

subheadings are provided for convenience and customs purposes, the written description of the scope of the investigations is dispositive.

[FR Doc. 2019-16887 Filed 8-5-19; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-570-971]

#### Multilayered Wood Flooring From the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2016

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

**SUMMARY:** The Department of Commerce (Commerce) determines that Jiangsu Senmao Bamboo Wood Industry Co., Ltd. (Jiangsu Senmao) and Riverside Plywood Corp. and its cross-owned affiliates (Riverside Plywood), producers and/or exporters of multilayered wood flooring (wood flooring) from the People's Republic of China (China), received countervailable subsidies during the period of review (POR) January 1, 2016 through December 31, 2016.

**DATES:** Applicable August 6, 2019.

**FOR FURTHER INFORMATION CONTACT:** Dennis McClure or Suzanne Lam, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-5973 or (202) 482-0783, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

Commerce published the *Preliminary Results* of the administrative review in the *Federal Register* on December 28, 2018.<sup>1</sup> For the events that occurred since Commerce published the *Preliminary Results*, see the Issues and Decision Memorandum.<sup>2</sup> We invited

<sup>1</sup> See *Multilayered Wood Flooring from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, Rescission of Review, in Part, and Intent to Rescind the Review in Part*; 2016, 83 FR 67229 (December 28, 2018) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

<sup>2</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, from James Maeder, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Decision Memorandum for Final Results and Partial Rescission of Countervailing Duty Administrative Review: Multilayered Wood Flooring from the People's Republic of China;

interested parties to comment on the *Preliminary Results*. On April 23, 2019, we received comments from Jiaxing Brilliant Import & Export Co. (Jiaxing Brilliant) in lieu of a case brief.<sup>3</sup> On April 23, 2019, we received case briefs from American Manufacturers of Multilayered Wood Flooring (Petitioner), the GOC, Jiangsu Senmao, and Riverside Plywood.<sup>4</sup> On May 1, 2019, we received rebuttal case briefs from the Petitioner, the Government of the People's Republic of China (GOC), Jiangsu Senmao, and Riverside Plywood.<sup>5</sup>

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019.<sup>6</sup> The revised deadline for the final results was May 30, 2019. On May 29, 2019, we extended this deadline to July 30, 2019.<sup>7</sup>

#### Scope of the Order<sup>8</sup>

The product covered by the *Order* is wood flooring from the China. A full

2016" (Issues and Decision Memorandum), dated concurrently with, and hereby adopted by, this notice.

<sup>3</sup> See Letter from Jiaxing Brilliant, "Multilayered Wood Flooring from the People's Republic of China—Letter In Lieu of Case Brief," dated April 23, 2019.

<sup>4</sup> See Letters from Petitioner, "Multilayered Wood Flooring from the People's Republic of China: Case Brief," dated April 23, 2019; the Government of China (GOC), "Government of China's Affirmative Case Brief Multilayered Wood Flooring from the People's Republic of China," dated April 23, 2019; Jiangsu Senmao, "Multilayered Wood Flooring from the People's Republic of China: Case Brief," dated April 23, 2019; and Riverside Plywood, "Riverside Plywood Co., Ltd.—Administrative Case Brief: 2016 Administrative Review of the Countervailing Duty Order on Multilayered Wood Flooring from China (C-570-971)," dated April 23, 2019.

<sup>5</sup> See Letters from the Petitioner, "Multilayered Wood Flooring from the People's Republic of China: Rebuttal Brief," dated May 1, 2019; the GOC, "Government of China's Rebuttal Case Brief Multilayered Wood Flooring from the People's Republic of China," dated May 1, 2019; Jiangsu Senmao, "Multilayered Wood Flooring from the People's Republic of China: Rebuttal Brief," dated May 1, 2019; and Riverside Plywood, "Riverside Plywood—Rebuttal Brief: 2016 Administrative Review of the Countervailing Duty Order on Multilayered Wood Flooring from China (C-570-971)," dated May 1, 2019.

<sup>6</sup> See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

<sup>7</sup> See Memorandum, "Multilayered Wood Flooring from the People's Republic of China: Extension of the Deadline for the Final Results of Countervailing Duty Administrative Review," dated May 29, 2019.

<sup>8</sup> See *Order*; see also *Multilayered Wood Flooring from the People's Republic of China: Final*

description of the scope of the order is contained in the Issues and Decision Memorandum.

#### Analysis of Comments Received

All issues raised in the parties' briefs are addressed in the Issues and Decision Memorandum. A list of the issues addressed is attached to this notice.<sup>9</sup> The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov> and in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

#### Changes From the Preliminary Results

Based on our analysis of the comments received, Commerce made certain revisions to the rates assigned to Jiangsu Senmao and Riverside Plywood. The Issues and Decision Memorandum contains descriptions of these revisions.

#### Methodology

Commerce conducted this review in accordance with section 751(a)(1)(A) of the Act. For each of the subsidy programs found countervailable, we find that there is a subsidy, *i.e.*, a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.<sup>10</sup> The Issues and Decision Memorandum contains a full description of the methodology underlying Commerce's conclusions, including any determination that relied upon the use of adverse facts available pursuant to sections 776(a) and (b) of the Act.

#### Partial Rescission of Administrative Review

As noted in the *Preliminary Results*, Commerce timely received no-shipment certifications from Anhui Boya Bamboo & Wood Products Co., Ltd., Chinafloors Timber (China) Co., Ltd., Hunchun

*Clarification of the Scope of the Antidumping and Countervailing Duty Orders*, 82 FR 27799 (June 19, 2017).

<sup>9</sup> See Appendix I.

<sup>10</sup> See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

Forest Wolf Wooden Industry Co., Ltd. (Hunchun Forest), Jiangsu Keri Wood Co., Ltd., Jiashan On-Line Lumber Co., Ltd., Kingman Floors Co., Ltd., Linyi Bonn Flooring Manufacturing Co., Ltd., and Zhejiang Shiyou Timber Co., Ltd. We inquired with U.S. Customs and Border Protection (CBP) whether these companies had shipped merchandise to the United States during the POR. CBP provided no evidence to contradict the claims of no shipments made by these companies, except for Hunchun Forest. Accordingly, we stated our intention to rescind the review with respect to these companies in the *Preliminary Results*. As the facts have remained the same since the *Preliminary Results*, we are rescinding the administrative review of these companies, pursuant to 19 CFR 351.213(d)(3).

On October 29, 2018, Huzhou Muyun Wood Co., Ltd. (Muyun Wood) filed a no-shipment certification. On November

13, 2018, we rejected Muyun Wood’s request for no-shipment status because the request was untimely filed. Therefore, we are including Muyun Wood in this administrative review for purposes of the final results.

Hunchun Forest also timely filed a no-shipment certification. However, Hunchun Forest subsequently withdrew its no-shipment submission. Therefore, we are including Hunchun Forest in this administrative review for purposes of the final results.

**Rate for Non-Selected Companies Under Review**

In this review, in addition to the two selected mandatory respondents, there are 132 companies for which a review was requested and not rescinded, but which were not selected for individual examination (non-selected companies). For these companies, we applied the average of the rates calculated for the mandatory respondents, Jiangsu Senmao

and Riverside Plywood, which are above *de minimis*. For further information on the calculation of the non-selected rate, refer to the section in the Issues and Decision Memorandum entitled, “*Ad Valorem* Rate for Non-Selected Companies Under Review.” Concerning Jiaxing Brilliant’s April 23, 2019, comments, we note that we inadvertently included the company in our review. Jiaxing Brilliant was excluded from the order as a result of the final determination in the investigation segment of this case.<sup>11</sup> Therefore, Jiaxing Brilliant is not subject to this review and is excluded from the list of non-selected companies receiving a rate below.

**Final Results**

In accordance with 19 CFR 351.221(b)(4)(i), we determine the following net subsidy rates for the 2016 administrative review:

Producer/exporter	Subsidy rate (percent)
Jiangsu Senmao Bamboo Wood Industry Co., Ltd .....	2.96
Riverside Plywood Corp. and its Cross-Owned Affiliates <sup>12</sup> .....	3.20

Review-Specific Average Rate  
Applicable to the Following Non-Selected Companies:

