment or survival. For these reasons, we have determined, in consideration of all of the effects of the Ocean Wind's activities combined, that the take proposed to be authorized would have a negligible impact on sperm whales.

Dolphins and Small Whales (Including Delphinids, Pilot Whales, and Harbor Porpoises)

There are no specific issues with the status of odontocete stocks that cause particular concern (e.g., no recent UMEs). No mortality or serious injury is expected nor proposed to be authorized for these stocks. With the exception of 11 takes by Level A harassment proposed for the coastal stock of bottlenose dolphins as a precaution in the event that a pod approaches the cofferdams during either installation or removal activities, only Level B harassment is anticipated or proposed for authorization for any dolphin or small whale.

The maximum amount of Level B harassment take proposed for authorization within any one year for all odontocetes cetacean stocks ranges from 100 to 1,645 instances, which is less than 2.5 percent as compared to the population size for all stocks, with the exception of coastal bottlenose dolphins, for which the estimate is closer to 25 percent, if each instance were considered a take of a separate individual. As described above for odontocetes broadly, we anticipate that a fair number of these instances of take in a day represent multiple exposures of a smaller number of individuals, meaning the actual number of

individuals taken is lower. Although some amount of repeated exposures to some individuals are likely given the duration of activity proposed by Ocean Wind, the intensity of any Level B harassment combined with the availability of alternate nearby foraging habitat suggests that the likely impacts would not impact the reproduction or survival of any individuals.

Ocean Wind has requested, and we proposed to authorize, 11 instances of Level A harassment in the form of PTS to the northern coastal stock of bottlenose dolphins due to vibratory pile driving of temporary cofferdams using sheet piles. We anticipate the mitigation measures employed and avoidance behavior by this species would reduce the severity of PTS such that any threshold shift would be small and be limited to half or one octave above the frequencies in which vibratory pile driving contains the most energy (below 2 kHz) which would only overlap a relatively small portion of the hearing range of these species. In general, any small amount of PTS incurred in the noted frequency range is unlikely to interfere significantly with dolphin vocalization or echolocation abilities and, as such, is not anticipated to impact survival or reproduction of any individual.

The western North Atlantic northern migratory coastal stock of bottlenose dolphins is not listed under the ESA but is strategic given its depleted status under the MMPA. The stock has, in the past, been subject to UMEs. An analysis of coast-wide (New Jersey to Florida) trends in abundance for common bottlenose dolphins based on aerial surveys conducted between 2002 and 2016. There was no significant trend in population size between 2002 and 2011; however, between 2011 and 2016, there was a significant difference in slope indicating a decline in population size. NMFS identified the 2013–2015 UME as a cause for this decline which is no longer a threat. There have been no UMEs since 2015 and there are no active UMEs impacting this stock.

The amount of take authorized for this stock constitutes the largest total percentage of exposures in comparison with the stock abundance (total of 24.78 percent based on the maximum take in any one year). Ocean Wind has requested, and we have proposed to authorize, 1,643 instances of Level B harassment. However, the number of individuals taken is highly likely to be a combination of repeat exposures to the same individual or single exposures to individuals; therefore the amount of individuals taken represent a smaller percentage of the population than the

number of exposures. The majority of exposures (1,031 instances of Level B harassment; total of 15.5 percent) is due to vibratory pile driving to install cofferdams which will likely elicit less severe responses than impact pile driving or UXO/MEC detonation given lower source levels. The potential effects from exposure to any of Ocean Wind's pile driving, UXO/MEC detonation or HRG survey activities are likely to be temporary avoidance of the area, changes to behavior such as vocalizing (due to masking) or foraging, and potential TTS. No Level A harassment (in the form of PTS or other injury (from UXO/MEC detonation)) is anticipated or proposed to be authorized. Cofferdam installation would be relatively brief compared to other project activities (a maximum of 12 hours of vibratory installation/removal per day within any 24-hour period). Given the temporary nature and minimal severity of the effects, NMFS does not expect that, collectively, the activities proposed would impact the reproduction or survival of any individuals, or the population collectively through the annual rates of recruitment and survival.

Overall, the populations of all dolphins and small whale species and stocks for which we propose to authorize take are stable (no declining population trends), not facing existing UMEs, and the small amount, magnitude and severity of effects is 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, in consideration of all of the effects of the Ocean Wind's activities combined, that the take proposed to be authorized would have a negligible impact on all dolphin and small whale species and stocks considered in this analysis.

Harbor Porpoises

The Gulf of Maine/Bay of Fundy stock of harbor porpoise is found predominantly in northern U.S. coastal waters (less than 150 m depth) and up into Canada's Bay of Fundy. Although the population trend is not known, there are no UMEs or other factors that cause particular concern for this stock. No mortality or non-auditory injury by UXO/MEC detonation are anticipated or authorized for this stock. We propose to authorize 350 takes by Level B harassment and 69 takes by Level A harassment.

Regarding the severity of those individuals taken by behavioral Level B harassment, because harbor porpoises are particularly sensitive to noise, it is

likely that a fair number of the responses could be of a moderate nature, particularly to pile driving. In response to pile driving, harbor porpoises are likely to avoid the area during construction, as previously demonstrated in Tougaard *et al.* (2009) in Denmark, in Dahne *et al.* (2013) in Germany, and in Vallejo *et al.* 2017 in the United Kingdom, although a study by Graham *et al.* (2019) may indicate that the avoidance distance could decrease over time. However, pile driving is scheduled to occur when harbor porpoise abundance is low off the coast of New Jersey and given alternative foraging areas, any avoidance of the area by individuals is not likely to impact the reproduction or survival of any individuals. Given only one UXO/MEC would be detonated on any given day and up to only 10 UXO/MEC would be detonated over the 5-year effective period of the LOA, any behavioral response would be brief and of a low severity.

With respect to PTS and TTS, the effects on an individual are likely relatively low given the frequency bands of pile driving (most energy below 2 kHz) compared to harbor porpoise hearing (150 Hz to 160 kHz peaking around 40 kHz). Specifically, PTS or TTS is unlikely to impact hearing ability in their more sensitive hearing ranges, or the frequencies in which they communicate and echolocate. Regardless, we have authorized a limited amount of PTS but expect any PTS that may occur to be within the very low end of their hearing range where harbor porpoises are not particularly sensitive (*i.e.*, any PTS or TTS is unlikely to impact hearing ability in their more sensitive hearing ranges) and any PTS would be of small magnitude. As such, any PTS would not interfere with key foraging or reproductive strategies necessary for reproduction or survival.

In summary, the amount of take proposed to be authorized is small and while harbor porpoises are likely to avoid the area during any construction activity discussed herein, as demonstrated during European wind farm construction, the time of year in which work would occur is when harbor porpoise are not in high abundance and any work would not result in abandonment of the waters off of New Jersey. Any PTS or TTS would occur in the very low ends of harbor porpoise hearing range and be of small magnitude. The low magnitude and severity of harassment effects is not expected to result in impacts on the reproduction or survival of any individuals, let alone have impacts on

annual rates of recruitment or survival of this stock. No mortality or serious injury is anticipated or proposed to be authorized. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Ocean Wind's activities combined, that the proposed authorized take would have a negligible impact on the Gulf of Maine/Bay of Fundy stock of harbor porpoise.

Pinnipeds (Harbor Seals and Gray Seals)

Neither of these stocks of harbor seals or gray seals are listed under the ESA. Ocean Wind requested, and NMFS proposes to authorize no more than 35 and 844 harbor seals and 31 and 305 gray seals by Level A and Level B harassment, respectively, within any one year. These species occur in New Jersey waters most often in winter when impact and vibratory pile driving and UXO/MEC detonations would not occur. Seals are also more likely to be close to shore such that exposure to impact pile driving would be expected to be at lower levels generally (but still above NMFS behavioral harassment threshold). The majority of takes of these species' is from vibratory pile driving associated with temporary cofferdam installation and removal from which impacts are expected to be minimal. Research and observations show that pinnipeds in the water may be tolerant of anthropogenic noise and activity (a review of behavioral reactions by pinnipeds to impulsive and non-impulsive noise can be found in Richardson *et al.* (1995) and Southall *et al.* (2007)). Available data, though limited, suggest that exposures between approximately 90 and 140 dB SPL do not appear to induce strong behavioral responses in pinnipeds exposed to non-pulse sounds in water (Costa *et al.*, 2003; Jacobs and Terhune, 2002; Kastelein *et al.*, 2006c). Based on the limited data on pinnipeds in the water exposed to multiple pulses (small explosives, impact pile driving, and seismic sources), exposures in the approximately 150 to 180 dB SPL range generally have limited potential to induce avoidance behavior in pinnipeds (Blackwell *et al.*, 2004; Harris *et al.*, 2001; Miller *et al.*, 2004). Pinnipeds may not react at all until the sound source is approaching within a few hundred meters and then may alert, ignore the stimulus, change their behaviors, or avoid the immediate area by swimming away or diving. Effects on pinnipeds that are taken by Level B harassment in the project area would likely be limited to reactions such as increased swimming speeds, increased

surfacing time, or decreased foraging (if such activity were occurring). Most likely, individuals would simply move away from the sound source and be temporarily displaced from those areas (see Lucke *et al.*, 2006; Edren *et al.*, 2010; Skeate *et al.*, 2012; Russell *et al.*, 2016). Given their documented tolerance of anthropogenic sound (Richardson *et al.*, 1995; Southall *et al.*, 2007), repeated exposures of individuals of any of these species to levels of sound that may cause Level B harassment are unlikely to significantly disrupt foraging behavior. Thus, even repeated Level B harassment across a few days of some small subset of individuals, which could occur, is unlikely to result in impacts on the reproduction or survival of any individuals. Moreover, pinnipeds would benefit from the mitigation measures described in the Proposed Mitigation section.

Ocean Wind requested, and NMFS is proposing to authorize, a small amount of PTS (48 harbor seals and 35 gray seals which constitutes less than 0.1 percent of the populations) incidental to pile driving and UXO/MEC detonation. The majority of PTS is from installing cofferdams which is unlikely to manifest as a large degree of PTS given the nature of vibratory pile driving and we would anticipate seals would move away from the activity prior to a large degree of PTS occurring. As described above, noise from pile driving and UXO/MEC detonation is low frequency and, while any PTS that does occur would fall within the lower end of pinniped hearing ranges (50 Hz to 86 kHz), PTS would not occur at frequencies where pinniped hearing is most sensitive. In summary, any PTS, would be of small degree and not occur across the entire, or even most sensitive, hearing range. Hence, any impacts from PTS are likely to be of low severity and not interfere with behaviors critical to reproduction or survival.

