

and determined that Essar did not.<sup>13</sup> The Department's redetermination resulted in a change to the *Final Results* concerning Essar's net subsidy rate for the CIP from 54.69 percent to zero.<sup>14</sup> Therefore, Essar's total net countervailable rate from the *Final Results*, 76.88 percent, decreased by 54.69 percentage points to a total net countervailable subsidy rate of 22.19 percent.<sup>15</sup> The CIT sustained the Department's remand redetermination on January 25, 2011, in *Essar II*.<sup>16</sup>

On February 11, 2011, the Department published the *Amended Final Results*, amending the total net countervailable subsidy rate for Essar for the period January 1, 2007, through December 31, 2007, and cash deposit rate to 22.19 percent.<sup>17</sup> The Department instructed U.S. Customs and Border Protection (CBP) to collect cash deposits for Essar at the cash deposit rate of 22.19 percent.

The CIT's ruling in *Essar II* was appealed to the CAFC. In *Essar III*, the CAFC reversed the CIT's decision concerning the application of AFA with respect to the CIP and upheld the Department's application of AFA with respect to Essar's participation in the CIP as supported by substantial evidence.<sup>18</sup> Subsequently, the case returned to the CIT, which remanded the case for Commerce to address the outstanding issue of corroboration of the AFA rate the Department had applied to Essar for the CIP in the *Final Results*.<sup>19</sup> The CIT stated that the Department "explained its methodology for calculating the AFA rate assigned to Essar for its participation in the CIP programs but did not discuss the specific issue of corroboration."<sup>20</sup> Therefore, the Court remanded the case

for the Department to explain how it corroborated Essar's AFA rate or explain why corroboration is not practicable.<sup>21</sup>

On January 11, 2013, the Department filed with the CIT its remand results explaining how it corroborated, to the extent practicable, the AFA rate it had assigned to Essar in the *Final Results*.<sup>22</sup> On April 9, 2013, the CIT sustained the Department's remand results, holding that the Department "corroborated Essar's AFA rate to the extent practicable by utilizing calculated benefits from similar programs identified in this CVD proceeding."<sup>23</sup>

#### Amended Final Results

The CIT's April 9, 2013, judgment in *Essar V* sustaining the Department's corroboration of the AFA rate for Essar (54.68 percent *ad valorem*), constitutes a final decision of that court that is not in harmony with the Department's *Amended Final Results*.<sup>24</sup> Because there is now a final CIT decision, the Department amends its *Amended Final Results*. The following total countervailable net subsidy rate exists for the 2007 period of review:

Company	<i>Ad valorem</i> net subsidy rate (percent)
Essar Steel Limited .....	76.88

The cash deposit rate for Essar is also 76.88 percent. The Department will instruct CBP to collect cash deposits for Essar at the rate indicated.

In the event the CIT's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct CBP to assess countervailing duties on entries of the subject merchandise during the 2007 review period from Essar based on the revised assessment rate determined by the Department.

This notice is issued and published in accordance with sections 516A(e), 751(a), and 777(i)(1) of the Act.

Dated: April 25, 2013.

**Paul Piquado,**  
Assistant Secretary for Import  
Administration.

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**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XC511

#### Notice of Availability of a Draft Programmatic Environmental Assessment for Fisheries Research Conducted and Funded by the National Marine Fisheries Service, Southwest Fisheries Science Center

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

**ACTION:** Notice of availability of a Draft Programmatic Environmental Assessment; Request for comments.

**SUMMARY:** NMFS announces the availability of the "Draft Programmatic Environmental Assessment (DPEA) for Fisheries Research Conducted and Funded by the Southwest Fisheries Science Center (SWFSC)." Publication of this notice begins the official public comment period for this DPEA. The purpose of the DPEA is to evaluate, in compliance with the National Environmental Policy Act (NEPA), the potential direct, indirect, and cumulative impacts of conducting and funding fisheries and ecosystem research along the U.S. West Coast, throughout the Eastern Tropical Pacific Ocean, and in the Scotia Sea area off Antarctica.