Producer/exporter	Subsidy rate (percent)
A&W (Shanghai) Woods Co., Ltd .....	3.10
Anhui Longhua Bamboo Product Co., Ltd .....	3.10
Anhui Suzhou Dongda Wood Co., Ltd .....	3.10
Armstrong Wood Products (Kunshan) Co., Ltd .....	3.10
Baishan Huafeng Wooden Product Co., Ltd .....	3.10
Baiying Furniture Manufacturer Co., Ltd .....	3.10
Benxi Flooring Factory (General Partnership) .....	3.10
Benxi Wood Company .....	3.10
Changbai Mountain Development and Protection Zone Hongtu Wood Industrial Co., Ltd .....	3.10
Changzhou Hawd Flooring Co., Ltd .....	3.10
Cheng Hang Wood Co., Ltd .....	3.10
Dalian Dajen Wood Co., Ltd .....	3.10
Dalian Huade Wood Product Co., Ltd .....	3.10
Dalian Huilong Wooden Products Co., Ltd .....	3.10
Dalian Jaenmaken Wood Industry Co., Ltd .....	3.10
Dalian Jiahong Wood Industry Co., Ltd .....	3.10
Dalian Jiuyuan Wood Industry Co., Ltd .....	3.10
Dalian Kemian Wood Industry Co., Ltd .....	3.10
Dalian Qianqiu Wooden Product Co., Ltd .....	3.10
Dalian T-Boom Wood Products Co., Ltd .....	3.10
Dalian Xinjinghua Wood Co., Ltd .....	3.10
Dongtai Fuan Universal Dynamics, LLC .....	3.10
Dongtai Zhangshi Wood Industry Co. Ltd .....	3.10
Dun Hua Sen Tai Wood Co., Ltd .....	3.10
Dunhua City Dexin Wood Industry Co., Ltd .....	3.10
Dunhua City Hongyuan Wood Industry Co., Ltd .....	3.10
Dunhua City Wanrong Wood Industry Co., Ltd .....	3.10
Dunhua Shengda Wood Industry Co., Ltd .....	3.10
Fine Furniture (Shanghai) Limited .....	3.10

<sup>11</sup> See *Multilayered Wood Flooring From the People’s Republic of China: Countervailing Duty Order*, 76 FR 76693, 76694 (December 8, 2011).

<sup>12</sup> Cross-owned affiliates are Baroque Timber Zhongshan Co. Ltd. and Suzhou Times Flooring Co., Ltd.

Producer/exporter	Subsidy rate (percent)
Fu Lik Timber (HK) Co., Ltd	3.10
Fujian Wuyishan Werner Green Industry Co., Ltd	3.10
Fusong Jinlong Wooden Group Co., Ltd	3.10
Fusong Qianqiu Wooden Product Co., Ltd	3.10
GTP International Ltd	3.10
Guangdong Fu Lin Timber Technology Limited	3.10
Guangdong Yihua Timber Industry Co., Ltd	3.10
Guangzhou Homebon Timber Manufacturing Co., Ltd	3.10
Guangzhou Panyu Kangda Board Co., Ltd	3.10
Guangzhou Panyu Southern Star Co., Ltd	3.10
HaiLin LinJing Wooden Products, Ltd	3.10
HaiLin XinCheng Wooden Products, Ltd	3.10
Hangzhou Dazhuang Floor Co., Ltd (dba Dasso Industrial Group Co., Ltd)	3.10
Hangzhou Hanje Tec Company Limited	3.10
Hangzhou Huahi Wood Industry Co., Ltd	3.10
Hangzhou Zhengtian Industrial Co., Ltd	3.10
Henan Xingwangjia Technology Co., Ltd	3.10
Hong Kong Easoon Wood Technology Co., Ltd	3.10
Huaxin Jiasheng Wood Co., Ltd	3.10
Huber Engineering Wood Corp	3.10
Hunchun Forest Wolf Wooden Industry Co., Ltd	3.10
Hunchun Xingjia Wooden Flooring Inc	3.10
Huzhou Chenghang Wood Co., Ltd	3.10
Huzhou City Nanxun Guangda Wood Co., Ltd	3.10
Huzhou Fulinmen Imp. & Exp. Co., Ltd	3.10
Huzhou Fuma Wood Co., Ltd	3.10
Huzhou Muyun Wood Co., Ltd	3.10
Huzhou Sunergy World Trade Co., Ltd	3.10
Innomaster Home (Zhongshan) Co., Ltd	3.10
Jiafeng Wood (Suzhou) Co., Ltd	3.10
Jiangsu Guyu International Trading Co., Ltd	3.10
Jiangsu Kentier Wood Co., Ltd	3.10
Jiangsu Simba Flooring Co., Ltd	3.10
Jiangsu Yuhui International Trade Co., Ltd	3.10
Jiashan Fengyun Timber Co., Ltd	3.10
Jiashan HuiJiaLe Decoration Material Co., Ltd	3.10
Jiaxing Hengtong Wood Co., Ltd	3.10
Jilin Forest Industry Jinqiao Flooring Group Co., Ltd	3.10
Jilin Xinyuan Wooden Industry Co., Ltd	3.10
Jingsu Mingle Flooring Co., Ltd	3.10
Karly Wood Product Limited	3.10
Kember Flooring, Inc	3.10
Kemian Wood Industry (Kunshan) Co., Ltd	3.10
Kornbest Enterprises Limited	3.10
Kunming Alston (AST) Wood Products Co., Ltd	3.10
Les Planchers Mercier, Inc	3.10
Linyi Anying Wood Co., Ltd	3.10
Linyi Youyou Wood Co., Ltd	3.10
Metropolitan Hardwood Floors, Inc	3.10
Mudanjiang Bosen Wood Industry Co., Ltd	3.10
Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd	3.10
Nanjing Minglin Wooden Industry Co., Ltd	3.10
Ningbo Tianyi Bamboo and Wood Products Co., Ltd	3.10
Pinge Timber Manufacturing (Zhejiang) Co., Ltd	3.10
Power Dekor Group Co. Ltd	3.10
Qingdao Barry Flooring Co., Ltd	3.10
Samling Elegant Living Trading (Labuan) Ltd	3.10
Samling Global USA, Inc	3.10
Samling Riverside Co., Ltd	3.10
Scholar Home (Shanghai) New Material Co. Ltd	3.10
Shandong Kaiyuan Wood Industry Co., Ltd	3.10
Shandong Longteng Wood Co., Ltd	3.10
Shandong Puli Trading Co., Ltd	3.10
Shanghai Anxin (Weiguang) Timber Co., Ltd	3.10
Shanghai Demeija Timber Co., Ltd	3.10
Shanghai Eswell Timber Co., Ltd	3.10
Shanghai Lairunde Wood Co., Ltd	3.10
Shanghai Lizhong Wood Products Co., Ltd (aka The Lizhong Wood Industry Limited Company of Shanghai)	3.10
Shanghai New Sihe Wood Co., Ltd	3.10
Shanghai Shenlin Corporation	3.10
Shenyang Haobainian Wooden Co., Ltd	3.10
Shenyang Sende Wood Co., Ltd	3.10
Shenzhenshi Huanwei Woods Co., Ltd	3.10

