

merchandise has been “altered in form or appearance in minor respects . . . whether or not included in the same tariff classification.” Section 781(c)(2) of the Act provides an exception that “[p]aragraph 1 shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the {order}.” While the Act is silent regarding the factors to consider in determining whether alterations are properly considered “minor,” the legislative history of this provision indicates that there are certain factors that should be considered before reaching a circumvention determination. In conducting a circumvention inquiry under section 781(c) of the Act, Commerce has generally relied upon “such criteria as the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products.”⁴ Concerning the allegation of minor alteration under section 781(c) of the Act and 19 CFR 351.225(i), Commerce examines such factors as: (1) Overall physical characteristics; (2) expectations of ultimate users; (3) use of merchandise; (4) channels of marketing; and, (5) cost of any modification relative to the value of the imported products.⁵

Section 781(d) of the Act provides that Commerce may initiate an circumvention inquiry to determine whether merchandise developed after an AD or CVD investigation is within the scope of the order(s). In conducting later-developed merchandise inquiries under section 781(d)(1) of the Act, Commerce will evaluate whether: (1) The general physical characteristics of the merchandise subject to the inquiry are the same as subject merchandise covered by the order(s); (2) the expectations of the ultimate purchasers of the merchandise subject to the inquiry are no different to the expectations of the ultimate purchasers of subject merchandise; (3) the ultimate use of the inquiry merchandise and subject merchandise are the same; (4) the channels of trade of both products are the same; and, (5) there are any differences in the advertisement and display of both products.⁶ First,

however, Commerce applies a commercial availability test to determine whether the merchandise subject to the inquiry was commercially available at the time of the investigation(s) (*i.e.*, the product was present in the commercial market or the product was tested and ready for commercial production).⁷

Analysis

After analyzing the record evidence and the petitioner’s allegation, we determine that there is sufficient information to warrant the initiation of a minor alterations circumvention inquiry, pursuant to section 781(c) of the Act and 19 CFR 351.225(i). However, we determine that initiation of a later-developed merchandise circumvention inquiry, pursuant to section 781(d) of the Act and 19 CFR 351.225(j), is not warranted. For a full discussion of the basis for our decision to initiate a minor alterations circumvention inquiry, but not a later-developed merchandise circumvention inquiry, *see* the Initiation Decision Memorandum. The Initiation Decision Memorandum is a public document, on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Initiation Decision Memorandum can be accessed directly at <http://access.trade.gov/public/FRNoticesListLayout.aspx>.

Conclusion

Commerce will determine whether the merchandise subject to the inquiry (as described in the “Merchandise Subject to the Anti-Circumvention Inquiry” section above) is circumventing the *Orders* such that it should be included within the scope of the *Orders*, pursuant to section 781(c) of the Act and 19 CFR 351.225(i).

In accordance with 19 CFR 351.225(l)(2), if Commerce issues a preliminary affirmative determination, we will then instruct U.S. Customs and Border Protection to suspend liquidation and require a cash deposit of estimated duties, at the applicable rate,

for each unliquidated entry of the merchandise at issue entered or withdrawn from warehouse for consumption on or after the date of publication in the **Federal Register** of the initiation of the inquiry.

Commerce will establish a schedule for questionnaires and comments on the issues related to the inquiry. In accordance with section 781(f) of the Act, to the maximum extent practicable, Commerce intends to issue its final determination within 300 days of the date of publication of this initiation.

Notification to Interested Parties

This notice is published in accordance with sections 781(c) of the Act and 19 CFR 351.225(i).

Dated: November 18, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, Performing the Non-Exclusive Functions and Duties of the Assistant Secretary for Enforcement and Compliance.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB048]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the U.S. Coast Guard’s Alaska Facility Maintenance and Repair Activities

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

ACTION: Notice; receipt of application for Letter of Authorization; request for comments and information.

SUMMARY: NMFS has received a request from the U.S. Coast Guard for authorization to take small numbers of marine mammals incidental to conducting construction activities related to maintenance and repair of eight of their facilities in Alaska over the course of five years from the date of issuance. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the U.S. Coast Guard’s request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on the application and request.

⁴ See *Carbon and Certain Alloy Steel Wire Rod from Mexico: Initiation of Anti-Circumvention Inquiry of Antidumping Duty Order*, 83 FR 5405 (February 7, 2018) (citing S. Rep. No. 71, 100th Cong., 1st Sess. 100 (1987)).

⁵ *Id.*; see also *Deacero S.A. de C.V. v. United States*, 817 F.3d 1332 (Fed. Cir. 2016).

⁶ See section 781(d)(1) of the Act.

⁷ See *Later-Developed Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People’s Republic of China: Affirmative Preliminary Determination of Circumvention of Antidumping Duty Order*, 71 FR 32033, 32035 (June 2, 2006), unchanged in *Later-Developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People’s Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 71 FR 59075 (October 6, 2006).

DATES: Comments and information must be received no later than December 27, 2021.

ADDRESSES: Comments on the applications should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Electronic comments should be sent to ITP.Meadows@noaa.gov.

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

FOR FURTHER INFORMATION CONTACT: Dr. Dwayne Meadows, Office of Protected Resources, NMFS, (301) 427-8401. An electronic copy of the U.S. Coast Guard's application may be obtained online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

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

An incidental take authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the

availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 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.

The MMPA states that the term "take" means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On March 15, 2021, NMFS received an application from the U.S. Coast Guard (Coast Guard) requesting authorization for take of marine mammals incidental to maintenance and repair of eight of their facilities in Alaska. After the applicant responded to our questions, we determined the application was adequate and complete on November 17, 2021. The requested regulations would be valid for 5 years, from April 1, 2022 through March 31, 2027. The Coast Guard plans to conduct necessary work, including impact and vibratory pile driving and removal, making holes using down-the-hole equipment, pile cutting and power washing to maintain and repair their dock and other facilities. The proposed action may incidentally expose marine mammals occurring in the vicinity to elevated levels of underwater sound, thereby resulting in incidental take, by Level A and/or Level B harassment only. Therefore, the Coast Guard requests authorization to incidentally take marine mammals.

Specified Activities

The Coast Guard proposes to conduct construction necessary for maintenance and repair of existing in-water structures at the following eight Coast Guard station facilities in Alaska: Kodiak, Sitka, Ketchikan, Valdez, Cordova, Juneau, Petersburg, and

Seward. Up to 246 piles will be removed and replaced on a 1 to 1 basis over the 5-year regulations. The Coast Guard anticipates a maximum of 395 work days over the course of the 5-year period and they expect to take 23 stocks from 12 species of marine mammals.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the Coast Guard's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by the Coast Guard, if appropriate.

Dated: November 18, 2021.

Kimberly Damon-Randall,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB598]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Parallel Thimble Shoal Tunnel Project in Virginia Beach, Virginia

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the Chesapeake Tunnel Joint Venture (CTJV) to incidentally harass, by Level A and Level B harassment only, marine mammals during construction activities associated with the Parallel Thimble Shoal Tunnel Project (PTST) in Virginia Beach, Virginia.

DATES: This authorization is effective for one year from the date of issuance.

FOR FURTHER INFORMATION CONTACT: Dwayne Meadows, Ph.D., Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained