

351.214(b)(2)(iv), Muchsee Wood submitted documentation establishing the following: (1) The date on which the company first shipped multilayered wood flooring for export to the United States and the date on which the multilayered wood flooring was first entered, or withdrawn from warehouse, for consumption; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.⁹

Commerce conducted a query of the U.S. Customs and Border Protection (CBP) database and confirmed that Muchsee Wood's shipment of subject merchandise had entered the United States for consumption and that liquidation of such entries had been properly suspended for antidumping duties. The information which Commerce examined was consistent with that provided by Muchsee Wood in its request. In particular, the CBP data confirmed the price and quantity reported by Muchsee Wood for the sale that forms the basis of this NSR request. Commerce also confirmed by examining CBP data that Muchsee Wood's entries were made during the POR specified by Commerce's regulations.¹⁰

On February 26, 2019, the petitioner, the American Manufacturers of Multilayered Wood Flooring (AMMWF), filed new factual information in response to Muchsee Wood's request for an NSR.¹¹ Commerce accepted the petitioner's submission and established a timeline for interested parties to submit new factual information to rebut, clarify, or correct the information in the petitioner's submission.¹² On March 8, 2019, Muchsee Wood timely submitted rebuttal information regarding its sale to an unaffiliated U.S. customer during the proposed POR. Because this new factual information and rebuttal information were filed so close in time to the March 12, 2019, deadline to initiate the NSR, there was insufficient time to perform the necessary analysis; therefore, Commerce will evaluate this

information during the course of the review.

Period of Review

Pursuant to 19 CFR 351.214(c), an exporter or producer may request an NSR within one year of the date on which its subject merchandise was first entered. Muchsee Wood requested this NSR within one year of the date on which its multilayered wood flooring was first entered, and made its request in the month of December, which is the anniversary month of the *Order*. In accordance with 19 CFR 351.214(g)(1)(i)(A), the POR is December 1, 2017, through November 30, 2018.

Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B) of the Act, 19 CFR 351.214(b), and the information on the record, Commerce finds that Muchsee Wood's request meets the threshold requirements for initiation of a NSR and is therefore initiating an NSR of Muchsee Wood.¹³ However, if the information supplied by Muchsee Wood is later found to be incorrect or insufficient during the course of this proceeding, Commerce may rescind the review or apply adverse facts available pursuant to section 776 of the Act, depending upon the facts on record. Commerce intends to issue the preliminary results within 180 days from the date of initiation, and the final results within 90 days from the issuance of the preliminary results.¹⁴

It is our usual practice, in cases involving non-market economies, to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate (*i.e.*, a separate rate) provide evidence of *de jure* and *de facto* absence of government control over the company's export activities.¹⁵ Accordingly, Commerce will issue questionnaires to Muchsee Wood that will include a section requesting information with regard to the company's export activities for the purpose of establishing its eligibility for a separate rate. The review will proceed if the response provides sufficient indication that Muchsee Wood is not subject to either *de jure* or *de facto* government control with respect to its exports of subject merchandise.

We will conduct this new shipper review in accordance with section 751(a)(2)(B) of the Act, as amended by

the Trade Facilitation and Trade Enforcement Act of 2015.¹⁶

Interested parties requiring access to proprietary information in this proceeding should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 19 CFR 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 19 CFR 351.221(c)(1)(i).

Dated: March 12, 2019.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XG873

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to U.S. Navy Training and Testing Activities in the Mariana Islands 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 Mariana Islands Training and Testing (MITT) Study Area for a period of seven years, from August, 2020 through August, 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 April 15, 2019.

⁹ *Id.* at Exhibit 1.

¹⁰ See Memorandum to the File, "U.S. Customs and Border Protection Data" for Muchsee Wood," dated concurrently with this notice; see also Memorandum to the File, "Initiation of Antidumping New Shipper Review of Multilayered Wood Flooring from the People's Republic of China: Muchsee Wood (Chuzhou) Co., Ltd. Initiation Checklist" ("Muchsee Wood Initiation Checklist"), dated concurrently with this notice.

¹¹ See Letter from Petitioner, "Multilayered Wood Flooring From the People's Republic of China: Comments on Muchsee Wood's Request for New Shipper Review," dated February 26, 2019.