Elevated numbers of harbor seal and gray seal mortalities were first observed in July 2018 and occurred across Maine, New Hampshire, and Massachusetts until 2020. Based on tests conducted so far, the main pathogen found in the seals belonging to that UME was phocine distemper virus, although additional testing to identify other factors that may be involved in this UME are underway. Currently, the only active UME is occurring in Maine with some harbor and gray seals testing positive for highly pathogenic avian influenza (HPAI) H5N1. Although elevated strandings continue, neither UME (alone or in combination) provide cause for concern regarding population-level impacts to any of these stocks. For

harbor seals, the population abundance is over 75,000 and annual M/SI (350) is well below PBR (2,006) (Hayes *et al.*, 2020). The population abundance for gray seals in the United States is over 27,000, with an estimated abundance, including seals in Canada, of approximately 450,000. In addition, the abundance of gray seals is likely increasing in the U.S. Atlantic as well as in Canada (Hayes *et al.*, 2020).

Overall, impacts from the Level B harassment take proposed to be authorized incidental to Ocean Wind's specified activities would be of relatively low magnitude and a low severity. Similarly, while some individuals may incur PTS overlapping some frequencies that are used for foraging and communication, given the low degree, the impacts would not be expected to impact reproduction or survival of any individuals. In consideration of all of the effects of Ocean Wind's activities combined, we have preliminarily determined that the authorized take will have a negligible impact on harbor seals and gray seals.

Preliminary Negligible Impact Determination

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

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is less than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

NMFS proposes to authorize incidental take (by Level A and B harassment) of 17 species of marine

mammal (with 18 managed stocks). The maximum number of takes possible within any one year and proposed for authorization relative to the best available population abundance is low for all species and stocks potentially impacted (*i.e.*, less than 3 percent for 17 stocks, and less than 25 percent for 1 other stock; see Table 36). Therefore, NMFS preliminarily finds that small numbers of marine mammals may be taken relative to the estimated overall population abundances for those stocks.

Based on the analysis contained herein of the proposed action (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

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

Adaptive Management

The regulations governing the take of marine mammals incidental to Ocean Wind's construction activities would contain an adaptive management component. The reporting requirements associated with this rule are designed to provide NMFS with monitoring data from completed projects to allow consideration of whether any changes are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from Ocean Wind 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 reducing adverse effects to marine mammals and if the measures are practicable.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) Results from monitoring reports, as required by MMPA authorizations; (2) results from general marine mammal and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or

number not authorized by these regulations or subsequent LOA. During the course of the rule, Ocean Wind (and other LOA-holders conducting offshore wind development activities) would be required to participate in one or more adaptive management meetings convened by NMFS and/or BOEM, in which the above information would be summarized and discussed in the context of potential changes to the mitigation or monitoring measures.

Endangered Species Act (ESA)

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

The NMFS Office of Protected Resources is proposing to authorize the take of five marine mammal species, which are listed under the ESA: the North Atlantic right, sei, fin, blue, and sperm whale. The Permit and Conservation Division has requested initiation of Section 7 consultation on September 12, 2022 with GARFO for the issuance of this proposed rulemaking. NMFS will conclude the Endangered Species Act consultation prior to reaching a determination regarding the proposed issuance of the authorization. The proposed regulations and any subsequent LOA(s) would be conditioned such that, in addition to measures included in those documents, the applicant would also be required to abide by the reasonable and prudent measures and terms and conditions of a Biological Opinion and Incidental Take Statement, issued by NMFS, pursuant to Section 7 of the Endangered Species Act.

Proposed Promulgation

As a result of these preliminary determinations, NMFS proposes to promulgate an ITR for Ocean Wind authorizing take, by Level A and B harassment, incidental to construction activities associated with the Ocean Wind 1 offshore wind facility offshore of New Jersey for a five-year period from August 1, 2023 through July 31, 2028, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft

of the proposed rulemaking can be found at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-ocean-wind-lcc-construction-ocean-wind-1-wind-energy-facility>.

Request for Additional Information and Public Comments

NMFS requests interested persons to submit comments, information, and suggestions concerning Ocean Wind's request and the proposed regulations (see **ADDRESSES**). All comments will be reviewed and evaluated as we prepare the final rule and make final determinations on whether to issue the requested authorization. This document and referenced documents provide all environmental information relating to our proposed action for public review.

Classification

Pursuant to the procedures established to implement Executive Order 12866, the Office of Management and Budget has determined that this proposed rule is not significant.

Pursuant to section 605(b) of 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. Ocean Wind is the sole entity that would be subject to the requirements in these proposed regulations, and Ocean Wind is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Under the RFA, governmental jurisdictions are considered to be small if they are “. . . governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000. . . .” As of the 2020 census, Atlantic County, NJ, the county containing Atlantic City, NJ, had a population of nearly 275,000 people. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number. These requirements have been approved by OMB under control number 0648-0151 and include applications for regulations, subsequent LOA, and reports. Send comments regarding any

aspect of this data collection, including suggestions for reducing the burden, to NMFS.

NMFS has determined that activities requiring an authorization for the incidental, but not intentional, take of small numbers of marine mammals on the outer continental shelf are not within or would not affect a state's coastal zone, and thus do not require a NMFS consistency determination under 307(c)(3)(A) of the Coastal Zone Management Act (CZMA), 16 U.S.C. 1456 (c)(3)(A), and associated regulations codified at 15 CFR 930, subpart D, and are not contingent on a state's concurrence. Activities requiring an authorization for the incidental take of small numbers of marine mammals are deemed an unlisted activity under 15 CFR 930.54. Pursuant to section 101(a)(5)(A) of the MMPA, NMFS is publishing notice of the proposed incidental take regulation and requests public comment. If the state wants to review the unlisted activity under the CZMA, then it must submit an unlisted activity review request to the Director of NOAA's Office for Coastal Management within 30 days from the date of publication of this document (see **DATES** section for exact dates), and notify the applicant and NMFS that it intends to review the proposed activity. If the request is not submitted within the 30 days, the state's opportunity to review the unlisted activity will be considered waived. Conversely, if the state timely submits an unlisted activity review request and the Director of the Office for Coastal Management approves the request, then the applicant must submit a consistency certification to the state for review. In the latter instance, NMFS will not issue the incidental take authorization until the state provides concurrence that the proposed activity is consistent with the state coastal management program or until concurrence by the state agency is presumed (due to the state's failure to respond within the required timeframe). See 15 CFR 930.54(d) and (e).

List of Subjects in 50 CFR Part 217

Administrative practice and procedure, Endangered and threatened species, Exports, Fish, Fisheries, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation, Wildlife.

Dated: October 20, 2022.

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 217 as follows:

PART 217—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

■ 1. The authority citation for part 217 continues to read:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

■ 2. Add subpart AA, consisting of §§ 217.260 through 217.269, to read as follows:

Subpart AA—Taking Marine Mammals Incidental to Construction of the Ocean Wind 1 Wind Energy Facility Offshore of New Jersey

Sec.

- 217.260 Specified activity and specified geographical region.
- 217.261 Effective dates.
- 217.262 Permissible methods of taking.
- 217.263 Prohibitions.
- 217.264 Mitigation requirements.
- 217.265 Requirements for monitoring and reporting.
- 217.266 Letter of Authorization.
- 217.267 Modifications of Letter of Authorization.
- 217.268–217.269 [Reserved]

Subpart AA—Taking Marine Mammals Incidental to Construction of the Ocean Wind 1 Wind Energy Facility Offshore of New Jersey

§ 217.260 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the taking of marine mammals that occurs incidental to activities associated with construction of the Ocean Wind 1 Wind Energy Facility by Ocean Wind, LLC (Ocean Wind), a subsidiary of Orsted Wind Power North America, LLC's (Orsted) and a joint venture partner of the Public Service Enterprise Group Renewable Generation, LLC (PSEG), and those persons it authorizes or funds to conduct activities on its behalf in the area outlined in paragraph (b) of this section.

(b) The taking of marine mammals by Ocean Wind may be authorized in a Letter of Authorization (LOA) only if it occurs in the Bureau of Ocean Energy Management (BOEM) Lease Area Outer Continental Shelf (OCS)–A–0498 Commercial Lease of Submerged Lands for Renewable Energy Development and

along export cable routes at sea-to-shore transition points at BL England and Oyster Creek.

(c) The taking of marine mammals by Ocean Wind is only authorized if it occurs incidental to the following activities associated with the Ocean Wind 1 Wind Energy Facility:

(1) Installation of wind turbine generators (WTG) and offshore substation (OSS) foundations by impact pile driving;

(2) Installation of temporary cofferdams by vibratory pile driving;

(3) High-resolution geophysical (HRG) site characterization surveys; and

(4) Detonation of unexploded ordnances or munitions and explosives of concern (UXOs/MECs).

§ 217.261 Effective dates.

Regulations in this subpart are effective from August 1, 2023, through July 31, 2028.

§ 217.262 Permissible methods of taking.

Under an LOA, issued pursuant to this section and § 217.266, Ocean Wind, and those persons it authorizes or funds to conduct activities on its behalf, may incidentally, but not intentionally, take marine mammals within the area described in § 217.260(b) in the following ways, provided Ocean Wind is in complete compliance with all terms, conditions, and requirements in this subpart and the appropriate LOA:

(a) By Level B harassment associated with the acoustic disturbance of marine

mammals by impact pile driving (WTG and OSS monopile and/or jacket foundation installation), vibratory pile installation and removal of temporary cofferdams, the detonation of UXOs/MECs, and through HRG site characterization surveys.

(b) By Level A harassment, provided take is associated with impact pile driving or UXO/MEC detonations.

(c) The incidental take of marine mammals by the activities listed in paragraphs (a) and (b) of this section is limited to the species in the following table.