**DATES:** Comments and information must be received no later than July 1, 2013.

**ADDRESSES:** Comments on the DPEA should be addressed to Jeremy Rusin, Deputy Director, SWFSC Protected Resources Division, 8901 La Jolla Shores Drive, La Jolla, CA 92037. The mailbox address for providing email comments is [SWFSC.DPEA@noaa.gov](mailto:SWFSC.DPEA@noaa.gov). NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

A copy of the DPEA may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: <http://swfsc.noaa.gov/dpea.aspx>. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Jeremy Rusin, SWFSC, NMFS, (858) 546-7101.

**SUPPLEMENTARY INFORMATION:** The SWFSC is the research arm of NMFS in

<sup>13</sup> See *Final Results of Redetermination Pursuant to Court Remand, Essar Steel Limited v. United States*, Court No., 09-00197 (Department of Commerce October 28, 2010) at 16 (*Essar I Remand Redetermination*).

<sup>14</sup> *Id.* at 16-17.

<sup>15</sup> *Id.* In *Essar I Remand Redetermination*, the Department inadvertently stated that Essar's total net countervailable subsidy rate from the *Final Results*, 76.88 percent, decreased by 54.69 percentage points, to a total net countervailable subsidy rate of 22.19 percent. See also the *Amended Final Results*. However, Essar's AFA rate for the CIP in the *Final Results* was 54.68 percent *ad valorem*, not 54.69 percent *ad valorem*. Therefore, the correct AFA rate for Essar is 54.68 percent *ad valorem*, which is the AFA rate from the *Final Results*. The final net subsidy rate for Essar is the same rate as the rate from the *Final Results*, 76.88 *ad valorem*.

<sup>16</sup> See *Essar Steel Limited v. United States*, Slip Op. 11-10, Court No. 09-197 (Ct Int'l Trade January 25, 2011) (*Essar II*).

<sup>17</sup> *Amended Final Results*, 76 FR at 7811.

<sup>18</sup> See *Essar Steel Limited v. United States*, 678 F.3d 1268, 1278-1279 (CAFC 2012) (*Essar III*).

<sup>19</sup> *Essar Steel Limited v. United States*, 880 F. Supp. 2d 1327, 1332 (CIT 2012) (*Essar IV*).

<sup>20</sup> *Essar IV* at 1330.

<sup>21</sup> *Id.* at 1331.

<sup>22</sup> See January 2013 remand results.

<sup>23</sup> See *Essar V*.

<sup>24</sup> See section 516A of the Act; *Timken*, 893 F.2d at 341; *Diamond Sawblades*, 626 F.3d 1374.

the Southwest Region. The SWFSC conducts research and provides scientific advice to manage fisheries and conserve protected species along the U.S. West Coast in the California Current Ecosystem (CCE), throughout the Eastern Tropical Pacific (ETP) Ocean, and in the Scotia Sea area off Antarctica. Research is aimed at monitoring fish stock recruitment, survival and biological rates, abundance and geographic distribution of species and stocks, and providing other scientific information needed to improve our understanding of complex marine ecological processes. Primary research activities include: mid-water trawl surveys to support assessments of coastal pelagic species, salmon and groundfish in the CCE; longline surveys for life history studies of sablefish in the CCE and highly migratory species tagging in the CCE and ETP; deep-set buoy surveys for tagging swordfish in the CCE; ecosystem surveys using active acoustic systems, plankton nets, and other oceanographic equipment in the CCE and ETP; and bottom trawl and ecosystem surveys in the Antarctic Research Area.

