

## Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

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### DEPARTMENT OF COMMERCE

#### National Institute of Standards and Technology

[Docket No. 191126–0092]

#### Request for Information Regarding the Interagency Edison System for Reporting Federally Funded Inventions

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice; Request for Information (RFI).

**SUMMARY:** The National Institute of Standards and Technology (NIST) has been delegated responsibility by the Secretary of Commerce to promulgate regulations concerning the management and licensing of federally funded inventions. Under the Lab-to-Market Cross Agency Priority (CAP) goal co-led with the White House’s Office of Science and Technology Policy (OSTP), NIST is initiating an effort to advance the President’s Management Agenda and modernize government for the 21st century by assuming the responsibility for and rebuilding the Interagency Edison (iEdison) system for reporting extramural inventions created with federal funding. NIST requests information from the public regarding the current state of the iEdison system, including, but not limited to, specific challenges and recommended improvements. The information received in response to this RFI will inform NIST in developing a redesigned iEdison.

**DATES:** Comments must be received by 5:00 p.m. Eastern time on January 27, 2020. Written comments in response to the RFI should be submitted according to the instructions in the

**SUPPLEMENTARY INFORMATION** section below. Submissions received after that date will be considered to the extent practicable.

**ADDRESSES:** Electronic comments regarding the RFI should be addressed to Dr. Courtney Silverthorn by email to [courtney.silverthorn@nist.gov](mailto:courtney.silverthorn@nist.gov).

**FOR FURTHER INFORMATION CONTACT:** Dr. Courtney Silverthorn, Deputy Director, Technology Partnerships Office, National Institute of Standards and Technology, Technology Partnerships Office, 100 Bureau Drive, MS 2200, Gaithersburg, MD 20899, 301–975–4189, or by email to [courtney.silverthorn@nist.gov](mailto:courtney.silverthorn@nist.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Federal Government invests approximately \$100B each year in extramural research and development at universities, non-profits, and small and large businesses.<sup>1</sup> This results in the creation of thousands of inventions annually, which are required to be reported to the funding agency.<sup>2</sup> Many agencies use the Interagency Edison (iEdison) system,<sup>3</sup> a web-based platform that allows awardees to report federally funded subject inventions, elect rights, request extensions of time requirements, request waivers, demonstrate progress, inform the government of its limited use rights, upload requested documents, and perform other reporting tasks as required by their funding agency. First developed in 1995, the platform is currently used by 32 funding agencies and is hosted by the National Institutes of Health (NIH).

A 2016 report from the National Academies of Science<sup>4</sup> highlighted a number of systemic challenges inherent in the current iEdison platform that have impeded data entry and reporting compliance. The challenges described in the report include the following topics paraphrased below:

- Inadequate staffing and funding
- Cumbersome reporting procedures due to (i) gated features preventing further action if certain requirements are left incomplete, (ii) requiring greater data specificity than that which is required by law, (iii) frequent reporting over the life of even unlicensed patents, and (iv) a complicated document uploading process
- Inconsistent use and reporting requirements amongst funding agencies

<sup>1</sup> National Center for Science and Engineering Statistics. *Survey of Federal Funds for Research and Development: Fiscal Years 2016–2017*. Available at: <https://www.nsf.gov/statistics/srvyfedfunds/>.

<sup>2</sup> 37 CFR 401.14.

<sup>3</sup> <https://public.era.nih.gov/iedison/public/login.do>.

<sup>4</sup> National Academies of Sciences, Engineering, and Medicine. 2016. *Optimizing the Nation’s Investment in Academic Research: A New Regulatory Framework for the 21st Century*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/21824>.

Comments received in response to prior Requests for Information on related topics such as rights to federally funded inventions and licensing of government owned inventions<sup>5</sup> as well as federal technology transfer authorities and processes,<sup>6</sup> have noted similar concerns from the public. Addressing these challenges by modernizing the iEdison system to create a secure, interoperable platform that is easy to access, analyze, and use will help reduce administrative burdens on awardees, while further protecting public investment in extramural research and development.

As part of the Lab-to-Market CAP goal<sup>7</sup> to “support innovative tools and services for technology transfer”, NIST and OSTP have identified a rebuild of the iEdison system as a strategic priority. The rebuild will address transferring the management of iEdison operations from NIH to NIST, implementing Recommendation 10.1 of the 2016 National Academies report. NIST, to which the Secretary of Commerce has delegated responsibility for promulgating regulations implementing the Bayh-Dole Act pertaining to the management and licensing of federally funded inventions, is well-positioned to manage the iEdison platform and to implement changes on an on-going basis.