TABLE 1 TO PARAGRAPH (C)

| Marine mammal species | Scientific name | Stock |
|------------------------------|-----------------------------------|----------------------------------|
| Blue whale | <i>Balaenoptera musculus</i> | Western North Atlantic. |
| Fin whale | <i>Balaenoptera physalus</i> | Western North Atlantic. |
| Sei whale | <i>Balaenoptera borealis</i> | Nova Scotia. |
| Minke whale | <i>Balaenoptera acutorostrata</i> | Canadian East Stock. |
| North Atlantic right whale | <i>Eubalaena glacialis</i> | Western North Atlantic. |
| Humpback whale | <i>Megaptera novaeangliae</i> | Gulf of Maine. |
| Sperm whale | <i>Physeter macrocephalus</i> | North Atlantic. |
| Atlantic spotted dolphin | <i>Stenella frontalis</i> | Western North Atlantic. |
| Atlantic white-sided dolphin | <i>Lagenorhynchus acutus</i> | Western North Atlantic. |
| Bottlenose dolphin | <i>Tursiops truncatus</i> | Northern Migratory Coastal. |
| Bottlenose dolphin | <i>Tursiops truncatus</i> | Western North Atlantic Offshore. |
| Common dolphin | <i>Delphinus delphis</i> | Western North Atlantic. |
| Harbor porpoise | <i>Phocoena phocoena</i> | Gulf of Maine/Bay of Fundy. |
| Long-finned pilot whale | <i>Globicephala melas</i> | Western North Atlantic. |
| Short-finned pilot whale | <i>Globicephala macrorhynchus</i> | Western North Atlantic. |
| Risso's dolphin | <i>Grampus griseus</i> | Western North Atlantic. |
| Gray seal | <i>Halichoerus grypus</i> | Western North Atlantic. |
| Harbor seal | <i>Phoca vitulina</i> | Western North Atlantic. |

§ 217.263 Prohibitions.

Except for the takings described in § 217.262 and authorized by an LOA issued under §§ 217.266 and 217.267, it is unlawful for any person to do any of the following in connection with the activities described in § 217.260:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or an LOA issued under §§ 217.266 and 217.267;

(b) Take any marine mammal not specified in table 1 to § 217.262(c);

(c) Take any marine mammal specified in the LOA in any manner other than as specified; or

(d) Take any marine mammal specified in table 1 to § 217.262(c) if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammals.

(e) [Reserved]

§ 217.264 Mitigation requirements.

When conducting the activities identified in § 217.260(c) the mitigation

measures contained in any LOA issued under § 217.266 must be implemented. These mitigation measures must include, but are not limited to:

(a) *General conditions.* (1) A copy of any issued LOA must be in the possession of Ocean Wind and its designees, all vessel operators, visual and acoustic protected species observers (PSOs)/passive acoustic monitoring (PAM) operators, pile driver operator, and any other relevant designees operating under the authority of the issued LOA;

(2) Ocean Wind must conduct briefings between construction supervisors, construction crews, and the PSO/PAM team prior to the start of all construction activities (as described in § 217.260), and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring and reporting protocols, and operational procedures. An informal guide must be included with the Marine Mammal Monitoring Plan to aid personnel in

identifying species if they are observed in the vicinity of the project area;

(3) Ocean Wind must ensure that any visual observations of an ESA-listed marine mammal are communicated to PSOs and vessel captains during the concurrent use of multiple project-associated vessels (of any size; e.g., construction surveys, crew/supply transfers, etc.);

(4) If an individual from a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized take number has been met, is observed entering or within the relevant Level B harassment zone for each specified activity, impact and vibratory pile driving activities and HRG acoustic sources must be shut down immediately, unless shutdown is not practicable, or be delayed if the activity has not commenced. Impact and vibratory pile driving, UXO/MEC detonation, and initiation of HRG acoustic sources must not commence or resume until the animal(s) has been

confirmed to have left the relevant clearance zone or the observation time has elapsed with no further sightings. UXO/MEC detonations may not occur until the animal(s) has been confirmed to have left the relevant clearance zone or the observation time has elapsed with no further sightings;

(5) Prior to and when conducting any in-water construction activities and vessel operations, Ocean Wind personnel (e.g., vessel operators, PSOs) must use available sources of information on North Atlantic right whale presence in or near the project area including daily monitoring of the Right Whale Sightings Advisory System, and monitoring of Coast Guard VHF Channel 16 throughout the day to receive notification of any sightings and/or information associated with any Slow Zones (i.e., Dynamic Management Areas (DMAs) and/or acoustically-triggered slow zones) to provide situational awareness for both vessel operators and PSOs;

(6) Any marine mammals observed within a clearance or shutdown zone must be allowed to remain in the area (i.e., must leave of their own volition) prior to commencing impact and vibratory pile driving activities or construction surveys; and

(7) Any large whale sighted by a PSO or acoustically detected by a PAM operator that cannot be identified as a non-North Atlantic right whale must be treated as if it were a North Atlantic right whale.

(b) *Vessel strike avoidance measures.*

(1) Prior to the start of construction activities, all vessel operators and crew must receive a protected species identification training that covers, at a minimum:

(i) Sightings of marine mammals and other protected species known to occur or which have the potential to occur in the Ocean Wind 1 project area;

(ii) Training on making observations in both good weather conditions (i.e., clear visibility, low winds, low sea states) and bad weather conditions (i.e., fog, high winds, high sea states, with glare);

(iii) Training on information and resources available to the project personnel regarding the applicability of Federal laws and regulations for protected species;

(iv) Observer training related to these vessel strike avoidance measures must be conducted for all vessel operators and crew prior to the start of in-water construction activities; and

(v) Confirmation of marine mammal observer training (including an understanding of the LOA requirements)

must be documented on a training course log sheet and reported to NMFS.

(2) All vessels must abide by the following:

(i) All vessel operators and crews, regardless of their vessel's size, must maintain a vigilant watch for all marine mammals and slow down, stop their vessel, or alter course, as appropriate, to avoid striking any marine mammal;

(ii) All vessels must have a visual observer on board who is responsible for monitoring the vessel strike avoidance zone for marine mammals. Visual observers may be PSO or crew members, but crew members responsible for these duties must be provided sufficient training by Ocean Wind to distinguish marine mammals from other phenomena and must be able to identify a marine mammal as a North Atlantic right whale, other whale (defined in this context as sperm whales or baleen whales other than North Atlantic right whales), or other marine mammal. Crew members serving as visual observers must not have duties other than observing for marine mammals while the vessel is operating over 10 kts;

(iii) Year-round, all vessel operators must monitor, the project's Situational Awareness System, WhaleAlert, US Coast Guard VHF Channel 16, and the Right Whale Sighting Advisory System (RWSAS) for the presence of North Atlantic right whales once every 4-hour shift during project-related activities. The PSO and PAM operator monitoring teams for all activities must also monitor these systems no less than every 12 hours. If a vessel operator is alerted to a North Atlantic right whale detection within the project area, they must immediately convey this information to the PSO and PAM teams. For any UXO/MEC detonation, these systems must be monitored for 24 hours prior to blasting;

(iv) Any observations of any large whale by any Ocean Wind staff or contractor, including vessel crew, must be communicated immediately to PSOs and all vessel captains to increase situational awareness;

(v) All vessels must comply with existing NMFS vessel speed regulations, as applicable, for North Atlantic right whales;

(vi) Between November 1st and April 30th, all vessels, regardless of size, must operate at 10 kts or less when traveling between ports in New Jersey, New York, Maryland, Delaware, and Virginia;

(vii) All vessels, regardless of size, must immediately reduce speed to 10 kts or less when any large whale, mother/calf pairs, or large assemblages of non-delphinid cetaceans are observed (within 500 m) of an underway vessel;

(viii) All vessels, regardless of size, must immediately reduce speed to 10 kts or less when a North Atlantic right whale is sighted, at any distance, by anyone on the vessel;

(ix) If a vessel is traveling at greater than 10 knots, in addition to the required dedicated visual observer, Ocean Wind must monitor the transit corridor in real-time with PAM prior to and during transits. If a North Atlantic right whale is detected via visual observation or PAM within or approaching the transit corridor, all crew transfer vessels must travel at 10 kts or less for 12 hours following the detection. Each subsequent detection shall trigger a 12-hour reset. A slowdown in the transit corridor expires when there has been no further visual or acoustic detection in the transit corridor in the past 12 hours;

(x) All underway vessels (e.g., transiting, surveying) operating at any speed must have a dedicated visual observer on duty at all times to monitor for marine mammals within a 180° direction of the forward path of the vessel (90° port to 90° starboard) located at an appropriate vantage point for ensuring vessels are maintaining appropriate separation distances. Visual observers must be equipped with alternative monitoring technology for periods of low visibility (e.g., darkness, rain, fog, etc.). The dedicated visual observer must receive prior training on protected species detection and identification, vessel strike minimization procedures, how and when to communicate with the vessel captain, and reporting requirements in this subpart. Visual observers may be third-party observers (i.e., NMFS-approved PSOs) or crew members. Observer training related to these vessel strike avoidance measures must be conducted for all vessel operators and crew prior to the start of in-water construction activities. Confirmation of the observers' training and understanding of the Incidental Take Authorization (ITA) requirements must be documented on a training course log sheet and reported to NMFS;

(xi) All vessels must maintain a minimum separation distance of 500 m from North Atlantic right whales. If underway, all vessels must steer a course away from any sighted North Atlantic right whale at 10 kts or less such that the 500-m minimum separation distance requirement is not violated. If a North Atlantic right whale is sighted within 500 m of an underway vessel, that vessel must shift the engine to neutral. Engines must not be engaged until the whale has moved outside of the vessel's path and beyond 500 m. If

a whale is observed but cannot be confirmed as a species other than a North Atlantic right whale, the vessel operator must assume that it is a North Atlantic right whale and take the vessel strike avoidance measures described in this paragraph (b)(2)(xi);

(xii) All vessels must maintain a minimum separation distance of 100 m from sperm whales and non-North Atlantic right whale baleen whales. If one of these species is sighted within 100 m of an underway vessel, that vessel must shift the engine to neutral. Engines must not be engaged until the whale has moved outside of the vessel's path and beyond 100 m;

(xiii) All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all delphinoid cetaceans and pinnipeds, with an exception made for those that approach the vessel (e.g., bow-riding dolphins). If a delphinid cetacean or pinniped is sighted within 50 m of an underway vessel, that vessel must shift the engine to neutral, with an exception made for those that approach the vessel (e.g., bow-riding dolphins). Engines must not be engaged until the animal(s) has moved outside of the vessel's path and beyond 50 m;

(xiv) When a marine mammal(s) is sighted while a vessel is underway, the vessel must take action as necessary to avoid violating the relevant separation distances (e.g., attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area). If a marine mammal(s) is sighted within the relevant separation distance, the vessel must reduce speed and shift the engine to neutral, not engaging the engine(s) until the animal(s) is clear of the area. This does not apply to any vessel towing gear or any situation where respecting the relevant separation distance would be unsafe (i.e., any situation where the vessel is navigationally constrained);

(xv) All vessels underway must not divert or alter course to approach any marine mammal. Any vessel underway must avoid speed over 10 kts or abrupt changes in course direction until the animal is out of an on a path away from the separation distances; and

(xiv) For in-water construction heavy machinery activities other than impact or vibratory pile driving, if a marine mammal is on a path towards or comes within 10 m of equipment, Ocean Wind must cease operations until the marine mammal has moved more than 10 m on a path away from the activity to avoid direct interaction with equipment.