¹² See Memorandum to the File, "Timeline to Rebut Factual Information for Muchsee Wood (Chuzhou) Co., Ltd.," dated March 1, 2019.

¹³ See Muchsee Wood Initiation Checklist.

¹⁴ See section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(i).

¹⁵ See Import Administration Policy Bulletin, Number: 05.1. (<http://ia.ita.doc.gov/policy/bull05-1.pdf>).

¹⁶ The Trade Facilitation and Trade Enforcement Act of 2015 removed from section 751(a)(2)(B) of the Act the provision directing Commerce to instruct Customs and Border Protection to allow an importer the option of posting a bond or security in lieu of a cash deposit during the pendency of a new shipper review.

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.Egger@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 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: Stephanie Egger, Office of Protected Resources, NMFS, (301) 427-8401. An electronic copy of the Navy's application may be obtained online at: www.nmfs.noaa.gov/pr/permits/incidental/military.htm. 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 for Fiscal Year 2004 (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 February 11, 2019, NMFS received an adequate and complete application from the Navy requesting authorization for the take of marine mammals, by Level A 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. The requested regulations will 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 MITT Study Area, following those effective from August 3, 2010, through August 3, 2015, (75 FR 45527; August 3, 2010) and from August 3, 2015 through August 3, 2020 (80 FR 46112; August 3, 2015).

Description of the Specified Activity

The MITT Study Area is comprised of three components: (1) The Mariana Islands Range Complex (MIRC), (2) additional areas on the high seas, and (3) a transit corridor between the MIRC and the Hawaii Range Complex (HRC) (see Figure 1.1-1 of the application). The transit corridor is outside the geographic boundaries of the MIRC and represents a great-circle route across the high seas for Navy ships transiting between the MIRC and the HRC. The proposed activities also includes various operations in Apra Harbor such as sonar maintenance and testing alongside Navy piers located in Inner Apra Harbor.

The following types of training and testing, which are classified as military readiness activities pursuant to section 315(f) of Public Law 101-314 (16 U.S.C. 703), are included in the specified activity described in the Navy's application: Amphibious warfare (in-water detonations), anti-submarine warfare (sonar and other transducers, in-water detonations), surface warfare (in-water detonations), and other (sonar and other transducers).

The Navy's application includes proposed mitigation measures for marine mammals that would be implemented during training and testing activities in the MITT Study Area. Proposed procedural mitigation measures generally include: (1) The use of Lookouts to observe for biological resources and communicate the need for mitigation implementation; (2) powerdowns, shutdowns, and delay of starts to avoid exposure of marine mammals to high levels of sound or explosive blasts more likely to result in injury or more serious behavioral disruption; and (3) limiting the use of active sonar or explosives in certain biologically important areas to reduce the probability or severity of impacts when they are more likely to contribute to fitness impacts.

The Navy also proposes to undertake monitoring and reporting efforts to track compliance with incidental take authorizations and to help investigate the effectiveness of implemented mitigation measures in the MITT Study Area. This can include Adaptive

Management, the Integrated Comprehensive Monitoring Program, the Strategic Planning Process, and Annual Monitoring and Exercise and Testing Reports. As an example, under the Integrated Comprehensive Monitoring Program, the monitoring relating to the effects of Navy training and testing activities on protected marine species are designed to increase the understanding of the likely occurrence of marine mammals in the vicinity of the action (*i.e.*, presence, abundance, distribution, and density of species) and to increase the understanding of the nature, scope, or context of the likely exposure of marine mammals to any of the potential stressors associated with the action.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the Navy'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 Navy, if appropriate.

Dated: March 11, 2019.

Catherine G. Marzin,

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

[FR Doc. 2019-04818 Filed 3-14-19; 8:45 am]

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO-P-2019-0005]

Notice Regarding a New Pilot Program Concerning Motion To Amend Practice and Procedures in Trial Proceedings Under the America Invents Act Before the Patent Trial and Appeal Board

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of pilot program.

