

EPA-APPROVED MISSISSIPPI REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section 25–4–103 .....	Definitions .....	9/27/2012	4/8/2013 [Insert citation of publication].	
Section 25–4–105 .....	Certain actions, activities and business relationships prohibited or authorized; contacts in violation of section voidable; penalties.	9/27/2012	4/8/2013 [Insert citation of publication].	

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(e) \* \* \*

EPA-APPROVED MISSISSIPPI NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approval date	Explanation
110(a)(2)(E)(ii) Infrastructure Requirement for the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards.	Mississippi .....	10/11/2012	4/8/2013 .....	EPA disapproved the State's 110(a)(2)(E)(ii) as it relates to section 128(a)(2), the significant portion of income requirement.

■ 3. Section 52.1278 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

**§ 52.1278 Control strategy: Sulfur oxides and particulate matter.**

(b) *Disapproval.* EPA is disapproving portions of Mississippi's Infrastructure SIP for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS addressing section 110(a)(2)(E)(ii) that requires the State to comply with section 128 of the CAA.

[FR Doc. 2013-07975 Filed 4-5-13; 8:45 am]

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 54**

[WC Docket Nos. 10-90 and 05-337; DA 13-282]

**Data Specifications for Collecting Study Area Boundaries**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Wireline Competition Bureau adopts

modifications to the data specifications for collecting study area boundaries for purposes of implementing various reforms. The original specifications were adopted in the Commission's Connect America Fund; High-Cost Universal Service Support, Report and Order, (*Study Area Boundary Order*), released on November 6, 2012.

**DATES:** Effective April 8, 2013. The modifications adopted in this document are revisions to the *Study Area Boundary Order* data collection. The *Study Area Boundary Order* contained new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. The Bureau submitted a request for emergency PRA approval for the new data collection to the Office of Management and Budget (OMB) in December 2012, and OMB approved the Bureau's request on January 23, 2013. The OMB control number for this collection is 3060-1181.

**FOR FURTHER INFORMATION CONTACT:** Chelsea Fallon, Assistant Division Chief, at 202-418-7991, Industry Analysis & Technology Division, Wireline Competition Bureau. For additional information concerning the PRA information collection requirements contained in this

document, send an email to [PRA@fcc.gov](mailto:PRA@fcc.gov) or contact Judith B. Herman at 202-418-0214.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Bureau's *Study Area Boundary Reconsideration Order (Reconsideration Order)* in WC Docket No. 10-90; WC Docket No. 05-337; DA 13-282, released on February 26, 2013. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street SW., Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street SW., Room CY-B402, Washington, DC 20554. Customers may contact BCPI, Inc. via their Web site, <http://www.bcpi.com>, or call 1-800-378-3160. This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact the FCC by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

**Synopsis of Reconsideration Order**

1. On November 6, 2012, the Wireline Competition Bureau (Bureau) released the *Study Area Boundary Order*, DA 12-

1777, published at 78 FR 5750, January 28, 2013, OMB Control Number 3060–1181, adopting data specifications for the collection of study area boundary data to use in the implementation of certain universal service reforms adopted as part of the *USF/ICC Transformation Order*, 76 FR 73830, November 29, 2011. The *Study Area Boundary Order* required incumbent local exchange carriers (LECs) to submit certified study area boundary data in esri shapefile format, and it allowed state commissions or state telecommunications associations (state entities) voluntarily to submit such data on the LECs' behalf. In this *Reconsideration Order*, the Bureau modifies on its own motion several aspects of the rules adopted in the *Study Area Boundary Order*.

2. First, the Bureau concludes that it is more appropriate for state commissions to certify to the accuracy of the study area boundary data when they submit such data on behalf of the incumbent LECs operating in their state. Second, the Bureau reconsiders its decision to permit state associations to submit data on behalf of incumbent LECs and instead require that the entity that will certify to the accuracy of the data make the submission. Third, the Bureau permits incumbent LECs that are price cap carriers to submit exchange-level study area boundary data by providing internal wire center boundaries, if they choose, and indicating the exchange(s) associated with the wire center. Finally, the Bureau provides some guidance as to expectations regarding the certification requirement and clarifies the standards of accuracy laid out in the *Study Area Boundary Order*.