(c) *Fisheries monitoring surveys*—(1) *Training*. (i) All crew undertaking the fishery survey activities must receive protected species identification training prior to activities occurring.

(ii) [Reserved]

(2) *During vessel use*. (i) Marine mammal monitoring must occur prior to, during, and after haul-back, and gear must not be deployed if a marine mammal is observed in the area;

(ii) Trawl operations must only start after 15 minutes of no marine mammal sightings within 1 nm of the sampling station; and

(iii) During daytime sampling for the research trawl surveys, Ocean Wind must maintain visual monitoring efforts during the entire period of time that trawl gear is in the water from deployment to retrieval. If a marine mammal is sighted before the gear is removed from the water, the vessel must slow its speed and steer away from the observed animal(s).

(3) *Gear-specific best management practices (BMPs)*. (i) Baited remote underwater video (BRUV) sampling and chevron trap usage, for example, would utilize specific mitigation measures to reduce impacts to marine mammals. These specifically include the breaking strength of all lines being less than 1,700 pounds (771 kg), limited soak durations of 90 minutes or less, no gear being left without a vessel nearby, and a delayed deployment of gear if a marine mammal is sighted nearby;

(ii) The permit number will be written clearly on buoy and any lines that go missing will be reported to NOAA Fisheries' Greater Atlantic Regional Fisheries Office (GARFO) Protected Resources Division as soon as possible;

(iii) If marine mammals are sighted near the proposed sampling location, chevron traps and/or BRUVs will not be deployed;

(iv) If a marine mammal is determined to be at risk of interaction with the deployed gear, all gear will be immediately removed;

(v) Marine mammal monitoring would occur during daylight hours and begin prior to the deployment of any gear (e.g., trawls, longlines) and continue until all gear has been retrieved; and

(vi) If marine mammals are sighted in the vicinity within 15 minutes prior to gear deployment and it is determined the risks of interaction are present regarding the research gear, the sampling station will either move to another location or suspend activities until there are no marine mammal sightings for 15 minutes within 1 nm.

(d) *Wind turbine generator (WTG) and offshore substation (OSS) foundation installation*—(1) *Seasonal and daily*

restrictions. (i) Foundation impact pile driving activities may not occur January 1 through April 30;

(ii) No more than two foundation monopiles may be installed per day;

(iii) Ocean Wind must not initiate pile driving later than 1.5 hours after civil sunset or 1 hour before civil sunrise unless Ocean Wind submits an Alternative Monitoring Plan to NMFS for approval that proves the efficacy of their night vision devices; and

(iv) Monopiles must be no larger than 11-m in diameter, representing the larger end of the tapered 8/11-m monopile design. If jacket foundations are used for OSSs, pin piles must be no larger than 2.44-m in diameter. For all monopiles and pin piles, the minimum amount of hammer energy necessary to effectively and safely install and maintain the integrity of the piles must be used. Hammer energies must not exceed 4,000 kJ.

(2) *Noise abatement systems*. (i) Ocean Wind must deploy dual noise abatement systems that are capable of achieving, at a minimum, 10 dB of sound attenuation, during all impact pile driving of foundation piles.

(A) A single big bubble curtain (BBC) must not be used unless paired with another noise attenuation device; and

(B) A double big bubble curtain (dBBC) may be used without being paired with another noise attenuation device.

(ii) The bubble curtain(s) must distribute air bubbles using an air flow rate of at least 0.5 m³/(min*m). The bubble curtain(s) must surround 100 percent of the piling perimeter throughout the full depth of the water column. In the unforeseen event of a single compressor malfunction, the offshore personnel operating the bubble curtain(s) must make appropriate adjustments to the air supply and operating pressure such that the maximum possible sound attenuation performance of the bubble curtain(s) is achieved.

(iii) The lowest bubble ring must be in contact with the seafloor for the full circumference of the ring, and the weights attached to the bottom ring must ensure 100-percent seafloor contact.

(iv) No parts of the ring or other objects may prevent full seafloor contact.

(v) Construction contractors must train personnel in the proper balancing of airflow to the ring. Construction contractors must submit an inspection/performance report for approval by Ocean Wind within 72 hours following the performance test. Corrections to the bubble ring(s) to meet the performance

standards must occur prior to impact pile driving of monopiles. If Ocean Wind uses a noise mitigation device in addition to the BBC, Ocean Wind must maintain similar quality control measures as described here.

(3) *Sound field verification.* (i) Ocean Wind must perform sound field verification (SFV) during all impact pile driving of the first three monopiles and a full jacket foundation (16 total pin piles) and must empirically determine source levels (peak and cumulative sound exposure level), the ranges to the isopleths corresponding to the Level A harassment (permanent threshold shifts (PTS)) and Level B harassment (temporary threshold shifts (TTS)) thresholds, and estimated transmission loss coefficients.

(ii) If a subsequent monopile and pin pile installation and location is selected that was not represented by previous three locations (*i.e.*, substrate composition, water depth), SFV must be conducted.

(iii) Ocean Wind must measure received levels at a standard distance of 750 m from the monopiles and pin piles.

(iv) If SFV measurements on any of the first three piles indicate that the ranges to Level A harassment and Level B harassment isopleths are larger than those modeled, assuming 10-dB attenuation, Ocean Wind must modify and/or apply additional noise attenuation measures (*e.g.*, improve efficiency of bubble curtain(s), modify the piling schedule to reduce the source sound, install an additional noise attenuation device) before the second pile is installed. Until SFV confirms the ranges to Level A harassment and Level B harassment isopleths are less than or equal to those modeled, assuming 10-dB attenuation, the shutdown and clearance zones must be expanded to match the ranges to the Level A harassment and Level B harassment isopleths based on the SFV measurements. If the application/use of additional noise attenuation measures still does not achieve ranges less than or equal to those modeled, assuming 10-dB attenuation, and no other actions can further reduce sound levels, Ocean Wind must expand the clearance and shutdown zones according to those identified through SFV, in consultation with NMFS.

(v) If acoustic measurements indicate that ranges to isopleths corresponding to the Level A harassment and Level B harassment thresholds are less than the ranges predicted by modeling (assuming 10 dB attenuation), Ocean Wind may request a modification of the clearance and shutdown zones for impact pile

driving of monopiles and pin piles. For a modification request to be considered by NMFS, Ocean Wind must have conducted SFV on three or more monopiles and at least one entire jacket foundation (16 pin piles) to verify that zone sizes are consistently smaller than predicted by modeling (assuming 10 dB attenuation).

(vi) Ocean Wind must submit a SFV Plan at least 180 days prior to the planned start of impact pile driving. The plan would describe how Ocean Wind would ensure that the first three monopile and jacket foundation installation sites selected for SFV are representative of the rest of the monopile and pin pile installation. In the case that these sites are not determined to be representative of all other monopile and pin pile installation sites, Ocean Wind must include information on how additional sites would be selected for SFV. The plan must also include methodology for collecting, analyzing, and preparing SFV data for submission to NMFS. The plan must describe how the effectiveness of the sound attenuation methodology would be evaluated based on the results. Ocean Wind must also provide, as soon as they are available but no later than 48 hours after each installation, the initial results of the SFV measurements to NMFS in an interim report after each monopile for the first three piles and pin pile installation for the first full jacket foundation (16 pin piles).

(4) *PSO and PAM use.* (i) Ocean Wind must have a minimum of four PSOs actively observing marine mammals before, during, and after (specific times described in this paragraph (d)(4)) the installation of foundation piles (monopiles and/or pin piles). At least four PSOs must be actively observing for marine mammals. At least two PSOs must be actively observing on the pile driving vessel while at least two PSOs must be actively observing on a secondary, PSO-dedicated vessel. At least one active PSO on each platform must have a minimum of 90 days at-sea experience working in those roles in offshore environments with no more than 18 months elapsed since the conclusion of the at-sea experience. Concurrently, at least one acoustic PSO (*i.e.*, PAM operator) must be actively monitoring for marine mammals before, during and after impact pile driving.

(ii) All visual PSOs and PAM operators used for the Ocean Wind project must meet the requirements and qualifications described in § 217.265(a), (b), and (c), respectively, and as applicable to the specified activity.

(5) *Clearance and shutdown zones.* (i) Ocean Wind must establish and implement clearance and shutdown zones (all distances to the perimeter are the radii from the center of the pile being driven) as described in the LOA for all WTG and OSS foundation installation.

(ii) Ocean Wind must use visual PSOs and PAM operators to monitor the area around each foundation pile before, during and after pile driving. PSOs must visually monitor clearance zones for marine mammals for a minimum of 60 minutes prior to commencing pile driving. Acoustic PSOs (at least one PAM operator) must review data from at least 24 hours prior to pile driving and actively monitor hydrophones for 60 minutes prior to pile driving. Prior to initiating soft-start procedures, all clearance zones must be visually confirmed to be free of marine mammals for 30 minutes immediately prior to starting a soft-start of pile driving.

(iii) PSOs must be able to visually clear (*i.e.*, confirm no marine mammals are present) an area that extends around the pile being driven as described in the LOA. The entire minimum visibility zone must be visible (*i.e.*, not obscured by dark, rain, fog, *etc.*) for a full 30 minutes immediately prior to commencing impact pile driving (based on season; summer and winter minimum visibility zones). Clearance zones extending beyond this minimum visibility zone may be cleared using both visual and acoustic methods.

(iv) If a marine mammal is observed entering or within the relevant clearance zone prior to the initiation of impact pile driving activities, pile driving must be delayed and must not begin until either the marine mammal(s) has voluntarily left the specific clearance zones and have been visually or acoustically confirmed beyond that clearance zone, or, when specific time periods have elapsed with no further sightings or acoustic detections have occurred (*i.e.*, 15 minutes for small odontocetes and 30 minutes for all other marine mammal species).

(v) The clearance zone may only be declared clear if no confirmed North Atlantic right whale acoustic detections (in addition to visual) have occurred during the 60-minute monitoring period. Any large whale sighting by a PSO or detected by a PAM operator that cannot be identified as a non-North Atlantic right whale must be treated as if it were a North Atlantic right whale.