The objectives for the rebuild of the system are to:

- Modernize the technology stack and provide increased system security
- Re-examine and streamline the system to align with regulatory requirements
- Improve user experience and facilitate user compliance with reporting requirements
- Improve the presentation of pertinent information requiring user action

To respond to this RFI, please submit written comments by email to Dr. Courtney Silverthorn at [courtney.silverthorn@nist.gov](mailto:courtney.silverthorn@nist.gov) in any of the following formats: ASCII; Word;

<sup>5</sup> “Rights to Federally Funded Inventions and Licensing of Government Owned Inventions,” 81 *Federal Register* 78090 (7 November 2016), pp. 78090–78097. Available at: <https://www.federalregister.gov/documents/2016/11/07/2016-25325/rights-to-federally-funded-inventions-and-licensing-of-government-owned-inventions>.

<sup>6</sup> “Request for Information Regarding Federal Technology Transfer Authorities and Processes,” 83 *Federal Register* 19052 (1 May 2018), pp. 19052–19054. Available at: <https://www.federalregister.gov/documents/2018/05/01/2018-09182/request-for-information-regarding-federal-technology-transfer-authorities-and-processes>.

<sup>7</sup> Copan, W. and Kratsios, M. (2018). *Lab to Market: Cross Agency Priority Goal Quarterly Progress Update, September 2019*. Available at: [https://www.performance.gov/CAP/action\\_plans/sept\\_2019\\_Lab\\_to\\_Market.pdf](https://www.performance.gov/CAP/action_plans/sept_2019_Lab_to_Market.pdf).

RTF; or PDF. Please include your name, organization's name (if any), and cite "iEdison RFI" in the subject line of all correspondence.

## II. Request for Information

All responses that comply with the requirements listed in the **DATES** and **ADDRESSES** sections of this RFI will be considered.

All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. NIST reserves the right to publish comments publicly, unedited and in their entirety. Sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information. Do not submit confidential business information, or otherwise sensitive or protected information. Comments that contain profanity, vulgarity, threats, or other inappropriate language or content will not be considered.

The following list of topics covers the major areas about which NIST seeks information. The listed areas are not intended to limit the topics that may be addressed by respondents so long as they address the iEdison system, including, but not limited to, specific challenges and recommended improvements. Responses may include any topic believed to have implications for NIST's development of a redesigned iEdison, regardless of whether the topic is included in this document.

NIST is specifically interested in receiving input from the extramural community pertaining to the following questions:

(1) What, if any, current features of iEdison does your organization believe should be retained in any updated version?

(2) What challenges, if any, is your organization experiencing in reporting inventions in the iEdison system? Where practicable, please provide specific descriptions and/or screenshots of user interface screens or error messages.

(3) What improvements could be made to the iEdison system that would reduce your organization's reporting burdens, improve its experience, and facilitate your organization's ability to comply with reporting requirements?

**Authority:** 35 U.S.C. 202(c); DOO 30–2A.

**Kevin A. Kimball,**  
Chief of Staff.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648–XR043]

#### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Astoria Waterfront Bridge Replacement Phase 2 Project

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

**ACTION:** Notice; issuance of 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 City of Astoria to incidentally harass, by Level A and Level B harassment, marine mammals during construction activities associated with Phase Two of the Astoria Waterfront Bridge Replacement project in Astoria, OR.

**DATES:** This Authorization is effective from December 9, 2019 through December 8, 2020.

**FOR FURTHER INFORMATION CONTACT:**

Leah Davis, 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 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

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

Authorization for incidental takings shall be granted if NMFS finds that the

taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other "means of effecting the least practicable adverse impact" on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as "mitigation"); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

#### Summary of Request

On June 3, 2019 NMFS received a request from the City of Astoria (City) for an IHA to take marine mammals incidental to pile driving and construction work in Astoria, Oregon. The application was deemed adequate and complete on October 17, 2019. The City's request was for take of a small number of California sea lion (*Zalophus californianus*) and harbor seal (*Phoca vitulina richardii*) by Level A and Level B harassment, and a small number of Steller sea lion (*Eumetopias jubatus*) by Level B harassment only. Neither the City nor NMFS expects serious injury or mortality to result from this activity, and, therefore, an IHA is appropriate.

This IHA covers one year of a larger, two-year project that involves removal and replacement of six bridges on the Astoria, Oregon waterfront. NMFS previously issued an IHA to the City for removal and replacement of three bridges (83 FR 19243, May 2, 2018). The City complied with all the requirements (*e.g.*, mitigation, monitoring, and reporting) of the previous IHA and information regarding their monitoring results may be found in the Monitoring and Mitigation Section. The monitoring report exposed the need for clarification of monitoring requirements, specifically those involving Protected Species Observer (PSO) coverage of Level A and Level B zones. NMFS clarified those requirements with the applicant.

#### Description of the Specified Activity

The City of Astoria, Oregon proposes to remove and replace three bridges connecting 6th, 8th, and 10th Streets with waterfront piers near the mouth of the Columbia River. The bridges are currently supported by decayed timber