3. *State Entity Certification*. In the *Study Area Boundary Order*, the Bureau allowed state entities voluntarily to submit shapefiles on behalf of any and/or all incumbent LECs within their states. The Bureau stated that state commissions typically are the entities that establish incumbent LEC service areas and therefore are well situated to assist incumbent LECs in preparing study area boundary data. The *Study Area Boundary Order* concluded, however, that even when states submit data on behalf of incumbent LECs, those incumbent LECs remain responsible for reviewing and certifying to the accuracy of the state-submitted data. With this *Reconsideration Order*, the Bureau modifies certain aspects of these requirements; it concludes that the entity submitting data to the Commission is the more appropriate entity to certify to the accuracy of the study area boundaries and continues to

encourage states to submit data on behalf of their incumbent LECs.

4. Since release of the *Study Area Boundary Order*, some incumbent LECs have argued that, because state commissions are the entities responsible for establishing study area boundaries, state commissions should be responsible for submitting such boundaries and/or certifying that they are accurate. In addition, certain state commissions have also asserted that they should be involved in or responsible for certifying the accuracy of the study area boundaries in their state. The Bureau recognizes that both state commissions and the Commission have a role in overseeing study area boundaries. Therefore, it is appropriate for the state commissions that voluntarily undertake the task of submitting boundary data to us to certify that these data are accurate and correct to the best of their knowledge, information, and belief. In addition to acknowledging the states' traditional role in administering incumbent LEC study area boundaries, the Bureau also believes that it is most efficient and direct for an entity submitting data to the Commission to be responsible for its accuracy, rather than having data submitted by one party but verified by another. While state commissions were the entities that originally established study area boundaries for the incumbent LECs in their state, the Bureau acknowledges that certain states may not have the resources available to compile and submit study area boundary data in the format requested for this data collection. The Bureau therefore will continue to rely on individual incumbent LECs to submit data on the study areas they serve, in cases where state commissions do not submit data, and will invite state entities to participate in any necessary reconciliation of data submitted by ILECs.

5. State commissions wishing to submit and certify study area boundary data should notify the Commission in writing of their intention to do so by filing a notification in WC Docket No. 10–90 using the Commission's Electronic Comment Filing System (ECFS). In these notifications, states should indicate which incumbent LEC study areas they plan to include in their submission. The Bureau will release a Public Notice identifying the deadlines for these notices, as well as the deadlines for the shapefile submissions and certifications, in the near future. States planning to submit data will be able to file at a later date than incumbent LECs since the states will have already taken on the task of

resolving any disputes and ensuring the accuracy of the filing. State commissions should submit data based on the specification in the Specification attached hereto. The Bureau expects that the boundaries submitted and certified by state commissions will have been verified and reconciled at the state level, and that minimal further reconciliation will need to be done by Commission staff.

6. If a state commission does not notify the Commission that it intends to submit study area boundary data for the incumbent LECs in its state, those incumbent LECs are required to submit and certify their study area boundary data under the rules and procedures established in the *Study Area Boundary Order* and this *Reconsideration Order*, as well as subsequent Public Notices providing filing deadlines and instructions.

7. On reconsideration, the Bureau no longer provides an option for state associations to submit data on behalf of incumbent LECs in their state. Consistent with the decision above that state commissions making submissions should certify as to the accuracy of the data, the party submitting the data should also certify as to its accuracy, consistent with the certification standard as explained below. The Bureau does not believe that the state associations are likely to have the necessary information to be able to certify as to the accuracy of incumbent LECs' data; the Bureau therefore reconsiders the earlier decision to provide the option for state associations to submit data on behalf of incumbent LECs. However, state associations can assist state commissions and incumbent LECs in preparing boundary data and in the reconciliation of data submitted by incumbent LECs. In those states where the state commission chooses not to submit data on behalf of all incumbents, the Bureau encourages state commissions and state telecommunications associations to participate in the process of reconciling data submitted by the incumbent LECs and will share such data with them to assist in that function. For instance, the Bureau plans to provide state entities with a map of the LEC-submitted boundaries for their review and comment. If boundary overlaps, void areas, or disputes occur in data submitted by incumbent LECs, the Bureau will seek input from the relevant state entities and incumbent LECs to help resolve such issues. If a state commission chooses not to participate in the reconciliation process, the Bureau will resolve the matter based on the information before us.