NMFS has prepared the DPEA under NEPA to evaluate several alternatives for conducting and funding fisheries and ecosystem research activities as the primary federal action. Additionally in the DPEA, NMFS evaluates a related action—also called a “connected action” under 40 CFR 1508.25 of the Council on Environmental Quality’s regulations for implementing the procedural provisions of NEPA (42 U.S.C. 4321 *et seq.*)—which is the proposed promulgation of regulations and authorization of the take of marine mammals incidental to the fisheries research under the Marine Mammal Protection Act (MMPA). Additionally, because the proposed research activities occur in areas inhabited by species of marine mammals, birds, sea turtles, and fish listed under the Endangered Species Act (ESA) as threatened or endangered, this DPEA evaluates activities that could result in unintentional takes of ESA-listed marine species.

The following four alternatives are currently evaluated in the DPEA:

- No-Action/Status Quo Alternative—Conduct Federal Fisheries and Ecosystem Research with Scope and Protocols Similar to Past Effort
- Preferred Alternative—Conduct Federal Fisheries and Ecosystem Research (New Suite of Research) with Mitigation for MMPA and ESA Compliance
- Modified Research Alternative—Conduct Federal Fisheries and

Ecosystem Research (New Suite of Research) with Additional Mitigation

- No Research Alternative—No Fieldwork for Federal Fisheries and Ecosystem Research Conducted or Funded by SWFSC

The first three alternatives include a program of fisheries and ecosystem research projects conducted or funded by the SWFSC as the primary federal action. Because this primary action is connected to a secondary federal action (also called a connected action under NEPA), to consider authorizing incidental take of marine mammals under the MMPA, NMFS must identify as part of this evaluation “(t)he means of effecting the least practicable adverse impact on the species or stock and its habitat.” (Section 101(a)(5)(A) of the MMPA [16 U.S.C. 1361 *et seq.*]). NMFS must therefore identify and evaluate a reasonable range of mitigation measures to minimize impacts to protected species that occur in SWFSC research areas. These mitigation measures are considered as part of the identified alternatives in order to evaluate their effectiveness to minimize potential adverse environmental impacts. The three action alternatives also include mitigation measures intended to minimize potentially adverse interactions with other protected species that occur within the action area. Protected species include all marine mammals, which are covered under the MMPA, all species listed under the ESA, and bird species protected under the Migratory Bird Treaty Act.

NMFS is also evaluating a second type of no-action alternative that considers no federal funding for field fisheries and ecosystem research activities. This is called the No Research Alternative to distinguish it from the No-Action/Status Quo Alternative. The No-Action/Status Quo Alternative will be used as the baseline to compare all of the other alternatives.

Potential direct and indirect effects on the environment are evaluated under each alternative in the DPEA. The environmental effects on the following resources are considered: physical environment, special resource areas, fish, marine mammals, birds, sea turtles, invertebrates, and the social and economic environment. Cumulative effects of external actions and the contribution of fisheries research activities to the overall cumulative impact on the aforementioned resources is also evaluated in the DPEA for the three main geographic regions in which SWFSC surveys are conducted.

NMFS requests comments on the DPEA for Fisheries Research Conducted

and Funded by the National Marine Fisheries Service, Southwest Fisheries Science Center. Please include, with your comments, any supporting data or literature citations that may be informative in substantiating your comment.

Dated: April 25, 2013.

**Francisco E. Werner,**  
Director, Southwest Fisheries Science Center,  
National Marine Fisheries Service.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC336**

#### Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Fisheries Research

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

**ACTION:** Notice; receipt of application for letter of authorization; request for comments and information.

**SUMMARY:** NMFS’ Office of Protected Resources has received a request from the NMFS Southwest Fisheries Science Center (SWFSC) for authorization to take small numbers of marine mammals incidental to conducting fisheries research, over the course of five years from the date of issuance. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of SWFSC’s request under section 101(a)(5)(A) of the MMPA for the development and implementation of regulations governing the incidental taking of marine mammals. We invite information, suggestions, and comments on SWFSC’s application and request.

**DATES:** Comments and information must be received no later than June 3, 2013.

**ADDRESSES:** Comments on the application should be addressed to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is [ITP.Laws@noaa.gov](mailto:ITP.Laws@noaa.gov). We are not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.