SUMMARY: The United States Patent and Trademark Office ("USPTO" or "Office") provides notice of a pilot program for motion to amend ("MTA") practice and procedures in trial proceedings under the America Invents Act ("AIA") before the Patent Trial and Appeal Board ("PTAB" or "Board"). In particular, a patent owner who files an MTA will have the ability to choose how that motion will proceed before the Board, including whether to request preliminary guidance from the Board on the MTA and whether to file a revised

MTA. The Office previously published a notice requesting comments on proposed modifications to the current MTA practice and procedures. The Office has considered those comments and greatly appreciates the feedback. In view of the comments received, the Office has modified its prior proposal in certain respects as reflected in this notice, and will implement the MTA pilot program presented in this notice.

DATES: This pilot will begin on March 15, 2019.

Applicability Date: This pilot program applies to all AIA trial proceedings instituted on or after the effective date.

Duration: The USPTO anticipates it will reassess the MTA pilot program approximately one year from its effective date based on information obtained during the pilot program. The USPTO may terminate the pilot program at any time or continue the program (with or without modifications) depending on the feedback received during the course of the pilot program, and the effectiveness of the program.

FOR FURTHER INFORMATION CONTACT: Melissa Haapala, Acting Vice Chief Administrative Patent Judge, or Jessica Kaiser, Lead Administrative Patent Judge, by telephone at (571) 272-9797.

SUPPLEMENTARY INFORMATION:

I. Preamble

On October 29, 2018, the Office published a request for comments ("RFC") on a proposed procedure for motions to amend filed in *inter partes* reviews, post-grant reviews, and covered business method patent reviews (collectively AIA trials) before the PTAB. The Office received 49 comments in response to this RFC as of December 21, 2018 (the closing date for comments). The majority of comments supported the Office taking action in relation to MTA practice and procedures in AIA trials. Several comments suggested that the Office should reconsider the timelines of due dates presented in the initial RFC. Other comments suggested further revisions, discussed in greater detail below.

This notice provides information relating to the pilot program for a new MTA practice in response to the stakeholder comments received. As discussed below, the pilot program provides a patent owner with two options not previously available. The first option is that a patent owner may choose to receive preliminary guidance from the Board on its MTA. The second option is that a patent owner may choose to file a revised MTA after receiving petitioner's opposition to the original MTA and/or after receiving the

Board's preliminary guidance (if requested).

In addition to these new options, the patent owner also will be able to pursue an MTA in effectively the same way as current practice. Specifically, if a patent owner does not elect either the option to receive preliminary guidance or the option to file a revised MTA, AIA trial practice, including MTA practice, is essentially unchanged from current practice, especially regarding the timing of due dates for already existing papers in an AIA trial. One exception is that times between due dates for certain later-filed papers will be extended slightly, as compared to the existing process. For example, rather than 1 month, a patent owner will have 6 weeks to file a reply after receiving an opposition to its original MTA, and a petitioner will have 6 weeks to file a sur-reply in response to that reply. See *infra* Appendix 1A (PO Reply Timeline). In addition, to align relevant due dates as done in current practice, a patent owner will have 6 weeks to file a sur-reply after receiving a reply in relation to the petition, regardless of whether patent owner files an MTA. *Id.*

The first notable new feature of the program is that a patent owner may request, in its MTA, that the Board issue preliminary guidance on the MTA after a petitioner files an opposition to an MTA (or after the due date for the opposition, if none is filed). The preliminary guidance typically will be in the form of a short paper (although it may be oral guidance provided in a conference call, at the Board's discretion) that provides preliminary, non-binding guidance from the Board to the parties about the MTA. The Board's preliminary guidance will focus on the limitations added in the patent owner's MTA, and will not address the patentability of the originally challenged claims.

With that in mind, the preliminary guidance will provide an initial discussion about whether there is a reasonable likelihood that the MTA meets statutory and regulatory requirements for an MTA. The preliminary guidance also will provide an initial discussion about whether petitioner (or the record then before the Office, including any opposition to the MTA and accompanying evidence) establishes a reasonable likelihood that the substitute claims are unpatentable. Many stakeholders who provided comments to the October 2018 Request for Comment on MTA Practice and Procedure on this topic indicated that they were in favor of the Board providing some kind of preliminary guidance of this nature. See Request for