8. The Bureau emphasizes that it needs to complete the initial data collection with sufficient time to allow for its use in developing revised high cost loop support (HCLS) benchmarks that will determine support levels beginning January 1, 2014. If neither an incumbent LEC nor the relevant state commission submits or certifies boundary data for particular study areas, the Bureau will determine the boundaries of such study areas, using its own analysis and data sources, for purposes of establishing the HCLS benchmarks that will be used to deliver support in 2014. If state commissions or incumbent LECs make refinements or corrections to study area boundary data after the required deadlines in 2013, those modifications cannot be considered until the next time the Bureau updates the HCLS benchmarks.

9. *Submissions by Price Cap Carriers.* The *Study Area Boundary Order* required all incumbent LECs to submit study area boundary data at the exchange level, with the shapefile for each study area depicting each internal exchange as a closed, non-overlapping polygon. It is important to collect exchange-level data from rate-of-return carriers because the Bureau, when conducting the analysis used to implement the HCLS benchmarking rule, must be able to distinguish those exchanges that are subject to “frozen” support levels from those that are not, and track and account for exchanges that are transferred from one incumbent LEC to another. However, because the HCLS benchmarking rule does not apply to price cap carriers, certain parties have argued that it may not be necessary or practical to collect study area boundary data at the exchange level from price cap carriers.

10. The study area boundaries of price cap carriers are needed to “complete the puzzle” for HCLS implementation—to verify the accuracy of adjacent rate-of-return carrier study areas. In addition, data on exchanges is useful for tracking the sale or transfer of exchanges between price cap and rate-of-return carriers. Knowing which exchanges have been transferred from a price cap carrier is important for HCLS implementation because it allows the Bureau to account for whether and how a rate-of-return carrier’s study area boundary has changed as a result of the sale or purchase of an exchange. The Bureau therefore believes that exchange-level data from price cap carriers is necessary to ensure ongoing accurate HCLS implementation and will provide information generally useful for ongoing policy implementation at the Commission.

11. While exchange-level data from rate-of-return carriers are essential to HCLS implementation, and the benefits of collecting these data fully exceed the burdens involved in submitting them, the Bureau recognizes that the benefits of obtaining similar data from price cap carriers—while substantial—are more removed, and that submitting data at that level of detail involves time and effort on the part of the incumbent LECs or state commissions. The Bureau therefore reconsiders its decision to require exchange-level data for price cap areas and will allow price cap carriers—or state commissions—to submit the boundaries of component wire centers, which may be less burdensome to compile in a shapefile format, when submitting price cap study area boundary data, as long as the filer indicates the exchange or exchanges associated with each wire center. In addition, the filer should submit both a polygon of the outer boundary of the price cap study area, as well as polygons for the individual interior wire center boundaries, as part of the same shapefile or map layer. This change should provide the Commission with adequate data for HCLS implementation while reducing the filing burden on incumbent LECs and state commissions.

12. *Accuracy Requirements.* In the *Study Area Boundary Order*, the Bureau required that the submitted shapefiles conform to the 1:24,000 scale, which is the standard used by the U.S. Geological Survey (USGS) National Map and which claims to produce a horizontal accuracy of  $\pm 40$  feet. Certain parties have voiced concerns about certifying that the study area boundary data they submit have a horizontal accuracy of  $\pm 40$  feet. This requirement stems from the need to have boundaries conform to a common base map, rather than an accuracy requirement *per se*. If two adjoining study areas are bound by a road, stream, or other geographic or topographic feature, basing the maps of these areas on a standard scale of 1:24,000 will produce a more accurate set of boundaries and will greatly improve the reconciliation process.

13. This *Reconsideration Order* clarifies that in the initial year of implementation of this data collection, the Bureau will take a flexible approach in administering the requirement that shapefiles conform to the 1:24,000 topographic scale of the USGS National Map or that have an accuracy level of  $\pm 40$  feet. In particular, the Bureau emphasizes that it does not intend to penalize filers who undertake reasonable, good faith efforts to submit information within the necessary time frames, even if that information

subsequently is adjusted or corrected in future years.