Producer/exporter	Subsidy rate (percent)
Sino-Maple (Jiangsu) Co., Ltd .....	3.10
Suzhou Anxin Weiguang Timber Co., Ltd .....	3.10
Suzhou Dongda Wood Co., Ltd .....	3.10
Tak Wah Building Material (Suzhou) Co .....	3.10
Tech Wood International Ltd .....	3.10
Tongxiang Jisheng Import and Export Co., Ltd .....	3.10
Vicwood Industry (Suzhou) Co. Ltd .....	3.10
Xiamen Yung De Ornament Co., Ltd .....	3.10
Xuzhou Antop International Trade Co., Ltd .....	3.10
Xuzhou Shenghe Wood Co., Ltd .....	3.10
Yekalon Industry, Inc .....	3.10
Yihua Lifestyle Technology Co., Ltd .....	3.10
Yingyi-Nature (Kunshan) Wood Industry Co., Ltd .....	3.10
Yixing Lion-King Timber Industry .....	3.10
Zhejiang Anji Xinfeng Bamboo and Wood Industry Co., Ltd .....	3.10
Zhejiang Biyork Wood Co., Ltd .....	3.10
Zhejiang Dadongwu Green Home Wood Co., Ltd .....	3.10
Zhejiang Desheng Wood Industry Co., Ltd .....	3.10
Zhejiang Fudeli Timber Industry Co., Ltd .....	3.10
Zhejiang Fuerjia Wooden Co., Ltd .....	3.10
Zhejiang Fuma Warm Technology Co., Ltd .....	3.10
Zhejiang Haoyun Wooden Co., Ltd .....	3.10
Zhejiang Jesonwood Co., Ltd .....	3.10
Zhejiang Jiechen Wood Industry Co., Ltd .....	3.10
Zhejiang Longsen Lumbering Co., Ltd .....	3.10
Zhejiang Shuimojiangnan New Material Technology Co., Ltd .....	3.10
Zhejiang Simite Wooden Co., Ltd .....	3.10
Zhejiang Tianzhen Bamboo & Wood Development Co., Ltd .....	3.10
Zhejiang Yongyu Bamboo Joint-Stock Co., Ltd .....	3.10

**Assessment Rates**

Pursuant to 19 CFR 351.212(b)(2), Commerce will determine, and CBP shall assess, countervailing duties on all appropriate entries of subject merchandise in accordance with the final results of this review, for the above-listed companies at the applicable *ad valorem* assessment rates listed. We intend to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

For the companies for which this review is rescinded, Commerce will instruct CBP to assess countervailing duties on all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the POR in accordance with 19 CFR 351.212(c)(1)(i).