(vi) If a marine mammal is observed entering or within the respective shutdown zone, as defined in the LOA, after impact pile driving has begun, the

PSO must call for a temporary cessation of impact pile driving.

(vii) Ocean Wind must immediately cease pile driving upon orders of the PSO unless shutdown is not practicable due to imminent risk of injury or loss of life to an individual, pile refusal, or pile instability. In this situation, reduced hammer energy must be implemented instead, as determined to be practicable.

(viii) Pile driving must not restart until either the marine mammal(s) has voluntarily left the specific clearance zones and has been visually or acoustically confirmed beyond that clearance zone, or, when specific time periods have elapsed with no further sightings or acoustic detections have occurred. The specific time periods are 15 minutes for small odontocetes and 30 minutes for all other marine mammal species. In cases where these criteria are not met, pile driving may restart only if necessary to maintain pile stability at which time the lowest hammer energy must be used to maintain stability.

(ix) If impact pile driving has been shut down due to the presence of a North Atlantic right whale, pile driving may not restart until the North Atlantic right whale is no longer observed or 30 minutes has elapsed since the last detection.

(x) Upon re-starting pile driving, soft start protocols must be followed.

(6) *Soft start.* (i) Ocean Wind must utilize a soft start protocol for impact pile driving of monopiles by performing 4–6 strikes per minute at 10 to 20 percent of the maximum hammer energy, for a minimum of 20 minutes.

(ii) Soft start must occur at the beginning of monopile installation and at any time following a cessation of impact pile driving of 30 minutes or longer.

(iii) If a marine mammal is detected within or about to enter the applicable clearance zones, prior to the beginning of soft-start procedures, impact pile driving would be delayed until the animal has been visually observed exiting the clearance zone or until a specific time period has elapsed with no further sightings. The specific time periods are 15 minutes for small odontocetes and 30 minutes for all other species.

(e) *Cofferdam installation—(1) Seasonal and daily restrictions.* (i) Ocean Wind must only conduct cofferdam installation/removal from October through March, although some removal shall also be allowed to occur in April or May.

(ii) Ocean Wind must conduct vibratory pile driving associated with

cofferdam installation and removal during daylight hours only.

(2) *PSO use.* (i) All visual PSOs used for the Ocean Wind project must meet the requirements and qualifications described in § 217.265(a) and (b), as applicable to the specified activity.

(ii) Ocean Wind must have a minimum of two PSOs on active duty during any installation and removal of the temporary cofferdams. These PSOs would always be located at the best vantage point(s) on the vibratory pile driving platform or secondary platform in the immediate vicinity of the vibratory pile driving platform, in order to ensure that appropriate visual coverage is available of the entire visual clearance zone and as much of the Level B harassment zone, as possible.

(3) *Clearance and shutdown zones.* (i) Ocean Wind must establish and implement clearance and shutdown zones as described in the LOA.

(ii) Prior to the start of vibratory pile driving activities, at least two PSOs must monitor the clearance zone for 30 minutes, continue monitoring during pile driving and for 30 minutes post pile driving.

(iii) If a marine mammal is observed entering or is observed within the clearance zones, piling must not commence until the animal has exited the zone or a specific amount of time has elapsed since the last sighting. The specific amount of time is 30 minutes for large whales and 15 minutes for dolphins, porpoises, and pinnipeds.

(iv) If a marine mammal is observed entering or within the respective shutdown zone, as defined in the LOA, after vibratory pile driving has begun, the PSO must call for a temporary cessation of vibratory pile driving.

(v) Ocean Wind must immediately cease pile driving upon orders of the PSO unless shutdown is not practicable due to imminent risk of injury or loss of life to an individual, pile refusal, or pile instability.

(vi) Pile driving must not restart until either the marine mammal(s) has voluntarily left the specific clearance zones and have been visually or acoustically confirmed beyond that clearance zone, or, when specific time periods have elapsed with no further sightings or acoustic detections have occurred. The specific time periods are 15 minutes for small odontocetes and 30 minutes for all other marine mammal species.

(f) *UXO/MEC detonation(s)—(1) General.* (i) Ocean Wind shall only detonate a maximum of 10 UXO/MECs, of varying sizes, during the entire effective period of this subpart and LOA.

(ii) Upon encountering a UXO/MEC of concern, Ocean Wind may only resort to high-order removal (*i.e.*, detonation) after all other means by which to remove the UXO/MEC have been exhausted. Ocean Wind must not detonate a UXO/MEC if another means of removal is practicable.

(iii) Ocean Wind must utilize a noise abatement system (*e.g.*, bubble curtain or similar noise abatement device) around all UXO/MEC detonations and operate that system in a manner that achieves maximum noise attenuation levels practicable.

(2) *Seasonal and daily restrictions.* (i) Ocean Wind must not detonate UXOs/MECs from November 1st through April 31st, annually.

(ii) Ocean Wind must only detonate UXO/MECs during daylight hours.

(3) *PSO and PAM use.* (i) All visual PSOs and PAM operators used for the Ocean Wind project must meet the requirements and qualifications described in § 217.265(a), (b), and (c), respectively, and as applicable to the specified activity.

(ii) Ocean Wind must use at least six visual PSOs and one acoustic PSO to clear the area prior to detonation. These PSOs would be located on at least two dedicated PSO vessels or, if the largest clearance zone is greater than 5 km, one dedicated PSO vessel and one aerial platform (*i.e.*, airplane).

(4) *Clearance zones.* (i) Ocean Wind must establish and implement clearance zones using both visual and acoustic monitoring, as described in the LOA.

(ii) Clearance zones must be fully visible for at least 60 minutes and all marine mammal(s) must be confirmed to be outside of the clearance zone for at least 30 minutes prior to detonation. PAM must also be conducted for at least 60 minutes and the zone must be acoustically cleared during this time.

(iii) If a marine mammal is observed entering or within the clearance zone prior to denotation, the activity must be delayed. Detonation may only commence if all marine mammals have been confirmed to have voluntarily left the clearance zones and been visually confirmed to be beyond the clearance zone, or when 60 minutes have elapsed without any redetections for whales (including the North Atlantic right whale) or 15 minutes have elapsed without any redetections of delphinids, harbor porpoises, or seals.

(5) *Sound field verification.* (i) During each UXO/MEC detonation, Ocean Wind must empirically determine source levels (peak and cumulative sound exposure level), the ranges to the isopleths corresponding to the Level A harassment and Level B harassment

thresholds, and estimated transmission loss coefficient(s).

(ii) If SFV measurements on any of the detonations indicate that the ranges to Level A harassment and Level B harassment thresholds are larger than those modeled, assuming 10-dB attenuation, Ocean Wind must modify the ranges, with approval from NMFS, and/or apply additional noise attenuation measures (e.g., improve efficiency of bubble curtain(s), install an additional noise attenuation device) before the next detonation event.

(g) *HRG surveys*—(1) *General*. (i) All personnel with responsibilities for marine mammal monitoring must participate in joint, onboard briefings that would be led by the vessel operator and the Lead PSO, prior to the beginning of survey activities. The briefing must be repeated whenever new relevant personnel (e.g., new PSOs, acoustic source operators, relevant crew) join the survey operation before work commences.

(ii) Ocean Wind must deactivate acoustic sources during periods where no data is being collected, except as determined to be necessary for testing. Any unnecessary use of the acoustic source(s) must be avoided.

(iii) Ocean Wind must instruct all vessel personnel regarding the authority of the marine mammal monitoring team(s). For example, the vessel operator(s) would be required to immediately comply with any call for a shutdown by the Lead PSO. Any disagreement between the Lead PSO and the vessel operator would only be discussed after shutdown has occurred.

(iv) Any large whale sighted by a PSO within 1 km of the boomer, sparker, or Compressed High-Intensity Radiated Pulse (CHIRP) that cannot be identified as a non-North Atlantic right whale must be treated as if it were a North Atlantic right whale.

(2) *PSO use*. (i) Ocean Wind must use at least one PSO during daylight hours and two PSOs during nighttime operations, per vessel. Any PSO shall have the authority to call for a delay or shutdown of the survey activities.

(ii) PSOs must establish and monitor the appropriate clearance and shutdown zones (i.e., radial distances from the acoustic source in-use and not from the vessel).

(iii) PSOs must begin visually monitoring 30 minutes prior to the initiation of the specified acoustic source (i.e., ramp-up, if applicable), through 30 minutes after the use of the specified acoustic source has ceased.

(3) *Ramp-up*. (i) Any ramp-up activities of boomers, sparkers, and CHIRPs must only commence when

visual clearance zones are fully visible (e.g., not obscured by darkness, rain, fog, etc.) and clear of marine mammals, as determined by the Lead PSO, for at least 30 minutes immediately prior to the initiation of survey activities using a specified acoustic source.

(ii) Prior to starting the survey and after receiving confirmation from the PSOs that the clearance zone is clear of any marine mammals, Ocean Wind must ramp-up sources to half power for 5 minutes and then proceed to full power, unless the source operates on a binary on/off switch in which case ramp-up is not feasible. Ramp-up activities would be delayed if a marine mammal(s) enters its respective shutdown zone. Ramp-up would only be reinitiated if the animal(s) has been observed exiting its respective shutdown zone or until additional time has elapsed with no further sighting. The specific time periods are 15 minutes for small odontocetes and seals, and 30 minutes for all other species.

(4) *Clearance and shutdown zones*. (i) Ocean Wind must establish and implement clearance zones as described in the LOA.

(ii) Ocean Wind must implement a 30-minute clearance period of the clearance zones immediately prior to the commencing of the survey or when there is more than a 30 minute break in survey activities and PSOs are not actively monitoring.

(iii) If a marine mammal is observed within a clearance zone during the clearance period, ramp-up would not be allowed to begin until the animal(s) has been observed voluntarily exiting its respective clearance zone or until an additional time period has elapsed with no further sighting (i.e., 15 minutes for small odontocetes and seals, and 30 minutes for all other species).

(iv) In any case when the clearance process has begun in conditions with good visibility, including via the use of night vision equipment (IR/thermal camera), and the Lead PSO has determined that the clearance zones are clear of marine mammals, survey operations would be allowed to commence (i.e., no delay is required) despite periods of inclement weather and/or loss of daylight.

(v) Once the survey has commenced, Ocean Wind must shut down boomers, sparkers, and CHIRPs if a marine mammal enters a respective shutdown zone.