14. The Bureau also acknowledges that even after incumbent LECs or state commissions certify to the accuracy of their submitted data, overlap and void areas can occur, and, in such cases, the Bureau will seek input from the relevant parties (incumbent LECs and/or state commissions) to resolve such issues during the reconciliation process. There may be disputes in particular instances as to the precise location of a boundary, and in this first year of implementation, the Bureau asks all parties to undertake best efforts to work with the Commission to develop a coherent national data set. The Bureau recognizes that the initial implementation of this data collection may be more challenging for some states than others, and the Bureau encourages all states to participate in this important effort.

15. Finally, the Bureau provides guidance regarding the requirement that an official certify that the information provided is accurate and correct to the best of his or her knowledge, information, and belief. Such certifications should be based on the information before the official making the certification and on a reasonable, good faith effort to confirm the accuracy of submitted boundaries. For incumbent LECs in states where the state commission is unable, for whatever reason, to undertake this important task, it is necessary to have some party indicate that it has made a reasonable, good faith effort to verify the information in question, even though the incumbent LEC is not the ultimate decision maker regarding the location of the boundary. The certification from an official of an incumbent LEC regarding the location of the boundary to the best of that individual’s knowledge, information, and belief will represent just that—the individual’s or company’s reasonable, good faith efforts.

#### **Congressional Review Act**

16. The Commission will send a copy of this *Reconsideration Order* in a report to be sent to Congress and the Government Accountability Office, pursuant to the Congressional Review Act.

#### **Paperwork Reduction Act**

17. The *Study Area Boundary Order* contained new information collection requirements subject to the PRA, Public Law 104–13. The Bureau submitted a request for emergency PRA approval for this new data collection to the OMB in December 2012, 77 FR 75159–01, and OMB approved the Bureau’s request on January 23, 2013, 78 FR 5750. The

emergency PRA approval expires on July 31, 2013. The Bureau will explain the modifications adopted in this *Reconsideration Order* when it submits its request for extension of the currently-approved collection to OMB. When that PRA request is published in the **Federal Register**, OMB, the general public, and other Federal agencies will be invited to comment on all aspects of the study area boundary information collection requirements.

### Final Regulatory Flexibility Analysis

18. As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission prepared a Final Regulatory Flexibility Analysis (FRFA) for the *Study Area Boundary Order*. In accordance with the RFA, the Bureau certifies that the modifications adopted herein “will not have a significant economic impact on a substantial number of small entities.” The rules modified in this *Reconsideration Order* will reduce the burden on small entities relative to the impact of the rules adopted in the *Study Area Boundary Order*. The Bureau has eased the burden on small incumbent LECs by allowing state entities to certify to the accuracy of the data they (the states) submit, rather than requiring incumbent LECs to make the certification. The Bureau has also reduced the burden on small entities that are price cap carriers by allowing them the option to submit boundary data at the wire center rather than exchange level. The Commission will send a copy of this *Reconsideration Order*, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration.

### Ordering Clauses

19. Pursuant to sections 1, 2, 4(i), 201–205, 218–220, 254, 256, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201–205, 218–220, 254, 303(r), and 403, and §§ 0.91, 0.201(d), 0.291, and 1.427 of the Commission’s rules, 47 CFR 0.91, 0.201(d), 0.291, 1.427, and pursuant to the delegations of authority in paragraphs 157, 184, 187, 192, 217 of the *USF/ICC Transformation Order*, document DA 13–282 is adopted.

20. Document DA 13–282 shall be effective upon publication in the **Federal Register**. The Bureau concludes that good cause exists to make the effective date of the modifications adopted in this *Reconsideration Order* effective immediately upon publication in the **Federal Register**, pursuant to section 553(d)(3) of the Administrative Procedure Act, 5 U.S.C. 553(d)(3). Agencies determining whether there is good cause to make a rule revision take

effect less than 30 days after **Federal Register** publication must balance the necessity for immediate implementation against principles of fundamental fairness that require that all affected persons be afforded a reasonable time to prepare for the effective date of a new rule. The rules in the *Study Area Boundary Order* were duly published in the **Federal Register** and took effect on February 27, 2013. The changes adopted in this *Reconsideration Order* provide the affected parties with additional options for complying with the requirements in the *Study Area Boundary Order*. Given the need to collect this information and the lack of any additional burden imposed by this *Reconsideration Order*, there is good cause to make these amendments effective immediately upon **Federal Register** publication.