**Cash Deposit Requirements**

Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the respective companies listed above on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of

estimated countervailing duties at the most recent company-specific or all others rate applicable to the company, as appropriate. These cash deposit requirements, effective upon publication of these final results, shall remain in effect until further notice.

**Administrative Protective Orders**

This notice also serves as a reminder to parties subject to 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). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these final results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 30, 2019.

**Christian Marsh,**

*Deputy Assistant Secretary for Enforcement and Compliance.*

**Appendix I**

**List of Topics Discussed in the Final Decision Memorandum**

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Partial Rescission of Administrative

- Review
- V. Period of Review
- VI. Subsidies Valuation Information
- VII. Changes From the Preliminary Results
- VIII. Use of Facts Otherwise Available
- IX. Analysis of Programs
- X. Analysis of Comments
  - Comment 1:* Application of Total Adverse Facts Available (AFA) to the GOC and Riverside Plywood
  - Comment 2:* Application of Partial AFA with Respect to Riverside's Plywood's Purchases of Veneers for Less than Adequate Remuneration (LTAR)
  - Comment 3:* Application of AFA with Respect to the Jiangsu Senmao's Receipt of Policy Loans for LTAR
  - Comment 4:* Application of AFA with Respect to the Export Buyer's Credit Program
  - Comment 5:* Selection of the AFA Rate for the Export Buyer's Credit Program
  - Comment 6:* Countervailability of Other Subsidies
  - Comment 7:* Whether to Adjust Benchmark Prices to Account for Prevailing Market Conditions
  - Comment 8:* Applicable Value Added Tax (VAT) Rate for Benchmark Prices
  - Comment 9:* Applicable Import Duty for Benchmark Prices
  - Comment 10:* Requirements Necessary to Determine Countervailability of Land Use
  - Comment 11:* Amount to Use as Benefit for Grants
  - Comment 12:* Exclusion of Certain Export Data Used to Calculate the Veneers Benchmark

XI. Recommendation

[FR Doc. 2019-16753 Filed 8-5-19; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XR008

#### Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to U.S. Navy Training and Testing Activities in the Northwest Training and Testing Study Area

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

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

**SUMMARY:** NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to training and testing activities conducted in the Northwest Training and Testing (NWT) Study Area for a period of seven years, from November, 2020 through November, 2027. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the Navy'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 Navy's application and request.

**DATES:** Comments and information must be received no later than September 5, 2019.

**ADDRESSES:** Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to [ITP.Piniak@noaa.gov](mailto:ITP.Piniak@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 received electronically, 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 to the internet at [www.nmfs.noaa.gov/pr/permits/incidental/military.htm](http://www.nmfs.noaa.gov/pr/permits/incidental/military.htm) 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:** Wendy Piniak, Office of Protected Resources, NMFS, (301) 427-8401. An electronic copy of the Navy's application may be obtained online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities>. In case of problems accessing these documents, please call the contact listed 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 (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographic region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

An 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.

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).

The National Defense Authorization Act (NDAA) for Fiscal Year 2004 (Public Law (Pub. L.) 108-136) removed the "small numbers" and "specified geographical region" limitations indicated above and amended the definition of "harassment" as it applies to a "military readiness activity" to read as follows (Section 3(18)(B) of the MMPA): (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B harassment). On August 13, 2018, the 2019 NDAA (Pub. L. 115-232) amended the MMPA to allow incidental take regulations for military readiness activities to be issued for up to seven years.

#### Summary of Request

On March 11, 2019, NMFS received an adequate and complete application from the Navy requesting authorization for the take of marine mammals, by Level A harassment and B harassment, incidental to training, testing, and routine military operations (all categorized as military readiness activities) from the use of sonar and other transducers and in-water detonations. In addition, the Navy is requesting authorization of three takes of large whales by serious injury or mortality resulting from vessel strikes. NMFS received a revised application on June 24, 2019. The requested regulations would be valid for seven years, from 2020 through 2027.

This will be the third time NMFS has promulgated incidental take regulations pursuant to the MMPA relating to similar military readiness activities in the NWT Study Area, following those effective from November 9, 2010 through November 8, 2015 (75 FR 69275; November 10, 2010) and from November 9, 2015 through November 8, 2010 (80 FR 73555; November 24, 2015).

#### Description of the Specified Activity

The NWT Study Area is composed of established maritime operating and warning areas in the eastern North