(vi) In cases when the shutdown zones become obscured for brief periods due to inclement weather, survey operations would be allowed to continue (i.e., no shutdown is required)

so long as no marine mammals have been detected.

(vii) The use of boomers, sparkers, and CHIRPS would not be allowed to commence or resume until the animal(s) has been confirmed to have left the Level B harassment zone or until a full 15 minutes (for small odontocetes and seals) or 30 minutes (for all other marine mammals) have elapsed with no further sighting.

(viii) Ocean Wind must immediately shutdown any boomer, sparker, or CHIRP acoustic source if a marine mammal is sighted entering or within its respective shutdown zones (500 m for North Atlantic right whale; 100 m for all other marine mammals, except for those specified here). The shutdown requirement does not apply to small delphinids of the following genera: *Delphinus*, *Stenella*, *Lagenorhynchus*, and *Tursiops*. If there is uncertainty regarding the identification of a marine mammal species (i.e., whether the observed marine mammal belongs to one of the delphinid genera for which shutdown is waived), the PSOs must use their best professional judgment in making the decision to call for a shutdown. Shutdown is required if a delphinid that belongs to a genus other than those specified here is detected in the shutdown zone.

(ix) If a boomer, sparker, or CHIRP is shut down for reasons other than mitigation (e.g., mechanical difficulty) for less than 30 minutes, it would be allowed to be activated again without ramp-up only if:

(A) PSOs have maintained constant observation; and

(B) No additional detections of any marine mammal occurred within the respective shutdown zones.

(x) If a boomer, sparker, or CHIRP was shut down for a period longer than 30 minutes, then all clearance and ramp-up procedures must be initiated.

§ 217.265 Requirements for monitoring and reporting.

(a) *PSO qualifications*. (1) Ocean Wind must employ qualified, trained visual and acoustic PSOs to conduct marine mammal monitoring during activities associated with construction. PSO requirements are as follows:

(i) Ocean Wind must use independent, dedicated, qualified PSOs, meaning that the PSOs must be employed by a third-party observer provider, must have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of protected species and mitigation requirements;

(ii) All PSOs must be approved by NMFS. Ocean Wind must submit PSO resumes for NMFS' review and approval at least 60 days prior to commencement of in-water construction activities requiring PSOs. Resumes must include dates of training and any prior NMFS approval, as well as dates and description of last experience, and must be accompanied by information documenting successful completion of an acceptable training course. NMFS shall be allowed 3 weeks to approve PSOs from the time that the necessary information is received by NMFS, after which PSOs meeting the minimum requirements must automatically be considered approved;

(iii) PSOs must have visual acuity in both eyes (with correction of vision being permissible) sufficient enough to discern moving towards the water's surface with the ability to estimate the target size and distance (binocular use is allowable);

(iv) All PSOs must be trained in marine mammal identification and behaviors and must be able to conduct field observations and collect data according to assigned protocols. Additionally, PSOs must have the ability to work with all required and relevant software and equipment necessary during observations;

(v) PSOs must have sufficient writing skills to document all observations, including but not limited to:

(A) The number and species of marine mammals observed;

(B) The dates and times of when in-water construction activities were conducted;

(C) The dates and time when in-water construction activities were suspended to avoid potential incidental injury of marine mammals from construction noise within a defined shutdown zone; and

(D) Marine mammal behavior;

(vi) All PSOs must be able to communicate orally, by radio, or in-person with Ocean Wind project personnel;

(vii) PSOs must have sufficient training, orientation, or experience with construction operations to provide for their own personal safety during observations;

(A) All PSOs must complete a Permits and Environmental Compliance Plan training and a 2-day refresher session that will be held with the PSO provider and Project compliance representative(s) prior to the start of construction activities.

(B) [Reserved]

(viii) At least one PSO must have prior experience working as an observer. Other PSOs may substitute education

(*i.e.*, degree in biological science or related field) or training for experience;

(ix) One PSO for each activity (*i.e.*, foundation installation, cofferdam installation, HRG surveys, UXO/MEC detonation) must be designated as the "Lead PSO." The Lead PSO must demonstrate prior experience working as a PSO in offshore environments, specifically with prior experience observing mysticetes, odontocetes, and pinnipeds in the Northwestern Atlantic Ocean;

(x) At a minimum, two of the PSOs located on observation platforms (either vessel-based or aerial-based) must have a minimum of 90 days of at-sea experience and must have had this at-sea experience within the last 18 months. Any new and/or inexperienced PSOs would be paired with an experienced PSO;

(xi) PSOs must not exceed 4 consecutive watch hours, must have a minimum break of 2 hours, and must not exceed a total watch schedule of more than 12 hours within any 24-hour period;

(xii) PSOs must monitor all clearance and shutdown zones prior to, during, and following impact pile driving, vibratory pile driving, UXO/MEC detonations, and during HRG surveys that use boomers, sparkers, and CHIRPs with specific monitoring durations described in paragraph (b)(1)(ii) of this section. PSOs must also monitor the Level B harassment zones and document any marine mammals observed within these zones, to the extent practicable;

(xiii) PSOs must be located on the best available vantage point(s) on the primary vessel(s) (*i.e.*, pile driving vessel, UXO/MEC vessel, HRG survey vessel) and on other dedicated PSO vessels (*e.g.*, additional UXO/MEC vessels) or aerial platforms, as applicable and necessary, to allow them appropriate coverage of the entire visual shutdown zone(s), clearance zone(s), and as much of the Level B harassment zone as possible. These vantage points must maintain a safe work environment; and

(xiv) Acoustic PSOs are required to complete specialized training for operating PAM systems and must demonstrate familiarity with the PAM system on which they must be working. PSOs may act as both acoustic and visual observers (but not simultaneously), so long as they demonstrate that their training and experience are sufficient to perform each task.

(A) All PAM operators must complete a Permits and Environmental Compliance Plan training and a 2-day

refresher session that will be held with the PSO/PAM operator provider and Project compliance representative(s) prior to the start of construction activities.

(B) [Reserved]

(b) *PSO requirements*—(1) *General*. (i) All PSOs must be located at the best vantage point(s) primary vessel and any dedicated PSO vessels in order to ensure 360° visual coverage of the entire clearance and shutdown zones around the vessels, and as much of the Level B harassment zone as possible. During UXO/MEC detonation events, monitoring from an aerial platform would also be required.

(ii) During all observation periods, PSOs must use high magnification (25×) binoculars, standard handheld (7×) binoculars, and the naked eye to search continuously for marine mammals. During impact pile driving and UXO/MEC detonation events, at least one PSO on the primary pile driving or UXO/MEC vessel must be equipped with Big Eye binoculars (*e.g.*, 25 × 150; 2.7 view angle; individual ocular focus; height control) of appropriate quality. These must be pedestal mounted on the deck at the most appropriate vantage point that provides for optimal sea surface observation and PSO safety.

(iii) PSOs must not exceed four consecutive watch hours on duty at any time, must have a 2-hour (minimum) break between watches, and must not exceed a combined watch schedule of more than 12 hours in a 24-hour period.

(2) *WTG and OSS foundation installation*. (i) At least four PSOs must be actively observing marine mammals before, during, and after installation of foundation piles (monopiles and/or pin piles). At least two PSOs must be stationed and observing on the pile driving vessel and at least two PSOs must be stationed on a secondary, PSO-dedicated vessel. Concurrently, at least one acoustic PSO (*i.e.*, PAM operator) must be actively monitoring for marine mammals with PAM before, during and after impact pile driving.

(ii) If PSOs cannot visually monitor the minimum visibility zone at all times using the equipment described in paragraph (b)(1)(ii) of this section or approved alternative equipment, impact pile driving operations must not commence or must shutdown if they are currently active.

(iii) All PSOs, including PAM operators, must begin monitoring 60 minutes prior to pile driving, during, and for 30 minutes after an activity. The impact pile driving of both monopiles and/or pin piles must only commence when the minimum visibility zone is fully visible (*e.g.*, not obscured by

darkness, rain, fog, *etc.*) and the clearance zones are clear of marine mammals for at least 30 minutes, as determined by the Lead PSO, immediately prior to the initiation of impact pile driving.

(iv) For North Atlantic right whales, any visual or acoustic detection must trigger a delay to the commencement of pile driving. In the event that a large whale is sighted or acoustically detected that cannot be confirmed as a non-North Atlantic right whale species, it must be treated as if it were a North Atlantic right whale.

(v) Following a shutdown, monopile and/or pin pile installation must not recommence until the minimum visibility zone is fully visible and clear of marine mammals for 30 minutes.

(3) *Cofferdam installation and removal.* (i) At least two PSOs must be on active duty during all activities related to the installation and removal of cofferdams.

(ii) These PSOs must be located at appropriate vantage points on the vibratory pile driving platform or secondary platform in the immediate vicinity of the vibratory pile driving platform.

(iii) PSOs must ensure that there is appropriate visual coverage for the entire clearance zone and as much of the Level B harassment zone as possible.

(iv) PSOs must monitor the clearance zone for the presence of marine mammals for 30 minutes before, throughout the installation of the sheet piles (and casing pipe, if installed), and for 30 minutes after all vibratory pile driving activities have ceased. Sheet pile or casing pipe installation shall only commence when visual clearance zones are fully visible (*e.g.*, not obscured by darkness, rain, fog, *etc.*) and clear of marine mammals, as determined by the Lead PSO, for at least 30 minutes immediately prior to initiation of impact or vibratory pile driving.

(4) *UXO/MEC detonations.* (i) At least six PSOs must be on active duty prior to, during, and after UXO/MEC detonations and must be located on at least two dedicated PSO vessels. Two PSOs must also be on the airplane during aerial surveys and must monitor for marine mammals before, during, and after UXO/MEC detonation events.

(ii) All PSOs, including PAM operators, must begin monitoring 60 minutes prior to UXO/MEC detonation, during, and for 30 minutes after an activity.

(iii) For detonation areas larger than 2 km, Ocean Wind must use a secondary vessel to monitor. For any additional vessels determined to be necessary, two

PSOs must be used and located at the appropriate vantage point on the vessel. These additional PSOs would maintain watch during the same time period as the PSOs on the primary monitoring vessel. Prior to, during, and after any detonation occurring, Ocean Wind must ensure that these clearance zones are fully (100 percent) monitored.

(5) *HRG surveys.* (i) Between four and six PSOs would be present on every 24-hour survey vessel and two to three PSOs would be present on every 12-hour survey vessel. At least one PSO must be on active duty during HRG surveys conducted during daylight and at least two PSOs must be on activity duty during HRG surveys conducted at night.