21. The Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of document DA 13–282, to the Chief Counsel for Advocacy of the Small Business Administration.

22. The Commission shall send a copy of document DA 13–282 to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

Federal Communications Commission.

Carol Matthey,

Deputy Chief, Wireline Competition Bureau.

### Appendix—Specification for Study Area Boundary Submission

1. *General*. Incumbent local exchange carriers (LECs) or state commissions must submit study area boundaries in esri shapefile format. Incumbent LECs should submit each study area served in a separate shapefile. Since shapefiles typically consist of 3 to 9 individual files, the shapefile for the study area should be submitted as a single, zipped file containing all of the component files. The shapefile and encapsulating zip file names must contain the company name and the 6-digit study area code. Shapefile templates are available at <http://www/fcc/gpv/wcb/iatd/neca.html>.

2. State commissions may submit shapefiles comprised of multiple study areas, and may submit zip files that contain multiple study areas. The encapsulating zip file should contain the state name. Study area boundaries for rate-of-return carriers must be submitted at the exchange level, while study areas for price cap carriers can be submitted at the exchange or wire center level. The shapefile must contain one data record for each exchange or wire center within the study area. Each exchange or wire center should be represented as a closed, non-overlapping polygon with the associated feature attributes listed below in the accompanying metadata.

3. In cases where a carrier or state submits price cap study areas at the wire center level,

the shapefile must contain both a polygon representing the outer study area boundary as well as polygons representing the internal wire centers. In the attributes associated with the polygon representing the outer study area boundary, fields 4, 5, and 6 (in Section II.B below) can be left blank or null. In addition, the attributes associated with each wire center polygon should include the exchange name(s) associated with the wire center. If there are multiple exchanges, list them all in the field separated by a comma.

4. After submitting the study area boundaries, an officer of the LEC, or an individual authorized by the state commission, must certify that the information provided is accurate and correct to the best of his/her knowledge, information, and belief, based on the individual’s or company’s reasonable, good faith efforts.

Note that submitted boundaries are public data and may be used in published FCC documents and Web pages.

5. *Shapefile*. A shapefile template is available at <http://transition.fcc.gov/wcb/iatd/neca.html>. Submitted shapefiles must:

- A. Contain one closed, non-overlapping polygon for each exchange or wire center in the study area. The polygon should represent the area served from that exchange or wire center
  - B. Have associated with each exchange or wire center polygon the following identifying feature attributes (or fields):
    1. OCN—NECA-assigned operating company number as in the LERG
    2. Company Name
    3. Boundary Type—Exchange, Wire Center, or Outer Study Area
    4. Exchange Name (If a price cap carrier or state commission is submitting wire center-level data, it should provide the name of the exchange associated with the wire center boundary.)
    5. Wire Center Name (leave blank if submitting exchange-level data)
    6. Was the Exchange acquired subject to section 54.305 of the Commission’s rules?
    7. Study Area Code (6-digit)
    8. State
  - C. Have an assigned projection w/ accompanying .prj file
  - D. Use unprojected (geographic) WGS84 geographic coordinate system
  - E. Conforming to 1:24K national mapping standards or have a minimum horizontal accuracy of +/- 40 feet or less
  - F. Be submitted as a WinZip archive with a name containing the company name and study area code (e.g., CompanyName\_123456.zip).
6. *CLLI Codes*. In conjunction with the shapefile attributes listed above, incumbent LECs or state entities should submit, within the zip file, a .csv file listing all of the 11-digit CLLI codes (for switches) associated with each exchange or wire center boundary. Because multiple CLLI codes can be associated with an exchange, it is easiest to capture these data in a separate table rather than include them in the shapefile attributes listed above. The .csv file should contain the three fields listed below, and each CLLI code should be listed in a separate row. This is a .csv file only; the locations of the switches

associated with the CLLI codes do not need to be mapped.