(ii) During periods of low visibility (*e.g.*, darkness, rain, fog, *etc.*), PSOs must use alternative technology (*i.e.*, infrared/thermal camera) to monitor the clearance and shutdown zones.

(iii) PSOs on HRG vessels must begin monitoring 30 minutes prior to activating boomers, sparkers, or CHIRPs, during, and 30 minutes after use of those sources has ceased.

(iv) Any observations of marine mammals must be communicated to PSOs on all nearby survey vessels during concurrent HRG surveys.

(v) During daylight hours when survey equipment is not operating, Ocean Wind must ensure that visual PSOs conduct, as rotation schedules allow, observations for comparison of sighting rates and behavior with and without use of the specified acoustic sources. Off-effort PSO monitoring must be reflected in the monthly PSO monitoring reports.

(c) *PAM operator requirements—(1) General.* (i) PAM operators must have completed specialized training for operating PAM systems prior to the start of monitoring activities, including identification of species-specific mysticete vocalizations.

(ii) During use of any real-time PAM system, at least one PAM operator must be designated to monitor each system by viewing data or data products that would be streamed in real-time or in near real-time to a computer workstation and monitor.

(iii) PAM operators may be located on a vessel or remotely on-shore but must have the appropriate equipment available wherever they are stationed.

(iv) Visual PSOs must remain in contact with the PAM operator currently on duty regarding any animal detection that would be approaching or found within the applicable zones no matter where the PAM operator is stationed (*i.e.*, onshore or on a vessel).

(v) The PAM operator must inform the Lead PSO on duty of animal detections approaching or within applicable ranges of interest to the pile driving activity via the data collection software system (*i.e.*, Mysticetus or similar system) who will be responsible for requesting the designated crewmember to implement the necessary mitigation procedures.

(vi) PAM operators must be on watch for a maximum of 4 consecutive hours, followed by a break of at least 2 hours between watches.

(vii) A Passive Acoustic Monitoring Plan must be submitted to NMFS for review and approval at least 180 days prior to the planned start of monopile and/or pin pile installation.

(2) *WTG and OSS foundation installation.* (i) Ocean Wind must use a minimum of one PAM operator before, during, and after impact pile driving activities commence. The PAM operator must assist visual PSOs in ensuring full coverage of the clearance and shutdown zones.

(ii) PAM operators must assist the visual PSOs in monitoring by beginning PAM activities 60 minutes prior to any impact pile driving, during, and after for 30 minutes for the appropriate distance (based on season). The entire minimum visibility zone must be clear for at least 30 minutes with no marine mammal detections prior to the start of impact pile driving.

(iii) Any acoustic monitoring during low visibility conditions during the day would complement visual monitoring efforts and would cover an area of at least the Level B harassment zone around each monopile or pin pile foundation.

(iv) Any visual or acoustic detection must trigger a delay to the commencement of pile driving. In the event that a large whale is sighted or acoustically detected that cannot be confirmed as a non-North Atlantic right whale species, it must be treated as if it were a North Atlantic right whale. Following a shutdown, monopile and/or pin pile installation shall not recommence until the minimum visibility zone is fully visible and clear of marine mammals for 30 minutes.

(3) *UXO/MEC detonation(s).* (i) Ocean Wind must use a minimum of one PAM operator on one of two dedicated PSO vessels for monitoring during daylight UXO/MEC detonation(s).

(ii) PAM must be conducted for at least 60 minutes prior to detonation, during, and for 30 minutes after detonation and the zone must be acoustically clear during this entire duration.

(iii) The PAM operator must monitor to and past the clearance zone for large whales.

(d) *Data collection and reporting.* (1) Prior to initiation of project activities, Ocean Wind must demonstrate in a report submitted to NMFS (at itp.potlock@noaa.gov and pr.itp.monitoringreports@noaa.gov) that all required training for Ocean Wind personnel (including the vessel crews, vessel captains, PSOs, and PAM operators) has been completed.

(2) Ocean Wind must use a standardized reporting system during the effective period of the regulations in this subpart and LOA. All data collected related to the Ocean Wind 1 project must be recorded using industry-standard software (e.g., Mysticetus or a similar software) that is installed on field laptops and/or tablets. Ocean Wind must collect the following information during activities requiring PSOs:

- (i) Date and time that monitored activity begins or ends;
- (ii) Construction activities occurring during each observation period;
- (iii) Watch status (*i.e.*, sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);
- (iv) PSO who sighted the animal;
- (v) Time of sighting;
- (vi) Weather parameters (e.g., wind speed, percent cloud cover, visibility);
- (vii) Water conditions (e.g., sea state, tide state, water depth);
- (viii) All marine mammal sightings, regardless of distance from the construction activity;
- (ix) Species (or lowest possible taxonomic level possible)
- (x) Pace of the animal(s);
- (xi) Estimated number of animals (minimum/maximum/high/low/best);
- (xii) Estimated number of animals by cohort (e.g., adults, yearlings, juveniles, calves, group composition, *etc.*);
- (xiii) Description (*i.e.*, as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics);
- (xiv) Description of any marine mammal behavioral observations (e.g., observed behaviors such as feeding or traveling) and observed changes in behavior, including an assessment of behavioral responses thought to have resulted from the specific activity;
- (xv) Animal's closest distance and bearing from the pile being driven, UXO/MEC, or specified HRG equipment and estimated time entered or spent within the Level A harassment and/or Level B harassment zones;
- (xvi) Construction activity at time of sighting (e.g., vibratory installation/

removal, impact pile driving, UXO/MEC detonation, construction survey), use of any noise attenuation device(s), and specific phase of activity (e.g., ramp-up of HRG equipment, HRG acoustic source on/off, soft start for pile driving, active pile driving, post-UXO/MEC detonation, *etc.*);

(xvii) Description of any mitigation-related action implemented, or mitigation-related actions called for but not implemented, in response to the sighting (e.g., delay, shutdown, *etc.*) and time and location of the action; and

(xviii) Other human activity in the area.

(3) For all marine mammal sightings by PSOs, the following information must also be collected and reported to NMFS:

- (i) Identification of the animal(s) (*i.e.*, genus/species, lowest possible taxonomic level, or unidentified); also note the composition of the group if there is a mix of species;
- (ii) Pace of the animal(s);
- (iii) Estimated number of animals (high/low/best);
- (iv) Estimated number of animals by cohort (e.g., adults, yearlings, juveniles, calves, group composition, *etc.*);
- (v) Description (*i.e.*, as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics);
- (vi) Description of any observations of marine mammal behavior (e.g., observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (e.g., no response or changes in behavioral state such as ceasing feeding, changing direction, or breaching);
- (vii) Animal's closest distance from the pile being driven or specified HRG equipment and estimated time spent within the Level A harassment and/or Level B harassment zones;
- (viii) Construction activity at time of sighting (e.g., vibratory installation/removal, impact pile driving, construction survey), use of any noise attenuation device, and specific phase of activity (e.g., ramp-up HRG equipment, HRG acoustic source on/off, soft start for pile driving, active pile driving, *etc.*);
- (ix) Distance and bearing to each marine mammal observed;
- (x) Description of any mitigation-related actions implemented, or mitigation-related actions called for but not implemented, in response to the sighting (e.g., delay, shutdown, *etc.*) and time and location of the action;

(xi) Watch status (*i.e.*, sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);

(xii) PSO who sighted the animal;

(xiii) Time of sighting;

(xiv) Location of sighting;

(xv) Water depth;

(xvi) Sea state and weather; and

(xvii) Marine mammal occurrence within relevant Level A harassment or Level B harassment zones.

(4) For all real-time acoustic detections of marine mammals, the following must be recorded and included in weekly, monthly, annual, and final reports:

- (i) Location of hydrophone (latitude & longitude; in Decimal Degrees) and site name;
 - (ii) Bottom depth and depth of recording unit (in meters);
 - (iii) Recorder (model & manufacturer) and platform type (*i.e.*, bottom-mounted, electric glider, *etc.*), and instrument ID of the hydrophone and recording platform (if applicable);
 - (iv) Time zone for sound files and recorded date/times in data and metadata (in relation to UTC. *i.e.*, EST time zone is UTC-5);
 - (v) Duration of recordings (start/end dates and times; in ISO 8601 format, yyyy-mm-ddTHH:MM:SS.sssZ);
 - (vi) Deployment/retrieval dates and times (in ISO 8601 format);
 - (vii) Recording schedule (must be continuous);
 - (viii) Hydrophone and recorder sensitivity (in dB *re.* 1 μ Pa);
 - (ix) Calibration curve for each recorder;
 - (x) Bandwidth/sampling rate (in Hz);
 - (xi) Sample bit-rate of recordings; and,
 - (xii) Detection range of equipment for relevant frequency bands (in meters).
- (5) For each detection, the following information must be noted:
- (i) Species identification (if possible);
 - (ii) Call type and number of calls (if known);
 - (iii) Temporal aspects of vocalization (date, time, duration, *etc.*, date times in ISO 8601 format);
 - (iv) Confidence of detection (detected, or possibly detected);
 - (v) Comparison with any concurrent visual sightings;
 - (vi) Location and/or directionality of call (if determined) relative to acoustic recorder or construction activities;
 - (vii) Location of recorder and construction activities at time of call;
 - (viii) Name and version of detection or sound analysis software used, with protocol reference;
 - (ix) Minimum and maximum frequencies viewed/monitored/used in detection (in Hz); and,
 - (x) Name of PAM operator(s) on duty.

(6) Ocean Wind must compile and submit weekly PSO and PAM reports to NMFS (at itp.potlock@noaa.gov and PR.ITP.monitoringreports@noaa.gov) that document the daily start and stop of all pile driving, HRG survey, or UXO/MEC detonation activities, the start and stop of associated observation periods by PSOs, details on the deployment of PSOs, a record of all detections of marine mammals, any mitigation actions (or if mitigation actions could not be taken, provide reasons why), and details on the noise attenuation system(s) used and its performance. Weekly reports are due on Wednesday for the previous week (Sunday–Saturday) and must include the information required under this section.

(7) Ocean Wind must compile and submit monthly reports to NMFS (at itp.potlock@noaa.gov and PR.ITP.monitoringreports@noaa.gov) that include a summary of all information in the weekly reports, including project activities carried out in the previous month, vessel transits (number, type of vessel, and route), number of piles installed, all detections of marine mammals, and any mitigative action taken. Monthly reports are due on the 15th of the month for the previous month. The report should note the location and date of any turbines that become operational.

(8) Ocean Wind must submit an annual report to NMFS (at itp.potlock@noaa.gov and PR.ITP.monitoringreports@noaa.gov) no later than 90 days following the end of a given calendar year. Ocean Wind must provide a final report within 30 days following resolution of comments on the draft report. The report must detail the following information:

(A) The total number of marine mammals of each species/stock detected and how many were within the designated Level A harassment and Level B harassment zones with comparison to authorizes take of marine mammals for the associated activity type;

(B) Marine mammal detections and behavioral observations before, during, and after each activity;

(C) What mitigation measures were implemented (*i.e.*, number of shutdowns or clearance zone delays, *etc.*) or, if no mitigative actions was taken, why not;

(D) Operational details (*i.e.*, days of impact and vibratory pile driving, days/amount of HRG survey effort, total number and charge weights related to UXO/MEC detonations, *etc.*);

(E) Sound field verification results;

(F) Any PAM systems used;

(G) The results, effectiveness, and which noise abatement systems were used during relevant activities (*i.e.*, impact pile driving, UXO/MEC detonation);

(H) Summarized information related to situational reporting (see paragraph (d)(12) of this section); and

(I) Any other important information relevant to the Ocean Wind 1 project, including additional information that may be identified through the adaptive management process.

(ii) The final annual report must be prepared and submitted within 30 calendar days following the receipt of any comments from NMFS on the draft report. If no comments are received from NMFS within 60 calendar days of NMFS' receipt of the draft report, the report must be considered final.

(9) Ocean Wind must submit its draft final report(s) to NMFS (at itp.potlock@noaa.gov and PR.ITP.monitoringreports@noaa.gov) on all visual and acoustic monitoring conducted under the LOA within 90 calendar days of the completion of activities occurring under the LOA. A final report must be prepared and submitted within 30 calendar days following receipt of any NMFS comments on the draft report. If no comments are received from NMFS within 30 calendar days of NMFS' receipt of the draft report, the report shall be considered final.

(10) By 90 days after the expiration of the rule, Ocean Wind must submit a final report to NMFS (at itp.potlock@noaa.gov and PR.ITP.monitoringreports@noaa.gov) that summarizes all of the data contained within the annual reports. A final 5-year report would be prepared and submitted within 60 calendar days following receipt of any NMFS comments on the draft report. If no comments were received from NMFS within 60 calendar days of NMFS' receipt of the draft report, the report would be considered final.

(11)(i) Ocean Wind must provide the initial results of the SFV measurements to NMFS in an interim report after each monopile and jacket foundation installation for the first three monopiles piles, completion of installing one jacket foundation, and for each UXO/MEC detonation as soon as they are available, but no later than 48 hours after each installation. Ocean Wind must also provide interim reports on any subsequent SFV on foundation piles within 48 hours. The interim report must include hammer energies used during pile driving or UXO/MEC weight (including donor charge weight), peak sound pressure level (SPL_{pk}) and

median, mean, maximum, and minimum root-mean-square sound pressure level that contains 90 percent of the acoustic energy (SPL_{rms}) and single strike sound exposure level (SEL_{ss}); and

(ii) The final results of SFV of monopile installations must be submitted as soon as possible, but no later than within 90 days following completion of impact pile driving of the three monopiles and jacket foundations and UXO/MEC data to date. The final report must include, at minimum, the following:

(A) Peak sound pressure level (SPL_{pk}), root-mean-square sound pressure level that contains 90 percent of the acoustic energy (SPL_{rms}), single strike sound exposure level (SEL_{ss}), integration time for SPL_{rms}, SEL_{ss} spectrum, and 24-hour cumulative SEL extrapolated from measurements at specified distances (*e.g.*, 750 m). All these levels must be reported in the form of median, mean, maximum, and minimum. The SEL and SPL power spectral density and one-third octave band levels (usually calculated as decidecade band levels) at the receiver locations should be reported;

(B) The sound levels reported must be in median and linear average (*i.e.*, average in linear space), and in dB;

(C) A description of depth and sediment type, as documented in the Construction and Operation Plan, at the recording and pile driving locations;

(D) Hammer energies required for pile installation and the number of strikes per pile;

(E) Hydrophone equipment and methods (*i.e.*, recording device, bandwidth/sampling rate, distance from the pile where recordings were made; depth of recording device(s));

(F) Description of the SFV PAM hardware and software, including software version used, calibration data, bandwidth capability and sensitivity of hydrophone(s), any filters used in hardware or software, any limitations with the equipment, and other relevant information;

(G) Description of UXO/MEC, weight, including donor charge weight, and why detonation was necessary;

(H) Local environmental conditions, such as wind speed, transmission loss data collected on-site (or the sound velocity profile), baseline pre- and post-activity ambient sound levels (broad-band and/or within frequencies of concern);

(I) Spatial configuration of the noise attenuation device(s) relative to the pile;

(J) The extents of the Level A harassment and Level B harassment zones; and

(K) A description of the noise attenuation devices and operational parameters (*e.g.*, bubble flow rate, distance deployed from the pile, *etc.*) and any action taken to adjust noise attenuation devices.

(12) Specific situations encountered during the development of Ocean Wind 1 shall require immediate reporting to be undertaken. These situations and the relevant procedures are described in paragraphs (d)(12)(i) through (v) of this section.

(i) If a North Atlantic right whale is observed at any time by PSOs or personnel on or in the vicinity of any project vessel, or during vessel transit, Ocean Wind must immediately report sighting information to the NMFS North Atlantic Right Whale Sighting Advisory System (866) 755-6622, through the WhaleAlert app (<http://www.whalealert.org/>), and to the U.S. Coast Guard via channel 16, as soon as feasible, but no longer than 24 hours after the sighting. Information reported must include, at a minimum: time of sighting, location, and number of North Atlantic right whales observed.

(ii) When an observation of a marine mammal occurs during vessel transit, the following information must be recorded:

- (A) Time, date, and location;
- (B) The vessel's activity, heading, and speed;
- (C) Sea state, water depth, and visibility;
- (D) Marine mammal identification to the best of the observer's ability (*e.g.*, North Atlantic right whale, whale, dolphin, seal);
- (E) Initial distance and bearing to marine mammal from vessel and closest point of approach; and
- (F) Any avoidance measures taken in response to the marine mammal sighting.

(iii) If a North Atlantic right whale is detected via PAM, the date, time, location (*i.e.*, latitude and longitude of recorder) of the detection as well as the recording platform that had the detection must be reported to nmfs.pacmdata@noaa.gov as soon as feasible, but no longer than 24 hours after the detection. Full detection data and metadata must be submitted monthly on the 15th of every month for the previous month via the webform on the NMFS North Atlantic right whale Passive Acoustic Reporting System website (<https://www.fisheries.noaa.gov/resource/document/passive-acoustic-reporting-system-templates>).

(iv) In the event that the personnel involved in the activities defined in § 217.260(c) discover an injured or dead

marine mammal, Ocean Wind must immediately report the observation to the NMFS Office of Protected Resources (OPR), the NMFS Greater Atlantic Stranding Coordinator for the New England/Mid-Atlantic area (866-755-6622), the NMFS RWSAS hotline, and the U.S. Coast Guard within 24 hours. If the injury or death was caused by a project activity, Ocean Wind must immediately cease all activities until NMFS OPR is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the LOA. NMFS may impose additional measures to minimize the likelihood of further prohibited take and ensure MMPA compliance. Ocean Wind may not resume their activities until notified by NMFS. The report must include the following information:

(A) Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

(B) Species identification (if known) or description of the animal(s) involved;

(C) Condition of the animal(s) (including carcass condition if the animal is dead);

(D) Observed behaviors of the animal(s), if alive;

(E) If available, photographs or video footage of the animal(s); and

(F) General circumstances under which the animal was discovered.

(v) In the event of a vessel strike of a marine mammal by any vessel associated with the Ocean Wind 1 Offshore Energy Facility, Ocean Wind must immediately report the strike incident to the NMFS Office of Protected Resources and the GARFO within and no later than 24 hours. The incident must also be immediately reported to NMFS OPR (301-427-8401). Ocean Wind must immediately cease all activities until NMFS OPR is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the LOA. If activities related to the Ocean Wind 1 project caused the injury or death of the animal, Ocean Wind must supply a vessel to assist with any salvage efforts, if requested by NMFS. The report must include the following information:

(A) Time, date, and location (latitude/longitude) of the incident;

(B) Species identification (if known) or description of the animal(s) involved;

(C) Vessel's speed leading up to and during the incident;

(D) Vessel's course/heading and what operations were being conducted (if applicable);

(E) Status of all sound sources in use;

(F) Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;

(G) Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;

(H) Estimated size and length of animal that was struck;

(I) Description of the behavior of the marine mammal immediately preceding and following the strike;

(J) If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;

(K) Estimated fate of the animal (*e.g.*, dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and,

(L) To the extent practicable, photographs or video footage of the animal(s).

§ 217.266 Letter of Authorization.

(a) To incidentally take marine mammals pursuant to this subpart, Ocean Wind must apply for and obtain an LOA.

(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) If an LOA expires prior to the expiration date of this subpart, Ocean Wind may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, Ocean Wind must apply for and obtain a modification of the LOA as described in § 217.267.

(e) The LOA must set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.*, mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA must be based on a determination that the level of taking must be consistent with the findings made for the total taking allowable under this subpart.

(g) Notice of issuance or denial of an LOA must be published in the **Federal Register** within 30 days of a determination.

§ 217.267 Modifications of Letter of Authorization.

(a) An LOA issued under §§ 217.262 and 217.266 for the activities identified in § 217.260(c) shall be modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for this subpart (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under this subpart were implemented.

(b) For a LOA modification request by the applicant that includes changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for this subpart or result in no more than a minor change

in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed 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 §§ 217.262 and 217.266 for the activities identified in § 217.260(c) may be modified by NMFS under the following circumstances:

(1) *Adaptive management.* NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with Ocean Wind regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring 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:

(A) Results from Ocean Wind's monitoring from the previous year(s).

(B) Results from other marine mammals and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent, or number not authorized by this subpart or subsequent LOA.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS shall publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) *Emergencies.* If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in the LOA issued pursuant to §§ 217.262 and 217.266, an 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.

§§ 217.268–217.269 [Reserved]

[FR Doc. 2022–23200 Filed 10–25–22; 8:45 am]

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