- Boundary Type—Exchange, Wire Center, or Outer Study Area
- Exchange or Wire Center Name
- CLLI Code (11-digit)

7. *Cover Page Information.* In addition to the shapefile data described above, the Bureau also will collect electronically the following information:

- A. Company Name
- B. FRN (please use the FRN used for the 477 filing in the state)
- C. Contact person name
- D. Contact person address
- E. Contact person phone number
- F. Contact person email address
- G. Date created/revised
- H. Methodology—process steps to create the data
- I. Certifying official name
- J. Certifying official address
- K. Certifying official phone number
- L. Certifying official email address

[FR Doc. 2013-08030 Filed 4-5-13; 8:45 am]

**BILLING CODE 6712-01-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 217

[Docket No. 110801452-3176-04]

RIN 0648-BB00

#### Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Construction and Operation of a Liquefied Natural Gas Deepwater Port in the Gulf of Mexico

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

**ACTION:** Final rule.

**SUMMARY:** NMFS, upon request of Port Dolphin Energy LLC (Port Dolphin), hereby issues regulations pursuant to the Marine Mammal Protection Act (MMPA) to govern the unintentional taking of marine mammals, by harassment, incidental to port construction and operations at its Port Dolphin Deepwater Port in the Gulf of Mexico, over the course of five years; approximately June 2013 through May 2018. These regulations, which allow for the issuance of Letters of Authorization for the incidental take of marine mammals during the described activities and specified timeframes, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, as well as requirements

pertaining to the monitoring and reporting of such taking.

**DATES:** Effective from June 1, 2013 through May 31, 2018.

**ADDRESSES:** A copy of Port Dolphin's application may be obtained by writing to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or visiting the internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. Documents cited in this final rule may also be viewed, by appointment, during regular business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Ben Laws, Office of Protected Resources, NMFS, (301) 427-8401.

#### 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 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.

Authorization for incidental takings 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."

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 February 1, 2011, we received a complete application from Port Dolphin for the taking of marine mammals incidental to port construction and operations at its Port Dolphin Deepwater Port (DWP) facility in the Gulf of Mexico (GOM). During the effective period of this final rule (June 2013–May 2018), Port Dolphin plans to construct the DWP and related infrastructure, expected to occur over an approximately 11-month period, and will subsequently begin operations. The DWP will be an offshore liquefied natural gas (LNG) facility, located in the GOM approximately 45 km (28 mi) off the western coast of Florida, and approximately 68 km (42 mi) from Port Manatee, located in Manatee County, Florida, within Tampa Bay (see Figure S-1 in Port Dolphin's application). The DWP will be in waters of the U.S. Exclusive Economic Zone (EEZ) approximately 31 m (100 ft) in depth and will consist principally of a permanently moored buoy system, designed for offloading of natural gas, leading to a single new natural gas transmission pipeline that will come ashore at Port Manatee and connect to existing infrastructure.

Take of marine mammals is expected to occur as a result of the introduction of sound into the marine environment during construction of the DWP and pipeline and during DWP operations, which will involve shuttle regasification vessel (SRV) maneuvering, docking, and debarkation, as well as regasification activity. Because the specified activities have the potential to take marine mammals present within the action area, Port Dolphin may be authorized to incidentally take, by Level B harassment only, small numbers of bottlenose dolphin (*Tursiops truncatus*) and Atlantic spotted dolphin (*Stenella frontalis*).

#### Description of the Specified Activity

Port Dolphin's proposed activities were described in detail in the **Federal Register** notice announcing the proposed rule (77 FR 55646; September 10, 2012); please see that document for more information. Port Dolphin plans to construct and operate a DWP in the U.S. EEZ of the GOM Outer Continental Shelf (OCS) approximately 45 km (28 mi) off the western coast of Florida to the southwest of Tampa Bay, in a water depth of approximately 31 m (100 ft). On March 29, 2007, Port Dolphin submitted an application to the U.S. Coast Guard (USCG) and the U.S. Maritime Administration (MARAD) for all federal authorizations required for a